

P.

P.abbr. PACIFIC REPORTER.

P.A.

P.A.abbr.See professional association under ASSOCIATION.

PAAGE

paage (pay-ij). See PEDAGE.

PAC

PAC (pak).abbr.POLITICAL-ACTION COMMITTEE.

PACARE

pacare (p<<schwa>>-kair-ee), vb.[Law Latin] Hist. To pay.

PACER

PACER.abbr.PUBLIC ACCESS TO COURT ELECTRONIC RECORDS.

PACIFICATION

pacification (pas-<<schwa>>-fi-kay-sh<<schwa>>n), n. Int'l law. The act of making peace between two belligerent nations. — pacify (pas-<<schwa>>-fl), vb.

PACIFIC BLOCKADE

pacific blockade.See BLOCKADE.

PACIFICIST

pacificist. See PACIFIST.

PACIFIC REPORTER

Pacific Reporter.A set of regional lawbooks, part of West's National Reporter System, containing every officially published appellate decision from Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming, from 1883 to date. • The first series ran from 1883 to 1931; the second series ran until 2000; the third series is the current one. — Abbr. P.; P.2d.; P.3d.

PACIFISM

pacifism (pas-<<schwa>>-fiz-<<schwa>>m).Int'l law. The advocacy of peaceful methods rather than war as a means of solving disputes.

PACIFIST

pacifist (pas-<<schwa>>-fist), n. A person who is opposed to war; a person who believes in pacifism. — Also termed pacifist. Cf. CONSCIENTIOUS OBJECTOR.

PACK

pack,vb. To choose or arrange (a tribunal, jurors, etc.) to accomplish a desired result <pack a jury>.

PACKAGE MORTGAGE

package mortgage.See MORTGAGE.

PACKAGE POLICY

package policy.See INSURANCE POLICY.

PACKING

packing,n. A gerrymandering technique in which a dominant political or racial group minimizes minority representation by concentrating the minority into as few districts as possible. Cf. CRACKING; STACKING(2). [Cases: Elections 12(6).]

PACKING A JURY

packing a jury.See JURY-PACKING.

PAC-MAN DEFENSE

Pac-Man defense (pak-man). An aggressive antitakeover defense by which the target company attempts to take over the bidder company by making a cash tender offer for the bidder company's shares. • The name derives from a video game popular in the 1980s, the object of which was to gobble up the enemy. This defense is seldom used today. Cf. CROWN-JEWEL DEFENSE; SCORCHED-EARTH DEFENSE .

PACT

pact. An agreement between two or more parties; esp., an agreement (such as a treaty) between two or more nations or governmental entities.

“Popular understanding notwithstanding, there is no legal difference between various kinds of international instruments because of the name they are given. In other words, ‘treaties,’ ‘pacts,’ ‘protocols,’ ‘conventions,’ ‘covenants,’ and ‘declarations’ are all terms to convey international agreements. Some of these terms may connote more or less solemnity or formality, but it does not matter for purposes of characterizing an accord as an international agreement, binding under international law.” David J. Bederman, *International Law Frameworks* 25 (2001).

PACTA SUNT SERVANDA

pacta sunt servanda (pak-t<<schwa>> s<<schwa>>nt s<<schwa>>r-van-d<<schwa>>). [Latin “agreements must be kept”] The rule that agreements and stipulations, esp. those contained in treaties, must be observed <the Quebec courts have been faithful to the pacta sunt servanda

principle>. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.]

PACT DE NON ALIENANDO

pact de non alienando (pakt dee non ay-lee-<<schwa>>-nan-doh). [Latin] Civil law. An agreement not to alienate encumbered (esp. mortgaged) property. • This stipulation will not void a sale to a third party, but it does allow the mortgagee to proceed directly against the mortgaged property without notice to the purchaser.

PACTIO

pactio (pak-shee-oh). [Latin] Civil law. 1. The negotiating process that results in a pactum. 2. The pactum arrived at; an agreement. Pl. pactiones.

PACTION

paction (pak-sh<<schwa>>n). 1. PACTIO. 2. Int'l law. An agreement between two nations to be performed by a single act.

PACTIONAL

pactional, adj. Relating to or generating an agreement. — pactionally, adv.

PACT OF PARIS

Pact of Paris. See KELLOGG–BRIAND PACT.

PACTUM

pactum (pak-t<<schwa>>m), n. [Latin] Roman & civil law. An agreement or convention, usu. falling short of a contract; a pact. — Also termed pactum conventum. Pl. pacta.

pactum constitutae pecuniae (pak-t<<schwa>>m kon-st<<schwa>>-t[y]oo-tee pi-kyoo-nee-ee). [Latin “agreement for a fixed sum of money”] See pactum de constituto.

pactum corvinum de hereditate viventis (pak-t<<schwa>>m kor-vi-n<<schwa>>m dee h<<schwa>>-red-i-tay-tee vI-ven-tis). [Latin “a raven-like contract on the inheritance of the living”] An agreement concerning the succession of one still living. — Also termed pactum de successione viventis; pactum super hereditate viventis.

“It is supposed that the Romans called this a corvine agreement (pactum corvinum) on account of the eager rapacity of ravens, which prompts them to attack and commence to devour animals weakened and dying before death has actually taken place.” John Trayner, Trayner's Latin Maxims 429 (4th ed. 1894).

pactum de constituto (pak-t<<schwa>>m dee kon-sti-t[y]oo-toh). [Latin “an agreement”] An informal agreement to pay an existing debt, one's own or another's, at a fixed time. • The agreement was enforceable by a praetor. Justinian extended the pactum de constituto from money to debts of any kind. The pactum could also be used to give security; it differs from fidejussion mainly in its informality. — Also termed pactum constitutae pecuniae. See CONSTITUTUM. Cf. FIDEJUSSION.

pactum de non petendo (pak-t<<schwa>>m dee non p<<schwa>>-ten-doh). [Latin “agreement not to sue”] An agreement in which a creditor promises not to enforce the debt.

pactum de quota litis (pak-t<<schwa>>m dee kwoh-t<<schwa>> II-tis). [Latin “agreement about a portion of the amount in issue”] An agreement in which a creditor promises to pay a portion of a difficult-to-collect debt to a person attempting to collect it; an agreement to share the proceeds of a litigation.

pactum de retrovendendo (pak-t<<schwa>>m dee re-troh-ven-den-doh). [Latin] An agreement concerning the selling back of an object. • This agreement gave the seller the right to repurchase the item sold within a certain period and at a fixed price.

pactum de successione viventis (pak-t<<schwa>>m dee s<<schwa>>k-ses[h]-ee-oh-nee vI-ven-tis). [Latin] See pactum corvinum de hereditate viventis.

pactum displicentiae (pak-t<<schwa>>m dis-pli-sen-shee-I). Roman law. A sale on approval. • The buyer had the property on trial and could reject it.

pactum donationis (pak-t<<schwa>>m doh-nay-shee-oh-nis). [Latin] An agreement to make a gift. • Justinian made such agreements enforceable. If informal, the agreement would be valid up to a fixed sum (500 solidi).

pactum illicitum (pak-t<<schwa>>m i-lis-<<schwa>>-t<<schwa>>m). [Latin] An illegal agreement.

pactum legis commissoriae (pak-t<<schwa>>m lee-jis kom-i-sor-ee-ee). [Latin] An agreement under which the seller received the benefit of the lex commissoria. See LEX COMMISSORIA.

pactum legis commissoriae in pignoribus (pak-t<<schwa>>m lee-jis kom-i-sor-ee-ee in pig-nor-<<schwa>>-b<<schwa>>s). [Law Latin] An agreement giving the pledgee the benefit of a forfeiture clause. See LEX COMMISSORIA.

“The pactum legis commissoriae in pignoribus was ... a Roman law paction, sometimes adjoined to a redeemable right, whereby it was provided, that, if the subject were not redeemed against a determinate day, the right of reversion should be irritated, and the subject should become the irredeemable property of him to whom it was implied. Such stipulations were held in the Roman law to be contra bonos mores; but, by the law of Scotland, irritant clauses in contracts, obligations, infestments, and the like, are effectual.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 758 (George Watson ed., 7th ed. 1890).

pactum liberatorium (pak-t<<schwa>>m lib-<<schwa>>r-<<schwa>>-tor-ee-<<schwa>>m). [Law Latin “a liberating agreement”] An agreement liberating parties from honoring a real right. • This type of agreement appears to have been long defunct.

pactum super hereditate viventis (pak-t<<schwa>>m s[y]oo-p<<schwa>>r h<<schwa>>-red-i-tay-tee vI-ven-tis). [Law Latin] See pactum corvinum de hereditate viventis.

PAD

pad,vb. Slang. (Of a lawyer, paralegal, etc.) to overstate the number of (billable hours worked). See BILLABLE HOUR. — padding,n.

PADDED-PAYROLL RULE

padded-payroll rule.See FICTITIOUS-PAYEE RULE.

PAID-IN CAPITAL

paid-in capital.See CAPITAL.

PAID-IN FUND

paid-in fund.See FUND(1).

PAID-IN SURPLUS

paid-in surplus.See SURPLUS.

PAID-UP INSURANCE

paid-up insurance.See INSURANCE.

PAID-UP LEASE

paid-up lease.Oil & gas. A mineral lease that does not provide for delay-rental payments and does not subject the lessor to any covenant to drill. • In effect, the lessor makes all delay-rental payments, and perhaps a bonus, when the lease is signed. A paid-up lease may be used to lease a small area or a fractional interest, or for a short primary term or for small delay rentals. The lease is effective through the primary term.

PAID-UP POLICY

paid-up policy.See INSURANCE POLICY.

PAID-UP STOCK

paid-up stock.See full-paid stock under STOCK.

PAIN AND SUFFERING

pain and suffering.Physical discomfort or emotional distress compensable as an element of damages in torts. See DAMAGES. [Cases: Damages 31, 48.C.J.S. Damages §§ 92, 94; Torts § 66.]

PAIN OF, ON

pain of, on.See ON PAIN OF.

PAINS AND PENALTIES, BILL OF

pains and penalties, bill of.See BILL OF PAINS AND PENALTIES.

PAIR

pair.Parliamentary law. Two voters, usu. legislators, on opposite sides of an issue who agree that they will abstain if either cannot vote on the issue. • A pair is usu. announced and recorded.

“In a legislative body it is a rule that no member can vote who is not present when the question is put, but ‘pairing,’ which is a type of absentee voting by which a member agrees with a member who would have voted opposite to the first member not to vote, has long been used in Congress and some of the states and has been recognized by the courts. Each house of the legislature, under the authority to make rules for its own governance, has power to recognize what are called ‘pairs.’ ” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 538, at 385 (2000).

PAIRED VOTE

paired vote.See VOTE(1).

PAIS

pais (pay or pays). See IN PAIS.

PALACE COURT

Palace Court.Hist. A court having jurisdiction over all personal actions arising within 12 miles of Whitehall. • This court was created by James I in response to complaints about the inconvenience of using the itinerant Court of the Marshalsea; its jurisdiction was similar, but the court remained in Whitehall. It was abolished along with the Court of the Marshalsea in 1849. — Formerly also termed curia palatii. See COURT OF THE MARSHALSEA.

“The court of the marshalsea, and the palace court at Westminster, though two distinct courts, are frequently confounded together. The former was originally holden before the steward and marshal of the king's house, and was instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service.... But this court being ambulatory, and obliged to follow the king in all his progresses, so that by the removal of the household, actions were frequently discontinued, and doubts having arisen as to the extent of its jurisdiction ... [the king] erected a new court of record, called the curia palatii, or palace-court, to be held before the steward of the household and knight marshal, and the steward of the court, or his deputy; with jurisdiction to hold plea of all manner of personal actions whatsoever, which shall arise between any parties within twelve miles of his majesty's palace at Whitehall.” 3 William Blackstone, *Commentaries on the Laws of England* 76 (1768).

PALIMONY

palimony (pal-<<schwa>>-moh-nee). [Portmanteau word from pal + alimony] 1. A court's award of post-relationship support or compensation for services, money, and goods contributed during a long-term nonmarital relationship, esp. where a common-law marriage cannot be established.The term originated in the press coverage of *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976). Cf. alimony. [Cases: Marriage54. C.J.S. Marriage ?? 43?44.] 2. Loosely, child support.This sense is esp. common in the United Kingdom.

PALLIO COOPERIRE

pallio cooperire (pal-ee-oh koh-op-<<schwa>>-ri-ree). [Latin “to cover with a pallium”] Hist. A marriage of persons who have already had a child together. • The pallium was a veil or cover over the bride, which was extended to cover the bastard child. Its removal at the wedding was deemed to legitimate the child.

PALMER'S ACT

Palmer's Act. An English statute, enacted in 1856, giving a person accused of a crime falling outside the jurisdiction of the Central Criminal Court the right to have the case tried in that court. St. 19 & 20 Vict., ch. 16. — Also termed Central Criminal Court Act. See CENTRAL CRIMINAL COURT.

PALMING OFF

palming off. See PASSING OFF.

PALSGRAF<TT> RULE

Palsgraf rule (pawlz-graf). Torts. The principle that negligent conduct resulting in injury will lead to liability only if the actor could have reasonably foreseen that the conduct would cause the injury. • In *Palsgraf v. Long Island R.R.*, 162 N.E. 99 (N.Y. 1928), two railroad attendants negligently dislodged a package of fireworks from a man they were helping board a train. The package exploded on impact and knocked over some scales that fell on Mrs. Palsgraf. The New York Court of Appeals, in a 4–3 majority opinion written by Chief Justice Benjamin Cardozo, held that the attendants could not have foreseen the possibility of injury to Palsgraf and therefore did not breach any duty to her. In the dissenting opinion, Justice William S. Andrews asserted that the duty to exercise care is owed to all, and thus a negligent act will subject the actor to liability to all persons proximately harmed by it, whether or not the harm is foreseeable. Both opinions have been widely cited to support the two views expressed in them. [Cases: Negligence 213. C.J.S. Negligence § 34.]

PAN-AMERICAN CONVENTION

Pan-American Convention. Copyright. One of a series of copyright conventions held among Western Hemisphere countries to negotiate treaties patterned after the Berne Convention. • The first Convention was held in 1902, the last in 1946. The largest was the 1910 Pan American Convention in Buenos Aires.

PANDECT

pandect (pan-dekt). 1. A complete legal code, esp. of a nation or a system of law, together with commentary. 2. (cap. & pl.) The 50 books constituting Justinian's Digest (one of the four works making up the Corpus Juris Civilis), first published in A.D. 533. • The substance of 2,000 treatises was distilled into this abridgment. One estimate is that 3 million lines were reduced to 150,000. This prodigious amount of work was carried out in three short years (A.D. 530–533) by a commission of 17 jurists headed by Tribonian. — Also spelled (in reference to German law)

pandekt. — Also termed (in sense 2) Digest. Pl. pandects, pandectae. See CORPUS JURIS CIVILIS .

PANDER

pander, n. One who engages in pandering. — Also termed panderer. See PIMP.

PANDERING

pandering (pan-d<<schwa>>r-ing), n. 1. The act or offense of recruiting a prostitute, finding a place of business for a prostitute, or soliciting customers for a prostitute. — Also termed promoting prostitution. [Cases: Prostitution 1. C.J.S. Prostitution and Related Offenses §§ 2–4, 8–13, 17, 21–24.] 2. The act or offense of selling or distributing textual or visual material (such as magazines or videotapes) openly advertised to appeal to the recipient's sexual interest. • Although the concept of pandering was invoked by the U.S. Supreme Court in *Ginzburg v. United States*, 383 U.S. 463, 86 S.Ct. 942 (1966), it has seldom been discussed by the Court since then. — pander, vb.

P & L

P & L. abbr. Profit and loss. See INCOME STATEMENT.

PANDUIT TEST

Panduit test. Patents. A four-factor test for measuring profits lost because of patent infringement. • The patentee must prove (1) that there was a demand for the product; (2) that the patentee had the manufacturing and marketing capacity to meet that demand; (3) that there were no acceptable noninfringing alternatives on the market; and (4) how much was lost in profits. *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.*, 575 F.2d 1152 (6th Cir. 1978). [Cases: Patents 318. C.J.S. Patents §§ 561–562.]

PANEL

panel. 1. A list of persons summoned as potential jurors. 2. A group of persons selected for jury duty; VENIRE. [Cases: Jury 66, 78. C.J.S. Juries §§ 271, 312, 340–341.] 3. A set of judges selected from a complete court to decide a specific case; esp., a group of three judges designated to sit for an appellate court. [Cases: Courts 90(2). C.J.S. Courts § 141.] 4. Scots law. A person indicted in a crime; the accused. — Also spelled (in sense 4) pannel.

PANELATION

panelation (pan-<<schwa>>l-ay-sh<<schwa>>n). The act of empaneling a jury. — Also spelled panellation.

PANEL ATTORNEY

panel attorney. A private attorney who represents indigent defendants at government expense.

PANEL-SHOPPING

panel-shopping. The practice of choosing the most favorable group of judges to hear an

appeal.

PANNAGE

pannage (pan-ij).Hist.1. The right to feed animals, esp. swine, on the windfallen nuts, etc. in a forest. 2. The payment made to a forest's owner in exchange for the right.

PAPAL LAW

papal law (pay-p<<schwa>>l). See CANON LAW.

PAPER

paper. 1. Any written or printed document or instrument. 2. A negotiable document or instrument evidencing a debt; esp., commercial documents or negotiable instruments considered as a group. See NEGOTIABLE INSTRUMENT. 3. (pl.) COURT PAPERS.

accommodation paper.See ACCOMMODATION PAPER.

bankable paper.Notes, checks, bank bills, drafts, and other instruments received as cash by banks.

bearer paper.An instrument payable to the person who holds it rather than to the order of a specific person. • Bearer paper is negotiated simply by delivering the instrument to a transferee. — Also termed bearer document; bearer instrument. [Cases: Bills and Notes 210. C.J.S. Bills and Notes; Letters of Credit § 145.]

chattel paper (chat-<<schwa>>l). See CHATTEL PAPER.

commercial paper. 1. An instrument, other than cash, for the payment of money. • Commercial paper — typically existing in the form of a draft (such as a check) or a note (such as a certificate of deposit) — is governed by Article 3 of the UCC. But even though the UCC uses the term commercial paper when referring to negotiable instruments of a particular kind (drafts, checks, certificates of deposit, and notes as defined by Article 3), the term long predates the UCC as a business and legal term in common use. Before the UCC, it was generally viewed as synonymous with negotiable paper or bills and notes. It was sometimes applied even to nonnegotiable instruments. — Also termed mercantile paper; company's paper. See NEGOTIABLE INSTRUMENT. [Cases: Bills and Notes 1. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 5–6, 8–9, 17–18, 22.]

“ ‘Commercial paper’ is rather a popular than a technical expression, often used, however, both in statutes and in decisions of courts, to designate those simple forms of contract long recognized in the world's commerce and governed by the law merchant.” 1 Joseph F. Randolph, *A Treatise on the Law of Commercial Paper* § 1, at 1 (2d ed. 1899).

“Defined most broadly, commercial paper refers to any writing embodying rights that are customarily conveyed by transferring the writing. A large subset of commercial paper consists of such writings that are negotiable, which means that the law enables a transferee to acquire the embodied rights free of claims and defenses against the transferor.” Richard E. Speidel,

Negotiable Instruments and Check Collection in a Nutshell 1 (4th ed. 1993).

2. Such instruments collectively. — Also termed bills and notes. 3. Loosely, a short-term unsecured promissory note, usu. issued and sold by one company to meet another company's immediate cash needs.

commodity paper.An instrument representing a loan secured by a bill of lading or warehouse receipt.

order paper.An instrument payable to a specific payee or to any person that the payee designates. — Also termed order document; order instrument. [Cases: Bills and Notes 208. C.J.S. Bills and Notes; Letters of Credit §§ 139, 143, 146.]

PAPER LOSS

paper loss.See LOSS.

PAPER MARKET

paper market.See derivative market under MARKET.

PAPER MONEY

paper money.See MONEY.

PAPER PATENT

paper patent.See PATENT(3).

PAPER PROFIT

paper profit.See PROFIT(1).

PAPERS

papers. See COURT PAPERS.

PAPER STANDARD

paper standard.A monetary system based entirely on paper; a system of currency that is not convertible into gold or other precious metal. Cf. GOLD STANDARD.

PAPER STREET

paper street.See STREET.

PAPER TITLE

paper title.See record title under TITLE(2).

PAPIAN LAW

Papian law.See LEX PAPIA POPPEA.

PAR

par. See PAR VALUE.

PARAGE

parage (par-ij), n.[Law French] Hist. Equality of condition, blood, or dignity; esp., the equal tenure in land existing among the nobility who inherit from a common ancestor. — Also termed paragium. Cf. DISPARAGARE(2).

PARAGIUM

paragium (p<<schwa>>-ray-jee-<<schwa>>m). [Law Latin] PARAGE.

PARAJUDGE

parajudge. See UNITED STATES MAGISTRATE JUDGE.

PARALEGAL

paralegal,n. A person who assists a lawyer in duties related to the practice of law but who is not a licensed attorney. — Also termed legal assistant; legal analyst. — paralegal,adj.

PARALEGALIZE

paralegalize,vb. Slang. To proofread, cite-check, and otherwise double-check the details in (a legal document).

PARALLEL CITATION

parallel citation.See CITATION(3).

PARALLEL IMPORTS

parallel imports.Goods bearing valid trademarks that are manufactured abroad and imported into the United States to compete with domestically manufactured goods bearing the same valid trademarks. • Domestic parties commonly complain that parallel imports compete unfairly in the U.S. market. But U.S. trademark law does not prohibit the sale of most parallel imports. — Also termed gray-market goods. See gray market under MARKET.

PARALLEL PARENTING

parallel parenting.See PARENTING.

PARALLEL RESEARCH

parallel research.Intellectual property. The coincident but independent development of similar information or ideas by more than one person. • Parallel research may be offered to establish an independent-conception defense. If more than one person independently reaches the same result, each may protect the product as a trade secret.

PARAMOUNT TITLE

paramount title.See TITLE(2).

PARAPH

paraph (par-⟨schwa⟩f), n.1.Hist. A flourish that follows a signature, intended as a safeguard against forgery. 2.Civil law. A signature itself; esp., a notary public's signature on a document, followed by the date, names of the parties, and seal.

paraph (par-⟨schwa⟩f), vb. Civil law. To add a paraph to ⟨paraphed the contract⟩.

PARAPHERNA

parapherna (par-⟨schwa⟩-f⟨schwa⟩r-n⟨schwa⟩), n. [Greek “things brought on the side”] 1.Roman law. Property of a wife not forming part of her dowry. See DOS(1).2.Scots law. A married woman's personal property, such as clothing, jewelry, and intimate possessions, which a husband did not acquire by virtue of marriage. See JUS MARITI.

PARAPHERNALIA

paraphernalia (par-⟨schwa⟩-f⟨schwa⟩r-nay-lee-⟨schwa⟩).Hist. Property that a wife was allowed to keep, in addition to her dowry, on the death of her husband.

“[I]n one particular instance the wife may acquire a property in some of her husband's goods: which shall remain to her after his death and not go to the executors. These are called her paraphernalia, which is a term borrowed from the civil law ... signifying something over and above her dower.” 2 William Blackstone, Commentaries on the Laws of England 435–36 (1765).

PARAPHERNAL PROPERTY

paraphernal property.See extradotal property under PROPERTY.

PARAPHRASE OF THEOPHILUS

Paraphrase of Theophilus.See INSTITUTE(4).

PARATA EXECUTIO

parata executio (p⟨schwa⟩-ray-t⟨schwa⟩ ek-s⟨schwa⟩-kyoo-shee-oh). [Law Latin “a prepared diligence”] Scots law. A creditor's completed diligence allowing the creditor to proceed to obtain payment of a debt.

PARATITLA

paratitla (par-⟨schwa⟩-tīt-l⟨schwa⟩), n. pl.[Law Latin “next to the title”] Roman & civil law. Notes or abstracts prefixed to titles of law, giving a summary of their contents.

PARATUM HABEO

paratum habeo (p⟨schwa⟩-ray-t⟨schwa⟩m hay-bee-oh). [Law Latin “I have him in readiness”] Hist. A sheriff's return of a capias ad respondendum, signifying that the defendant is ready to be brought to court.

PARATUS EST VERIFICARE

paratus est verificare (p<<schwa>>-ray-t<<schwa>>s est ver-<<schwa>>-fi-kair-ee). [Law Latin] He is ready to verify. • This phrase formerly concluded a verified pleading.

PARAVAIL

paravail (par-<<schwa>>-vaylorpar-<<schwa>>-vayl), adj.[Law French “at the bottom”] Hist. (Of a tenant) holding of another tenant.

PARCEL

parcel,n.1. A small package or bundle. 2. A tract of land; esp., a continuous tract or plot of land in one possession, no part of which is separated from the rest by intervening land in another's possession.

parcel,vb. To divide and distribute (goods, land, etc.) <Alex parceled out the inheritance>.

PARCENARY

parcenary (pahr-s<<schwa>>-ner-ee). See COPARCENARY.

PARCENER

parcener (pahr-s<<schwa>>-n<<schwa>>r). See COPARCENER.

PARCO FRACTO

parco fracto (pahr-koh frak-toh). See DE PARCO FRACTO.

PAR DELICTUM

par delictum (pahr di-lik-t<<schwa>>m). [Latin] Equal guilt; equal wrong.

PARDON

pardon,n. The act or an instance of officially nullifying punishment or other legal consequences of a crime. • A pardon is usu. granted by the chief executive of a government. The President has the sole power to issue pardons for federal offenses, and state governors have the power to issue pardons for state crimes. — Also termed executive pardon. See CLEMENCY. Cf. COMMUTATION (2); REPRIEVE. [Cases: Pardon and Parole 23. C.J.S. Pardon and Parole §§ 11–12, 14–16, 22–26, 29–30.] — pardon,vb.

“The term pardon is first found in early French law and derives from the Late Latin perdonare (‘to grant freely’), suggesting a gift bestowed by the sovereign. It has thus come to be associated with a somewhat personal concession by a head of state to the perpetrator of an offense, in mitigation or remission of the full punishment that he has merited.” Leslie Sebba, “Amnesty and Pardon,” in 1 Encyclopedia of Crime and Justice 59, 59 (Sanford H. Kadish ed., 1983).

absolute pardon.A pardon that releases the wrongdoer from punishment and restores the offender's civil rights without qualification. — Also termed full pardon; unconditional pardon. [Cases: Pardon and Parole 23. C.J.S. Pardon and Parole §§ 11–12, 14–16, 22–26, 29–30.]

conditional pardon.A pardon that does not become effective until the wrongdoer satisfies a

prerequisite or that will be revoked upon the occurrence of some specified act. [Cases: Pardon and Parole 23. C.J.S. Pardon and Parole §§ 11–12, 14–16, 22–26, 29–30.]

faultless pardon. A pardon granted because the act for which the person was convicted was not a crime.

general pardon. See AMNESTY.

partial pardon. A pardon that exonerates the offender from some but not all of the punishment or legal consequences of a crime. [Cases: Pardon and Parole 23. C.J.S. Pardon and Parole §§ 11–12, 14–16, 22–26, 29–30.]

PARDON ATTORNEY

pardon attorney. A Justice Department lawyer who considers applications for federal pardons and forwards those of promising candidates for review by the President.

PARENS BINUBUS

parens binubus (par-enz bI-n[y]oo-b<<schwa>>s). [Latin “twice-married parent”] Roman law. A parent who has remarried.

PARENS PATRIAE

parens patriae (par-enz pay-tree-ee or pa-tree-I). [Latin “parent of his or her country”] 1. The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves <the attorney general acted as parens patriae in the administrative hearing>; in Roman law, the emperor. [Cases: States 1. C.J.S. States §§ 2, 16.] 2. A doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, esp. on behalf of someone who is under a legal disability to prosecute the suit <parens patriae allowed the state to institute proceedings>. • The state ordinarily has no standing to sue on behalf of its citizens, unless a separate, sovereign interest will be served by the suit. — Also termed doctrine of parens patriae. [Cases: Infants 2; States 190. C.J.S. Infants §§ 12, 108, 198; States §§ 297, 314.]

PARENT

parent. 1. The lawful father or mother of someone. • In ordinary usage, the term denotes more than responsibility for conception and birth. The term commonly includes (1) either the natural father or the natural mother of a child, (2) the adoptive father or adoptive mother of a child, (3) a child's putative blood parent who has expressly acknowledged paternity, and (4) an individual or agency whose status as guardian has been established by judicial decree. In law, parental status based on any criterion may be terminated by judicial decree. In other words, a person ceases to be a legal parent if that person's status as a parent has been terminated in a legal proceeding. — Also termed legal parent. [Cases: Parent and Child 1. C.J.S. Parent and Child §§ 1–12, 201.]

absent parent. See noncustodial parent.

adoptive parent. A parent by virtue of legal adoption. See ADOPTION. [Cases: Adoption 4. C.J.S. Adoption of Persons §§ 13–17, 23–24.]

biological parent. The woman who provides the egg or the man who provides the sperm to form the zygote that grows into an embryo. — Also termed genetic parent.

birth parent. Either the biological father or the mother who gives birth to a child. — Sometimes written birthparent.

constructive parent. See equitable parent.

custodial parent. The parent awarded physical custody of a child in a divorce. See PHYSICAL CUSTODY(2). Cf. noncustodial parent.

de facto parent. An adult who (1) is not the child's legal parent, (2) has, with consent of the child's legal parent, resided with the child for a significant period, and (3) has routinely performed a share of the caretaking functions at least as great as that of the parent who has been the child's primary caregiver without any expectation of compensation for this care. • Because the status of de facto parent is subordinate to that of legal parent, a person who expects to be afforded the status of parent should, if possible, adopt the child. The primary function of this conceptual status is to provide courts with a means for maintaining a relationship between a child and an adult who has functioned as a parent when that adult is prohibited from legally adopting the child. The status is usu. limited to a person who has assumed the role of parent with the knowledge and consent, either express or implied, of the legal parent. But it may also arise when there is a total failure or inability of the legal parent to perform parental duties. Cf. equitable parent; psychological parent.

Disneyland parent. A noncustodial parent who indulges his or her child with gifts and good times during visitation and leaves most or all disciplinary responsibilities to the other parent; esp., a noncustodial parent who provides luxuries that the custodial parent cannot afford but performs no disciplinary duties, in an effort to gain or retain the child's affection. See LOLLIPOP SYNDROME.

domiciliary parent. A parent with whom a child lives.

dual-residential parent. A parent who shares primary residential responsibility for a child with the other parent when each provides a residence that is substantially a primary residence. • In many jurisdictions, dual residence is referred to as joint physical custody. See RESIDENTIAL RESPONSIBILITY; CUSTODY(2). Cf. residential parent.

equitable parent. 1. A husband who, though not the biological father, is treated by the court as the father in an action for custody or visitation, usu. when the husband (1) has treated the child as his own while married to the child's mother, (2) is the only father the child has ever known, and (3) seeks the rights of fatherhood. 2. A mother or father, not by blood or adoption, but by virtue of the close parent-like relationship that exists between that person and a child. • The status of equitable parent is a legal fiction that is used as an equitable remedy. Most commonly, the status of equitable parent arises when a person, living with the child and one of his or her legal or natural parents, forms a close bond with the child and assumes the duties and responsibilities of a parent. — Also termed constructive parent. See adoption by estoppel under ADOPTION. Cf. psychological parent; de facto parent.

foster parent. An adult who, though without blood ties or legal ties, cares for and rears a child, esp. an orphaned or neglected child who might otherwise be deprived of nurture, usu. under the auspices and direction of an agency and for some compensation or benefit. • Foster parents sometimes give care and support temporarily until a child is legally adopted by others. See FOSTER CARE. Cf. foster child under CHILD. [Cases: Infants 226. C.J.S. Adoption of Persons §§ 10–12.]

genetic parent. See biological parent.

godparent. See GODPARENT.

intended parent. See intentional parent.

intentional parent. The person whose idea it is to have and raise a child and who (1) enters into a surrogacy contract with a surrogate mother, and (2) is the legal parent of the child regardless of any genetic link to the child. — Also termed intended parent. See intended child under CHILD.

noncustodial parent. In the child-custody laws of some states, a parent without the primary custody rights of a child; esp., the parent not awarded physical custody of a child in a divorce. • The noncustodial parent is typically awarded visitation with the child. — Also termed nonresidential parent; possessory conservator; absent parent. See PHYSICAL CUSTODY(2). Cf. custodial parent. [Cases: Child Custody 175–231.]

nonresidential parent. See noncustodial parent.

parent by estoppel. A man who, though not a child's legal father, is estopped from denying liability for child support. • This estoppel usu. arises when the man (1) has lived with the child for at least two years, (2) has believed in good faith that he was the child's father, (3) has accepted parental responsibilities, and (4) has entered into a coparenting agreement with the child's mother — and when the court finds that recognition of the status of parent is in the child's best interests. See ESTOPPEL.

primary domiciliary parent. In a joint-custody arrangement, the parent who exercises primary physical custody. See joint custody under CUSTODY(2).

psychological parent. A person who, on a continuing and regular basis, provides for a child's emotional and physical needs. • The psychological parent may be the biological parent, a foster parent, a guardian, a common-law parent, or some other person unrelated to the child.

residential parent. A parent who has primary residential responsibility for a child and who is not a dual-residential parent. See RESIDENTIAL RESPONSIBILITY. Cf. dual-residential parent.

stepparent. The spouse of one's mother or father by a later marriage. [Cases: Parent and Child 15. C.J.S. Parent and Child §§ 345–350, 357–358.]

surrogate parent. 1. A person who carries out the role of a parent by court appointment or the voluntary assumption of parental responsibilities. [Cases: Parent and Child 15. C.J.S. Parent and Child §§ 345–350, 357–358.] 2. See surrogate mother (2) under MOTHER.

2. See parent corporation under CORPORATION.

PARENTAGE

parentage (pair-*<<schwa>>*n-tij orpar-). The state or condition of being a parent; kindred in the direct ascending line. [Cases: Parent and Child 1. C.J.S. Parent and Child §§ 1–12, 201.]

PARENTAGE ACTION

parentage action. See PATERNITY SUIT.

PARENTAL ACCESS

parental access. See VISITATION(2).

PARENTAL-ALIENATION SYNDROME

parental-alienation syndrome. See PARENT-ALIENATION SYNDROME.

PARENTAL-AUTONOMY DOCTRINE

parental-autonomy doctrine. The principle that a parent has a fundamental right to raise his or her child and to make all decisions regarding that child free from governmental intervention, unless (1) the child's health and welfare are jeopardized by the parent's decisions, or (2) public health, welfare, safety, and order are threatened by the parent's decisions. • The Supreme Court first recognized the doctrine of parental autonomy over the family in *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923). — Also termed family-autonomy doctrine. Cf. PARENTAL-PRIVILEGE DOCTRINE.

PARENTAL-CONSENT STATUTE

parental-consent statute. A statute that requires a minor to obtain his or her parent's consent before receiving elective medical treatment. • Without parental consent, a physician or other medical professional commits a battery upon a child when giving nonemergency medical treatment. To pass constitutional muster, a parental-consent statute must include a judicial-bypass provision. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 112 S.Ct. 2791 (1992). — Also termed parental-consent treatment statute. See JUDICIAL-BYPASS PROVISION. Cf. PARENTAL-NOTIFICATION STATUTE; MATURE-MINOR DOCTRINE.

PARENTAL-CONSENT TREATMENT STATUTE

parental-consent treatment statute. See PARENTAL-CONSENT STATUTE.

PARENTAL CONSORTIUM

parental consortium. See CONSORTIUM.

PARENTAL-DISCIPLINE PRIVILEGE

parental-discipline privilege. A parent's right to use reasonable force or to impose reasonable punishment on a child in a way that is necessary to control, train, and educate. • Several factors are used to determine the reasonableness of the action, including whether the actor is the parent; the

child's age, sex, and physical and mental state; the severity and foreseeable consequences of the punishment; and the nature of the misconduct. Cf. PARENTAL-PRIVILEGE DOCTRINE.

PARENTAL FUNCTIONS

parental functions. See PARENTING FUNCTIONS.

PARENT-ALIENATION SYNDROME

parent-alienation syndrome. A situation in which one parent has manipulated a child to fear or hate the other parent; a condition resulting from a parent's actions that are designed to poison a child's relationship with the other parent. • Some mental-health specialists deny that this phenomenon amounts to a "psychological syndrome." — Also termed parental-alienation syndrome.

PARENTAL IMMUNITY

parental immunity. See IMMUNITY(2).

PARENTAL-IMMUNITY DOCTRINE

parental-immunity doctrine. See parental immunity (1) under IMMUNITY(2).

PARENTAL KIDNAPPING

parental kidnapping. See KIDNAPPING.

PARENTAL KIDNAPPING PREVENTION ACT

Parental Kidnapping Prevention Act. A federal law, enacted in 1980, providing a penalty for child-kidnapping by a noncustodial parent and requiring a state to recognize and enforce a child-custody order rendered by a court of another state. 28 USCA § 1738A; 42 USCA §§ 654, 655, 663. — Abbr. PKPA. Cf. UNIFORM CHILD CUSTODY JURISDICTION ACT; FEDERAL KIDNAPPING ACT. [Cases: Child Custody 723, 738.]

PARENTAL-LIABILITY STATUTE

parental-liability statute. A law obliging parents to pay damages for torts (esp. intentional ones) committed by their minor children. • All states have these laws, but most limit the parents' monetary liability to about \$3,000 per tort. Parents can also be held criminally liable for the acts of their children. One group of laws is aimed at contributing to the delinquency and endangering the welfare of a minor. More recently, the laws have been directed at improper supervision and failure to supervise. The first law aimed at punishing parents for the acts of their children was enacted in Colorado in 1903. By 1961 all but two states had enacted similar laws. At least five states make it a felony for a parent to intentionally, knowingly, and recklessly provide a firearm to a child, or permit the child to handle a firearm, when the parent is aware of a substantial risk that the child will use the weapon to commit a crime. — Also termed parental-responsibility statute; failure-to-supervise statute. Cf. PARENTAL-RESPONSIBILITY STATUTE. [Cases: Parent and Child 13.5. C.J.S. Parent and Child §§ 191, 309–315.]

PARENTAL-NOTIFICATION STATUTE

parental-notification statute. A law that requires a physician to notify a minor's parent of her intention to have an abortion. Cf. PARENTAL-CONSENT STATUTE .

PARENTAL-PREFERENCE DOCTRINE

parental-preference doctrine. The principle that custody of a minor child should ordinarily be granted to a fit parent rather than another person. • The preference can be rebutted by proof that the child's best interests are to the contrary. — Also termed parental-rights doctrine; parental-superior-rights doctrine; parental-presumption rule. Cf. BEST INTERESTS OF THE CHILD. [Cases: Child Custody 460.]

PARENTAL-PRESUMPTION RULE

parental-presumption rule. See PARENTAL-PREFERENCE DOCTRINE.

PARENTAL-PRIVILEGE DOCTRINE

parental-privilege doctrine. The parent's right to discipline his or her child reasonably, to use reasonable child-rearing practices free of governmental interference, and to exercise decision-making authority over the child. Cf. PARENTAL-AUTONOMY DOCTRINE; PARENTAL-DISCIPLINE PRIVILEGE.

PARENTAL-RESPONSIBILITY STATUTE

parental-responsibility statute. 1. A law imposing criminal sanctions (such as fines) on parents whose minor children commit crimes as a result of the parents' failure to exercise sufficient control over them. — Also termed control-your-kid law. 2. PARENTAL-LIABILITY STATUTE. [Cases: Parent and Child 13.5(2, 4). C.J.S. Parent and Child §§ 191, 312–315.]

PARENTAL RIGHTS

parental rights. A parent's rights to make all decisions concerning his or her child, including the right to determine the child's care and custody, the right to educate and discipline the child, and the right to control the child's earnings and property. See TERMINATION OF PARENTAL RIGHTS. [Cases: Parent and Child 1–8. C.J.S. Parent and Child §§ 1–12, 40–54, 192, 201, 257–278, 327, 329–344.]

PARENTAL-RIGHTS DOCTRINE

parental-rights doctrine. See PARENTAL-PREFERENCE DOCTRINE.

PARENTAL-SUPERIOR-RIGHTS DOCTRINE

parental-superior-rights doctrine. See PARENTAL-PREFERENCE DOCTRINE.

PARENT APPLICATION

parent application. See PATENT APPLICATION.

PARENT BY ESTOPPEL

parent by estoppel. See PARENT.

PARENT-CHILD IMMUNITY

parent-child immunity. See parental immunity under IMMUNITY(2).

PARENT-CHILD RELATIONSHIP

parent-child relationship. See RELATIONSHIP.

PARENT COMMITTEE

parent committee. See COMMITTEE.

PARENT COMPANY

parent company. See parent corporation under CORPORATION.

PARENT CORPORATION

parent corporation. See CORPORATION.

PARENTELA

parentela (par-*<<schwa>>n-tee-l<<schwa>>*), n. pl. [Law Latin] Persons who can trace descent from a common ancestor.

PARENTELIC METHOD

parentelic method (par-*<<schwa>>n-tee-lik* or *-tel-ik*). A scheme of computation used to determine the paternal or maternal collaterals entitled to inherit when a childless intestate decedent is not survived by parents or their issue. • Under this method, the estate passes to grandparents and their issue; if there are none, to great-grandparents and their issue; and so on down each line until an heir is found. The Uniform Probate Code uses a limited parentelic system: it looks first to the grandparents and their issue, but if no heir is found in that line, the search ends and the estate escheats to the state. See DEGREE(5). Cf. GRADUAL METHOD.

PARENT FILING DATE

parent filing date. See effective filing date under DATE.

PARENTICIDE

parenticide (p-*<<schwa>>-ren-t<<schwa>>-sId*). 1. The act of murdering one's parent. 2. A person who murders his or her parent. — parenticidal, adj.

PARENTING

parenting, n. 1. Performance of the functions of a parent. 2. One or more methods of child-rearing.

parallel parenting. A situation in which divorced parents, although disagreeing on some aspects of child-rearing, allow each other to handle discipline and daily regimens in their own

individual ways when with the child.

shared parenting.Cooperation between divorced parents in child-rearing.

PARENTING AGREEMENT

parenting agreement.See PARENTING PLAN.

PARENTING FUNCTION

parenting function.A task that serves the direct or day-to-day needs of a child or of a child's family. • Parenting functions include providing necessities, making decisions about the child's welfare, and maintaining the family residence. Cf. CARETAKING FUNCTIONS.

PARENTING PLAN

parenting plan.A plan that allocates custodial responsibility and decision-making authority for what serves the child's best interests and that provides a mechanism for resolving any later disputes between parents. — Also termed parenting agreement. See CUSTODY(2); CUSTODIAL RESPONSIBILITY; DECISION-MAKING RESPONSIBILITY Y.

PARENTING TIME

parenting time.See VISITATION(2).

PARES CURIAE

pares curiae (par-eez kyoor-ee-ee). [Law Latin “peers of the court”] Hist. 1. A lord's tenants who sat in judgment of a fellow tenant. 2.PARES CURTIS.

PARES CURTIS

pares curtis (par-eez k<<schwa>>r-tis). [Law Latin] Hist. The peers of the court. — Also termed pares curiae.

“The lord was, in early times, the legislator and judge over all his feudatories: and therefore the vassals of the inferior lords were bound by their fealty to attend their domestic courts baron, (which were instituted in every manor or barony, for doing speedy and effectual justice to all the tenants) in order as well to answer such complaints as might be alleged against themselves, as to form a jury or homage for the trial of their fellow-tenants; and upon this account, in all the feudal institutions both here and on the continent, they are distinguished by the appellation of the peers of the court; pares curtis, or pares curiae.” 2 William Blackstone, Commentaries on the Laws of England 54 (1766).

PARES REGNI

pares regni (par-eez reg-nI). [Law Latin] Hist. Peers of the realm.

PARETO OPTIMALITY

Pareto optimality (p<<schwa>>-ray-toh or p<<schwa>>-ret-oh), n. An economic situation in which no person can be made better off without making someone else worse off. • The term

derives from the work of Vilfredo Pareto (1848–1923), an Italian economist and sociologist. — Pareto-optimal,adj.

PARETO SUPERIORITY

Pareto superiority,n. An economic situation in which an exchange can be made that benefits someone and injures no one. • When such an exchange can no longer be made, the situation becomes one of Pareto optimality. — Pareto-superior,adj.

PARI CAUSA, IN

pari causa, in.See IN PARI CAUSA.

PARI DELICTO, IN

pari delicto, in.See IN PARI DELICTO.

PARIES COMMUNIS

paries communis (pair-ee-eez k<<schwa>>-myoo-nis). [Latin] A common wall; a party wall.

PARIES ONERI FERENDO, UTI NUNC EST, ITA SIT

paries oneri ferendo, uti nunc est, ita sit (pair-ee-eez on-<<schwa>>r-I f<< schwa>>-ren-doh, yoo-tIn<<schwa>>ngk est, I-t<<schwa>> sit). [Latin] Roman law. The wall for bearing the burden, as it now is, so let it be. • The phrase constituted the urban servitude oneris ferendi. See ONERIS FERENDI; JUS ONERIS FERENDI; servitus oneris ferendi under SERVITUS.

PARI MATERIA, IN

pari materia, in.See IN PARI MATERIA.

PARIMUTUEL BETTING

parimutuel betting (par-i-myoo-choo-<<schwa>>l). A system of gambling in which bets placed on a race are pooled and then paid (less a management fee and taxes) to those holding winning tickets. [Cases: Gaming 1.]

PARI PASSU

pari passu (pahr-ee pahs-oo orpair-I, pair-ee, orpar-ee pas-[y]oo). [Latin “by equal step”] Proportionally; at an equal pace; without preference < creditors of a bankrupt estate will receive distributions pari passu>.

PARI RATIONE

pari ratione (pair-I ray-shee-oh-nee or rash-ee-oh-nee). [Latin] Roman & civil law. For the like reason; by like mode of reasoning.

PARIS ADDITIONAL ACT

Paris Additional Act.Copyright. An 1896 amendment to the Berne Convention extending copyright protection to photographs as derivative works.

PARIS CONVENTION

Paris Convention. See **PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY** .

PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Paris Convention for the Protection of Industrial Property. A treaty designed to unify and streamline patent prosecutions and trademark applications among the signatories. • The Convention eased the harsh effects of the first-to-file priority rule by allowing an applicant in any member country one year in which to apply in other member countries while maintaining the application's original priority date. It also banned patent-protection discrimination against residents of other member nations. Now administered by the World Intellectual Property Organization, an agency of the United Nations, the Convention was first signed in 1883 and revised most recently in 1970. — Often shortened to Paris Convention. — Also termed Paris Industrial Property Convention.

“The 1883 Paris Convention for the Protection of Industrial Property is the cornerstone of the international patent granting system. It represents the first efforts of several countries to adopt a common approach to industrial property. The fundamental principles of ‘right of priority’ and ‘national treatment’ set out by the Convention have been of capital importance to the internationalization of intellectual property rights over the last century.” Marta Pertegás Sender, *Cross-Border Enforcement of Patent Rights* 4 (2002).

PARISH

parish. 1. In Louisiana, a governmental subdivision analogous to a county in other U.S. states. [Cases: Counties 1. C.J.S. Counties §§ 2–4.] 2. Eccles. law. A division of a town or district, subject to the ministry of one pastor.

district parish. Eccles. law. A geographical division of an English parish made by the Crown's commissioners for the building of new churches for worship, celebration of marriages, christenings, and burials.

PARISH COURT

parish court. See county court under **COURT**.

PARIS INDUSTRIAL PROPERTY CONVENTION

Paris Industrial Property Convention. See **PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY** .

PAR ITEM

par item. See **ITEM**.

PARIUM JUDICIUM

parium iudicium (pair-ee-*<<schwa>>*m joo-dish-ee-*<<schwa>>*m). [Law Latin] The

judgment of peers; trial by a jury of one's peers or equals.

PARKER DOCTRINE

Parker doctrine. See STATE-ACTION DOCTRINE.

PARKING

parking. 1. The sale of securities subject to an agreement that the seller will buy them back at a later time for a similar price. • Parking is illegal if done to circumvent securities regulations or tax laws. It is often a method of evading the net-capital requirements of the National Association of Securities Dealers (NASD), which requires a brokerage firm to discount the value of any stock it holds in its own account when it files its monthly report about its net-capital condition. To reach technical compliance with the NASD's net-capital requirements, a brokerage firm “sells” stock from its own account to a customer at market price, thereby avoiding the discount for reporting purposes. Having filed its report, it can then “buy” the shares back from the customer, usu. at the same price at which it “sold” the stock, plus interest. [Cases: Securities Regulation 40.14. C.J.S. Securities Regulation § 160.] 2. The placement of assets in a safe, short-term investment while other investment opportunities are being considered. — Also termed (in sense 1) stock-parking.

PARKING-LOT RULE

parking-lot rule. The principle that workers'-compensation insurance covers the injuries suffered by an employee on the employer's premises when the employee is arriving at or leaving work. — Also termed premises rule. [Cases: Workers' Compensation 750. C.J.S. Workmen's Compensation § 445.]

PARLIAMENT

parliament. The supreme legislative body of some nations; esp. (cap.), in the United Kingdom, the national legislature consisting of the monarch, the House of Lords, and the House of Commons.

PARLIAMENTARIAN

parliamentarian. Parliamentary law. A consultant trained in parliamentary law who advises the chair and others on matters of parliamentary law and procedure. • The parliamentarian, who is often a professional, only advises and never “rules” on procedural issues. See PARLIAMENTARY LAW; PARLIAMENTARY PROCEDURE .

“The parliamentarian is a consultant, commonly a professional, who advises the president and other officers, committees, and members on matters of parliamentary procedure. The parliamentarian's role during a meeting is purely an advisory and consultative one — since parliamentary law gives to the chair alone the power to rule on questions of order or to answer parliamentary inquiries.... After the parliamentarian has expressed an opinion on a point, the chair has the duty to make the final ruling and, in doing so, has the right to follow the advice of the parliamentarian or to disregard it.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 47, at 449–50 (10th ed. 2002).

PARLIAMENTARY

parliamentary,adj. 1. Of or relating to a parliament. 2.Parliamentary law. Of or relating to rules of order for the conduct of business in deliberative assemblies.

PARLIAMENTARY AUTHORITY

parliamentary authority.A parliamentary manual that an organization has adopted for its deliberations, and whose provisions govern the organization in every case to which they apply, as long as they are consistent with law and with the organization's governing documents. See **PARLIAMENTARY MANUAL**.

PARLIAMENTARY DIPLOMACY

parliamentary diplomacy.See **DIPLOMACY**.

PARLIAMENTARY DIVORCE

parliamentary divorce.See legislative divorce under **DIVORCE**.

PARLIAMENTARY INQUIRY

parliamentary inquiry.See **INQUIRY**.

PARLIAMENTARY INTENT

parliamentary intent.See **LEGISLATIVE INTENT**.

PARLIAMENTARY LAW

parliamentary law.The body of rules and precedents governing the proceedings of legislative bodies and other deliberative assemblies. — Also termed parliamentary procedure. [Cases: Parliamentary Law 1. C.J.S. Parliamentary Law § 1.]

“Thomas Jefferson speaks of ‘the Parliamentary branch of the law.’ From this country's beginning, it has been an underlying assumption of our culture that what has been authoritatively established as parliamentary law is law — in the sense of being binding within all assemblies except as they may adopt special rules varying from the general parliamentary law.” Henry M. Robert, *Robert's Rules of Order Newly Revised* xxvi (10th ed. 2000).

“Parliamentary law differs somewhat from the other branches of common law in that it is based in an important measure upon precedents of legislative and administrative bodies. Particularly in America, however, where the courts have the power to make final decisions on all constitutional questions, the law has been evolving upon the basis of court decisions, and a considerable volume of judicial precedents has accumulated. The application of parliamentary rules to new situations is subject to the same rules of reasoning as the application of established common law rules to new legal situations.” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 44, at 40–41 (2000).

common parliamentary law. 1. See general parliamentary law. 2. The common law as applied to parliamentary law; parliamentary law as it is found in judicial decisions.

general parliamentary law. The basic principles and practices of parliamentary law, as commonly understood among a meeting's members based on their experience in other deliberative assemblies, that apply in the absence of adopted rules of order. • A parliamentary manual is evidence of the general parliamentary law. — Also termed common parliamentary law.

“A deliberative assembly that has not adopted any rules is commonly understood to hold itself bound by the rules and customs of the general parliamentary law — or common parliamentary law... — to the extent that there is agreement in the meeting body as to what these rules and practices are.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 1, at 3 (10th ed. 2000).

PARLIAMENTARY MANUAL

parliamentary manual. A code or reference, usu. a commercially published book, that contains parliamentary rules and is offered for adoption by organizations as their parliamentary authority. • The leading parliamentary manuals in print in the United States are Robert's Rules of Order Newly Revised for nonlegislative bodies, and Mason's Manual of Legislative Procedure for state legislatures. Cf. PARLIAMENTARY AUTHORITY.

PARLIAMENTARY MOTION

parliamentary motion. See MOTION(2).

PARLIAMENTARY PRACTICE

parliamentary practice. See PARLIAMENTARY PROCEDURE.

PARLIAMENTARY PRIVILEGE

parliamentary privilege. 1. PRIVILEGE(5). 2. See legislative privilege under PRIVILEGE(1).

PARLIAMENTARY PROCEDURE

parliamentary procedure. 1. PARLIAMENTARY LAW. 2. Parliamentary law as applied in a particular organization, including the parliamentary authority and other rules that the organization adopts. — Also termed parliamentary practice.

PARLIAMENTARY WILL

parliamentary will. See WILL.

PARLIAMENT HOUSE

Parliament House. Scots law. The building in Edinburgh that is the site of the Court of Session, the High Court of Justiciary, the attendant offices of both courts, and the library of the Faculty of Advocates.

PARLIAMENTUM INSANUM

parlamentum insanum. See MAD PARLIAMENT.

PARODY

parody. Intellectual property. A transformative use of a well-known work for purposes of satirizing, ridiculing, critiquing, or commenting on the original work, as opposed to merely alluding to the original to draw attention to the later work. • In constitutional law, a parody is protected as free speech. In copyright law, a work must meet the definition of a parody and be a fair use of the copyrighted material, or else it may constitute infringement. [Cases: Copyrights and Intellectual Property 53.2. C.J.S. Copyrights and Intellectual Property §§ 45–46, 48–50.]

“Trademark parodies, even when offensive, do convey a message. The message may be simply that business and product images need not always be taken too seriously; a trademark parody reminds us that we are free to laugh at the images and associations linked with the mark.” *L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26, 34 (1st Cir. 1987)(per Bownes, J.).

“We do not, of course, suggest that a parody may not harm the market at all, but when a parody, like a scathing theater review, kills demand for the original, it does not produce a harm cognizable under the Copyright Act. Because ‘parody may quite legitimately aim at garroting the original, destroying it commercially as well as artistically,’ the role of the courts is to distinguish between ‘biting criticism [that merely] suppresses demand [and] copyright infringement[, which] usurps it.’ ” *Campbell v. Acuff–Rose Music, Inc.*, 510 U.S. 569, 591, 114 S.Ct. 1164, 1178 (1994) (Souter, J.) (citations omitted).

PAR OF EXCHANGE

par of exchange. The equality of a given sum of one country's currency and the like sum of money of a foreign country into which it is to be exchanged.

PAROL

parol (p<<schwa>>-rohlorpar-<<schwa>>l), adj. 1. Oral; unwritten <parol evidence>. [Cases: Evidence 397. C.J.S. Evidence §§ 1159, 1165, 1189.] 2. Not under seal <parol contract>. [Cases: Contracts 36, 239. C.J.S. Contracts §§ 76, 415.]

parol (p<<schwa>>-rohlorpar-<<schwa>>l), n. 1. An oral statement or declaration. 2. Hist. The oral pleadings in a case.

“Anciently pleadings were conducted in court orally, and the whole pleadings were called the parol; but for centuries the pleadings in civil actions have been required to be in writing.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 178–79 (2d ed. 1899).

PAROL AGREEMENT

parol agreement. See parol contract (1) under CONTRACT.

PAROL ARREST

parol arrest. See ARREST.

PAROL CONTRACT

parol contract. See CONTRACT.

PAROL DEMURRER

parol demurrer. See DEMURRER.

PAROLE

parole (p<<schwa>>-roh), n. The release of a prisoner from imprisonment before the full sentence has been served. • Although not available under some sentences, parole is usu. granted for good behavior on the condition that the parolee regularly report to a supervising officer for a specified period. Cf. PARDON; PROBATION(1). [Cases: Pardon and Parole 41. C.J.S. Pardon and Parole § 42.] — parole, vb.

“The essence of parole is release from prison, before completion of the sentence, on condition that the prisoner abide by certain rules during the balance of the sentence. Parole is not freedom.” 59 Am. Jur. 2d Pardon and Parole § 6 (1987).

bench parole. See bench probation under PROBATION.

juvenile parole. The conditional release of a juvenile offender from confinement. — Also termed aftercare. [Cases: Infants 281. C.J.S. Infants §§ 57, 69–85, 198–199, 206–214, 280.]

PAROLE BOARD

parole board. A governmental body that decides whether prisoners may be released from prison before completing their sentences. — Also termed board of parole; parole commission. [Cases: Pardon and Parole 55. C.J.S. Pardon and Parole §§ 45–47.]

PAROLEE

parolee (p<<schwa>>-roh-lee). A prisoner who is released on parole.

PAROLE REVOCATION

parole revocation. The administrative act of returning a parolee to prison because of the parolee's failure to abide by the conditions of parole (as by committing a new offense). [Cases: Pardon and Parole 69. C.J.S. Pardon and Parole § 65.]

PAROL EVIDENCE

parol evidence. See EVIDENCE.

PAROL-EVIDENCE RULE

parol-evidence rule. Contracts. The common-law principle that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing. • This rule usu. operates to prevent a party from introducing extrinsic evidence of negotiations that occurred before or while the agreement was being reduced to its final written form. See INTEGRATION(2); MERGER(2). Cf. FOUR-CORNERS RULE. [Cases: Evidence 397. C.J.S. Evidence §§ 1159, 1165, 1189.]

“The basic principle is often called the ‘parol evidence rule’, and according to this rule evidence is not admissible to contradict or qualify a complete written contract. The rule is usually stated in the form of a rule of evidence, but it is probably best regarded as a rule of substantive law. The question is not really whether evidence can be admitted which might vary the written document, but whether, if the evidence is admitted, it will have the legal effect of varying the document.” P.S. Atiyah, *An Introduction to the Law of Contract* 161–62 (3d ed. 1981).

“The parol evidence rule assumes that the formal writing reflects the parties' minds at a point of maximum resolution and, hence, that duties and restrictions that do not appear in the written document, even though apparently accepted at an earlier stage, were not intended by the parties to survive. In addition, and quite apart from the survival of matters discarded in the course of negotiations, there is the obvious danger of outright fraud.” Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* 82–83 (1990).

PAROL LEASE

parol lease. See LEASE.

PAROLS DE LEY

parols de ley (p<<schwa>>-rohly d<<schwa>> lay). [Law French] Words of law; technical words.

PAROL TRUST

parol trust. See oral trust (1) under TRUST.

PARRATT–HUDSON DOCTRINE

Parratt–Hudson doctrine. The principle that a state actor's random, unauthorized deprivation of someone's property does not amount to a due-process violation if the state provides an adequate postdeprivation remedy. *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981); *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984). [Cases: Constitutional Law 278(1). C.J.S. Constitutional Law §§ 982–984, 987–990, 1211–1215, 1269, 1420–1421, 1424; Zoning and Land Planning § 23.]

PARRICIDE

parricide (par-<<schwa>>-sld), n. 1. The act of killing a close relative, esp. a parent. 2. One who kills such a relative. Cf. PATRICIDE. — parricidal, adj.

PARRICIDIUM

parricidium (par-<<schwa>>-sid-ee-<<schwa>>m), n. [Latin] Roman law. 1. The murder of a near relative, esp. a parent. 2. Perhaps in ancient law, the murder of any free citizen. • This ancient, broad sense of parricidium gave way in pre-Imperial law to homicidium (homicide), which extended to the killing of a slave.

PARS

pars (pahrz). [Latin] Hist. A party to an action.

PARS CONTRACTUS

pars contractus (pahrz k<<schwa>>n-trak-t<<schwa>>s). [Law Latin] Hist. Part of the contract.

“Verbal consensual contracts are binding upon the contracting parties immediately upon their consents being interchanged, and neither of them can afterwards resile from the transaction But if it be agreed that their contract shall be reduced to writing, such agreement being pars contractus, the contract is not finally entered into, nor does it become binding, until the writing has been executed.” John Trayner, Trayner's Latin Maxims 436 (4th ed. 1894).

PARS EJUSDEM NEGOTII

pars ejusdem negotii (pahrz ee-j<<schwa>>s-d<<schwa>>m ni-goh-shee-I). [Latin] Hist. Part of the same transaction. • The phrase refers, for example, to an obligation attached to a condition, both of which must be considered together to constitute one transaction.

PARS ENITIA

pars enitia (pahrz i-ni-shee-<<schwa>>). [Law Latin “oldest's part”] Hist. An oldest child's portion of lands divided by lot.

PARS FUNDI

pars fundi (pahrz f<<schwa>>n-dI). [Latin] Hist. Part of the ground.

PARS JUDICIS

pars judicis (pahrz joo-di-sis). [Latin] Hist. The part of the judge. • The phrase par judicis referred to the judge's obligation to perform the duties of the office.

PARSON

parson. See RECTOR(1).

PARS RATIONABILIS

pars rationabilis (pahrz rah-shee-ohn-ay-bil-is). See YORK, CUSTOM OF.

PARS REA

pars rea (pahrz ree-<<schwa>>). A party defendant.

PARS VISCERUM MATRIS

pars viscerum matris (pahrz vis-<<schwa>>r-<<schwa>>m may-tris). [Latin] Hist. Scots law. Part of the mother's body. • The phrase appeared in reference to a fetus.

PART AND PERTINENT

part and pertinent.Scots law. See APPURTENANT.

PARTE INAUDITA

parte inaudita (pahr-tee in-aw-dy-t<<schwa>> or in-aw-di-t<<schwa>>). [Latin “one side being unheard”] Of or relating to action taken ex parte.

PARTE NON COMPARENTE

parte non comparente (pahr-tee non kom-p<<schwa>>-ren-tee).Hist. The party not having appeared. • In civil cases, a party's failure to appear usu. resulted in a default judgment against the defendant. But in criminal cases, the accused's failure to appear raised no presumption of guilt; still, the offender was cited for contempt and made an outlaw. See OUTLAW.

PARTES BENEFICII

partes beneficii (pahr-teez ben-<<schwa>>-fish-ee-I). [Law Latin] Hist. Parts of a benefice.

PARTES FINIS NIHIL HABUERUNT

partes finis nihil habuerunt (pahr-teez fl-nis nI-hil hab-yoo-eer-<<schwa>>nt). [Law Latin “the parties to the fine had nothing”] Hist. A plea to set aside a conveyance of land on grounds that the transferor did not have a sufficient ownership interest in the property to alienate it.

“Yet where a stranger... officiously interferes in an estate which in nowise belongs to him, his fine is of no effect; and may at any time be set aside ... by pleading that ‘partes finis nihil habuerunt.’ ” 2 William Blackstone, Commentaries on the Laws of England 356–57 (1765).

PARTES SOLI

partes soli (pahr-teez soh-II). [Latin] Hist. Parts of the soil.

PARTIAL ACCOUNT

partial account.See ACCOUNT.

PARTIAL ASSIGNMENT

partial assignment.See ASSIGNMENT(2).

PARTIAL AVERAGE

partial average.See particular average under AVERAGE.

PARTIAL-BIRTH ABORTION

partial-birth abortion.See ABORTION.

PARTIAL BREACH

partial breach.See BREACH OF CONTRACT.

PARTIAL DEFENSE

partial defense.See DEFENSE(1).

PARTIAL DEPENDENT

partial dependent. See DEPENDENT.

PARTIAL DISABILITY

partial disability. See DISABILITY(2).

PARTIAL EMANCIPATION

partial emancipation. See EMANCIPATION.

PARTIAL EVICTION

partial eviction. See EVICTION.

PARTIAL EVIDENCE

partial evidence. See EVIDENCE.

PARTIAL FAILURE OF CONSIDERATION

partial failure of consideration. See FAILURE OF CONSIDERATION.

PARTIAL GUARDIAN

partial guardian. See GUARDIAN.

PARTIAL INSANITY

partial insanity. See diminished capacity under CAPACITY.

PARTIAL INTEGRATION

partial integration. See INTEGRATION(2).

PARTIAL INTERDICTION

partial interdiction. See INTERDICTION(3).

PARTIAL INTESTATE

partial intestate. See INTESTATE.

PARTIAL LAW

partial law. See LAW.

PARTIAL LIMITATION

partial limitation. Insurance. A policy provision in which the insurer agrees to pay a total loss if the actual loss exceeds a specified amount.

PARTIAL LIQUIDATION

partial liquidation. See LIQUIDATION.

PARTIAL LOSS

partial loss. See LOSS.

PARTIALLY DISCLOSED PRINCIPAL

partially disclosed principal. See PRINCIPAL(1).

PARTIALLY INTEGRATED CONTRACT

partially integrated contract. See INTEGRATED CONTRACT.

PARTIAL PARDON

partial pardon. See PARDON.

PARTIAL RELEASE

partial release. See RELEASE.

PARTIAL RESPONSIBILITY

partial responsibility. See diminished capacity under CAPACITY.

PARTIAL SUMMARY JUDGMENT

partial summary judgment. See SUMMARY JUDGMENT.

PARTIAL TRUCE

partial truce. See special truce under TRUCE.

PARTIAL VERDICT

partial verdict. See VERDICT.

PARTIAL ZONING

partial zoning. See ZONING.

PARTIARIUS

partiarius (pahr-shee-air-ee-*<<schwa>>*s), n. & adj. [Latin] Roman law. 1. A legatee entitled to a portion of an inheritance along with the appointed heirs. 2. A tenant who is bound to hand over a portion of the crop in lieu of rent.

PARTICEPS

particeps (pahr-t*<<schwa>>*-seps), n. [Latin] 1. A participant. 2. A part owner.

PARTICEPS CRIMINIS

particeps criminis (pahr-t*<<schwa>>*-seps krim-*<<schwa>>*-nis), n. [Latin "partner in crime"]
1. An accomplice or accessory. See ACCESSORY. Pl. participes criminis (pahr-tis-*<<schwa>>*-peez). [Cases: Criminal Law 59, 68. C.J.S. Criminal Law §§ 127, 137, 998.]

“The courts of justice will allow the objection that the consideration of the contract was immoral or illegal to be made even by the guilty party to the contract, for the allowance is not for the sake of the party who raises the objection, but is grounded on general principles of policy. A *particeps criminis* has been held to be entitled, in equity, on his own application to relief against his own contract, when the contract was illegal, or against the policy of the law, and relief became necessary to prevent injury to others.” 2 James Kent, *Commentaries on American Law* *467 (George Comstock ed., 11th ed. 1866).

“Even in felonies but little practical importance now attaches to the distinctions between the first three of these four classes of ‘accomplices’ — a term which the law applies to all the *participes criminis*, whatever their degree of ‘complicity’ in the offence, though popular use generally limits it to those who take only a minor part. For the maximum punishment prescribed for any given crime is the same in the case of all three classes.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 90 (16th ed. 1952).

2. The doctrine that one participant in an unlawful activity cannot recover in a civil action against another participant in the activity. • This is a civil doctrine only, having nothing to do with criminal responsibility. Cf. *IN PARI DELICTO DOCTRINE*. [Cases: Contracts 138. C.J.S. Contracts §§ 280, 286.]

PARTICEPS FRAUDIS

particeps fraudis (pah-r-t<<schwa>>-seps fraw-dis). [Latin “an accomplice in the fraud”] Roman law. One who participates in a fraud, esp. by helping to deceive a debtor's creditors. — Also termed *consciis fraudis*.

PARTICIPATING BOND

participating bond. See *BOND*(3).

PARTICIPATING INSURANCE

participating insurance. See *INSURANCE*.

PARTICIPATING POLICY

participating policy. See *INSURANCE POLICY*.

PARTICIPATING PREFERRED STOCK

participating preferred stock. See *STOCK*.

PARTICIPATION

participation, n. 1. The act of taking part in something, such as a partnership, a crime, or a trial. 2. The right of an employee to receive part of a business's profits; profit-sharing. See *JOINT PARTICIPATION*. [Cases: Master and Servant 72. C.J.S. Employer–Employee Relationship §§ 146–152, 155, 175.] — *participate*, vb.

PARTICIPATION LOAN

participation loan. See LOAN.

PARTICIPATION MORTGAGE

participation mortgage. See MORTGAGE.

PARTICIPATION STOCK

participation stock. See STOCK.

PARTICULAR AVERAGE

particular average. See AVERAGE.

PARTICULAR AVERAGE LOSS

particular average loss. See LOSS.

PARTICULAR CUSTOM

particular custom. See local custom under CUSTOM.

PARTICULAR DAMAGES

particular damages. See special damages under DAMAGES.

PARTICULAR ESTATE

particular estate. See ESTATE(1).

PARTICULAR JURISPRUDENCE

particular jurisprudence. See JURISPRUDENCE.

PARTICULAR LEGACY

particular legacy. See LEGACY.

PARTICULAR LIEN

particular lien. See LIEN.

PARTICULAR MALICE

particular malice. See MALICE.

PARTICULAR NON EST FACTUM

particular non est factum. See special non est factum under NON EST FACTUM.

PARTICULAR PARTNERSHIP

particular partnership. See PARTNERSHIP.

PARTICULAR POWER

particular power. See special power under POWER(3).

PARTICULAR RECITAL

particular recital. See RECITAL.

PARTICULARS, BILL OF

particulars, bill of. See BILL OF PARTICULARS.

PARTICULARS OF SALE

particulars of sale. A document that describes the various features of a thing (such as a house) that is for sale.

PARTICULAR SUCCESSOR

particular successor. See SUCCESSOR.

PARTICULAR TENANT

particular tenant. See TENANT.

PARTICULAR TITLE

particular title. See TITLE(2).

PARTITIO

partitio (pah-r-tish-ee-oh), n. [Latin] Roman law. Division; partition.

partitio legata (pah-r-tish-ee-oh l<<schwa>>-gay-t<<schwa>>). [Latin] A directive from a testator to an heir to divide the inheritance and deliver a designated portion to a named legatee; a testamentary partition.

PARTITION

partition, n. 1. Something that separates one part of a space from another. 2. The act of dividing; esp., the division of real property held jointly or in common by two or more persons into individually owned interests. — Also termed partition in kind. [Cases: Common Lands 14; Partition 1–10. C.J.S. Common Lands §§ 17–19; Partition §§ 1–2, 4–21, 23, 26.]

definitive partition. A partition that is irrevocable.

partition of succession. Louisiana law. The division of an estate among an intestate's heirs. See La. Civ. Code art. 1293.

provisional partition. A temporary partition, often made before the remainder of the property can be divided.

3. Oil & gas. The division of an undivided mineral interest by voluntary agreement or judicial action. — partition, vb. — partible, adj.

PARTITION IN KIND

partition in kind. See PARTITION(2).

PARTNER

partner. 1. One who shares or takes part with another, esp. in a venture with shared benefits and shared risks; an associate or colleague <partners in crime>. 2. One of two or more persons who jointly own and carry on a business for profit <the firm and its partners were sued for malpractice>. See PARTNERSHIP. [Cases: Partnership 1. C.J.S. Partnership §§ 1–7, 17.] 3. One of two persons who are married or who live together; a spouse or companion <my partner in life>. [Cases: Husband and Wife 1; Marriage 54. C.J.S. Marriage §§ 43–44.]

dormant partner. See silent partner.

general partner. A partner who ordinarily takes part in the daily operations of the business, shares in the profits and losses, and is personally responsible for the partnership's debts and liabilities. — Also termed full partner. [Cases: Partnership 353, 366. C.J.S. Partnership §§ 405, 407, 422–423, 425, 430, 432.]

junior partner. A partner whose participation is limited with respect to both profits and management.

limited partner. A partner who receives profits from the business but does not take part in managing the business and is not liable for any amount greater than his or her original investment. — Also termed special partner; (in civil law) partner in commendam. See limited partnership under PARTNERSHIP. [Cases: Partnership 353, 366, 371. C.J.S. Partnership §§ 405, 407, 422–423, 425, 429–432, 438.]

liquidating partner. The partner appointed to settle the accounts, collect the assets, adjust the claims, and pay the debts of a dissolving or insolvent firm. [Cases: Partnership 280. C.J.S. Partnership § 347.]

name partner. A partner whose name appears in the name of the partnership < Mr. Tibbs is a name partner in the accounting firm of Gibbs & Tibbs>. — Also termed named partner; title member.

nominal partner. A person who is held out as a partner in a firm or business but who has no actual interest in the partnership. — Also termed ostensible partner; partner by estoppel.

partner in commendam (in k<<schwa>>-men-d<<schwa>>m). See limited partner.

quasi-partner. A person who joins others in an enterprise that appears to be, but is not, a partnership. • A joint venturer, for example, is a quasi-partner.

secret partner. A partner whose connection with the firm is concealed from the public. — Also termed sleeping partner.

senior partner. A high-ranking partner, as in a law firm.

silent partner. A partner who shares in the profits but who has no active voice in management of the firm and whose existence is often not publicly disclosed. — Also termed dormant partner. [Cases: Partnership 90. C.J.S. Partnership § 39.]

“It is worth emphasizing that control does not necessarily mean active involvement. One of the most interesting figures in partnership law, in fact, is the ‘silent’ partner — typically a person who has invested in a business in return for a profit share, and who reserves the right to, and to some extent may in fact, participate in routine management decisions, may participate in no decisions at all, and may even be unaware of what is happening in the business for long periods of time. The fact of the person's financial interest in the partnership may be a secret from everyone except the other partners (indeed, such secrecy may be vital). Such a person is nonetheless a partner like any other for purposes, among other things, of personal liability for the debts of the partnership. The law simply does not distinguish between active and passive partners.” William A. Klein & John C. Coffee Jr., *Business Organization and Finance* 64 (2002).

sleeping partner. See secret partner.

special partner. See limited partner.

surviving partner. The partner who, upon the partnership's dissolution because of another partner's death, serves as a trustee to administer the firm's remaining affairs. [Cases: Partnership 280. C.J.S. Partnership § 347.]

PARTNERSHIP

partnership. A voluntary association of two or more persons who jointly own and carry on a business for profit. • Under the Uniform Partnership Act, a partnership is presumed to exist if the persons agree to share proportionally the business's profits or losses. Cf. JOINT VENTURE; STRATEGIC ALLIANCE. [Cases: Partnership 1. C.J.S. Partnership §§ 1–7, 17.]

collapsible partnership. Tax. A partnership formed by partners who intend to dissolve it before they realize any income. • Any partner's gain resulting from unrealized receivables or inventory that has increased substantially in value will be treated by the IRS as ordinary income rather than as capital gain. IRC (26 USCA) § 751. Cf. collapsible corporation under CORPORATION. [Cases: Internal Revenue 3931, 3935.]

commercial partnership. See trading partnership.

family partnership. A business partnership in which the partners are related. IRC (26 USCA) § 704(e). See FAMILY-PARTNERSHIP RULES.

general partnership. A partnership in which all partners participate fully in running the business and share equally in profits and losses (though the partners' monetary contributions may vary). [Cases: Partnership 79, 86, 87. C.J.S. Partnership §§ 90, 94–95.]

implied partnership. See partnership by estoppel.

limited-liability partnership. A partnership in which a partner is not liable for a negligent act committed by another partner or by an employee not under the partner's supervision. • All states have enacted statutes that allow a business (typically a law firm or accounting firm) to register as this type of partnership. — Abbr. L.L.P. [Cases: Partnership 371. C.J.S. Partnership §§ 429, 431, 438.]

limited partnership. A partnership composed of one or more persons who control the business and are personally liable for the partnership's debts (called general partners), and one or more persons who contribute capital and share profits but who cannot manage the business and are liable only for the amount of their contribution (called limited partners). • The chief purpose of a limited partnership is to enable persons to invest their money in a business without taking an active part in managing the business, and without risking more than the sum originally contributed, while securing the cooperation of others who have ability and integrity but insufficient money. — Abbr. L.P. — Also termed special partnership; (in civil law) partnership in commendam. [Cases: Partnership 349–376. C.J.S. Partnership §§ 402–441.]

“Unknown at common law, the limited partnership was derived from the *commenda* or *societe en commandite* of continental Europe to permit a person to invest and share in the profits of a partnership business and yet limit one's liability to one's investment. It was first recognized in the United States by a New York statute of 1822. It is now recognized by statute in all American jurisdictions.” Henry G. Henn & John R. Alexander, *Laws of Corporations* § 28, at 86 (3d ed. 1983).

“[T]he two primary characteristics of a limited partnership [are] liability of limited partners only for their agreed contributions, and a hierarchical structure with management in one or more general partners and very little power or authority in the limited partners. Thus, limited partners are typically — although not necessarily — passive contributors of capital.... In this respect they resemble shareholders in a corporation, but, depending on the details of the organizational documents, they may have greater or lesser rights.” 3 Alan R. Bromberg & Larry E. Ribstein, *Bromberg and Ribstein on Partnerships* § 12.01, at 12:5–12:6 (1999).

master limited partnership. A limited partnership whose interests or shares are publicly traded. See publicly traded partnership.

nontrading partnership. A partnership that does not buy and sell but instead is a partnership of employment or occupation. — Also termed noncommercial partnership.

particular partnership. A partnership in which the members unite to share the benefits of a single transaction or enterprise.

partnership at will. A partnership that any partner may dissolve at any time without thereby incurring liability. Cf. partnership for a term. [Cases: Partnership 259.5. C.J.S. Partnership §§ 303–305.]

partnership by estoppel. A partnership implied by law when one or more persons represent themselves as partners to a third party who relies on that representation. • A person who is deemed a partner by estoppel becomes liable for any credit extended to the partnership by the third party. — Also termed implied partnership. [Cases: Partnership 24. C.J.S. Partnership § 24.]

partnership for a term. A partnership that exists for a specified duration or until a specified event occurs. • Such a partnership can be prematurely dissolved by any partner, but that partner may be held liable for breach of the partnership agreement. Cf. partnership at will.

partnership in commendam. See limited partnership.

publicly traded partnership. A partnership whose interests are traded either over-the-counter or on a securities exchange. • These partnerships are treated as corporations for income-tax purposes. — Abbr. PTP.

special partnership. 1. See limited partnership. 2. A partnership formed only for a single venture.

subpartnership. An arrangement between a firm's partner and a nonpartner to share the partner's profits and losses in the firm's business, but without forming a legal partnership between the partner and the nonpartner.

tiered partnership. An ownership arrangement consisting of one parent partnership that is a partner in one or more subsidiary partnerships.

trading partnership. A partnership whose usual business involves buying and selling. — Also termed commercial partnership.

umbrella limited partnership. A limited partnership used by a real-estate investment trust to acquire investment properties in exchange for shares in the partnership. See umbrella-partnership real-estate investment trust under REAL-ESTATE INVESTMENT TRUSTT.

universal partnership. A partnership formed by persons who agree to contribute all their individually owned property — and to devote all their skill, labor, and services — to the partnership. [Cases: Partnership 22. C.J.S. Partnership § 9.]

PARTNERSHIP AGREEMENT

partnership agreement. A contract defining the partners' rights and duties toward one another — not the partners' relationship with third parties. — Also termed articles of partnership. [Cases: Partnership 71. C.J.S. Partnership § 78.]

PARTNERSHIP ASSOCIATION

partnership association. A business organization that combines the features of a limited partnership and a close corporation. • Partnership associations are statutorily recognized in only a few states. — Also termed statutory partnership association; limited partnership association. [Cases: Partnership 349–376. C.J.S. Partnership §§ 402–441.]

PARTNERSHIP AT WILL

partnership at will. See PARTNERSHIP.

PARTNERSHIP CERTIFICATE

partnership certificate. A document that evidences the participation of the partners in a partnership. • The certificate is often furnished to financial institutions when the partnership borrows money.

PARTNERSHIP DISTRIBUTION

partnership distribution. See DISTRIBUTION.

PARTNERSHIP INSURANCE

partnership insurance. See INSURANCE.

PARTNERSHIP LIFE INSURANCE

partnership life insurance. See partnership insurance (1) under INSURANCE.

PARTNER'S LIEN

partner's lien. A partner's right to have the partnership property applied in payment of the partnership's debts and to have whatever is due the firm from fellow partners deducted from what would otherwise be payable to them for their shares. [Cases: Partnership 89. C.J.S. Partnership § 97.]

PART PAYMENT

part payment. See PAYMENT.

PART PERFORMANCE

part performance. 1. PERFORMANCE. 2. PART-PERFORMANCE DOCTRINE.

PART-PERFORMANCE DOCTRINE

part-performance doctrine. The equitable principle by which a failure to comply with the statute of frauds is overcome by a party's execution, in reliance on an opposing party's oral promise, of an oral contract's requirements. — Sometimes shortened to part performance. See part performance under PERFORMANCE. [Cases: Frauds, Statute of 129.]

“Part performance is not an accurate designation of such acts as taking possession and making improvements when the contract does not provide for such acts, but such acts regularly bring the doctrine into play. The doctrine is contrary to the words of the Statute of Frauds, but it was established by English courts of equity soon after the enactment of the Statute. Payment of purchase-money, without more, was once thought sufficient to justify specific enforcement, but a contrary view now prevails, since in such cases restitution is an adequate remedy. English decisions treated a transfer of possession of the land as sufficient, if unequivocally referable to the oral agreement, apparently on the ground that the promise to transfer had been executed by a common-law conveyance. Such decisions are not generally followed in the United States. Enforcement has instead been justified on the ground that repudiation after ‘part performance’ amounts to a ‘virtual fraud.’ A more accurate statement is that courts with equitable powers are vested by tradition with what in substance is a dispensing power based on the promisee's reliance, a discretion to be exercised with caution in the light of all the circumstances.” Restatement (Second) of Contracts § 129 cmt. a (1979).

PART-SOVEREIGN STATE

part-sovereign state. See SOVEREIGN STATE.

PARTY

party. 1. One who takes part in a transaction <a party to the contract>. [Cases: Contracts 177. C.J.S. Contracts § 363.]

“Note, that if an Indenture be made between two as Parties thereto in the Beginning, and in the Deed one of them grants or lets a Thing to another who is not named in the Beginning, he is not Party to the Deed, nor shall take any Thing thereby.” John Rastell, *Les Termes de la Ley* 471 (26th ed. 1721).

“A person who takes part in a legal transaction or proceeding is said to be a party to it. Thus, if an agreement, conveyance, lease, or the like, is entered into between A. and B., they are said to be parties to it; and the same expression is often, though not very correctly, applied to the persons named as the grantors or releasors in a deed-poll.” 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 930 (1883).

party of the first part.Archaic. The party named first in a contract; esp., the owner or seller.

party of the second part.Archaic. The party named second in a contract; esp., the buyer.

2. One by or against whom a lawsuit is brought <a party to the lawsuit>. • For purposes of res judicata, a party to a lawsuit is a person who has been named as a party and has a right to control the lawsuit either personally or, if not fully competent, through someone appointed to protect the person's interests. [Cases: Federal Civil Procedure 101.]

adverse party.A party whose interests are opposed to the interests of another party to the action. Cf. hostile witness under WITNESS.

aggrieved party.A party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. — Also termed party aggrieved; person aggrieved. [Cases: Action 13; Appeal and Error 151; Federal Civil Procedure 103.2. C.J.S. Actions § 57–63; Appeal and Error § 168.]

coparty. See COPARTY.

fictitious party.A person who is named in a writ, complaint, or record as a party in a suit, but who does not actually exist, or a person who is named as a plaintiff but is unaware of the suit and did not consent to be named.

formal party.See nominal party.

indispensable party.A party who, having interests that would inevitably be affected by a court's judgment, must be included in the case. • If such a party is not included, the case must be dismissed. Fed. R. Civ. P. 19(b). Cf. necessary party. [Cases: Federal Civil Procedure 203; Parties 18, 29. C.J.S. Parties §§ 3–5, 48–49.]

innocent party.A party who did not consciously or intentionally participate in an event or transaction.

interested party.A party who has a recognizable stake (and therefore standing) in a matter. —

Abbr. IP. [Cases: Action 13; Federal Civil Procedure 103.2. C.J.S. Actions §§ 57–63.]

joint party. See COPARTY.

necessary party. A party who, being closely connected to a lawsuit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings. See compulsory joinder under JOINDER. Cf. indispensable party. [Cases: Federal Civil Procedure 202; Parties 18, 29. C.J.S. Parties §§ 3–5, 48–49.]

nominal party. A party to an action who has no control over it and no financial interest in its outcome; esp., a party who has some immaterial interest in the subject matter of a lawsuit and who will not be affected by any judgment, but who is nonetheless joined in the lawsuit to avoid procedural defects. • An example is the disinterested stakeholder in a garnishment action. — Also termed formal party. Cf. real party in interest. [Cases: Federal Civil Procedure 102; Parties 4. C.J.S. Parties §§ 7, 17–20.]

party aggrieved. See aggrieved party.

party cast. The losing party in a lawsuit.

party in interest. See real party in interest.

party opponent. An adversary in a legal proceeding. — Sometimes written party-opponent.

party to be charged. A defendant in an action to enforce a contract falling within the statute of frauds.

prevailing party. A party in whose favor a judgment is rendered, regardless of the amount of damages awarded <in certain cases, the court will award attorney's fees to the prevailing party>. — Also termed successful party. See *Buckhannon Bd. & Care Home, Inc. v. West Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603, 121 S.Ct. 1835, 1839 (2001) (relying on the seventh edition of Black's Law Dictionary [1999]). [Cases: Costs 32, 194.14; Federal Civil Procedure 2737.1. C.J.S. Costs §§ 10, 126.]

proper party. A party who may be joined in a case for reasons of judicial economy but whose presence is not essential to the proceeding. See permissive joinder under JOINDER. [Cases: Federal Civil Procedure 241; Parties 14, 25. C.J.S. Parties §§ 3–5, 41–43, 45–47, 56–57, 59–63.]

real party in interest. A person entitled under the substantive law to enforce the right sued upon and who generally, but not necessarily, benefits from the action's final outcome. — Also termed party in interest; (archaically) interessee. Cf. nominal party. [Cases: Federal Civil Procedure 131; Parties 6(2). C.J.S. Parties §§ 23–24.]

“[T]he ‘real party in interest’ is the party who, by the substantive law, possesses the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery.... The concept of real party in interest should not be confused with the concept of standing. The standing question arises in the realm of public law, when governmental action is

attacked on the ground that it violates private rights or some constitutional principle... Unfortunately, ... confusion between standing on the one hand and real party in interest or capacity on the other has been increasing.” Charles Alan Wright, *The Law of Federal Courts* § 70, at 490 & n.2 (5th ed. 1994).

successful party. See prevailing party.

third party. See THIRD PARTY.

3.POLITICAL PARTY.

PARTY-COLUMN BALLOT

party-column ballot. See BALLOT(4).

PARTY WALL

party wall. See WALL.

PARUM CAVISSE VIDETUR

parum cavisse videtur (par-*<<schwa>>*m k*<<schwa>>*-vis-ee vI-dee-t*<<schwa>>*r). [Latin] Hist. He seems to have taken too little care; he seems to have been incautious. • This expression was used by a judge when pronouncing a death sentence.

PAR VALUE

par value. The value of an instrument or security as shown on its face; esp., the arbitrary dollar amount assigned to a stock share by the corporate charter, or the principal of a bond. — Often shortened to par. — Also termed face amount; face value; nominal value; stated value. [Cases: Corporations 99(3). C.J.S. Corporations § 170.]

“At one time par value had considerable importance because it was widely viewed as the amount for which the shares would be issued: shares with a par value of one hundred dollars could be subscribed for at one hundred dollars per share with confidence that all other identical shares would also be issued for \$100. This practice, however, long ago fell into disuse. Today, par value serves only a minor function and is in no way an indication of the price at which the shares are issued, with this one exception: The one basic rule about setting the price for shares of common stock with a par value is that the price must be equal to or greater than par value.” Robert W. Hamilton, *The Law of Corporations in a Nutshell* 109 (3d ed. 1991).

PAR-VALUE STOCK

par-value stock. See STOCK.

PARVIS

parvis (pahr-vis). [fr. Old Fr. pareis “paradise,” fr. Late Latin paradus “garden,” fr. Greek paradeises] Hist. An academic exercise, such as a moot court. — Also spelled pervise; parvise.

PASS

pass,vb.1. To pronounce or render an opinion, ruling, sentence, or judgment < the court refused to pass on the constitutional issue, deciding the case instead on procedural grounds>.2. To transfer or be transferred <the woman's will passes title to the house to her nephew, much to her husband's surprise> <title passed when the nephew received the deed>.3. To enact (a legislative bill or resolution); to adopt <Congress has debated whether to pass a balanced-budget amendment to the Constitution>. See ADOPTION(5).4. To approve or certify (something) as meeting specified requirements <the mechanic informed her that the car had passed inspection>.5. To publish, transfer, or circulate (a thing, often a forgery) <he was found guilty of passing counterfeit bills>.6. To forgo or proceed beyond <the case was passed on the court's trial docket because the judge was presiding over a criminal trial>.7.ABSTAIN(1).

PASSAGE

passage,n.1.ADOPTION(5); esp., the passing of a legislative measure into law. [Cases: Statutes 17. C.J.S. Statutes §§ 34–36.] 2. A right, privilege, or permission to pass over land or water; an easement to travel through another's property.

PASS-ALONG

pass-along,adj. See PASS-THROUGH.

PASSBOOK

passbook. A depositor's book in which a bank records all the transactions on an account. — Also termed bankbook.

PASSED DIVIDEND

passed dividend.See DIVIDEND.

PASSIM

passim (pas-im), adv.[Latin] Here and there; throughout (the cited work). • In modern legal writing, the citation signal see generally is preferred to passim as a general reference, although passim can be useful in a brief's index of authorities to show that a given authority is cited throughout the brief.

PASSING OFF

passing off,n. Intellectual property. The act or an instance of falsely representing one's own product as that of another in an attempt to deceive potential buyers. • Passing off is actionable in tort under the law of unfair competition. It may also be actionable as trademark infringement. — Also termed palming off; misrepresentation of source. Cf. MISAPPROPRIATION. [Cases: Trade Regulation 404. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 103.] — pass off,vb.

reverse passing off.The act or an instance of falsely representing another's product as one's own in an attempt to deceive potential buyers. — Also termed reverse palming off.

PASSING ON

passing on. See pass-on defense under DEFENSE(1).

PASSIVE

passive, adj. Not involving active participation; esp., of or relating to a business enterprise in which an investor does not have immediate control over the activity that produces income.

PASSIVE ACTIVITY

passive activity. Tax. A business activity in which the taxpayer does not materially participate and therefore does not have immediate control over the income. • A typical example is the ownership and rental of real property by someone not in the real-property business. [Cases: Internal Revenue 3418. C.J.S. Internal Revenue § 199.]

PASSIVE ADOPTION-REGISTRY STATUTE

passive adoption-registry statute. See ADOPTION-REGISTRY STATUTE.

PASSIVE BOND

passive bond. See BOND(3).

PASSIVE BREACH OF CONTRACT

passive breach of contract. See BREACH OF CONTRACT.

PASSIVE CONCEALMENT

passive concealment. See CONCEALMENT.

PASSIVE CONDUCT

passive conduct. See CONDUCT.

PASSIVE DEBT

passive debt. See DEBT.

PASSIVE DUTY

passive duty. See negative duty under DUTY(1).

PASSIVE EUTHANASIA

passive euthanasia. See EUTHANASIA.

PASSIVE INCOME

passive income. See INCOME.

PASSIVE INVESTMENT INCOME

passive investment income. See INCOME.

PASSIVE LOSS

passive loss.See LOSS.

PASSIVE MERCY KILLING

passive mercy killing.See DYATHANASIA.

PASSIVE NEGLIGENCE

passive negligence.See NEGLIGENCE.

PASSIVE TRUST

passive trust.See TRUST.

PASS-ON DEFENSE

pass-on defense.See DEFENSE(1).

PASSPORT

passport. 1. A formal document certifying a person's identity and citizenship so that the person may travel to and from a foreign country. [Cases: Citizens 10.2. C.J.S. Citizens §§ 24–27.] 2.SEA LETTER. 3.SAFE CONDUCT .

“A passport is the universally accepted evidence of a person's identity and nationality. It does not give its bearer the right to travel in another country, but it does request that other governments permit him to travel in their territories or within their jurisdictions. It also entitles him to the protection and assistance of his own diplomatic and consular officers abroad.” Burdick H. Brittin, *International Law for Seagoing Officers* 183 (4th ed. 1981).

PASSPORT OFFICE

Passport Office.See BUREAU OF CONSULAR AFFAIRS.

PASS THE WITNESS

pass the witness.See TAKE THE WITNESS.

PASS-THROUGH

pass-through,adj. (Of a seller's or lessor's costs) chargeable to the buyer or lessee. — Also termed pass-along.

PASS-THROUGH SECURITY

pass-through security.See SECURITY.

PASS-THROUGH TAXATION

pass-through taxation.See TAXATION.

PAST CONSIDERATION

past consideration.See CONSIDERATION(1).

PAST RECOLLECTION RECORDED

past recollection recorded.Evidence. A document concerning events that a witness once knew about but can no longer remember. • The document itself is evidence and, despite being hearsay, may be admitted (or read into the record) if it was prepared or adopted by the witness when the events were fresh in the witness's memory. Fed. R. Evid. 803(5). — Also termed recorded recollection; past recorded recollection. Cf. PRESENT RECOLLECTION REFRESHED . [Cases: Criminal Law 435; Evidence 355(6). C.J.S. Criminal Law §§ 1047–1048; Evidence § 976.]

PASULA–ROBINETTE TEST

Pasula–Robinette test.The principle that if a miner establishes a prima facie case of retaliation for filing a claim under the Mine Safety and Health Act, the mine operator can still prevail by proving, as an affirmative defense, that (1) the miner did not engage in a protected activity, (2) the adverse action was based on the miner's unprotected activity, and (3) the mine operator would have taken the same action based solely on the unprotected activity. • To establish a prima facie case of retaliation, the evidence must show that the miner engaged in a protected activity and that an adverse employment action occurred based at least in part on that activity. 30 USCA § 815(c); Secretary ex rel. Pasula v. Consolidation Coal Co., 2 FMSHRC 2786 (1980); Secretary ex rel. Robinette v. United Coal Co., 3 FMSHRC 802 (1981).

PAT-DOWN

pat-down,n. See FRISK.

PATEAT UNIVERSIS PER PRAESENTES

pateat universis per praesentes (pat-ee-at yoo-n<<schwa>>-v<<schwa>>r-sis p<< schwa>>r pri-zen-teez). [Law Latin] Let it be open to all men by these presents. Cf. KNOW ALL MEN BY THESE PRESENTS; NOVERINT UNIVERSI PER PRAESENTES .

PATE<TT> HEARING

Pate hearing. A proceeding in which the trial court seeks to determine whether a criminal defendant is competent to stand trial. Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966); 18 USCA §§ 4241–4247. — Also termed competency hearing; incompetency hearing. [Cases: Criminal Law 625.10–625.35. C.J.S. Criminal Law §§ 551, 554–555, 557.]

PATENT

patent (pay-t<<schwa>>nt), adj. Obvious; apparent <a patent ambiguity>. Cf. LATENT. [Cases: Evidence 451. C.J.S. Evidence §§ 1222, 1224–1225.]

patent (pat-<<schwa>>nt), n.1. The governmental grant of a right, privilege, or authority. 2. The official document so granting. — Also termed public grant. See LETTERS PATENT.

call patent.A land patent in which the corners have been staked but the boundary lines have not been run out at the time of the grant.

escheat patent.See escheat grant under GRANT.

land patent. An instrument by which the government conveys a grant of public land to a private person. [Cases: Public Lands 114(1). C.J.S. Public Lands §§ 136, 139.]

lapse patent. A land patent substituting for an earlier patent to the same land that lapsed because the previous patentee did not claim it.

3. The right to exclude others from making, using, marketing, selling, offering for sale, or importing an invention for a specified period (20 years from the date of filing), granted by the federal government to the inventor if the device or process is novel, useful, and nonobvious. 35 USCA §§ 101–103. • The holding of a patent does not by itself grant any right to make, use, or sell anything if that activity would infringe another's blocking patent. — Also termed patent right; patent grant. [Cases: Patents 1. C.J.S. Patents §§ 1–5, 10–12, 15.] “The franchise which the patent grants consists altogether in the right to exclude everyone from making, using or vending the patented article, without the permission of the patentee. This is all he obtains by the patent.” *Bloomer v. McQuewan*, 55 U.S. 539, 549 (1852).

“What, exactly, is a patent and how does it operate to foster the ‘progress of the useful arts’? In its simplest terms a patent is an agreement between an inventor and the public, represented by the federal government: in return for a full public disclosure of the invention the inventor is granted the right for a fixed period of time to exclude others from making, using, or selling the defined invention in the United States. It is a limited monopoly, designed not primarily to reward the inventor (this may or may not follow), but to encourage a public disclosure of inventions so that after the monopoly expires, the public is free to take unrestricted advantage of the invention.” *Earl W. Kintner & Jack L. Lahr, An Intellectual Property Law Primer 7–11 (2d ed. 1982).*

basic patent. See pioneer patent.

blocking patent. One of two patents, neither of which can be effectively practiced without infringing the other. • For example, if A patents an improvement of B's patented invention, A cannot practice the improvement without infringing B's patent. Nor can B use the improvement without infringing A's patent. Owners of blocking patents often cross-license each other. See fencing patent; DOMINATION.

broadened reissue patent. Patents. A patent that is issued again, having broader claims than the original, surrendered patent. • Under 35 USCA § 251, a patent may be reissued, under certain circumstances, with broader claims than the original patent if the reissue application is filed within two years of the grant of the original patent. See INTERVENING RIGHTS.

business-method patent. A U.S. patent that describes and claims a series of process steps that, as a whole, constitutes a method of doing business. • Until 1998, methods for doing business were not expressly recognized as being patentable. In that year, the Federal Circuit Court of Appeals held in *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), that business methods are subject to the same legal requirements for patentability as any other process or method. — Also termed cyberpatent.

combination patent. A patent granted for an invention that unites existing components in a novel way. [Cases: Patents 26. C.J.S. Patents §§ 83–84.]

Community patent. An international patent issued by the European Patent Convention. • Community patents are good for 20 years from the application date. They may be registered in any nation in the European Union and other EPC signatories.

copending patent. A patent whose application is being prosecuted at or near the same time as another, similar patent. • Continuing applications must be copending with an existing patent application. A copending patent may affect another patent's validity if it discloses the same invention, or discloses some part of the invention that, combined with other prior art, results in anticipation (esp. if the copending patent is issued before the affected patent). A copending patent may be shown to be an unpatentable improvement on another copending patent's invention. 35 USCA § 102(e). See COPENDING.

cyberpatent. 1. See business-method patent. 2. See Internet patent.

design patent. A patent granted for a new, original, and ornamental design for an article of manufacture; a patent that protects a product's appearance or nonfunctional aspects. • Design patents — which, unlike utility patents, have a term of only 14 years from the date on which the patent is granted — are similar to copyrights. 36 USCA § 171. [Cases: Patents 15. C.J.S. Patents §§ 100, 103.]

dominating patent. See fencing patent.

fencing patent. A patent procured for some aspect of an invention that the inventor does not intend to produce but that the inventor wants to prevent competitors from using in making improvements. • By making a claim whose only purpose is to protect other claims, the inventor seeks to “fence in” any such competing improvements. Courts disfavor fencing claims. — Also termed dominating patent. [Cases: Patents 121. C.J.S. Patents § 213.]

improvement patent. A patent having claims directed to an improvement on a preexisting invention. • If the preexisting invention is patented by another, the owner of the improvement patent may need a license to practice the invention covered by the claims of the improvement patent. Similarly, the owner of the preexisting invention's patent may need a license to practice the invention in the improvement patent. Cf. pioneer patent. [Cases: Patents 9. C.J.S. Patents § 23.]

in-force patent. A patent that has not expired or been ruled invalid.

Internet patent. A type of utility patent granted on an invention that combines business methods and software programs for Internet applications. — Also termed cyberpatent.

method patent. A patent having method or process claims that define a series of actions leading to a tangible physical result. — Also termed process patent. See process patent.

paper patent. A patent granted for a discovery or invention that has never been used commercially. • A paper patent may receive less protection under the law than a patent granted for a device that is actually used in industry. As a prior-art reference, a paper patent may carry less weight with examiners than one for an invention that has been commercially exploited because it may suggest that the invention did not work as claimed. [Cases: Patents 172. C.J.S. Patents §§ 283, 306.]

pioneer patent.A patent covering a function or a major technological advance never before performed, a wholly novel device, or subject matter of such novelty and importance as to mark a distinct step in the progress of the art, as distinguished from a mere improvement or perfection of what had gone before. • Under U.S. law, the claims of a pioneer patent are entitled to broader interpretation and to be given a broader range of equivalents. A pioneer patent is usu. the first one documented by a patent-tracking service, although it may not be the first patent published by a national registry, such as the PTO. — Cf. improvement patent. [Cases: Patents 173. C.J.S. Patents § 307.]

“To what liberality of construction these claims are entitled depends to a certain extent upon the character of the invention, and whether it is what is termed in ordinary parlance a ‘pioneer.’ This word, although used somewhat loosely, is commonly understood to denote a patent covering a function never before performed, a wholly novel device, or one of such novelty and importance as to mark a distinct step in the progress of the art, distinguished from a mere improvement or perfection of what had gone before.” *Boyden Power-Brake Co. v. Westinghouse*, 170 U.S. 537, 561–62, 18 S.Ct. 707, 718 (1898).

plant patent.A patent granted for the invention or discovery of a new and distinct variety of asexually reproducing plant. 36 USCA § 161. [Cases: Patents 14. C.J.S. Patents § 22.]

process patent.A patent for a method of treating specified materials to produce a certain result; a patent outlining a means of producing a physical result independently of the producing mechanism. • The result might be brought about by chemical action, by applying some element or power of nature, by mixing certain substances together, or by heating a substance to a certain temperature. See method patent. [Cases: Patents 7. C.J.S. Patents §§ 17–19.]

reissue patent.A patent that is issued to correct unintentional or unavoidable errors in an original patent, such as to revise the specification or to fix an invalid claim. • A reissue may correct patent defects that might call the validity of the patent into question. It is also used, although rarely, to make the claims broader or narrower. The patentee risks the possibility that previously allowed claims may be rejected. It does not change the term of the patent. 35USCA § 251. — Sometimes shortened to reissue. [Cases: Patents 135. C.J.S. Patents § 239.]

submarine patent.Slang. A patent that is delayed in prosecution by the applicant in order to let an infringing user continue to develop its business, with the intention of taking in later-invented technology once the patent finally “surfaces” from the U.S. Patent and Trademark Office. • Typically, the patent applicant is aware of the developments and consciously delays the PTO's issuance of a patent, so that the invention's unwitting users will be forced to pay license fees. As of November 29, 2000, most patent applications must be published within 18 months of filing, so submarine patents are relatively rare now. See CONTINUATION-APPLICATION LACHES DOCTRINE.

utility-model patent.See UTILITY MODEL.

utility patent.A patent granted for one of the following types of inventions: a process, a machine, a manufacture, or a composition of matter (such as a new chemical). • Utility patents are

the most commonly issued patents. 35 USCA § 101. [Cases: Patents 1. C.J.S. Patents §§ 1–5, 10–12, 15.]

PATENTABILITY OPINION

patentability opinion. See OPINION(2).

PATENTABILITY SEARCH

patentability search. An inventor's research into a field's state of the art to determine whether an invention will qualify for patent protection. Cf. INFRINGEMENT SEARCH; VALIDITY SEARCH.

PATENTABLE

patentable, adj. Capable of being patented <patentable processes>.

PATENTABLE COMBINATION

patentable combination. A series of process steps or mechanical elements, or a mixture of materials, that produce a desirable result or effect that is not obvious from the qualities of the individual components or steps.

PATENTABLE SUBJECT MATTER

patentable subject matter. Things that by law can be patented; any machine, process, manufacture, or material composition, or an improvement to such things, that (1) is discovered or invented, (2) is new and useful, and (3) meets the statutory conditions and requirements to qualify for a patent. • Patents may be issued for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 USCA § 101. Patents may not be issued for laws of nature, naturally occurring materials, physical phenomena, or abstract ideas and formulas. But if a naturally occurring material is processed in a way that gives it a new use, that process may be patentable. — Often shortened to subject matter. — Also termed statutory subject matter. [Cases: Patents 1. C.J.S. Patents §§ 1–5, 10–12, 15.]

PATENT ACT

Patent Act. The current federal statute governing patent registrations and rights, enacted in 1952. 35 USCA §§ 1 et seq. • The Act reversed several Supreme Court doctrines of patentability by eliminating the synergism and “flash of genius” requirements for combination patents (§ 103), making “means-plus-function” claims valid once again (§ 112), and narrowing the patent-misuse doctrine of contributory infringement (§ 271). — Also termed Patent Act of 1952.

PATENT ACT OF 1790

Patent Act of 1790. Hist. The first U.S. patent statute, establishing a board to examine patent applications, specifications, and drawings to determine whether the inventions are “sufficiently useful and important” to justify the granting of patents. • The examining board, comprising the Secretary of State, the Secretary of War, and the Attorney General, was abolished three years later in favor of a simple registration system.

PATENT ACT OF 1793

Patent Act of 1793.Hist. An early U.S. patent law that (1) abandoned the examination process in favor of simple registration; (2) established the infringement defenses of invalidity for lack of novelty or public use; and (3) articulated the four categories of patentable subject matter as machine, manufacture, composition of matter, and art (now called process). • The State Department handled the registration of patents, and the question of their validity was left up to the courts.

PATENT ACT OF 1836

Patent Act of 1836.Hist. The U.S. statute that charged the Patent Office with examining patent applications for novelty and utility, and that first required claims in patent applications.

PATENT ACT OF 1870

Patent Act of 1870.A U.S. statute that shifted the burden of disclosing the exact nature of an invention to the patent applicant by requiring a rigorous listing of distinct claims. • Before the Act was passed, patent claims were less important than the description and drawings, and the scope of the patent grant was often ambiguous.

PATENT ACT OF 1952

Patent Act of 1952.See PATENT ACT.

PATENT AGENT

patent agent.See AGENT(2).

PATENT AMBIGUITY

patent ambiguity.See AMBIGUITY.

PATENT AND COPYRIGHT CLAUSE

Patent and Copyright Clause.The constitutional provision granting Congress the authority to promote the advancement of science and the arts by establishing a national system for patents and copyrights. U.S. Const. art. I, § 8, cl. 8. [Cases: Patents 3. C.J.S. Patents §§ 6–9.]

PATENT AND TRADEMARK DEPOSITORY LIBRARY

Patent and Trademark Depository Library.A library that has been designated by the U.S. Patent and Trademark Office as an official repository for information to aid in a patent or trademark search. — Abbr. PTDL.

PATENT AND TRADEMARK LAW AMENDMENTS ACT

Patent and Trademark Law Amendments Act.See BAYH–DOLE ACT.

PATENT AND TRADEMARK OFFICE

Patent and Trademark Office.See UNITED STATES PATENT AND TRADEMARK

OFFICE.

PATENT APPLICATION

patent application. An inventor's request for a patent, filed with the U.S. Patent and Trademark Office and accompanied by a specification (ending with at least one claim), drawings, the filing fee, and (except for a provisional patent application) an oath or a declaration. [Cases: Patents 98. C.J.S. Patents §§ 137–139.]

allowed application. A patent application for which the U.S. Patent and Trademark Office examiner has determined that all pending claims meet the conditions for patentability. • When an application is allowed, the PTO notifies the applicant through a Notice of Allowability and a Notice of Allowance. Once a patent application is allowed, a patent normally issues after the applicant has paid the required issue fee.

application for a reissue patent. An application by a patentee to change the scope of a patent that has already been issued, or to correct clerical or technological errors in the issued patent. • The scope of the claims can be broadened only if the application is made within two years of the date on which the patent was issued. See reissue patent under PATENT(3). Cf. CERTIFICATE OF CORRECTION.

child application. A later-filed application in a chain of continuing applications filed during the pendency of an earlier application and sharing common subject matter. • The first-filed application is called the parent application. Cf. parent application. [Cases: Patents 110. C.J.S. Patents § 156.]

continued-prosecution application. A request to abandon a patent application after final rejection and reopen a new case with the same file wrapper as the parent application. • CPAs are available only for applications filed before May 29, 2000. They are authorized in 37 CFR § 1.53(d). — Abbr. CPA. — Also termed Rule 1.53 application. Cf. REQUEST FOR CONTINUED EXAMINATION. [Cases: Patents 110. C.J.S. Patents § 156.]

continuing application. A patent application that is filed while the parent application is pending and that carries on prosecution of some or all of the original application. • Continuation, continuation-in-part, divisional, and reissue applications are all forms of continuing applications. [Cases: Patents 110. C.J.S. Patents § 156.]

Convention application. A patent application filed in accordance with the terms of an international patent treaty such as the Paris Convention or the Patent Cooperation Treaty.

divisional application. A patent application based on the same disclosure as the original application but claiming a different invention. • If an examiner finds that a disclosure reveals two or more distinct inventions, the applicant must restrict the original application to claiming one of the inventions. A divisional application can then be filed on any nonelected invention, and it will keep the same filing date as the parent application. — Often shortened to divisional. — Also termed restriction application. [Cases: Patents 109. C.J.S. Patents §§ 152–155.]

file-wrapper continuation application. See CONTINUATION; CONTINUATION-IN-PARTT.

grandparent application. The first-filed application in a chain of at least three continuation or continuation-in-part patent applications. [Cases: Patents 110. C.J.S. Patents § 156.]

informal application. A patent application that is not in the correct form as required by the U.S. Patent and Trademark Office. • According to the Manual of Patent Examining Procedure, an application is informal if it is printed on both sides of the paper, or is not permanent, legible, or reproducible. An informal application may be corrected and still retain the original filing date.

international application. An application under the Patent Cooperation Treaty for patent protection in specified member nations. • A PCT filing may be added as long as 30 months after the initial filing in a national patent office. It allows for simultaneous patent searches and examinations in multiple countries. — Also termed PCT application; PCT filing. See PATENT COOPERATION TREATY.

international application designating the United States. An international-patent application that is filed in accordance with the Patent Cooperation Treaty and specifically seeks patent protection in the United States. • The application may be filed in any nation, including the U.S., that is a party to the treaty.

international application originating in the United States. An international-patent application that is filed in the U.S. Patent and Trademark Office in accordance with the Patent Cooperation Treaty. • Under the treaty, the PTO acts as a receiving office for international applications. The applicant may or may not be seeking patent protection in the U.S. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

parent application. The first-filed application in a chain of later-filed continuation or continuation-in-part applications. • An application becomes the parent application when another type of application (such as continuation, divisional, or substitute) is filed. The term “parent” is generally not used to refer to a provisional application. Cf. child application. [Cases: Patents 110. C.J.S. Patents § 156.]

provisional application. An application that can be filed up to a year before the patent application itself, in order to establish a date for prior art and constructive reduction to practice. • The PPA must include a full description of the invention, but claims, drawings, and prior-art disclosures are not required. — Abbr. PPA. — Also termed provisional patent application. [Cases: Patents 98. C.J.S. Patents §§ 137–139.]

restriction application. See divisional application.

Rule 1.53 application. See continued-prosecution application.

substitute application. A duplicate application filed after the response period for a first office action has expired and the first application has been deemed abandoned. • A substitute application carries some danger for the applicant: the original filing date is lost, and any developments since that date become prior art that the examiner must consider before granting the patent. [Cases: Patents 110. C.J.S. Patents § 156.]

PATENT-APPLICATION AMENDMENT

patent-application amendment.A modification to a patent application, usu. narrowing or eliminating some claims in response to an examiner's rejection. [Cases: Patents 109. C.J.S. Patents §§ 152–155.]

amendment after allowance.An amendment submitted to the U.S. Patent and Trademark Office after the PTO has mailed notice of a patent application's approval. • Once a notice of allowance has been mailed, prosecution of the application is closed on the merits, and the entry of any amendment is within the discretion of the patent examiner. Amendments after allowance commonly address such matters as an amendment to the specification or claims, a change in the drawings or the list of inventors, and the submission of prior art. Amendments that merely correct formal matters in the specification or drawings, change the claims without changing their scope, or cancel a claim are typically approved by the Office. Amendments of greater significance require approval of the supervisory examiner under policies established by the group director. — Also termed 312 amendment; Rule 312 amendment. See amendment after payment of issue fee.

amendment after appeal.An amendment made after an appeal is taken from a patent application's final rejection. • Such an amendment is not made as a matter of right but is frequently allowed if it puts the case in better form for consideration on appeal or helps implement an examiner's recommendation.

amendment after final action.An amendment made after final rejection of the patent application. • The amendment may drop claims but not add them. To be entered, it may make changes in form, but may not raise new issues for the examiner. — Also termed Rule 116 amendment.

amendment after payment of issue fee.An amendment made by the applicant after the application has been allowed and the issue fee paid. • Such an amendment is not made as a matter of right but is governed by 37 CFR § 1.312. It must be accompanied by a petition to the Commissioner showing good and sufficient reasons why the amendment was not presented earlier. See amendment after allowance.

amendment before first action.See preliminary amendment.

amendment in excess of filing fee.An amendment to a patent application that increases the number of claims in the original application and requires payment of an additional fee.

preliminary amendment.An amendment filed before the U.S. Patent and Trademark Office issues an office action on a patent application. • An amendment that is not filed with the original application is not considered part of the original disclosure. — Also termed amendment before first action.

Rule 116 amendment.See amendment after final action.

Rule 312 amendment.See amendment after allowance.

312 amendment.See amendment after allowance.

PATENT ATTORNEY

patent attorney. A lawyer who drafts and prosecutes patent applications, and who represents inventors in infringement suits and interference hearings. • In addition to a law license, a patent attorney must have a scientific or technical background, pass the patent bar examination, and be licensed by the U.S. Patent and Trademark Office.

PATENT CLAIM

patent claim. A formal statement describing the novel features of an invention and defining the scope of the patent's protection <claim #3 of the patent describes an electrical means for driving a metal pin>. Cf. SPECIFICATION (3). [Cases: Patents 101. C.J.S. Patents §§ 140–142.]

“[The patent] application concludes with one or more ‘claims,’ which are summaries of the points of novelty of the invention disclosed by the specification, said claims also following certain fixed forms. If they are broad and in general terms, the patentee will be well protected, and will be the possessor of a worth while patent; but if, on the other hand, the claims are limited in scope, if they recite a multiplicity of exactly stated and unimportant elements, or if they are bad in any one of a number of other ways, the chances of success are small, the patent will be full of loop-holes of which infringers will be prompt to take advantage, the inventor will not have received all he is entitled to, nor all he has paid for, and, if the claims are very limited, it is more than likely that he will have obtained a patent not worth the paper upon which it is printed.” Richard B. Owen, *Patents, Trademarks, Copyrights, Departmental Practice* 14 (1925).

apparatus claim. A patent claim on a mechanical device, explaining how the components are connected and function together. • The preamble of an apparatus claim typically states the function of the machine; the body explains its elements and how they work together.

appendant claim. See dependent claim.

closed-ended claim. A patent claim that expressly limits its scope to a list of elements, typically introduced by the phrase “consisting of.” Cf. nearly closed-ended claim; open-ended claim.

coined-name claim. A chemical-patent claim consisting only of the name of the new material. • A coined-name claim is allowed by the U.S. Patent and Trademark Office only on the rare occasion when the name is established in the field before the patent is applied for. The chemical composition, its physical properties, and the process for making it must still be disclosed in the specification.

dependent claim. A patent claim that refers to and further limits another claim or set of claims in the same patent application. — Also termed appendant claim. [Cases: Patents 165(5). C.J.S. Patents §§ 283, 287, 290, 293.]

design claim. The single claim allowed in an application for a design patent, incorporating by reference the drawing and other specifications. • The brief claim typically starts with “an ornamental design for” and ends with “as shown” or “as shown and described.” Cf. omnibus claim. [Cases: Patents 101(4).]

fingerprint claim. A chemical-patent claim that differentiates the material from prior art in

terms of some physical feature, such as melting point or spectrum, rather than its chemical composition. • Fingerprint claims are allowed only when the chemical composition cannot be determined or cannot be distinguished from prior art.

generic claim.A claim that encompasses a class of elements, any of which could function as equivalents. • For a generic claim to be valid, the specific elements it encompasses must have a definable feature in common that makes them fit for the purpose. — Also termed genus claim. Cf. species claim.

improvement claim.See Jepson claim.

independent claim.A patent claim that does not refer to any other claim.

Jepson claim.An improvement-patent claim characterized by a preamble setting forth the current state of the art, followed by the phrase “the improvement comprising” and a description of the claimed patentable improvement. • The name comes from *Ex parte Jepson*, 1917 C.D. 62, 243 O.G. 526 (Ass't Comm'r Pat. 1917) in which this type of claim was first approved and sanctioned by the Commissioner of Patents. — Also termed improvement claim.

Markush claim.A patent claim that includes elements listing alternative chemicals, materials, or steps in a process. • A Markush claim typically has language such as “selected from the group consisting of.” The alternatives must all give the same result, rather than patentably distinct products. The name derives from *Ex parte Markush*, 1925 Dec. Comm'r Pat. 126. See MARKUSH DOCTRINE. [Cases: Patents 101(7).]

means-combination claim.A type of claim in a patent application that includes multiple limitations, at least one of which is in means-plus-function or step-plus-function form. • Means-combination claims are acceptable to examiners. [Cases: Patents 101(10).]

means-plus-function claim.See MEANS-PLUS-FUNCTION CLAUSE.

method claim.A patent claim that describes what is done to a workpiece in order to achieve the useful result claimed. • A method claim is the same thing as a process claim, but “method” is used more often in applications for mechanical and electrical devices. [Cases: Patents 101(11).]

multiple-dependent claim.A dependent claim that refers to more than one other preceding claim.

nearly closed-ended claim.A patent claim that limits its scope to a list of elements but does not expressly exclude close analogues. The claim is typically introduced by a phrase such as “consisting essentially of.” Cf. closed-ended claim; open-ended claim.

new-use claim.A method claim for a new way of using an existing invention. [Cases: Patents 27(1).]

nonelected claim.A claim that has been withdrawn from consideration based on the examiner's finding that the application claims more than one invention. • The applicant must elect to prosecute one invention. Other claims may either be abandoned or else be prosecuted separately under a divisional application. See RESTRICTION(4).

nonstatutory claim. See omnibus claim.

omnibus claim. A claim in a patent application that does not distinctly narrate a means to carry out a function but rather refers to the drawings or description with phrases such as “as described and shown.” • Omnibus claims are rejected in the United States but are accepted elsewhere. — Also termed nonstatutory claim. Cf. design claim.

open-ended claim. A patent claim that contains a nonexclusive list of elements, typically introduced by the phrase “consisting of.” • A later patent applicant cannot avoid infringement by merely adding an analogue to the list. Cf. closed-ended claim; nearly closed-ended claim.

plant-patent claim. The single claim in a plant-patent application, describing the principal distinguishing characteristics of the plant.

process claim. A patent claim that describes by steps what is done to the subject matter, usu. a substance, in order to achieve a useful result. • A process claim is the same thing as a method claim, but “process” is used more often in applications for chemical patents. [Cases: Patents 101(11).]

product-by-process claim. A patent claim defining a product through the process by which it is made. • The product-by-process claim is most often used to define new chemical compounds, such as drugs. [Cases: Patents 101(11).]

product claim. A patent claim that covers the structure, apparatus, or composition of a product.

single-means claim. A type of claim in a patent application that indicates a process, result, or function but does not describe the method of reaching that end <a method of curing cancer>. • When no other method is obvious, such an assertion claims rights to all possible ways of achieving the result — ways not specified in the application and even ways that have not yet been invented. Single-means claims are rejected as too broad. — Also termed single-element means claim. Cf. MEANS-PLUS-FUNCTION CLAUSE. [Cases: Patents 101(8).]

species claim. A claim that is limited to a single apparatus, process, composition of matter, or article of manufacture, rather than to a range of similar and related items. Cf. generic claim.

Squires claim. A utility-patent claim that incorporates a drawing or table by reference. • This claim is allowed by the U.S. Patent and Trademark Office only if there is no practical way to define the invention in words, but the invention is simple to illustrate with the drawing or table. See SQUIRES DOCTRINE.

subcombination claim. A patent claim, usu. on a device, describing a subsystem of a larger combination. • A subcombination may be patented separately if it has its own utility.

PATENT COOPERATION TREATY

Patent Cooperation Treaty. A 1970 treaty that streamlined the process of securing patents in multiple countries by establishing a single filing date and providing for a single preliminary patent search. • An inventor who wants to qualify for patents from several member countries files a

standard application in one country, thus preserving the priority date, then submits a PCT filing that designates which other countries' patents are being applied for. WIPO, the United Nations' World Intellectual Property Organization, administers the treaty. — Abbr. PCT. See international application under PATENT APPLICATION.

PATENT DANGER

patent danger. See apparent danger (1) under DANGER.

PATENT DEED

patent deed. See LETTERS PATENT(2).

PATENT DEFECT

patent defect. See DEFECT.

PATENT DISCLAIMER

patent disclaimer. See statutory disclaimer under DISCLAIMER.

PATENTEE

patentee (pat-<<schwa>>n-tee). One who either has been granted a patent or has succeeded in title to a patent. • Although it might seem helpful to distinguish a patentee as a person to whom a patent is issued and a patent-holder as the owner of a patent, including the original grantee's assigns, the Patent Act explicitly includes all title-holders under the term "patentee." 35 USCA § 100(d). — Also termed patent-holder; patent-owner. [Cases: Patents 90, 117. C.J.S. Patents §§ 120–125, 209.]

PATENT-EXHAUSTION DOCTRINE

patent-exhaustion doctrine. Patents. The rule that the unconditioned sale of a patented article ends the patentee's monopoly right to control its use. • That control may still be exercised by limitations in a contract or license, as long as it does not amount to anticompetitive patent misuse. *Adams v. Burke*, 84 U.S. (17 Wall.) 453 (1874). See FIRST-SALE DOCTRINE. [Cases: Patents 191. C.J.S. Patents §§ 217, 314, 339.]

PATENT GRANT

patent grant. See PATENT(3).

PATENT-HOLDER

patent-holder. See PATENTEE.

PATENT INFRINGEMENT

patent infringement. See INFRINGEMENT.

PATENT INSURANCE

patent insurance. See INSURANCE.

PATENT MARKING

patent marking. The incorporation or affixation of a patent number to a patented article's surface or surrounding packaging. • Affixing the patent number to a product gives constructive notice of patent rights to infringers. Without the number in place, a patentee cannot recover losses that occur before the infringer has actual notice of the patent. See PATENT NUMBER. [Cases: Patents 222. C.J.S. Patents §§ 394–395.]

PATENT MEDICINE

patent medicine. A packaged drug that is protected by trademark and is available without prescription. [Cases: Health 302–305.]

PATENT-MISUSE DOCTRINE

patent-misuse doctrine. An equitable rule that a patentee should not be allowed to use a patent to effectively broaden the scope of the patentee's monopoly in restraint of trade or otherwise against the public interest. • Two common examples of anticompetitive broadening are (1) using a patent to restrain competition from an unpatented product or process, and (2) employing the patent beyond its life span to exclude others from gaining commercial advantages by using the product or process. The practical effect of finding patent misuse is the loss of patent protection. The doctrine operates independently of antitrust law but overlaps it in many ways and arose in the same era, at the turn of the 20th century. It has been described as an application of the equitable rule of “unclean hands.” See nonmetered license under LICENSE. [Cases: Monopolies 17.5(14); Patents 283(1). C.J.S. Monopolies § 135; Patents §§ 436–439.]

PATENT NUMBER

patent number. Patents. The number assigned by the U.S. Patent and Trademark Office to a patent. See PATENT MARKING.

PATENT OFFICE

Patent Office. See UNITED STATES PATENT AND TRADEMARK OFFICE.

PATENT OFFICE REPORTS

Patent Office Reports. Hist. The former official publication of the U.S. Patent and Trademark Office. • It was replaced in 1872 by the Official Gazette of the United States Patent and Trademark Office.

PATENT OF PRECEDENCE

patent of precedence. Hist. A royal grant to barristers that the Crown wished to honor by conferring such rank and precedence as assigned in the grant.

PATENTOR

patentor (pat-⟨schwa⟩n-t⟨schwa⟩r or pat-⟨schwa⟩n-tor). One who grants a patent.

PATENT-OWNER

patent-owner. See PATENTEE.

PATENT PENDING

patent pending. The designation given to an invention while the Patent and Trademark Office is processing the patent application. • No protection against infringement exists, however, unless an actual patent is granted. — Abbr. pat. pend. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.]

PATENT POOLING

patent pooling. The cross-licensing of patents among patentees. • Patent pooling does not violate antitrust laws unless it is done to suppress competition or control an industry. [Cases: Monopolies 12(15). C.J.S. Monopolies §§ 129–135.]

PATENT-PROSECUTION PROCESS

patent-prosecution process. See PROSECUTION(4).

PATENT RIGHT

patent right. 1. PATENT(3). 2. RIGHT.

PATENT-RIGHT DEALER

patent-right dealer. A person who sells or brokers the sale of patent rights.

PATENT ROLL

Patent Roll. A list of the letters patent issued in the United Kingdom in any given year. • The first Patent Roll was issued in England in 1201. The Rolls were originally used to grant offices, lands, licenses, peerages, and pensions. In later centuries, the Patent Rolls included grants of patents for inventions.

PATENT SEARCH

patent search. 1. INFRINGEMENT SEARCH. 2. PATENTABILITY SEARCH. 3. VALIDITY SEARCH .

PATENT SOLICITOR

patent solicitor. See patent agent under AGENT(2).

PATENT SUPPRESSION

patent suppression. The deliberate nonuse of a patent, esp. in order to deny the public or competitors the benefit of the invention. • Patent suppression is a rich source of urban legend, such as the rumor of oil companies sitting on inventions that would greatly improve gas mileage, or pantyhose companies suppressing a patent on no-run nylon. But the stories are not always fictional: in 1942 Standard Oil admitted trying to delay the advancement of synthetic-rubber technology in order to protect its market in natural rubber.

PATENT TERM

patent term. The period during which a patent is in force. [Cases: Patents 131. C.J.S. Patents § 236.]

PATENT-TERM ADJUSTMENT

patent-term adjustment. A compulsory extension of the time a utility or plant patent remains in force, following administrative delays in prosecuting the application. • A provision of the American Inventors' Protection Act of 1999, the extension is available for new applications, continuation applications, and divisional applications filed since May 29, 2000. — Abbr. PTA. Cf. PATENT-TERM EXTENSION. [Cases: Patents 133. C.J.S. Patents §§ 234–235.]

PATENT-TERM EXTENSION

patent-term extension. A lengthening of the time a patent remains in force, given to compensate inventors for time lost because of administrative delays such as interferences, secrecy orders, or appeals. • The extension applies to utility and plant patents issued after June 7, 1995 and before May 29, 2000. Its maximum length is five years. Cf. PATENT-TERM ADJUSTMENT. [Cases: Patents 133. C.J.S. Patents §§ 234–235.]

PATENT-TERM GUARANTEE

patent-term guarantee. An inventor's statutory right to extend the term of a patent if the application was delayed by the U.S. Patent and Trademark Office. • The term can be extended up to five years if the application was delayed because of an interference proceeding or appellate review, or if the PTO missed a statutory deadline for certain steps in the prosecution, or failed to grant the patent within three years of the filing date. The guarantee took effect May 29, 2000. [Cases: Patents 133. C.J.S. Patents §§ 234–235.]

PATENT WATCH

patent watch. A system for continually monitoring published patent applications and granted patents in a particular scientific or technological field to detect or ensure against infringements.

PATENT WRIT

patent writ. See WRIT.

PATER

pater (pay-t<<schwa>>r), n. [Latin] Father.

PATERFAMILIAS

paterfamilias (pay-t<<schwa>>r-f<<schwa>>-mil-ee-<<schwa>>s or pah-t<<schwa>>r-), n. [Latin] Roman law. The male head of a family or household; the senior ascendant male; esp., one invested with potestas (power) over another. — Also termed homo sui juris. See patria potestas under POTESTAS.

PATERNAL

paternal,adj. Of, relating to, or coming from one's father <paternal property>. Cf. MATERNAL.

PATERNALISM

paternalism,n. A government's policy or practice of taking responsibility for the individual affairs of its citizens, esp. by supplying their needs or regulating their conduct in a heavy-handed manner. — paternalistic,adj.

PATERNAL LINE

paternal line.See LINE.

PATERNAL-LINE DESCENT

paternal-line descent.See DESCENT.

PATERNAL PROPERTY

paternal property.See PROPERTY.

PATERNA PATERNIS

paterna paternis (p<<schwa>>-t<<schwa>>r-n<<schwa>> p<<schwa>>-t<<schwa>>r-nis). [Law Latin] Hist. Goods acquired through the father descend to those connected with him. • The phrase invoked the distinction between the succession of consanguinean half-brothers and uterine half-brothers. Cf. MATERNA MATERNIS.

PATERNITY

paternity (p<<schwa>>-t<<schwa>>r-ni-tee).1. The state or condition of being a father, esp. a biological one; fatherhood. Cf. FILIATION. [Cases: Children Out-of-Wedlock 35.] 2.ATTRIBUTION RIGHT.

PATERNITY ACTION

paternity action.See PATERNITY SUIT.

PATERNITY PRESUMPTION

paternity presumption.See PRESUMPTION OF PATERNITY.

PATERNITY SUIT

paternity suit.A court proceeding to determine whether a person is the father of a child (esp. one born out of wedlock), usu. initiated by the mother in an effort to obtain child support. — Also termed paternity action; parentage action; bastardy proceeding; bastardy process. [Cases: Children Out-of-Wedlock 30. C.J.S. Children Out-of-Wedlock §§ 46, 49, 70, 91–93.]

PATERNITY TEST

paternity test.A test, usu. involving DNA identification or tissue-typing, for determining whether a given man is the biological father of a particular child. See DNA IDENTIFICATION;

HUMAN-LEUKOCYTE ANTIGEN TEST; BLOOD-GROUPING TEST . [Cases: Children Out-of-Wedlock 58. C.J.S. Children Out-of-Wedlock §§ 75–76.]

PATER PATRIAE

pater patriae (pay-t<<schwa>>r pay-tree-ee orpa-tree-ee). [Latin] Father of the country. See PARENS PATRIAE.

PATHOLOGICAL INTOXICATION

pathological intoxication. See INTOXICATION.

PATHOLOGY

pathology (p<<schwa>>-thol-<<schwa>>-jee), n. The branch of medical study that examines the origins, symptoms, and nature of diseases. — pathological (path-<<schwa>>-loj-i-k<<schwa>>l), adj. — pathologist (p<<schwa>>-thol-<<schwa>>-jist), n.

PATIENS

patiens (pay-shee-enz), n. [Latin] A person who suffers or permits; the passive party in a transaction. Cf. AGENS(1).

PATIENT

patient, n. A person under medical or psychiatric care. [Cases: Health 576.]

PATIENT-LITIGANT EXCEPTION

patient-litigant exception. An exemption from the doctor–patient privilege, whereby the privilege is lost when the patient sues the doctor for malpractice. [Cases: Witnesses 219(5). C.J.S. Witnesses §§ 381, 383–389.]

PATIENT– PHYSICIAN PRIVILEGE

patient–physician privilege. See doctor–patient privilege under PRIVILEGE(3).

PATIENT'S BILL OF RIGHTS

patient's bill of rights. A general statement of patient rights voluntarily adopted by a healthcare provider or mandated by statute, covering such matters as access to care, patient dignity and confidentiality, personal safety, consent to treatment, and explanation of charges. [Cases: Health 582.]

PAT. PEND

pat. pend. abbr. PATENT PENDING.

PATRIA

patria (pay-tree-<<schwa>> orpa-tree-<<schwa>>), n. [Latin] 1. Roman law. The fatherland; a person's home area. 2. Hist. The country or the area within it, such as a county or neighborhood. 3. Hist. A jury, as when a defendant “puts himself upon the country” (ponit se super patriam). See

CONCLUSION TO THE COUNTRY ; GOING TO THE COUNTRY; PAYS.

“Though our Latin uses patria, our French uses pays, which descends from Latin pagus. The ‘country’ of this formula is not our father-land but ‘the country-side.’ ” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 624 n.1 (2d ed. 1899).

PATRIA POTESTAS

patria potestas. See POTESTAS.

PATRICIAN

patrician (p<<schwa>>-trish-<<schwa>>n), n. Roman law. One of a privileged class of Roman citizens, as contrasted with plebeians. • Originally the rank was probably only by birth. They monopolized all the priesthoods and their class was probably defined by religious prerogatives, but membership in the senate was not confined to patricians. They lost their monopolies by B.C. 300, but one consul continued to be a patrician, and they held at least half the priestly offices. Emperors could and did confer patrician status on favored individuals. The hereditary patricians disappeared in the third century A.D., but later emperors revived the title as a personal honor for faithful service.

PATRICIDE

patricide (pa-tr<<schwa>>-sId), n.1. The act of killing one's own father. 2. One who kills his or her father. Cf. PARRICIDE. — patricidal, adj.

PATRIMONIAL

patrimonial (pa-tr<<schwa>>-moh-nee-<<schwa>>l), adj. Of or relating to an inheritance, esp. from a male ancestor.

PATRIMONIO EJUS ABEST

patrimonio ejus abest (pa-tr<<schwa>>-moh-nee-oh ee-j<<schwa>>s ab-est). [Latin] Hist. That which is wanting from a person's estate. • The phrase includes items held by one person but due to another.

PATRIMONIUM

patrimonium (pa-tr<<schwa>>-moh-nee-<<schwa>>m), n.[Latin] Roman law. Property that is capable of being inherited; private property. — Also termed patrimony.

PATRIMONY

patrimony (pa-tr<<schwa>>-moh-nee).1. An estate inherited from one's father or other ancestor; legacy or heritage. 2. Civil law. All of a person's assets and liabilities that are capable of monetary valuation and subject to execution for a creditor's benefit. 3. PATRIMONIUM.

PATRIOT ACT

Patriot Act. See USA PATRIOT ACT.

PATRON

patron. 1. A regular customer or client of a business. 2. A licensee invited or permitted to enter leased land for the purpose for which it is leased. 3. A person who protects or supports some person or thing.

PATRONAGE

patronage (pay-tr<<schwa>>-nij). 1. The giving of support, sponsorship, or protection. 2. All the customers of a business; clientele. 3. The power to appoint persons to governmental positions or to confer other political favors. — Also termed (in sense 3) political patronage. See SPOILS SYSTEM. [Cases: Officers and Public Employees 25. C.J.S. Officers and Public Employees § 36.]

PATRONIZING A PROSTITUTE

patronizing a prostitute. The offense of requesting or securing the performance of a sex act for a fee; PROSTITUTION. Cf. SOLICITATION(3).

PATRONUS

patronus (p<<schwa>>-troh-n<<schwa>>s), n. [Latin] 1. Roman law. Someone who had manumitted a slave, and was therefore entitled to certain services from the slave. 2. ADVOWEE. Pl. patroni (p<<schwa>>-troh-nl).

PATRUUS

patruus (pa-troo-<<schwa>>s), n. [Latin] Roman & civil law. A father's brother; a paternal uncle.

PATRUUS MAGNUS

patruus magnus (pa-troo-<<schwa>>s mag-n<<schwa>>s), n. [Latin] Roman & civil law. A grandfather's brother; a great-uncle.

PATRUUS MAXIMUS

patruus maximus (pa-troo-<<schwa>>s mak-s<<schwa>>-m<<schwa>>s). See ABPATRUUS.

PATTERN

pattern, n. A mode of behavior or series of acts that are recognizably consistent <a pattern of racial discrimination>.

PATTERN JURY CHARGE

pattern jury charge. See model jury instruction under JURY INSTRUCTION.

PATTERN JURY INSTRUCTION

pattern jury instruction. See model jury instruction under JURY INSTRUCTION.

PATTERN OF RACKETEERING ACTIVITY

pattern of racketeering activity. Two or more related criminal acts that amount to, or pose a threat of, continued criminal activity. • This phrase derives from the federal Racketeer Influenced and Corrupt Organizations Act. 18 USCA § 1961. See RACKETEERING. [Cases: Racketeer Influenced and Corrupt Organizations 24, 104. C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) § 7.]

PATTERN-OR-PRACTICE CASE

pattern-or-practice case. A lawsuit, often a class action, in which the plaintiff attempts to show that the defendant has systematically engaged in discriminatory activities, esp. by means of policies and procedures. • Typically, such a case involves employment discrimination, housing discrimination, or school segregation. A plaintiff must usu. show that a defendant's behavior forms a pattern of actions or is embedded in routine practices but that inferences of executive or official complicity may be drawn from a consistent failure to respond to complaints or implement corrective measures.

PATTERN SIMILARITY

pattern similarity. See comprehensive nonliteral similarity under SIMILARITY.

PAUCITAL

paucital (paw-si-t<<schwa>>l), adj. Rare. See IN PERSONAM.

PAULINE PRIVILEGE

Pauline privilege. Eccles. law. The doctrine that a baptized person's marriage to a never-baptized person may be dissolved under certain circumstances, when dissolution is beneficial to the church. • The privilege is ordinarily exercised when (1) the marriage was valid, (2) the baptized spouse now wishes to marry a Catholic, and (3) at the time of the marriage, both parties were unbaptized in any faith. Before the privilege can be exercised, (1) the unbaptized spouse must have deserted the baptized spouse without just cause, (2) the unbaptized spouse must still be unbaptized, (3) the baptized spouse must make the proper appeals to the church, and (4) the church must rule that the privilege is exercisable. There is uncertainty about the extent of the privilege. Cf. PETRINE PRIVILEGE.

PAUPER

pauper. A very poor person, esp. one who receives aid from charity or public funds; INDIGENT. See IN FORMA PAUPERIS. [Cases: Social Security and Public Welfare 3. C.J.S. Social Security and Public Welfare § 5.]

PAUPERIES

pauperies (paw-p<<schwa>>r-eez), n. [Latin "impoverishment"] Roman law. Damage done by a domesticated four-footed animal. • The animal's owner was liable for the damage. See actio

de pauperie under ACTIO.

PAUPER'S AFFIDAVIT

pauper's affidavit. See poverty affidavit under AFFIDAVIT.

PAUPER'S OATH

pauper's oath. See OATH.

PAWN

pawn, n. 1. An item of personal property deposited as security for a debt; a pledge or guarantee. • In modern usage, the term is usu. restricted to the pledge of jewels and other personal chattels to pawnbrokers as security for a small loan. 2. The act of depositing personal property in this manner. 3. The condition of being held on deposit as a pledge. Cf. BAILMENT. 4. PIGNUS (1). — pawn, vb.

PAWNBROKER

pawnbroker, n. One who lends money, usu. at a high interest rate, in exchange for personal property that is deposited as security by the borrower. [Cases: Consumer Credit 5. C.J.S. Interest and Usury; Consumer Credit § 352.] — pawnbroking, n.

PAWNEE

pawnee. One who receives a deposit of personal property as security for a debt. [Cases: Consumer Credit 5. C.J.S. Interest and Usury; Consumer Credit § 352.]

PAWNOR

pawnor. One who deposits an item of personal property as security for a debt. — Also spelled pawner. [Cases: Consumer Credit 5. C.J.S. Interest and Usury; Consumer Credit § 352.]

PAX REGIS

pax regis (paks ree-jis), n. [Latin "the king's peace"] Hist. 1. The government's guarantee of peace and security of life and property to all within the law's protection. 2. VERGE(1).

PAYABLE

payable, adj. (Of a sum of money or a negotiable instrument) that is to be paid. • An amount may be payable without being due. Debts are commonly payable long before they fall due.

payable after sight. Payable after acceptance or protest of nonacceptance. See sight draft under DRAFT. [Cases: Bills and Notes 129(3). C.J.S. Bills and Notes; Letters of Credit § 90.]

payable on demand. Payable when presented or upon request for payment; payable at any time. [Cases: Bills and Notes 129(3). C.J.S. Bills and Notes; Letters of Credit § 90.]

payable to bearer. Payable to anyone holding the instrument. [Cases: Bills and Notes 210, 427(1). C.J.S. Bills and Notes; Letters of Credit § 145.]

payable to order. Payable only to a specified payee. [Cases: Bills and Notes 427. C.J.S. Bills and Notes; Letters of Credit § 233.]

payable, n. See account payable under ACCOUNT.

PAYABLE DATE

payable date. See DATE.

PAY ANY BANK

pay any bank. A draft indorsement that permits only banks to acquire the rights of a holder until the draft is either returned to the customer initiating collection or specially indorsed by a bank to a person who is not a bank. UCC § 4-201(b). [Cases: Banks and Banking 158; Bills and Notes 190. C.J.S. Banks and Banking §§ 322, 383, 395–397, 399, 402, 404; Bills and Notes; Letters of Credit §§ 154–155.]

PAYBACK METHOD

payback method. An accounting procedure that measures the time required to recover a venture's initial cash investment.

PAYBACK PERIOD

payback period. The length of time required to recover a venture's initial cash investment, without accounting for the time value of money.

PAYDOWN

paydown. A loan payment in an amount less than the total loan principal.

PAYEE

payee. One to whom money is paid or payable; esp., a party named in commercial paper as the recipient of the payment.

PAYER

payer. See PAYOR.

PAYING QUANTITIES

paying quantities. Oil & gas. An amount of mineral production from a single well sufficient to justify a reasonably prudent operator to continue producing from that well. • Most jurisdictions interpret the language “for so long thereafter as oil and gas is produced” in habendum clauses to mean so long as paying quantities are produced. See HABENDUM CLAUSE. [Cases: Mines and Minerals 78.1(8). C.J.S. Mines and Minerals §§ 254–257, 264, 266.]

PAYMENT

payment. 1. Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation. [Cases: Payment 1. C.J.S. Payment §

2.] 2. The money or other valuable thing so delivered in satisfaction of an obligation.

advance payment. A payment made in anticipation of a contingent or fixed future liability or obligation.

balloon payment. A final loan payment that is usu. much larger than the preceding regular payments and that discharges the principal balance of the loan. See balloon note under NOTE(1).

conditional payment. Payment of an obligation only on condition that something be done. • Generally, the payor reserves the right to demand the payment back if the condition is not met. [Cases: Payment 33.]

constructive payment. A payment made by the payor but not yet credited by the payee. • For example, a rent check mailed on the first of the month is a constructive payment even though the landlord does not deposit the check until ten days later.

direct payment. 1. A payment made directly to the payee, without using an intermediary, such as a child-support payment made directly to the obligee parent rather than through the court. 2. A payment that is absolute and unconditional on the amount, the due date, and the payee.

down payment. The portion of a purchase price paid in cash (or its equivalent) at the time the sale agreement is executed. Cf. BINDER(2); EARNEST MONEY. [Cases: Vendor and Purchaser 69.1, 334(1). C.J.S. Vendor and Purchaser §§ 135, 137–138, 640, 642–644, 648.]

indefinite payment. 1. A stream of payments with no termination date, or a single payment with no specified due date. 2. A payment that does not specify to which debt it should be applied when it is made to a single creditor who holds several of the payor's debts.

installment payment. One of a series of periodic payments made under an installment plan. See INSTALLMENT SALE.

involuntary payment. A payment obtained by fraud or duress. [Cases: Payment 86–87. C.J.S. Payment §§ 105, 112.]

lump-sum payment. A payment of a large amount all at once, as opposed to smaller payments over time. Cf. periodic payment.

part payment. A buyer's delivery of money or other thing of value to the seller, and its acceptance by the seller, when the money or the value of the thing does not equal the full sum owed. [Cases: Sales 202(7); Vendor and Purchaser 184. C.J.S. Sales § 223; Vendor and Purchaser § 429.]

periodic payment. One of a series of payments made over time instead of a one-time payment for the full amount. Cf. lump-sum payment.

two-party payment. A single payment made by check to two people, usu. for the sum of the amount due to each person.

unofficial payment. A payment made by a person who has an interest in seeing that it should be made.

PAYMENT BOND

payment bond. See BOND(2).

PAYMENT DATE

payment date. See DATE.

PAYMENT IN DUE COURSE

payment in due course. A payment to the holder of a negotiable instrument at or after its maturity date, made by the payor in good faith and without notice of any defect in the holder's title. See HOLDER IN DUE COURSE.

PAYMENT INTANGIBLE

payment intangible. See INTANGIBLE.

PAYMENT INTO COURT

payment into court. A party's money or property deposited with a court for distribution after a proceeding according to the parties' settlement or the court's order. See INTERPLEADER. [Cases: Deposits in Court 1–12. C.J.S. Deposits in Court §§ 1, 4–40.]

PAYOFF

payoff. See KICKBACK.

PAYOLA

payola (pay-oh-l<<schwa>>). An indirect and secret payment for a favor, esp. one relating to business; a bribe.

PAY-ON-DEATH ACCOUNT

pay-on-death account. See ACCOUNT.

PAY-ON-DEATH BANK ACCOUNT

pay-on-death bank account. See pay-on-death account under ACCOUNT.

PAYOR

payor. One who pays; esp., a person responsible for paying a negotiable instrument. — Also spelled payer. See DRAWEE.

PAYOR BANK

payor bank. See BANK.

PAY-OR-PLAY CONTRACT

pay-or-play contract. See CONTRACT.

PAYOUT PERIOD

payout period. The time required for an asset to produce enough revenue to pay back the initial investment; esp., in oil-and-gas law, the time required for a well to produce a sufficient amount of oil or gas to pay back the investment in the well.

PAYOUT RATIO

payout ratio. The ratio between a corporation's dividends per share and its earnings per share. Cf. COMMON-STOCK RATIO.

PAYROLL

payroll. 1. A list of employees to be paid and the amount due to each of them. 2. The total compensation payable to a company's employees for one pay period.

PAYROLL TAX

payroll tax. See TAX.

PAYS

pays (pay or pays), n. [Law French] The country; a jury. See PATRIA.

PBGC

PBGC. abbr. PENSION BENEFIT GUARANTY CORPORATION.

PBS

PBS. abbr. 1. PUBLIC BUILDINGS SERVICE. 2. Public Broadcasting Service.

P.C.

P.C. abbr. 1. See professional corporation under CORPORATION. 2. POLITICAL CORRECTNESS. 3. PRIVY COUNCILLOR.

PCA

PCA. abbr. POSSE COMITATUS ACT.

PCR ACTION

PCR action. See POSTCONVICTION-RELIEF PROCEEDING.

PCT

PCT. abbr. PATENT COOPERATION TREATY.

PCT APPLICATION

PCT application. See international application under PATENT APPLICATION.

PCT FILING

PCT filing. See international application under PATENT APPLICATION.

PCT FILING DATE

PCT filing date. Patents. The date of an international application under the Patent Cooperation Treaty. — Also termed international filing date. See **PATENT COOPERATION TREATY**.

P.D.

P.D. abbr. 1. **PUBLIC DEFENDER**. 2. Police department.

PDA

PDA. abbr. **PREGNANCY-DISCRIMINATION ACT**.

PEACE

peace, n. A state of public tranquility; freedom from civil disturbance or hostility <breach of the peace>. See peace treaty under **TREATY**(1). — peaceable, peaceful, adj.

armed peace. A situation in which two or more nations, while at peace, are actually armed for possible or probable hostilities.

PEACE, JUSTICE OF

peace, justice of. See **JUSTICE OF THE PEACE**.

PEACEABLE POSSESSION

peaceable possession. See **POSSESSION**.

PEACE BOND

peace bond. See **BOND**(2).

PEACE CORPS

Peace Corps. An independent federal agency that promotes peace and friendship in the world by sending volunteers to other countries to work in education, agriculture, health, small-business development, urban development, and the environment. • The agency was established by the Peace Corps Act of 1961 and became independent in 1988.

PEACEMAKER'S COURT

peacemaker's court. See **COURT**.

PEACE OFFICER

peace officer. A civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order; esp., a person designated by public authority to keep the peace and arrest persons guilty or suspected of crime. • This term may also include a judge who hears criminal cases or another public official (such as a mayor) who may be statutorily designated as a peace officer for limited purposes. — Also termed officer of the peace; conservator of the peace. [Cases: Municipal Corporations 180(1). C.J.S. Municipal Corporations §§ 450–452, 474–476, 497, 502, 505, 508, 534.]

PEACE OF GOD AND THE CHURCH

Peace of God and the church.Hist. The cessation of litigation between terms and on Sundays and holidays.

PEACETIME

peacetime. A period in which a country has declared neither a war nor a national emergency, even if the country is involved in a conflict or quasi-conflict.

PEACE TREATY

peace treaty.See TREATY(1).

PEACE WARRANT

peace warrant.See WARRANT(1).

PEAK DEMAND

peak demand.The point (during some specified period) at which customer use results in the highest level of demand for a utility.

PECCAVI

peccavi (pe-kay-vIor pe-kah-vee), n.[Latin "I have sinned"] An acknowledgment or confession of guilt.

PECULATION

peculation (pek-y<<schwa>>-lay-sh<<schwa>>n), n. Embezzlement, esp. by a public official. Cf. DEPECULATION. [Cases: Officers and Public Employees 121. C.J.S. Officers and Public Employees §§ 329-334.] — speculate (pek-y<<schwa>>-layt), vb. — speculative (pek-y<<schwa>>-l<<schwa>>-tiv), adj. — peculator (pek-y<<schwa>>-lay-t<<schwa>>r), n.

PECULATUS

peculatus (pek-y<<schwa>>-lay-t<<schwa>>s), n.[Latin] Roman law. The offense of stealing or embezzling public funds; peculation. Cf. FURTUM(1).

PECULIAR

peculiar,adj. Special; particular <peculiar benefit>.

peculiar,n. Hist. Eccles. law. A district, parish, chapel, or church that was not subject to a bishop's jurisdiction. • Peculiars were created, usu. under papal authority, to limit a bishop's power. There were several types, including royal peculiars (e.g., the Chapel Royal at St. James's Palace or St. George's in Windsor), peculiars of the Archbishop of Canterbury, and peculiars of bishops and deans. The jurisdiction and privileges of the peculiars were abolished by various statutes in the 19th century.

PECULIAR BENEFIT

peculiar benefit. See special benefit under BENEFIT.

PECULIAR-RISK DOCTRINE

peculiar-risk doctrine. The principle that an employer will be liable for injury caused by an independent contractor if the employer failed to take precautions against a risk that is peculiar to the contractor's work and that the employer should have recognized. — Also termed peculiar-risk exception. [Cases: Master and Servant 319. C.J.S. Employer–Employee Relationship §§ 236, 239–240, 245.]

PECULIUM

peculium (pi-kyoo-lee-*<<schwa>>*m), n. [Latin] Roman law. Property or money given by the head of a household to a son or slave, to be used at that person's discretion for living expenses or business transactions; property at the disposal of the slave or son-in-power.

PECULIUM ADVENTITIUM

peculium adventitium. See ADVENTITIOUS PROPERTY.

PECULIUM PROPECTITIUM

peculium propectitium. See PROPECTITIUM PECULIUM.

PECUNE

pecune. [Origin unknown] Hist. CRIB.

PECUNIA

pecunia (pi-kyoo-nee-*<<schwa>>*), n. [Latin] Hist. 1. Money. 2. Real or personal property.

pecunia certa (pi-kyoo-nee-*<<schwa>>* s*<<schwa>>*r-t*<<schwa>>*). [Latin] A definite sum of money.

pecunia constituta (pi-kyoo-nee-*<<schwa>>* kon-sti-t[y]oo-t*<<schwa>>*). [Latin “fixed sum of money”] Roman law. See pactum de constituto under PACTUM.

pecunia non numerata (pi-kyoo-nee-*<<schwa>>* non n[y]oo-m*<<schwa>>*-ray-t*<<schwa>>*). [Latin “money not paid”] Roman law. A defense that even though the defendant acknowledged receiving money, it had not in fact been paid. Cf. exceptio pecuniae non numeratae under EXCEPTIO.

pecunia numerata (pi-kyoo-nee-*<<schwa>>* n[y]oo-m*<<schwa>>*-ray-t*<<schwa>>*). [Latin] Hist. Money numbered or counted out; money given to pay a debt.

PECUNIARY

pecuniary (pi-kyoo-nee-er-ee), adj. Of or relating to money; monetary <a pecuniary interest in the lawsuit>.

PECUNIARY ABILITY

pecuniary ability. Income from any source or sources sufficient to meet or pay an obligation, or for some other purpose, such as providing suitable maintenance for a spouse.

PECUNIARY BENEFIT

pecuniary benefit. See BENEFIT.

PECUNIARY BEQUEST

pecuniary bequest. See BEQUEST.

PECUNIARY CAUSE

pecuniary cause. Eccles. law. A lawsuit maintainable in an ecclesiastical court to redress an injury relating to the church, such as a parishioner's failure to pay a tithe to a parson.

PECUNIARY DAMAGES

pecuniary damages. See DAMAGES.

PECUNIARY DEVISE

pecuniary devise. See DEVISE.

PECUNIARY GAIN

pecuniary gain. See GAIN(1).

PECUNIARY INJURY

pecuniary injury. See INJURY.

PECUNIARY INTEREST

pecuniary interest. See financial interest under INTEREST(2).

PECUNIARY LEGACY

pecuniary legacy. See LEGACY.

PECUNIARY LOSS

pecuniary loss. See LOSS.

PECUNIA TRAJECTITIA

pecunia trajectitia (pi-kyoo-nee-<<schwa>> traj-ek-tish-ee-<<schwa>>). [Latin "money conveyed overseas"] Roman law. Money loaned in connection with the transport of goods by ship, with the lender bearing the risk of loss. See NAUTICUM FENUS.

PEDAGE

pedage (ped-ij). Hist. Money paid as a toll to travel through another's land. — Also termed paage; pedagium.

PEDAGIUM

pedagium (pi-day-jee-*<<schwa>>*m). [Law Latin] See PEDAGE.

PEDAL POSSESSION

pedal possession. See POSSESSION.

PEDANEUS

pedaneus (pi-day-nee-*<<schwa>>*s), n. & adj. [Latin] Roman law. A judge who sat at the foot of the tribunal (i.e., in the lowest seat) ready to try minor cases at the command of the magistrate; an assistant judge.

PEDERASTY

pederasty (ped-*<<schwa>>*r-as-tee), n. Anal intercourse between a man and a boy. • Pederasty is illegal in all states. Cf. SODOMY. [Cases: Sodomy 1. C.J.S. Sodomy §§ 2–6.] — pederast (ped-*<<schwa>>*-rast), n.

PEDIGREE

pedigree. A history of family succession; ancestry or lineage.

PEDIS ABSCISSIO

pedis abscissio (pee-dis orped-is ab-sish-ee-oh). [Latin “cutting off a foot”] Hist. Punishment by cutting off the offender's foot.

PEDIS POSITIO

pedis positio (pee-dis orped-is p*<<schwa>>*-zish-ee-oh). [Latin “the placement of the foot”] Hist. A putting or placing of the foot. • This term denoted possession of land by actual entry.

PEDIS POSSESSIO

pedis possessio. See POSSESSIO.

PEDIS POSSESSIO DOCTRINE

pedis possessio doctrine (pee-dis orped-is p*<<schwa>>*-zes[h]-ee-oh). [Latin “possession-of-a-foot doctrine”] The principle that a prospector working on land in the public domain is entitled to freedom from fraudulent or forcible intrusions while actually working on the site. [Cases: Mines and Minerals 27(1). C.J.S. Mines and Minerals §§ 63–64.]

PEDOPHILE

pedophile. An adult who engages in pedophilia.

PEDOPHILIA

pedophilia. 1. An adult's sexual disorder consisting in the desire for sexual gratification by molesting children, esp. prepubescent children. 2. An adult's act of child molestation. • Pedophilia

can but does not necessarily involve intercourse. Cf. PEDERASTY.

PEEPING TOM

Peeping Tom. A person who spies on another (as through a window), usu. to gain sexual pleasure; VOYEUR. — Also termed peeper. [Cases: Disorderly Conduct 1. C.J.S. Disorderly Conduct §§ 2–5.]

PEER

peer, n. 1. A person who is of equal status, rank, or character with another.

“The commonalty, like the nobility, are divided into several degrees; and, as the lords, though different in rank, yet all of them are peers in respect of their nobility, so the commoners, though some are greatly superior to others, yet all are in law peers, in respect of their want of nobility”
1 William Blackstone, Commentaries on the Laws of England 391 (1765).

2. A member of the British nobility (such as a duchess, marquis, earl, viscount, or baroness). — peerage (peer-ij), n. “The Crown has power to create any number of peers and of any degree. In modern practice the power is exercised on the advice of the Prime Minister and the honour is most commonly a reward for political services. Peerages can be, and have been, conferred for party political reasons; 12 were created in 1712 to save the government, and 16 to help pass the Reform Bill in 1832. In 1832 and 1911 the Opposition of the House of Lords was overcome by the threat to create enough peers to secure a majority.... The main privilege of a peer is to sit and vote in the House of Lords.” David M. Walker, *The Oxford Companion to Law* 942 (1980).

PEER-REVIEWED JOURNAL

peer-reviewed journal. A publication whose practice is to forward submitted articles to disinterested experts who screen them for scholarly or scientific reliability so that articles actually published have already withstood expert scrutiny and comment.

PEER-REVIEW ORGANIZATION

peer-review organization. A government agency that monitors health-regulation compliance by private hospitals requesting public funds (such as Medicare payments). — Abbr. PRO. [Cases: Health 270.]

PEER-REVIEW PRIVILEGE

peer-review privilege. See PRIVILEGE(3).

PEERS OF FEES

peers of fees. Hist. Vassals or tenants of the same lord who judged disputes arising out of fees.

PEINE FORTE ET DURE

peine forte et dure (pen for tay doororpayn fort ay dyoor). [French “strong and hard punishment”] Hist. The punishment of an alleged felon who refused to plead, consisting of pressing or crushing the person's body under heavy weights until the accused either pleaded or

died.

“In all other felonies, however, the punishment of *peine forte et dure* was, until lately, denounced as the consequence of an obstinate silence. The greatest caution and deliberation were indeed to be exercised before it was resorted to; and the prisoner was not only to have ‘*trina admonitio*,’ but a respite of a few hours, and the sentence was to be distinctly read to him, that he might be fully aware of the penalty he was incurring.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 425–26 (2d ed. 1826).

“In old English law, a person charged with felony who, refusing to accept jury trial, was pressed to death (*peine forte et dure*), was not regarded as committing suicide, so that he did not forfeit his property.” Glanville Williams, *The Sanctity of Life and the Criminal Law* 270 n.4 (1957).

PELL

pell. See CLERK OF THE PELLs.

PELLEX

pellex (*pel-eks*), n.[Latin] Roman law. A concubine.

PENAL

penal (*pee-n<<schwa>>l*), adj. Of, relating to, or being a penalty or punishment, esp. for a crime.

“The general rule is that penal statutes are to be construed strictly. By the word ‘penal’ in this connection is meant not only such statutes as in terms impose a fine, or corporal punishment, or forfeiture as a consequence of violating laws, but also all acts which impose by way of punishment damages beyond compensation for the benefit of the injured party, or which impose any special burden, or take away or impair any privilege or right.” William M. Lile et al., *Brief Making and the Use of Law Books* 344 (3d ed. 1914).

“The word penal connotes some form of punishment imposed on an individual by the authority of the state. Where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment the statute is always construed as penal.” 3 Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 59.01, at 113 (5th ed. 2001).

PENAL ACTION

penal action. See ACTION(4).

PENAL BILL

penal bill. See penal bond under BOND(2).

PENAL BOND

penal bond. See BOND(2).

PENAL CLAUSE

penal clause.See PENALTY CLAUSE.

PENAL CODE

penal code.A compilation of criminal laws, usu. defining and categorizing the offenses and setting forth their respective punishments. — Also termed criminal code. See MODEL PENAL CODE.

PENAL COLONY

penal colony.A remote place of detention for convicts and political prisoners, usu. in an isolated part of a nation or in a nation's extraterritorial holdings. • Historical examples include the Soviet Union's gulags in Siberia and France's penal colony on Devil's Island off the coast of Guiana.

PENAL CUSTODY

penal custody.See CUSTODY(1).

PENAL INSTITUTION

penal institution.See PRISON.

PENAL LAW

penal law.1. See penal statute under STATUTE. 2.CRIMINAL LAW.

PENAL LIABILITY

penal liability.See LIABILITY.

PENAL REDRESS

penal redress.See REDRESS.

PENAL SANCTION

penal sanction.See criminal sanction under SANCTION.

PENAL SERVITUDE

penal servitude.Confinement in prison with hard labor. See HARD LABOR. Cf. IMPRISONMENT.

PENAL STATUTE

penal statute.See STATUTE.

PENAL SUM

penal sum.The monetary amount specified as a penalty in a penal bond. See penal bond under BOND(2).

PENALTY

penalty. 1. Punishment imposed on a wrongdoer, usu. in the form of imprisonment or fine; esp., a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party's loss). • Though usu. for crimes, penalties are also sometimes imposed for civil wrongs. [Cases: Penalties 1. C.J.S. Penalties §§ 2–4.]

civil penalty. A fine assessed for a violation of a statute or regulation < the EPA levied a civil penalty of \$10,000 on the manufacturer for exceeding its pollution limits >.

statutory penalty. A penalty imposed for a statutory violation; esp., a penalty imposing automatic liability on a wrongdoer for violation of a statute's terms without reference to any actual damages suffered. [Cases: Penalties 1. C.J.S. Penalties §§ 2–4.]

2. An extra charge against a party who violates a contractual provision.

prepayment penalty. A charge assessed against a borrower who elects to pay off a loan before it is due. [Cases: Bills and Notes 429; Usury 61. C.J.S. Bills and Notes; Letters of Credit §§ 100, 234–236, 238; Interest and Usury; Consumer Credit § 172.]

3. Excessive stipulated damages that a contract purports to impose on a party that breaches. • If the damages are excessive enough to be considered a penalty, a court will usu. not enforce that particular provision of the contract. Some contracts specify that a given sum of damages is intended “as liquidated damages and not as a penalty” — but even that language is not foolproof. [Cases: Damages 80. C.J.S. Damages §§ 185, 190–192.] “A penalty is a sum which a party ... agrees to pay or forfeit in the event of a breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a punishment, the threat of which is designed to prevent the breach, or as security, where the sum is deposited or the covenant to pay is joined in by one or more sureties, to insure that the person injured shall collect his actual damages. Penalties ... are not recoverable or retainable as such by the person in whose favor they are framed” Charles T. McCormick, *Handbook on the Law of Damages* § 146, at 600 (1935).

4. PENALTY CLAUSE.

PENALTY CLAUSE

penalty clause. A contractual provision that assesses against a defaulting party an excessive monetary charge unrelated to actual harm. • Penalty clauses are generally unenforceable. — Often shortened to penalty. — Also termed penal clause. Cf. LIQUIDATED-DAMAGES CLAUSE; LIMITATION-OF-REMEDIES CLAUSE . [Cases: Damages 76, 80. C.J.S. Damages §§ 176, 185–187, 190–192, 194.]

“It not infrequently happens that contracts provide for what is to happen in the event of a breach by the parties, or by one of them. Such provisions may be perfectly simple attempts to avoid future disputes, and to quantify the probable amount of any loss. That is unobjectionable. But sometimes clauses of this kind are not designed to quantify the amount of the probable loss, but are designed to terrorize, or frighten, the party into performance. For example, a contract may

provide that the promisor is to pay £5 on a certain event, but if he fails to do so, he must then pay £500. Now a clause of that kind is called a penalty clause by lawyers, and for several hundred years it has been the law that such promises cannot be enforced. The standard justification for the law here is that it is unfair and unconscionable to enforce clauses which are designed to act in *terrorem*." P.S. Atiyah, *Promises, Morals, and Law* 57–58 (1981).

PENALTY PHASE

penalty phase. The part of a criminal trial in which the fact-finder determines the punishment for a defendant who has been found guilty. — Also termed sentencing phase. Cf. GUILT PHASE.

PENALTY POINT

penalty point. A punishment levied for a traffic offense and accumulated on the driver's record.

- If a driver receives a statutorily set number of points, the driver's license may be restricted, suspended, or terminated.

PENANCE

penance. Eccles. law. A punishment assessed by an ecclesiastical court for some spiritual offense.

PEND

pend, vb. (Of a lawsuit) to be awaiting decision or settlement.

PENDENCY

pendency (pen-d<<schwa>>n-see), n. The state or condition of being pending or continuing undecided.

PENDENS

pendens. See LIS PENDENS.

PENDENT

pendent (pen-d<<schwa>>nt), adj. 1. Not yet decided; pending <a pendent action>. 2. Of or relating to pendent jurisdiction or pendent-party jurisdiction <pendent parties>. [Cases: Federal Courts 14.1.] 3. Contingent; dependent <pendent upon a different claim>.

PENDENT-CLAIM JURISDICTION

pendent-claim jurisdiction. See pendent jurisdiction under JURISDICTION.

PENDENTE LITE

pendente lite (pen-den-tee II-tee), adv. [Latin "while the action is pending"] During the proceeding or litigation; in a manner contingent on the outcome of litigation. — Also termed *lite pendente*. Cf. LIS PENDENS.

PENDENTE LITE ADMINISTRATION

pendente lite administration. See administration pendente lite under ADMINISTRATION.

PENDENTE PROCESSU

pendente processu (pen-den-tee pr<<schwa>>-ses-[y]oo). [Law Latin] Hist. During the pendency of the process.

PENDENTES FRUCTUS

pendentes fructus (pen-den-teez [fr<<schwa>>k-t<<schwa>>s]). [Latin] Hist. Hanging fruits. • These fruits — as distinguished from fruits that have been gathered — must be restored to a real owner who defeats the claims of a bona fide possessor. — Sometimes shortened to pendentes.

PENDENTE TUTELA

pendente tutela (pen-den-tee t[y]oo-tee-l<<schwa>>). [Latin] Hist. During the tutory.

PENDENT JURISDICTION

pendent jurisdiction. See JURISDICTION.

PENDENT-PARTY JURISDICTION

pendent-party jurisdiction. See JURISDICTION.

PENDENT-VENUE DOCTRINE

pendent-venue doctrine. The principle that once venue is established for a federal claim, proof of venue for additional federal claims, cross-claims, and counterclaims is unnecessary.

PENDING

pending, adj. 1. Remaining undecided; awaiting decision <a pending case>. 2. Parliamentary law. (Of a motion) under consideration; moved by a member and stated by the chair as a question for the meeting's consideration. See CONSIDERATION(2); ON THE FLOOR. • A motion may be immediately pending, meaning that it is directly under consideration, being the last motion stated by the chair and next in line for a vote; or it may be pending subject to other motions of higher rank that have taken precedence over it. See immediately pending motion, pending motion under MOTION(2).

pending, prep. 1. Throughout the continuance of; during <in escrow pending arbitration>. 2. While awaiting; until <the injunction was in force pending trial>.

PENDING MOTION

pending motion. See MOTION(2).

PENDING-ORDINANCE DOCTRINE

pending-ordinance doctrine. The principle that a municipality may properly deny an application for a property use that, although it would satisfy existing law, would violate a law that is pending when the application is made. • This doctrine was judicially created, mainly to

short-circuit landowners' attempts to circumvent a new ordinance by applying for a nonconforming use on the eve of its approval. [Cases: Zoning and Planning 376. C.J.S. Zoning and Land Planning §§ 71, 199.]

PENETRATION

penetration, n. 1. Criminal law. The entry of the penis or some other part of the body or a foreign object into the vagina or other bodily orifice. • This is the typical meaning today in statutes defining sexual offenses. — Also termed intromission. See RAPE(1). 2. The depth reached by a bullet or other projectile in something against which the projectile is fired. 3. The act of piercing or passing something into or through a body or object. — penetrate, vb.

PENETRATION PRICING

penetration pricing. Pricing of a new product below its anticipated market price to enter a market, discourage competition, and recover the initial investment.

PENITENTIARY

penitentiary (pen-*<<schwa>>-ten-sh<<schwa>>-ree*), n. A correctional facility or other place of long-term confinement for convicted criminals; PRISON. [Cases: Prisons 1. C.J.S. Prisons and Rights of Prisoners §§ 2–3.] — penitentiary, adj.

PENITENTIARY MISDEMEANOR

penitentiary misdemeanor. See serious misdemeanor under MISDEMEANOR.

PENNOYER<TT> RULE

Pennoyer rule (p*<<schwa>>-noy-<<schwa>>r*). The principle that a court may not issue a personal judgment against a defendant over which it has no personal jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714 (1877). [Cases: Judgment 16. C.J.S. Judgments §§ 18, 546.]

PENNSYLVANIA<TT> RULE

Pennsylvania rule. Torts. The principle that a tortfeasor who violates a statute in the process of causing an injury has the burden of showing that the violation did not cause the injury. *The Pennsylvania*, 86 U.S. (19 Wall.) 125, 136 (1874). [Cases: Collision 123; Shipping 86(2.3). C.J.S. Collision §§ 211–220.]

PENNY STOCK

penny stock. See STOCK.

PENOLOGY

penology (pee-nol-*<<schwa>>-jee*), n. The study of penal institutions, crime prevention, and the punishment and rehabilitation of criminals, including the art of fitting the right treatment to an offender. Cf. CRIMINOLOGY. — penological (pee-n*<<schwa>>-loj-i-k<<schwa>>l*), adj. — penologist (pee-nol-*<<schwa>>-jist*), n.

PEN REGISTER

pen register. A mechanical device that logs dialed telephone numbers by monitoring electrical impulses. • Because a pen register does not record the telephone conversation, it does not constitute a Fourth Amendment search requiring a warrant (though it does need a court order). Some states, however, do consider the use of a pen register invasive enough to require a search warrant. Cf. WIRETAPPING. [Cases: Telecommunications 521.C.J.S. Telegraphs, Telephones, Radio, and Television §§ 247, 264, 298, 313.]

PENSIO

pensio (pen-shee-oh), n.[Latin] Roman & civil law. A payment for the use of a thing, such as rent for the use of another's house.

PENSION

pension. A fixed sum paid regularly to a person (or to the person's beneficiaries), esp. by an employer as a retirement benefit. Cf. ANNUITY (3). [Cases: Pensions 2, 24–27. C.J.S. Pensions and Retirement Plans and Benefits §§ 7, 16–17, 19.]

vested pension. A pension in which an employee (or employee's estate) has rights to benefits purchased with the employer's contributions to the plan, even if the employee is no longer employed by this employer at the time of retirement. • The vesting of qualified pension plans is governed by ERISA. See EMPLOYEE RETIREMENT INCOME SECURITY ACT. [Cases: Pensions 62. C.J.S. Pensions and Retirement Plans and Benefits §§ 73, 78–81, 83.]

PENSION AND WELFARE BENEFITS ADMINISTRATION

Pension and Welfare Benefits Administration. A unit in the U.S. Department of Labor responsible for regulating employee pension plans under the Employee Retirement Income Security Act (ERISA) and for enforcing the Act through its field offices. — Abbr. PWBA.

PENSION BENEFIT GUARANTY CORPORATION

Pension Benefit Guaranty Corporation. A self-financing federal corporation that guarantees payment of pension benefits in covered benefit pension plans. — Abbr. PBGC. [Cases: Pensions 90. C.J.S. Pensions and Retirement Plans and Benefits §§ 115–120, 123, 131.]

PENSIONER

pensioner. A recipient or beneficiary of a pension plan. [Cases: Pensions 2, 21. C.J.S. Pensions and Retirement Plans and Benefits § 7.]

PENSION PLAN

pension plan. 1. Under ERISA, any plan, fund, or program established or maintained by an employer or an employee organization that provides retirement income to employees or results in a deferral of income by employees extending to the termination of employment or beyond. 29 USCA § 1002(2)(A). [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.] 2. Under the Internal Revenue Code, an employer's plan established and maintained

primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usu. for life, after retirement. See EMPLOYEE RETIREMENT INCOME SECURITY ACT. Cf. EMPLOYEE BENEFIT PLAN.

contributory pension plan.A pension plan in which both the employer and the employee contribute. [Cases: Pensions 101–107. C.J.S. Pensions and Retirement Plans and Benefits §§ 53–68, 121–129.]

defined-contribution pension plan.See defined-contribution plan under EMPLOYEE BENEFIT PLAN.

defined pension plan.A pension plan in which the employer promises specific benefits to each employee. — Also termed fixed-benefit plan. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

noncontributory pension plan.A pension plan contributed to only by the employer. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

nonqualified pension plan.A deferred-compensation plan in which an executive increases retirement benefits by annual additional contributions to the company's basic plan. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

qualified pension plan.A pension plan that complies with federal law (ERISA) and thus allows the employee to receive tax benefits for contributions and tax-deferred investment growth. — Often shortened to qualified plan. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

top-hat pension plan.An unfunded pension plan that is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of managers or highly paid employees. • Top-hat plans are generally not subject to the broad remedial provisions of ERISA because Congress recognized that certain individuals, by virtue of position or compensation level, can substantially influence the design or operation of their deferred-compensation plans. — Often shortened to top-hat plan. [Cases: Pensions 24.1, 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

PENSION TRUST

pension trust.See TRUST.

PENTAGON FORCE PROTECTION AGENCY

Pentagon Force Protection Agency.A unit in the U.S. Department of Defense responsible for operating the Pentagon police force and providing basic law enforcement and security for the Pentagon and other military installations in the Washington, D.C. area. • The Agency was formed after the Pentagon was attacked on September 11, 2001. — Abbr. PFPA.

PENUMBRA

penumbra (pi-n<<schwa>>m-br<<schwa>>), n. A surrounding area or periphery of uncertain

extent. • In constitutional law, the Supreme Court has ruled that the specific guarantees in the Bill of Rights have penumbras containing implied rights, esp. the right of privacy. Pl. penumbras, penumbrae (pi-n<<schwa>>m-bree). — penumbral (pi-n<<schwa>>m-br<<schwa>>l), adj.

“Problems of fringe meaning are sometimes spoken of as ‘problems of the penumbra’, the point being that, in the case of a great many words, there is no doubt about the hard core of their meanings, but different views may well be taken on the question whether the words are applicable to things or situations outside that hard core.” Rupert Cross, *Statutory Interpretation* 57 (1976).

PENURIA PERITORUM

penuria peritorum (p<<schwa>>-nyoor-ee-<<schwa>> per-i-tor-<<schwa>>m). [Latin] Hist. A scarcity of (legally) skilled men. • The phrase appeared in reference to the grantor's lack of proper assistance in preparing and executing a conveyance.

PENURIA TESTIUM

penuria testium (p<<schwa>>-nyoor-ee-<<schwa>> tes-tee-<<schwa>>m). [Latin] Hist. A scarcity of witnesses.

“The disqualifications formerly attaching to witnesses, and especially that of relationship, were sometimes disregarded in occult or private facts, where there must, from the nature of the case, be a scarcity of unexceptionable witnesses It was not enough in this sense, to constitute a penuria testium, to prove that the other evidence was scanty and defective; it had to be shown farther that the penuria was necessarily occasioned by the very nature of the question at issue.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 798 (George Watson ed., 7th ed. 1890).

PEONAGE

peonage (pee-<<schwa>>-nij), n. Illegal and involuntary servitude in satisfaction of a debt. [Cases: Slaves 24. C.J.S. Peonage §§ 3–5.] — peon,n.

“Peonage, which is a term descriptive of a condition that existed in Spanish America, and especially in Mexico, and in the territory of New Mexico, and which may be defined as the status or condition of compulsory service based upon the indebtedness of the peon to the master, the basic fact being the indebtedness, is abolished and prohibited by an act of Congress which further declares that any statute, resolution, regulation, ordinance, or usage of any territory or state designed or operating to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, shall be null and void [42 USCA § 1994].” 45 Am. Jur. 2d *Involuntary Servitude and Peonage* § 10, at 935–36 (1969).

PEOPLE

people. (usu. cap.) The citizens of a state as represented by the prosecution in a criminal case <People v. Snyder>.

PEOPLE'S COURT

people's court. 1. A court in which individuals can resolve small disputes. See small-claims court under COURT. [Cases: Courts 174.1.] 2. In totalitarian countries, a group of nonlawyer citizens, often illiterate commoners, convened at the scene of a crime to pass judgment or impose punishment on the accused criminal. 3. (cap.) In Nazi Germany, a tribunal that dealt with political offenses.

PEPPERCORN

peppercorn. A small or insignificant thing or amount; nominal consideration < the contract was upheld despite involving mere peppercorn>. See nominal consideration under CONSIDERATION. [Cases: Contracts 54. C.J.S. Contracts § 87.]

PER

per (p<<schwa>>r), prep. 1. Through; by <the dissent, per Justice Thomas>.2. For each; for every <55 miles per hour>.3. In accordance with the terms of; according to <per the contract>.

PER AEQUIPOLLENS

per aequipollens (p<<schwa>>r ee-kwi-pol-enz). [Latin] Hist. By an equivalent.

PER AES ET LIBRAM

per aes et libram (p<<schwa>>r ees et li-br<<schwa>>m). [Latin] Roman law. By bronze (or copper) and scales. • The phrase typically referred to the fictitious sale in a mancipation during which the purchaser struck the scales with a piece of bronze or copper and then gave it to the seller as a symbol of the price. See MANCIPATION.

PER ALIUM STETIT

per alium stetit (p<<schwa>>r ay-lee-<<schwa>>m stet-it). [Latin] Hist. It was owing to (something done by) another.

PER AMBAGES

per ambages (p<<schwa>>r am-bay-jeez). [Latin] Hist. Indirectly; evasively.

PERAMBULATION

perambulation. The act or custom of walking around the boundaries of a piece of land, either to confirm the boundaries or to preserve evidence of them.

PERAMBULATIONE FACIENDA

perambulatione facienda. See DE PERAMBULATIONE FACIENDA.

PER ANNUM

per annum (p<<schwa>>r an-<<schwa>>m), adv. [Latin] By, for, or in each year; annually <interest of 8% per annum>.

P/E RATIO

P/E ratio.abbr.PRICE-EARNINGS RATIO.

PER AUTRE VIE

per autre vie.See PUR AUTRE VIE.

PER AVERSIONEM

per aversionem (p<<schwa>>r <<schwa>>-v<<schwa>>r-zhee-oh-n<<schwa>>m). [Latin “for a lump sum”] Roman & civil law. Of or relating to a sale in which goods are taken in bulk or land is bought by estimation of the number of acres. • This type of sale is so called because the buyer “turns away” from a careful scrutiny of the things purchased.

“It is a fundamental principle, pervading everywhere the doctrine of sales of chattels, that if the goods of different value be sold in bulk, and not separately, and for a single price, or per aversionem, in the language of the civilians, the sale is perfect, and the risk with the buyer; but if they be sold by number, weight, or measure, the sale is incomplete, and the risk continues with the seller, until the specific property be separated and identified.” 2 James Kent, Commentaries on American Law *496 (George Comstock ed., 11th ed. 1866).

PER BOUCHE

per bouche (p<<schwa>>r boosh). [Law French] By the mouth; orally.

PER CAPITA

per capita (p<<schwa>>r kap-i-t<<schwa>>), adj.[Latin “by the head”] 1. Divided equally among all individuals, usu. in the same class <the court will distribute the property to the descendants on a per capita basis>. Cf. PER STIRPES . [Cases: Descent and Distribution 43; Wills 530.C.J.S. Descent and Distribution §§ 27–28; Wills §§ 1015–1016.]

“Per capita means taking as an individual and not as a representative of an ancestor. Suppose the testator ... with three living children and three grandchildren who are the issue of a deceased son, had desired and had so stated in his will that his own children and the children of his deceased son should share equally in the estate. In that event the estate would be divided into six parts and each of the three children and each of the three grandchildren would receive an equal portion of the total estate — namely, one-sixth.” Gilbert Thomas Stephenson, Wills 30 (1934).

per capita with representation.Divided equally among all members of a class of takers, including those who have predeceased the testator, so that no family stocks are cut off by the prior death of a taker. • For example, if T (the testator) has three children — A, B, and C — and C has two children but predeceases T, C's children will still take C's share when T's estate is distributed.

2. Allocated to each person; possessed by each individual <the average annual per capita income has increased over the last two years>. — per capita,adv.

PER CAPITA TAX

per capita tax.See poll tax under TAX.

PERCENTAGE DEPLETION

percentage depletion.Oil & gas. A method of allowing a taxpayer who owns an economic interest in a producing oil or gas well to deduct a specified percentage of the gross income from the well in lieu of depleting the actual basis. 23 USCA § 611. Cf. COST DEPLETION.

PERCENTAGE GAME

percentage game.See GAME.

PERCENTAGE LEASE

percentage lease.See LEASE.

PERCENTAGE-OF-COMPLETION METHOD

percentage-of-completion method.See ACCOUNTING METHOD.

PERCENTAGE ORDER

percentage order.See ORDER(8).

PERCEPTION

perception. 1. An observation, awareness, or realization, usu. based on physical sensation or experience; appreciation or cognition. • The term includes both the actor's knowledge of the actual circumstances and the actor's erroneous but reasonable belief in the existence of nonexistent circumstances. 2.Roman & civil law. The act of taking into possession (as rents, profits, etc.), esp. by a bona fide possessor or usufructuary. — Also termed (in Roman law) perceptio (p<<schwa>>r-sep-shee-oh).

PERCEPTI SED NON CONSUMPTI

percepti sed non consumpti (p<<schwa>>r-sep-ti sed non k<<schwa>>n-s<<schwa>>mp-ti). [Latin] Hist. Fruits gathered but not consumed.

PERCIPIENT WITNESS

percipient witness.See WITNESS.

PERCOLATING WATER

percolating water.See WATER.

PER COLLATIONEM BONORUM

per collationem bonorum (p<<schwa>>r k<<schwa>>-lay-shee-oh-n<<schwa>>m b<<schwa>>-nor-<<schwa>>m). [Latin] Scots law. By bringing goods received into account (collation). • When heirs-at-law, or heirs who had received from a deceased ancestor during the ancestor's lifetime, wished to share in the legitim fund, they had to bring in (to collate) what they had received before the legitim could be shared out. See COLLATION(2).

PER CONSEQUENS

per consequens (p<<schwa>>r kon-s<<schwa>>-kwenz). [Latin] By consequence; consequently.

PER CONSIDERATIONEM CURIAE

per considerationem curiae (p<<schwa>>r k<<schwa>>n-sid-<<schwa>>-ray-shee-oh-n<<schwa>>m kyoor-ee-ee). [Law Latin] By the consideration of the court.

PER CONTRA

per contra (p<<schwa>>r kon-tr<<schwa>>). [Latin] On the other hand; to the contrary; by contrast.

PER CUR

per cur.abbr.Per curiam. See per curiam opinion under OPINION(1).

PER CURIAM

per curiam (p<<schwa>>r kyoor-ee-<<schwa>>m), adv. & adj.[Latin] By the court as a whole. [Cases: Courts 107. C.J.S. Courts §§ 165, 175; Criminal Law § 1665.]

per curiam,n. See per curiam opinion under OPINION(1).

PER CURIAM OPINION

per curiam opinion.See OPINION(1).

PER DIEM

per diem,adj. Based on or calculated by the day <per diem interest>.

per diem (p<<schwa>>r dI-<<schwa>>m orde-<<schwa>>m), adv.[Latin] By the day; for each day <reimbursed per diem>. Cf. IN DIEM.

per diem,n.1. A monetary daily allowance, usu. to cover expenses. 2. A daily fee.

PERDONATIO UTLAGARIAE

perdonatio utlagariae (p<<schwa>>r-d<<schwa>>-nay-shee-oh <<schwa>>t-l<<schwa>>-gair-ee-ee). [Law Latin “pardon of outlawry”] Hist. A pardon given to a person outlawed for failing to obey a court's summons. • A person who voluntarily surrendered was eligible for this type of pardon.

PERDUELLIO

perduellio (p<<schwa>>r-d[y]oo-el-ee-oh), n. [Latin “treason”] Roman law. The crime of hostility to one's native country; treasonous conduct, such as joining the enemy or deserting the battlefield. • This term corresponds to the English phrase high treason. In the Roman republic, several acts might constitute perduellio, such as assuming regal power; trying to subvert, by violence, the established form of government, esp. by fomenting internal rebellion; and promoting

the designs of external foes. Perduellio was later absorbed into a broader category of crimes against the state, the *crimen laesae majestatis*. — Also termed (in English) perduellion (p<<schwa>>r-d [y]oo-el-y<<schwa>>n). See CRIMEN MAJESTATIS.

PERDURABLE

perdurable (p<<schwa>>r-d[y]uur-<<schwa>>-b<<schwa>>l), adj. (Of an estate in land) lasting or enduring; durable; permanent.

PEREGRINUS

peregrinus (per-i-grI-n<<schwa>>s), n. Roman law. A free person who was not a Roman citizen; a free foreigner. Pl. peregrini.

PEREMPT

perempt (p<<schwa>>r-empt), vb.1.Civil law. To quash, do away with, or extinguish. 2.Slang. To exercise a peremptory challenge.

PEREMPTION

peremption (p<<schwa>>r-emp-sh<<schwa>>n), n. Civil law. A period of time fixed by statute for the existence of a right. • If the right is not exercised during this period, it is extinguished. Whereas prescription simply bars a specific remedy, peremption bars the action itself. Cf. PRESCRIPTION(1). See STATUTE OF REPOSE. [Cases: Limitation of Actions 1, 165. C.J.S. Limitations of Actions §§ 2–4, 10–11.]

PEREMPTORIA LITIS ET CAUSAE

peremptoria litis et causae (p<<schwa>>r-emp-tor-ee-<<schwa>> II-tis et kaw-zee). [Law Latin] Hist. Decisive of the suit and cause. • The phrase appeared in reference to peremptory defenses, to which there could be no reply.

PEREMPTORY

peremptory (p<<schwa>>r-emp-t<<schwa>>-ree), adj.1. Final; absolute; conclusive; incontrovertible <the king's peremptory order>.2. Not requiring any shown cause; arbitrary <peremptory challenges>.

peremptory,n. See peremptory challenge under CHALLENGE(2).

PEREMPTORY CHALLENGE

peremptory challenge.See CHALLENGE(2).

PEREMPTORY DAY

peremptory day.See DAY.

PEREMPTORY DEFENSE

peremptory defense.See DEFENSE(1).

PEREMPTORY EXCEPTION

peremptory exception. See EXCEPTION(1).

PEREMPTORY INSTRUCTION

peremptory instruction. See JURY INSTRUCTION.

PEREMPTORY MANDAMUS

peremptory mandamus. See MANDAMUS.

PEREMPTORY NORM

peremptory norm. See JUS COGENS(2).

PEREMPTORY PLEA

peremptory plea. See PLEA(3).

PEREMPTORY RULE

peremptory rule. See RULE(1).

PEREMPTORY STRIKE

peremptory strike. See peremptory challenge under CHALLENGE(2).

PEREMPTORY WRIT

peremptory writ. See WRIT.

PER EUNDEM

per eundem (p<<schwa>>r ee-<<schwa>>n-d<<schwa>>m). [Latin] By the same. • This term often appears in the phrase per eundem in eadem (“by the same judge in the same case”).

PER EXPRESSUM

per expressum (p<<schwa>>r ek-spres-<<schwa>>m). [Latin] Hist. Expressly; explicitly.

PER FAS AUT NEFAS

per fas aut nefas (p<<schwa>>r fas awt nee-fas). [Latin] Hist. By lawful or unlawful means.

PERFECT

perfect (p<<schwa>>r-fekt), vb. To take all legal steps needed to complete, secure, or record (a claim, right, or interest); to provide necessary public notice in final conformity with the law <perfect a security interest> <perfect the title>. [Cases: Secured Transactions 81. C.J.S. Secured Transactions §§ 3, 50–51, 53, 57, 62–64.]

PERFECT ATTESTATION CLAUSE

perfect attestation clause. A testamentary provision asserting that all actions required to make

a valid testamentary disposition have been performed. [Cases: Wills 113, 289, 302(5). C.J.S. Wills §§ 253–255, 582–588.]

PERFECT COMPETITION

perfect competition. See COMPETITION.

PERFECT DEFENSE

perfect defense. See DEFENSE(1).

PERFECT DUTY

perfect duty. See DUTY(1).

PERFECTED SECURITY INTEREST

perfected security interest. See SECURITY INTEREST.

PERFECT EQUITY

perfect equity. See EQUITY.

PERFECT GRANT

perfect grant. See GRANT.

PERFECTING AMENDMENT

perfecting amendment. See AMENDMENT(3).

PERFECT INSTRUMENT

perfect instrument. See INSTRUMENT(3).

PERFECTION

perfection. Validation of a security interest as against other creditors, usu. by filing a statement with some public office or by taking possession of the collateral. Cf. ATTACHMENT(4). [Cases: Secured Transactions 81–96, 138–145. C.J.S. Secured Transactions §§ 3, 50–51, 53–77, 88, 90–102, 105–107, 118.]

automatic perfection. The self-operative perfection of a purchase-money security interest without filing or without possession of the collateral. • The security interest is perfected simply by the attachment of the security interest, without any additional steps. See purchase-money security interest under SECURITY INTEREST. [Cases: Secured Transactions 83, 146. C.J.S. Secured Transactions §§ 10, 55, 103–105.]

temporary perfection. The continuous perfection of a security interest for a limited period. • For example, a security interest in proceeds from the original collateral is perfected for ten days after the debtor receives the proceeds; the interest will become unperfected after this ten-day period unless certain statutory requirements are met. On most instruments, a secured party who advances new value under a written security agreement obtains a 21-day perfection period, even if

the secured party does not file a financing statement and the collateral remains with the debtor. UCC § 9-312. [Cases: Secured Transactions 135, 168. C.J.S. Secured Transactions §§ 52, 119–124.]

PERFECT OBLIGATION

perfect obligation. See OBLIGATION.

PERFECT OWNERSHIP

perfect ownership. See OWNERSHIP.

PERFECT RIGHT

perfect right. See RIGHT.

PERFECT SELF-DEFENSE

perfect self-defense. See SELF-DEFENSE.

PERFECT TENDER

perfect tender. See TENDER(2).

PERFECT-TENDER RULE

perfect-tender rule. Commercial law. The principle that a buyer may reject a seller's goods if the quality, quantity, or delivery of the goods fails to conform precisely to the contract. • Although the perfect-tender rule was adopted by the UCC (§ 2-601), other Code provisions — such as the seller's right to cure after rejection — have softened the rule's impact. Cf. SUBSTANTIAL-PERFORMANCE DOCTRINE. [Cases: Sales 177. C.J.S. Sales §§ 162, 189, 194, 197–198.]

“At common law, a buyer of goods possessed a legal right to insist upon ‘perfect tender’ by the seller. If the goods failed to conform exactly to the description in the contract — whether as to quality, quantity or manner of delivery — the buyer could reject the goods and rescind the contract, which meant that the parties would be returned to the positions they occupied before the contract was entered into.” Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* 112 (1990).

PERFECT TITLE

perfect title. See TITLE(2).

PERFECT TRIAL

perfect trial. See TRIAL.

PERFECT USUFRUCT

perfect usufruct. See USUFRUCT.

PERFECT WAR

perfect war. See WAR.

PER FELONIAM

per feloniam (p<<schwa>>r f<<schwa>>-loh-nee-<<schwa>>m). [Latin] Hist. With criminal intent.

PERFICERE SUSCEPTUM MUNUS

perficere susceptum munus (p<<schwa>>r-fis-<<schwa>>r-ee s<<schwa>>-sep-t<<schwa>>m myoo-n<<schwa>>s). [Latin] Scots law. To perform the duties of an office undertaken.

• One assuming an office could not then capriciously resign from the office. See REBUS INTEGRIS.

PERFIDY

perfidy (p<<schwa>>r-f<<schwa>>-dee). Int'l law. A combatant's conduct that creates the impression that an adversary is entitled to, or is obliged to accord, protection under international law, when in fact the conduct is a ruse to gain an advantage. • Acts of perfidy include feigning an intent to negotiate under a flag of truce, or feigning protected status by using signs, emblems, or uniforms of the United Nations or of a neutral country.

PER FORMAM DONI

per formam doni (p<<schwa>>r for-m<<schwa>>m doh-nl). [Law Latin] By the form of the gift; by the designation of the giver rather than by operation of law.

PERFORMANCE

performance, n. 1. The successful completion of a contractual duty, usu. resulting in the performer's release from any past or future liability; EXECUTION(2). — Also termed full performance. Cf. NONPERFORMANCE; MISPERFORMANCE. [Cases: Contracts 275. C.J.S. Contracts § 502.]

defective performance. A performance that, whether partial or complete, does not fully comply with the contract. • One example is late performance. [Cases: Contracts 280(1), 302. C.J.S. Contracts §§ 561, 592.]

future performance. Performance in the future of an obligation that will become due under a contract.

misperformance. See MISPERFORMANCE.

nonperformance. See NONPERFORMANCE.

part performance. 1. The accomplishment of some but not all of one's contractual obligations. [Cases: Contracts 319. C.J.S. Contracts § 593.] 2. A party's execution, in reliance on an opposing party's oral promise, of enough of an oral contract's requirements that a court may hold the statute of frauds not to apply. [Cases: Frauds, Statute of 129.] 3. PART-PERFORMANCE DOCTRINE.

specific performance. See SPECIFIC PERFORMANCE.

substantial performance. Performance of the primary, necessary terms of an agreement. See SUBSTANTIAL-PERFORMANCE DOCTRINE. [Cases: Contracts 293. C.J.S. Contracts § 589.]

vicarious performance. Performance carried by an employee, agent, or other nominee.

“It is necessary ... to distinguish between assignment of a contractual liability and vicarious performance of a contract. Normally a person who contracts to do something must do it himself. But in the case of a duty of performance which involves no personal element, so that it does not matter to the other party who does the promised act, so long as it is done in accordance with the contract, the party liable may do it by a servant or agent or other nominee. This is not an assignment of the contractual liability, for the original contractor remains liable and if the deputy has done the work badly it is not the deputy but the contractor himself who is answerable to the other party.” 2 Stephen's Commentaries on the Laws of England 76–77 (L. Crispin Warmington ed., 21st ed. 1950).

2. The equitable doctrine by which acts consistent with an intention to fulfill an obligation are construed to be in fulfillment of that obligation, even if the party was silent on the point. 3. A company's earnings. 4. The ability of a corporation to maintain or increase earnings.

PERFORMANCE BOND

performance bond. 1. A bond given by a surety to ensure the timely performance of a contract. • In major international agreements, performance bonds are typically issued by banks, but sometimes also by insurance companies. The face amount of the bond is typically 2% of the value of performance, but occasionally as much as 5%. [Cases: Principal and Surety 59–87; Public Contracts 45. C.J.S. Principal and Surety §§ 8, 70–94, 111, 120; Public Administrative Law and Procedure § 45.] 2. A third party's agreement to guarantee the completion of a construction contract upon the default of the general contractor. — Also termed completion bond; surety bond; contract bond. Cf. common-law bond under BOND (2).

nonoperative performance bond. A performance bond that is not currently in effect but is activated upon the issuance of the buyer's letter of credit or other approved financing.

operative performance bond. A performance bond that has been activated by the issuance of the buyer's letter of credit or other approved financing. [Cases: Public Contracts 45. C.J.S. Public Administrative Law and Procedure § 45.]

revolving performance bond. A performance bond that is in continuous effect for the duration of the contract, usu. plus an additional number of days (often 45).

up-front performance bond. A performance bond given before the issuance of the buyer's letter of credit or other financing.

PERFORMANCE BONUS

performance bonus. See BONUS.

PERFORMANCE CONTRACT

performance contract. See CONTRACT.

PERFORMANCE FUND

performance fund. See MUTUAL FUND.

PERFORMANCE PLAN

performance plan. A bonus compensation plan in which executives are paid according to the company's growth.

PERFORMANCE RIGHT

performance right. A copyright holder's exclusive right to recite, play, act, show, or otherwise render the protected work publicly, whether directly or by technological means (as by broadcasting the work on television). • Every public performance of a copyrighted work requires authorization from the copyright owner or its representative, unless a statutory ephemeral-recording exemption applies. — Also termed public-performance right. [Cases: Copyrights and Intellectual Property 36. C.J.S. Copyrights and Intellectual Property §§ 10, 40–41, 97.]

PERFORMANCE SHARES

performance shares. Stock given to an executive when the corporation meets a performance objective.

PERFORMANCE SPECIFICATION

performance specification. See STATEMENT OF WORK.

PERFORMANCE STOCK

performance stock. See glamour stock under STOCK.

PER FRAUDEM

per fraudem (p<<schwa>>r fraw-d<<schwa>>m), adv. [Latin] By fraud; fraudulently.

PERICULO PETENTIS

periculo petentis (p<<schwa>>-rik-y<<schwa>>-loh p<<schwa>>-ten-tis). [Latin] Hist. At the risk of the person seeking. • A private person was liable in damages for a judicial warrant wrongfully issued at that person's insistence.

“[A] creditor seeking a warrant for the apprehension of his debtor as in meditatione fugae, obtains it periculo petentis, and he, not the judge, will be liable in damages if the debtor can show that the obtaining of the warrant and the using of it were illegal.” John Trayner, Trayner's Latin Maxims 454 (4th ed. 1894).

PERICULOSUS

periculosus (p<<schwa>>r-ik-y<<schwa>>-loh-s<<schwa>>s), adj.[Latin] Dangerous; perilous.

PERICULUM

periculum (p<<schwa>>-rik-y<<schwa>>-l<<schwa>>m), n.[Latin] Civil law. Peril; danger; risk. Pl. pericula.

PERIL

peril. 1. Exposure to the risk of injury, damage, or loss <the perils of litigation>.

inescapable peril.A danger that one cannot avoid without another's help. See LAST-CLEAR-CHANCE DOCTRINE. [Cases: Negligence 530(1). C.J.S. Negligence §§ 281–290, 313, 318.]

2.Insurance. The cause of a risk of loss to person or property; esp., the cause of a risk such as fire, accident, theft, forgery, earthquake, flood, or illness <insured against all perils>. Cf. RISK(3). [Cases: Insurance 2219. C.J.S. Insurance §§ 434, 996–997, 1000, 1003, 1010, 1014.]

PERIL OF THE SEA

peril of the sea.An action of the elements at sea of such force as to overcome the strength of a well-founded ship and the normal precautions of good marine practice. • A peril of the sea may relieve a carrier from liability for the resulting losses. — Also termed danger of navigation; danger of river; marine peril; marine risk; (in regard to the Great Lakes) perils of the lakes; danger of the sea. [Cases: Insurance 2220; Shipping 120. C.J.S. Insurance § 998; Shipping §§ 276–277.]

“Of the marine perils, by far the most important are those ‘of the seas’. What is covered is not any loss that may happen on the sea, but fortuitous losses occurring through extraordinary action of the elements at sea, or any accident or mishap in navigation. By far the greatest number of claims for marine loss, and of the insurance problems connected with other topics treated in this book arise under this clause. Extraordinary action of the wind and waves is a sea peril. Collision, foundering, stranding, striking on rocks and icebergs, are all covered under these words. Even a swell from a passing ship may be a ‘peril of the sea’. On the other hand, ordinary wear and tear are not included under the coverage of this or any other phrase in the clause, nor are losses which are anticipatable as regular incidents of sea carriage in general or of navigation in a particular part of the world.” Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 2-9, at 72–73 (2d ed. 1975).

PERIMERE CAUSAM

perimere causam (p<<schwa>>-rim-<<schwa>>-ree kaw-z<<schwa>>m). [Latin] Hist. To put an end to the cause. • The phrase appeared in reference to the legal effect of a peremptory defense. See peremptory defense under DEFENSE(1).

PERINATAL

perinatal (per-i-nayt-<<schwa>>l), adj. Of or relating to the period from about the 12th week

of gestation through the 28th day of life. Cf. NEONATAL.

PER INCURIAM

per incuriam (p<<schwa>>r in-kyoor-ee-<<schwa>>m), adj. (Of a judicial decision) wrongly decided, usu. because the judge or judges were ill-informed about the applicable law.

“There is at least one exception to the rule of stare decisis. I refer to judgments rendered per incuriam. A judgment per incuriam is one which has been rendered inadvertently. Two examples come to mind: first, where the judge has forgotten to take account of a previous decision to which the doctrine of stare decisis applies. For all the care with which attorneys and judges may comb the case law, *errare humanum est*, and sometimes a judgment which clarifies a point to be settled is somehow not indexed, and is forgotten. It is in cases such as these that a judgment rendered in contradiction to a previous judgment that should have been considered binding, and in ignorance of that judgment, with no mention of it, must be deemed rendered per incuriam; thus, it has no authority... The same applies to judgments rendered in ignorance of legislation of which they should have taken account. For a judgment to be deemed per incuriam, that judgment must show that the legislation was not invoked.” Louis-Philippe Pigeon, *Drafting and Interpreting Legislation* 60 (1988).

“As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some features of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided per incuriam, must in our judgment, consistently with the stare decisis rule which is an essential part of our law, be of the rarest occurrence.” Rupert Cross & J.W. Harris, *Precedent in English Law* 149 (4th ed. 1991).

PERINDE EST AC SI SCRIPTUM NON ESSET

perinde est ac si scriptum non esset (p<<schwa>>r-in-dee est ak sIskrip-t<< schwa>>m non es-et). [Latin] Scots law. It is the same as if it had not been written. • A deed that failed to convey the grantor's meaning adequately could not be supplemented by extrinsic evidence and would be void for uncertainty.

PER INFORTUNIUM

per infortunium (p<<schwa>>r in-for-t[y]oo-nee-<<schwa>>m), adj. or adv.[Latin] By misadventure. • At common law, when one person killed another per infortunium, a conviction and royal pardon were necessary even when there was no fault. See homicide per infortunium under HOMICIDE.

“It may seem strange to modern minds that for centuries it was a rule of our law that a man who killed another either by misadventure (per infortunium) or in reasonable self-defence (against an attack not itself felonious), although he did not commit a felony, must yet be held guilty of unlawful homicide and require the King's pardon if he were to escape punishment, and even if

granted pardon would still be liable to suffer forfeiture of his property; and that he was exposed to claims for compensation from the family of the deceased." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 113 (16th ed. 1952).

PER INSIDIAS ET INDUSTRIAM

per insidias et industriam (p<<schwa>>r in-sid-ee-<<schwa>>s et in-d<<schwa>>s-tree-<<schwa>>m). [Latin] Hist. By stratagem and on purpose; intentionally.

PERIODIC ALIMONY

periodic alimony. See permanent alimony under ALIMONY.

PERIODIC AUDIT

periodic audit. See AUDIT.

PERIODIC ESTATE

periodic estate. See periodic tenancy under TENANCY.

PERIODIC PAYMENT

periodic payment. See PAYMENT.

PERIODIC-PAYMENT-PLAN CERTIFICATE

periodic-payment-plan certificate. See STOCK CERTIFICATE.

PERIODIC TENANCY

periodic tenancy. See TENANCY.

PERIOD OF PRESCRIPTION

period of prescription. The period fixed by local law as sufficient for obtaining or extinguishing a right through lapse of time. • In addition to a fixed number of years, the period includes whatever further time is allowed by local law because of infancy, insanity, coverture, and other like circumstances. See PRESCRIPTIVE RIGHT; PRESCRIPTION(3), (4), (5).

PERIPHERAL RIGHT

peripheral right. See RIGHT.

PERIPHRAISIS

periphrasis (p<<schwa>>-rif-r<<schwa>>-sis), n. A roundabout way of writing or speaking; circumlocution. — periphrastic (per-<<schwa>>-fras-tik), adj.

PERISHABLE-FOOD-DISPARAGEMENT ACT

perishable-food-disparagement act. See AGRICULTURAL-DISPARAGEMENT LAW.

PERJURY

perjury (p<<schwa>>r-j<<schwa>>r-ee), n. The act or an instance of a person's deliberately making material false or misleading statements while under oath. — Also termed false swearing; false oath; (archaically) forswearing. [Cases: Perjury 1. C.J.S. Perjury §§ 2–3, 5–8, 21.] — perjure (p<<schwa>>r-j<<schwa>>r), vb. — perjured (p<<schwa>>r-j<<schwa>>rd), perjurious (p<<schwa>>r-juur-ee-<<schwa>>s), adj. — perjurer (p<<schwa>>r-j<<schwa>>r-<<schwa>>r), n.

PERJURY-TRAP DOCTRINE

perjury-trap doctrine. The principle that a perjury indictment against a person must be dismissed if the prosecution secures it by calling that person as a grand-jury witness in an effort to obtain evidence for a perjury charge, esp. when the person's testimony does not relate to issues material to the ongoing grand-jury investigation. [Cases: Perjury 10, 15. C.J.S. Perjury §§ 11, 21, 25–33.]

PERK

perk, n. See PERQUISITE.

PER LEGEM TERRAE

per legem terrae (p<<schwa>>r lee-j<<schwa>>m ter-ee). [Law Latin] By the law of the land; by due process of law.

PERLMAN DOCTRINE

Perlman doctrine. The principle that a discovery order directed at a disinterested third party is immediately appealable on the theory that the third party will not risk contempt by refusing to comply. • The doctrine originated in *Perlman v. United States*, 247 U.S. 7, 13, 38 S.Ct. 417, 420 (1918). The Court reasoned that the third party's ability to protect his or her rights would be thwarted if the party could not appeal immediately.

PERMANENCY HEARING

permanency hearing. See HEARING.

PERMANENCY PLAN

permanency plan. A proposed written strategy for the eventual permanent placement of a child who has been removed from his or her parents. • A permanency plan, ideally, provides either for the child's safe return to one or both parents or for the child's adoption. If neither of these alternatives is possible, then the plan will provide for long-term foster care, relative care, or guardianship. Under the Adoption and Safe Families Act, long-term foster care is the choice of last resort. — Also termed permanent plan.

PERMANENCY-PLANNING HEARING

permanency-planning hearing. See permanency hearing under HEARING.

PERMANENT ABODE

permanent abode. See DOMICILE(1).

PERMANENT ALIMONY

permanent alimony. See ALIMONY.

PERMANENT ALLEGIANCE

permanent allegiance. See ALLEGIANCE.

PERMANENT CHARGÉ D'AFFAIRES

permanent chargé d'affaires. See CHARGÉ D'AFFAIRES.

PERMANENT COMMITTEE

permanent committee. See standing committee under COMMITTEE.

PERMANENT DAMAGES

permanent damages. See DAMAGES.

PERMANENT DISABILITY

permanent disability. See DISABILITY(2).

PERMANENT EMPLOYMENT

permanent employment. See EMPLOYMENT.

PERMANENT FINANCING

permanent financing. See FINANCING.

PERMANENT FIXTURE

permanent fixture. See FIXTURE.

PERMANENT INJUNCTION

permanent injunction. See INJUNCTION.

PERMANENT INJURY

permanent injury. See INJURY.

PERMANENT LAW

permanent law. See LAW.

PERMANENT NUISANCE

permanent nuisance. See NUISANCE.

PERMANENT PLAN

permanent plan. See PERMANENCY PLAN.

PERMANENT POLICY

permanent policy. See INSURANCE POLICY.

PERMANENT PROTECTIVE ORDER

permanent protective order. See PROTECTIVE ORDER.

PERMANENT STATUTE

permanent statute. See perpetual statute under STATUTE.

PERMANENT TAKING

permanent taking. See TAKING(2).

PERMANENT TREATY

permanent treaty. See TREATY(1).

PERMANENT TRESPASS

permanent trespass. See TRESPASS.

PERMANENT WARD

permanent ward. See WARD.

PER MEMBRA CURIAE

per membra curiae (p<<schwa>>r mem-br<<schwa>> kyoor-ee-ee). [Law Latin] Hist. By members of the court.

PER METAS ET BUNDAS

per metas et bundas (p<<schwa>>r mee-t<<schwa>>s et b<<schwa>>n-d<<schwa>>s). [Law Latin] By metes and bounds.

PER MINAS

per minas. See duress per minas under DURESS.

PERMISSIBLE APPOINTEE

permissible appointee. See APPOINTEE.

PERMISSIBLE-REPAIR DOCTRINE

permissible-repair doctrine. See REPAIR DOCTRINE.

PERMISSION

permission. 1. The act of permitting. 2. A license or liberty to do something; authorization.

express permission. Permission that is clearly and unmistakably granted by actions or words, oral or written.

implied permission. 1. Permission that is inferred from words or actions. 2. See implied consent under CONSENT.

3. Conduct that justifies others in believing that the possessor of property is willing to have them enter if they want to do so. Cf. INVITATION.

PERMISSIVE ABSTENTION

permissive abstention. See ABSTENTION.

PERMISSIVE COUNTERCLAIM

permissive counterclaim. See COUNTERCLAIM.

PERMISSIVE INFERENCE

permissive inference. See permissive presumption under PRESUMPTION.

PERMISSIVE JOINDER

permissive joinder. See JOINDER.

PERMISSIVE PRESUMPTION

permissive presumption. See PRESUMPTION.

PERMISSIVE STATUTE

permissive statute. See STATUTE.

PERMISSIVE SUBJECT OF BARGAINING

permissive subject of bargaining. Labor law. An employment or collective-bargaining issue, other than a basic employment issue, that is not required to be the subject of collective bargaining but that cannot be implemented by management without union approval. • For example, altering the scope of the bargaining unit does not affect a term or condition of employment, so it is a permissive, instead of mandatory, subject of bargaining. Disagreement on a permissive subject of bargaining cannot be used as the basis for an impasse in negotiating a collective-bargaining agreement, unlike a mandatory subject of bargaining. — Often shortened to permissive subject. Cf. MANDATORY SUBJECT OF BARGAINING . [Cases: Labor Relations 178. C.J.S. Labor Relations § 155.]

PERMISSIVE TENANT

permissive tenant. See tenant at sufferance under TENANT.

PERMISSIVE USE

permissive use. See USE(4).

PERMISSIVE WASTE

permissive waste. See WASTE(1).

PERMIT

permit (p<<schwa>>r-mit), n. A certificate evidencing permission; a license <a gun permit>.

permit (p<<schwa>>r-mit), vb.1. To consent to formally <permit the inspection to be carried out>.2. To give opportunity for <lax security permitted the escape>.3. To allow or admit of <if the law so permits>.

PERMIT BOND

permit bond.See license bond under BOND(2).

PERMIT CARD

permit card.Labor law. A document issued by a union to a nonunion member to allow the person to work on a job covered by a union contract.

PERMITTEE

permittee (p<<schwa>>r-mi-tee). One who has permission to do something.

subpermittee. A person who receives permission to act from a permittee.

PER MITTER LE DROIT

per mitter le droit (p<<schwa>>r mit-<<schwa>>r l<<schwa>> droyt). [Law French] Hist. By passing the right. • This described how releases became effective, as when a person disseised of land released the estate to the disseisor, at which time the right and possession combined to give the disseisor the entire estate.

PER MITTER L'ESTATE

per mitter l'estate (p<<schwa>>r mit-<<schwa>>r l<<schwa>>-stayt). [Law French] Hist. By passing the estate. • This described the manner in which a joint tenant's right to an entire estate arose when the tenant received the remaining estate from the other joint tenant.

PER MODUM EXCEPTIONIS

per modum exceptionis (p<<schwa>>r moh-d<<schwa>>m ek-sep-shee-oh-nis). [Latin] Hist. By way of exception.

PER MODUM GRATIAE

per modum gratiae (p<<schwa>>r moh-d<<schwa>>m gray-shee-ee). [Latin] Hist. By way of favor.

PER MODUM JUSTITIAE

per modum justitiae (p<<schwa>>r moh-d<<schwa>>m j<<schwa>>s-tish-ee-ee). [Latin] Hist. By way of justice.

PER MODUM POENAE

per modum poenae (p<<schwa>>r moh-d<<schwa>>m pee-nee). [Latin] Hist. By way of penalty.

PER MODUM SIMPLICIS QUERELAE

per modum simplicis querelae (p<<schwa>>r moh-d<<schwa>>m sim-pli-sis kw<<schwa>>-ree-lee). [Law Latin] Scots law. By way of simple complaint. • Some actions could be brought by a complaint unaccompanied by formal summons.

PERMUTATIO

permutatio (p<<schwa>>r-myoo-tay-shee-oh), n.[Latin “exchange”] Roman law. An agreement for barter or exchange. • The agreement became binding as soon as one party had transferred ownership of his thing to the other. Pl. permutationes (p<<schwa>>r-myoo-tay-shee-oh-nee).

PERMUTATION

permutation.Civil law. Barter; exchange.

PER MY ET PER TOUT

per my et per tout (p<<schwa>>r mee ay p<<schwa>>r too[t]). [Law French] By the half and by the whole. • This phrase described the estate held by joint tenants: by the half for purposes of survivorship, by the whole for purposes of alienation. Cf. PER TOUT ET NON PER MY. [Cases: Joint Tenancy 1.C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9.]

PERNANCY

pernancy (p<<schwa>>r-n<<schwa>>n-see).Hist. A taking or reception, as of the profits of an estate.

PERNOR OF PROFITS

pernor of profits (p<<schwa>>r-n<<schwa>>r or -nor).Hist. A person who receives the profits of property; one who has the pernancy of the profits.

PERP

perp (p<<schwa>>rp), n. Slang. Perpetrator <the police brought in the perp for questioning>. See PERPETRATOR.

PERPARS

perpars (p<<schwa>>r-pahrz). [Law Latin, fr. Latin per partes “by parts”] See PURPART.

PERPARTS

perparts. See PURPART.

PERPETRATE

perpetrate,vb. To commit or carry out (an act, esp. a crime) <find whoever perpetrated this

heinous deed>. — perpetration,n.

PERPETRATOR

perpetrator. A person who commits a crime or offense.

PERPETUA

perpetua (p<<schwa>>r-pech-oo-<<schwa>>). See exceptio peremptoria under EXCEPTIO.

PERPETUAL BOND

perpetual bond.See annuity bond under BOND(3).

PERPETUAL EDICT

perpetual edict.See edictum perpetuum under EDICTUM.

PERPETUAL FREEHOLD

perpetual freehold.See FREEHOLD.

PERPETUAL INJUNCTION

perpetual injunction.See permanent injunction under INJUNCTION.

PERPETUAL LEASE

perpetual lease.See LEASE.

PERPETUALLY RENEWABLE LEASE

perpetually renewable lease.See LEASE.

PERPETUAL POLICY

perpetual policy.See INSURANCE POLICY.

PERPETUAL STATUTE

perpetual statute.See STATUTE.

PERPETUAL SUCCESSION

perpetual succession.See SUCCESSION(4).

PERPETUAL TRUST

perpetual trust.See TRUST.

PERPETUATION OF TESTIMONY

perpetuation of testimony.The means or procedure for preserving for future use witness testimony that might otherwise be unavailable at trial. [Cases: Federal Civil Procedure 1291; Pretrial Procedure 61. C.J.S. Pretrial Procedure §§ 1, 3–4, 9.]

 PERPETUITIES, RULE AGAINST

perpetuities, rule against. See RULE AGAINST PERPETUITIES.

PERPETUITY

perpetuity (p<<schwa>>r-p<<schwa>>-t[y]oo-<<schwa>>-tee). 1. The state of continuing forever. 2. Hist. An unbarrable entail. 3. Hist. An inalienable interest. 4. An interest that does not take effect or vest within the period prescribed by law. • In reference to the rule against perpetuities, only sense 4 is now current. See RULE AGAINST PERPETUITIES. [Cases: Perpetuities 4. C.J.S. Perpetuities §§ 2, 12.]

“A perpetuity is a thing odious in law, and destructive of the Commonwealth; it would put a stop to commerce and prevent the circulation of the riches of the Kingdom, and therefore is not to be countenanced in equity. If in equity you could come nearer to a perpetuity than the rules of Common Law would admit, all men being desirous to continue their estates in their families, would settle their estates by way of trust; which might indeed make well for the jurisdiction of the court, but would be destructive of the commonwealth.” (1683) 1 Vern. 163 (per Lord North) (as quoted in George W. Keeton, *English Law: The Judicial Contribution* 118 (1974)).

PERPETUITY OF THE KING

perpetuity of the king or queen. A fiction of English law that for political purposes the king or queen is immortal; that is, a monarch dies, but the office is never vacant.

PER PROCURATIONEM

per procuracionem (p<<schwa>>r prok-y<<schwa>>-ray-shee-oh-n<<schwa>>m). [Latin] By proxy. — Abbr. per pro.; p. proc.; p. pro.; p.p. — Also termed per procuracionem.

PERP WALK

perp walk. Slang. The act of making a suspect in custody walk before an audience, esp. members of the media. • Perp is short for perpetrator.

PER QUAE SERVITIA

per quae servitia (p<<schwa>>r kwee s<<schwa>>r-vish-ee-<<schwa>>). [Latin “by which services”] Hist. A real action by which the grantee of a landed estate could compel the tenants of the grantor to attorn to him. • This action was abolished in the 19th century.

PERQUISITE

perquisite (p<<schwa>>r-kwi-zit). A privilege or benefit given in addition to one's salary or regular wages. — Often shortened to perk. [Cases: Officers and Public Employees 99. C.J.S. Officers and Public Employees §§ 275–277, 279–287, 310–312, 314–320.]

PERQUISITOR

perquisitor (p<<schwa>>r-kwiz-<<schwa>>-t<<schwa>>r). [Latin “a seeker out”] Hist. A

purchaser; esp., one who first acquires an estate by sale or gift.

PER QUOD

per quod (p<<schwa>>r kwod), adv. & adj.[Latin “whereby”] Requiring reference to additional facts; (of libel or slander) actionable only on allegation and proof of special damages. See actionable per quod under ACTIONABLE; libel per quod under LIBEL; slander per quod under SLANDER. [Cases: Libel and Slander 1, 33. C.J.S. Libel and Slander; Injurious Falsehood §§ 2, 5–6, 10, 47, 198.]

PER QUOD CONSORTIUM AMISIT

per quod consortium amisit (p<<schwa>>r kwod k<<schwa>>n-sor-shee-<<schwa>>m <<schwa>>-mI-zit). [Law Latin] Hist. Whereby he lost the company (of his wife). • This phrase was used in a trespass declaration to describe the loss suffered by a husband whose wife had been beaten or otherwise abused. [Cases: Husband and Wife 209(3).]

PER QUOD SERVITIUM AMISIT

per quod servitium amisit (p<<schwa>>r kwod s<<schwa>>r-vish-ee-<<schwa>>m <<schwa>>-mI-zit). [Law Latin] Hist. Whereby he lost the services (of his servant). • This phrase was used in a trespass declaration to describe the loss suffered by a master whose servant had been injured by another. [Cases: Master and Servant 336; Monopolies 12(1.10). C.J.S. Employer–Employee Relationship §§ 256, 259; Monopolies §§ 47–52, 72, 78, 80–82, 105.]

PER RESCRIPTUM PRINCIPIS

per rescriptum principis (p<<schwa>>r ri-skrip-t<<schwa>>m prin-si-pis). [Latin] Roman law. By the prince's rescript; by an imperial written reply to a petition.

PER SALTUM

per saltum (p<<schwa>>r sal-t<<schwa>>m). [Latin] Hist. By a leap; without an intermediate step.

PER SE

per se (p<<schwa>>r say), adv. & adj.[Latin] 1. Of, in, or by itself; standing alone, without reference to additional facts. See actionable per se under ACTIONABLE; libel per se under LIBEL; slander per se under SLANDER. 2. As a matter of law.

PERSECUTIO

persecutio (p<<schwa>>r-s<<schwa>>-kyoo-shee-oh), n.[Latin] Roman law. A lawsuit or civil claim under cognitio extraordinaria. Pl. persecutiones (p<<schwa>>r-s<<schwa>>-kyoo-shee-oh-nee-z). See COGNITIO EXTRAORDINARIA.

PERSECUTION

persecution, n. Violent, cruel, and oppressive treatment directed toward a person or group of persons because of their race, religion, sexual orientation, politics, or other beliefs. See hate crime

under CRIME. — persecute,vb.

PER SE DEADLY WEAPON

per se deadly weapon.See deadly weapon per se under WEAPON.

PERSEQUI

persequi (p<<schwa>>r-s<<schwa>>-kwI), vb.[Latin] Roman law. To claim through a judicial proceeding.

PER SE RULE

per se rule.Antitrust. The judicial principle that a trade practice violates the Sherman Act simply if the practice is a restraint of trade, regardless of whether it actually harms anyone. See SHERMAN ANTITRUST ACT. Cf. RULE OF REASON .

PER SE VIOLATION

per se violation.Antitrust. A trade practice (such as price-fixing) that is considered inherently anticompetitive and injurious to the public without any need to determine whether it has actually injured market competition.

PERSISTENT PRICE DISCRIMINATION

persistent price discrimination.See PRICE DISCRIMINATION.

PERSON

person. 1. A human being. — Also termed natural person.

absent person.Louisiana law. A person who has no representative in the state and whose whereabouts are not known and cannot be ascertained by diligent effort. La. Civ. Code art. 47.

adult disabled person.A child over the age of 18 for whom a parent continues to have a duty of support.

associated person.See ASSOCIATED PERSON.

disabled person.A person who has a mental or physical impairment. See DISABILITY.

disappeared person.See DISAPPEARED PERSON.

interested person.A person having a property right in or claim against a thing, such as a trust or decedent's estate. • The meaning may expand to include an entity, such as a business that is a creditor of a decedent. — Abbr. IP.

person in loco parentis (in loh-koh p<<schwa>>-ren-tis). A person who acts in place of a parent, either temporarily (as a schoolteacher does) or indefinitely (as a stepparent does); a person who has assumed the obligations of a parent without formally adopting the child. See IN LOCO PARENTIS. [Cases: Parent and Child 15. C.J.S. Parent and Child §§ 345–350, 357–358.]

person in need of supervision.See child in need of supervision under CHILD. — Abbr. PINS.

person of incidence. The person against whom a right is enforceable; a person who owes a legal duty. • The meaning may expand to include an entity, such as an insurance company.

person of inherence (in-heer-*<<schwa>>*nts). The person in whom a legal right is vested; the owner of a right. • The meaning may expand to include an entity.

person of interest. A person who is the subject of a police investigation but who has not been identified by investigators as being suspected of committing the crime itself.

person not deceased. A person who is either living or not yet born.

person of opposite sex sharing living quarters. See POSSLQ.

person with ordinary skill in the art. See PERSON WITH ORDINARY SKILL IN THE ART.

private person. 1. A person who does not hold public office or serve in the military. 2. Civil law. An entity such as a corporation or partnership that is governed by private law.

protected person. 1. A person for whom a conservator has been appointed or other protective order has been made. [Cases: Guardian and Ward 9.5, 17; Mental Health 104. C.J.S. Insane Persons § 111.] 2. Int'l law. A person who is protected by a rule of international law; esp., one who is in the hands of an occupying force during a conflict. • Protected persons are entitled to a standard of treatment (including a prohibition on coercion and corporal punishment) by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949). 3. English law. An inhabitant of a protectorate of the United Kingdom. • Though not a British subject, such a person is given diplomatic protection by the Crown.

2. The living body of a human being <contraband found on the smuggler's person>. 3. An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. • In this sense, the term includes partnerships and other associations, whether incorporated or unincorporated. "So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition." John Salmond, *Jurisprudence* 318 (Glanville L. Williams ed., 10th ed. 1947).

artificial person. An entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being. • An entity is a person for purposes of the Due Process and Equal Protection Clauses but is not a citizen for purposes of the Privileges and Immunities Clauses in Article IV, § 2, and in the Fourteenth Amendment. — Also termed fictitious person; juristic person; juridical person; legal person; moral person. Cf. LEGAL ENTITY. [Cases: Corporations 1.1(2). C.J.S. Corporations § 2.]

control person. See CONTROL PERSON.

fictitious person. See artificial person.

international person. See INTERNATIONAL PERSON.

juridical person. See artificial person.

juristic person. See artificial person.

legal person. See artificial person.

moral person. See artificial person.

private person. Civil law. See private person (2) under PERSON(1).

PERSONA

persona (p<<schwa>>r-soh-n<<schwa>>), n. [Latin] Roman law. A person; an individual human being.

persona designata (p<<schwa>>r-soh-n<<schwa>> dez-ig-nay-t<<schwa>>). [Latin] A person considered as an individual (esp. in a legal action) rather than as a member of a class.

persona dignior (p<<schwa>>r-soh-n<<schwa>> dig-nee-or). [Latin] Hist. The more worthy or respectable person; the more fitting person.

persona ficta (p<<schwa>>r-soh-n<<schwa>> fik-t<<schwa>>). [Latin "false mask"] Hist. A fictional person, such as a corporation.

"But units other than individual men can be thought of as capable of acts, or of rights and liabilities: such are Corporations and even Hereditates Iacentes. Accordingly the way is clear to apply the name of person to these also. The mediaeval lawyers did so, but as they regarded Corporations as endowed with personality by a sort of creative act of the State, and received from the Roman lawyers the conception of the hereditas iacens as representing the persona of the deceased rather than as itself being a person, they called these things Personae Fictae, an expression not used by the Romans." W.W. Buckland, *Elementary Principles of the Roman Private Law* 16 (1912).

persona grata. See PERSONA GRATA.

persona illustris (p<<schwa>>r-soh-n<<schwa>> i-l<<schwa>>s-tris). [Latin] Hist. A person of distinction.

persona miserabilis (p<<schwa>>r-soh-n<<schwa>> miz-<<schwa>>-rab-<<schwa>>-lis). [Latin "a pitiable person"] Roman law. An unfortunate person, esp. because of age, illness, or status. • A persona miserabilis received certain privileges in litigation.

persona moralis (p<<schwa>>r-soh-n<<schwa>> m<<schwa>>-ray-lis). [Latin] A collective entity that, by law or custom, is recognized as an artificial person (e.g., a church or corporation). See artificial person under PERSON(2).

persona nasciturus (p<<schwa>>r-soh-n<<schwa>> nas-<<schwa>>-t[y]oor-<<schwa>>s or

-t[y]<<schwa>>r-<<schwa>>s). [fr. Latin nascor “to be born”] Roman law. An unborn child. — Sometimes shortened to nasciturus.

persona non grata. See PERSONA NON GRATA.

persona praedilecta (p<<schwa>>r-soh-n<<schwa>> pree-d<<schwa>>-lek-t<<schwa>>). [Law Latin] Scots law. A preferred person.

“This phrase signifies one person who, among others appointed with him as colleagues in some office, enjoys the confidence and esteem of the person appointing, more than those appointed with him. Thus a testator not unfrequently appoints among his trustees one who shall be a sine qua non — that is, one whose concurrence and consent shall be indispensable to every act of administration under the trust. Such a trustee falls within the description of a persona praedilecta.” John Trayner, *Trayner's Latin Maxims* 456 (4th ed. 1894).

persona standi in iudicio. See PERSONA STANDI IN JUDICIO.

PERSONABLE

personable, adj. Having the status of a legal person (and thus the right to plead in court, enter into contracts, etc.) <a personable entity>.

PERSON AGGRIEVED

person aggrieved. See aggrieved party under PARTY(2).

PERSONA GRATA

persona grata (p<<schwa>>r-soh-n<<schwa>> gray-t<<schwa>> orgrah-t<<schwa>> orgrat-<<schwa>>), n. [Latin] An acceptable person; esp., a diplomat who is acceptable to a host country. Pl. personae gratae (p<<schwa>>r-soh-nee gray-tee orgrah-tee orgrat-ee). Cf. PERSONA NON GRATA.

PERSONAL

personal, adj. 1. Of or affecting a person <personal injury>. 2. Of or constituting personal property <personal belongings>. See IN PERSONAM.

PERSONAL ACTION

personal action. See ACTION(4).

PERSONAL ASSET

personal asset. See ASSET.

PERSONAL BOND

personal bond. See BOND(2).

PERSONAL-CAPACITY SUIT

personal-capacity suit. See SUIT.

PERSONAL CHATTEL

personal chattel. See chattel personal under CHATTEL.

PERSONAL CHECK

personal check. See CHECK.

PERSONAL-COMFORT DOCTRINE

personal-comfort doctrine. The principle that the course of employment is not interrupted by certain acts relating to the employee's personal comfort, typically short breaks for eating, drinking, using the restroom, and the like. — Also termed personal-comfort rule.

PERSONAL-CONDITION CRIME

personal-condition crime. See status crime under CRIME.

PERSONAL CONTRACT

personal contract. See CONTRACT.

PERSONAL COVENANT

personal covenant. See COVENANT(4).

PERSONAL CRIME

personal crime. See CRIME.

PERSONAL DEFENSE

personal defense. See DEFENSE(4).

PERSONAL DEMAND

personal demand. See DEMAND(3).

PERSONAL EFFECTS

personal effects. See EFFECTS.

PERSONAL ESTATE

personal estate. See personal property under PROPERTY.

PERSONAL EVIDENCE

personal evidence. See TESTIMONY.

PERSONAL EXEMPTION

personal exemption. See EXEMPTION.

PERSONAL HISTORY

personal history. An individual's background; the particular experiences and events that shape a person's life.

PERSONAL HOLDING COMPANY

personal holding company. See COMPANY.

PERSONAL-HOLDING-COMPANY TAX

personal-holding-company tax. See holding-company tax under TAX.

PERSONALI EXCEPTIONE

personali exceptione (p<<schwa>>r-s<<schwa>>-nay-lī ek-sep-shee-oh-nee). [Latin] Hist. By personal exception; by an exception based on personal reasons. — Also termed personali objectione (<<schwa>>b-jek-shee-oh-nee).

PERSONAL INCOME

personal income. See INCOME.

PERSONAL INDIGNITY

personal indignity. See INDIGNITY.

PERSONAL INJURY

personal injury. See INJURY.

PERSONALIS ACTIO

personalis actio (p<<schwa>>r-s<<schwa>>-nay-lis ak-shee-oh). [Latin] Hist. A personal action; an action in personam.

PERSONALITER

personaliter (p<<schwa>>r-s<<schwa>>-nay-l<<schwa>>-t<<schwa>>r), adv. [Latin] Personally; in person.

PERSONALITY

personality. 1. The legal status of one regarded by the law as a person; the legal conception by which the law regards a human being or an artificial entity as a person. — Also termed legal personality.

“Legal personality ... refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities.” George Whitecross Paton, *A Textbook of Jurisprudence* 393 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

2. Parliamentary law. (usu. pl.) An improper reference to a member by name or in his or her personal capacity. “No person in speaking, is to mention a member then present by his name; but to describe him by his seat in the house, or who spoke last, or on the other side of the question, nor to digress from the matter to fall upon the person, by speaking, reviling, nipping, or unmannerly

words against a particular member. The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose or advocate it, is a personality, and against order.” Thomas Jefferson, *A Manual of Parliamentary Practice* 36–37 (1801) (citations omitted).

PERSONALITY THEORY

personality theory. Intellectual property. A rationalization of intellectual-property laws, esp. copyright, drawing on the philosophy of G.W.F. Hegel, holding that personal expression is a form of self-actualization that gives the creator inalienable moral rights in the creations. • As a way of analyzing intellectual-property rights, personality theory takes the point of view of the individual inventor, author, or artist rather than that of society as a whole. Cf. LOCKEAN LABOR THEORY; UTILITARIANISM.

PERSONAL JUDGMENT

personal judgment. See JUDGMENT.

PERSONAL JURISDICTION

personal jurisdiction. See JURISDICTION.

PERSONAL JUSTICE

personal justice. See JUSTICE(1).

PERSONAL KNOWLEDGE

personal knowledge. See KNOWLEDGE.

PERSONAL LAW

personal law. The law that governs a person's family matters, usu. regardless of where the person goes. • In common-law systems, personal law refers to the law of the person's domicile. In civil-law systems, it refers to the law of the individual's nationality (and so is sometimes called *lex patriae*). Cf. TERRITORIAL LAW.

“The idea of the personal law is based on the conception of man as a social being, so that those transactions of his daily life which affect him most closely in a personal sense, such as marriage, divorce, legitimacy, many kinds of capacity, and succession, may be governed universally by that system of law deemed most suitable and adequate for the purpose [A]lthough the law of the domicile is the chief criterion adopted by English courts for the personal law, it lies within the power of any man of full age and capacity to establish his domicile in any country he chooses, and thereby automatically to make the law of that country his personal law.” R.H. Graveson, *Conflict of Laws* 188 (7th ed. 1974).

PERSONAL LIABILITY

personal liability. See LIABILITY.

PERSONAL LIBERTY

personal liberty. See LIBERTY.

PERSONAL NAME

personal name. See NAME.

PERSONAL NOTICE

personal notice. See NOTICE.

PERSONAL OBLIGATION

personal obligation. See OBLIGATION.

PERSONAL PRIVILEGE

personal privilege. See PRIVILEGE(5).

PERSONAL PROPERTY

personal property. See PROPERTY.

PERSONAL-PROPERTY TAX

personal-property tax. See TAX.

PERSONAL RECOGNIZANCE

personal recognizance. See RECOGNIZANCE.

PERSONAL REPLEVIN

personal replevin. See REPLEVIN.

PERSONAL REPRESENTATIVE

personal representative. See REPRESENTATIVE.

PERSONAL REPUTATION

personal reputation. See REPUTATION.

PERSONAL-RESIDENCE TRUST

personal-residence trust. See TRUST.

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT

Personal Responsibility and Work Opportunity Reconciliation Act. A 1996 federal law that overhauled the welfare system, as well as requiring states to provide a means for collecting child support by (1) imposing liens on a child-support obligor's assets, and (2) facilitating income-withholding. • The Act did away with Aid to Families with Dependent Children in favor of Temporary Assistance to Needy Families. It also limited the length of time that persons could receive welfare and tied states' receipt of federal child-support funds to their implementing enhanced paternity-establishment services. — Abbr. PRWORA. — Also termed Welfare Reform

Act. See AID TO FAMILIES WITH DEPENDENT CHILDREN ; TEMPORARY ASSISTANCE TO NEEDY FAMILIES.

PERSONAL RIGHT

personal right. See RIGHT.

PERSONAL SECURITY

personal security. See SECURITY.

PERSONAL SERVICE

personal service. 1. Actual delivery of the notice or process to the person to whom it is directed. — Also termed actual service. [Cases: Federal Civil Procedure 413; Process 48, 64. C.J.S. Process §§ 26, 33, 42–44, 49.] 2. An act done personally by an individual. • In this sense, a personal service is an economic service involving either the intellectual or manual personal effort of an individual, as opposed to the salable product of the person's skill.

PERSONAL SERVITUDE

personal servitude. See SERVITUDE(2).

PERSONAL STATUTE

personal statute. See STATUTE.

PERSONAL SURETYSHIP

personal suretyship. See SURETYSHIP.

PERSONAL TITHE

personal tithe. See TITHE.

PERSONAL TORT

personal tort. See TORT.

PERSONAL TREATY

personal treaty. See TREATY(1).

PERSONAL TRUST

personal trust. See private trust under TRUST.

PERSONALTY

personalty (p<<schwa>>rs-<<schwa>>n-<<schwa>>l-tee). Personal property as distinguished from real property. See personal property (1) under PROPERTY. [Cases: Property 4. C.J.S. Property §§ 14–21, 23.]

quasi-personalty. Things that are considered movable by the law, though fixed to real

property either actually (as with a fixture) or fictitiously (as with a lease for years).

PERSONAL WARRANTICE

personal warrantice. See WARRANTICE.

PERSONAL WARRANTY

personal warranty. See WARRANTY(2).

PERSONAL WRONG

personal wrong. See WRONG.

PERSONAM

personam. See IN PERSONAM.

PERSONA MISERABILIS

persona miserabilis. See PERSONA.

PERSONA MORALIS

persona moralis. See PERSONA.

PERSONA NASCITURUS

persona nasciturus. See PERSONA.

PERSONA NON GRATA

persona non grata (p<<schwa>>r-sohn-<<schwa>> non grah-d<<schwa>>), n.[Latin] An unwanted person; esp., a diplomat who is not acceptable to a host country. Pl. personae non gratae. Cf. PERSONA GRATA.

PERSONA PRAEDILECTA

persona praedilecta. See PERSONA.

PERSONA PROPOSITA

persona proposita. See PROPOSITUS.

PERSONA STANDI IN JUDICIO

persona standi in judicio (p<<schwa>>r-soh-n<<schwa>> stan-dI in joo-dish-ee-oh). [Law Latin] 1. Capacity of standing in judgment; the right to appear in court. 2. One with personal standing to vindicate a legal right.

“What persona standi is, may be more easily learned by considering the loss of it by civil death or outlawry But there are others besides outlaws who have no persona standi. A pupil cannot pursue or defend; that must be done by his tutor in his name. And companies, as such, have not a persona standi.... Persona standi applies to the status of the person, as qualified to pursue or

defend in actions generally; title to pursue applies to particular actions, and requires, in addition to a *persona standi*, that the party have a proper legal interest in the particular action pursued or defended." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 800 (George Watson ed., 7th ed. 1890).

PERSONATION

personation. See IMPERSONATION.

PERSON-ENDANGERING STATE OF MIND

person-endangering state of mind. An intent to kill, inflict great bodily injury, act in wanton disregard of an unreasonable risk, or perpetrate a dangerous felony. — Also termed man-endangering state of mind.

PERSONIN LOCO PARENTIS

person in loco parentis. See PERSON(1).

PERSON IN NEED OF SUPERVISION

PERSON NOT DECEASED

person not deceased. See PERSON(1).

PERSON OF INCIDENCE

person of incidence. See PERSON(1).

PERSON OF INHERENCE

person of inherence. See PERSON(1).

PERSON OF INTEREST

person of interest. See PERSON(1).

PERSON OF OPPOSITE SEX SHARING LIVING QUARTERS

PERSON WITH ORDINARY SKILL IN THE ART

person with ordinary skill in the art. Patents. A fictional construct of the patent laws, denoting someone who has reasonably developed abilities in the field of the invention at issue. • The patent application must be clear and complete enough to teach a person skilled in the art how to make and use the invention without undue experimentation. [Cases: Patents 16(3).]

"The term 'person skilled in the art ...' has been interpreted to mean a person having ordinary or fair information in that particular line, not necessarily a person of high scientific attainments. The skill or knowledge to be imputed to such a person will vary with the complexity of the art to which the invention relates." Archie R. McCrady, *Patent Office Practice* 61 (2d ed. 1946).

PER STIRPES

per stirpes (p<<schwa>>r st<<schwa>>r-pee-z), adv. & adj.[Latin "by roots or stocks"] Proportionately divided between beneficiaries according to their deceased ancestor's share. — Also termed in stirpes; per stirpem. Cf. PER CAPITA . [Cases: Descent and Distribution 43; Wills 530.C.J.S. Descent and Distribution §§ 27–28; Wills §§ 1015–1016.]

PERSUADE

persuade,vb. To induce (another) to do something <Steve persuaded his neighbor to sign the release after the accident>.

PERSUASION

persuasion. The act of influencing or attempting to influence others by reasoned argument; the act of persuading.

fair persuasion.Argument, exhortation, or persuasion that does not involve harassment, threats, or misrepresentations.

PERSUASION BURDEN

persuasion burden.See BURDEN OF PERSUASION.

PERSUASIVE AUTHORITY

persuasive authority.See AUTHORITY(4).

PERSUASIVE PRECEDENT

persuasive precedent.See PRECEDENT.

PER SUBSEQUENS MATRIMONIUM

per subsequens matrimonium (p<<schwa>>r s<<schwa>>b-s<<schwa>>-kwenz ma-tr<<schwa>>-moh-nee-<<schwa>>m). [Latin] Roman & civil law. By subsequent marriage. • The phrase often referred to a child's legitimation by the later marriage of the child's parents.

PER TACITAM RECONVENTIONEM

per tacitam reconventionem (p<<schwa>>r tas-<<schwa>>-t<<schwa>>m ree-k<<schwa>>n-ven-shee-oh-n<<schwa>>m). [Latin] Hist. By a tacit renewal of the contract.

PER TACITAM RELOCATIONEM

per tacitam relocationem (p<<schwa>>r tas-<<schwa>>-t<<schwa>>m ree-loh-kay-shee-oh-n<<schwa>>m). [Latin] Hist. By tacit relocation. See TACIT RELOCATION .

PERTAIN

pertain,vb. To relate to; to concern.

PERTINENT

pertinent,adj. Pertaining to the issue at hand; relevant <pertinent testimony>.

PERTINENT ART

pertinent art. See analogous art, relevant art under ART.

PER TOTAM CURIAM

per totam curiam (p<<schwa>>r toh-t<<schwa>>m kyoor-ee-<<schwa>>m). [Law Latin] By the whole court.

PER TOUT ET NON PER MY

per tout et non per my (p<<schwa>>r too[t] ay non p<<schwa>>r mee). [Law French] By the whole and not by the half. • This phrase described the estate given to a husband and wife — both are seised of the entire estate. Cf. PER MY ET PER TOUT .

PERTURBATOR

perturbator (p<<schwa>>r-t<<schwa>>r-bay-t<<schwa>>r). [Law Latin] Hist. A person, esp. a man, who disturbs the peace. [Cases: Breach of the Peace 1. C.J.S. Breach of the Peace §§ 2–5.]

PERTURBATRIX

perturbatrix (p<<schwa>>r-t<<schwa>>r-bay-triks), n.[Law Latin] Hist. A woman who disturbs the peace.

PER UNIVERSITATEM

per universitatem (p<<schwa>>r yoo-n<<schwa>>-v<<schwa>>r-s<<schwa>>-tay-t<<schwa>>m). [Latin] Civil law. By an aggregate or whole; as an entirety. • This term describes the acquisition of an entire estate, esp. of an entire inheritance by universal succession.

PER VENDITIONIS, DONATIONIS, CESSIONIS, VEL COMMUTATIONIS TITULUM

per venditionis, donationis, cessionis, vel commutationis titulum (p<<schwa>>r ven-dish-ee-oh-nis, doh-nay-shee-oh-nis, sesh-ee-oh-nis, vel kom-y<<schwa>>-tay-shee-oh-nis tich-[y]<<schwa>>-l<<schwa>>m). [Law Latin] Hist. By the title of sale, donation, cession, or barter.

“Per venditionis, donationis, cessionis, vel commutationis titulum These terms were used in the older forms of conveyancing, to distinguish lands so acquired from lands acquired either by inheritance or feudal grant. They signify what is now known by the name of a singular title.” John Trayner, Trayner's Latin Maxims 452 (4th ed. 1894.).

PER VERBA DE FUTURO

per verba de futuro.By words in the future tense.

PER VERBA DE PRAESENTI

per verba de praesenti. By words in the present tense.

PERVERSE VERDICT

perverse verdict. See VERDICT.

PER VIM LEGIS

per vim legis (p<<schwa>>r vim lee-jis). [Latin] Hist. By force of law. • The phrase generally referred to persons who succeeded by intestacy to an estate.

PERVISE

pervise. See PARVIS.

PER VIVAM VOCEM

per vivam vocem (p<<schwa>>r vI-v<<schwa>>m voh-s<<schwa>>m). [Law Latin] By the living voice.

PER VOLUNTATEM HOMINIS

per voluntatem hominis (p<<schwa>>r vol-<<schwa>>n-tay-t<<schwa>>m hom-<<schwa>>-nis). [Latin] Hist. By the will of man. • The phrase appeared in reference to an act done by the testator's intention.

PESSIMA FIDES

pessima fides (pes-<<schwa>>-m<<schwa>> fI-deez). [Latin] Hist. The worst faith. • The phrase appeared in reference to moral dishonesty.

PESSIMI EXEMPLI

pessimi exempli (pes-<<schwa>>-mI eg-zem-plI). [Latin] Hist. Of the worst example.

“Thus, to acquit a man of a crime because he had committed it under the influence of drink, or to allow any one to take benefit under a contract induced by his fraud, would be pessimi exempli, as tending to lead others to be dishonest or unfair in their dealings, or to be careless of their habits or their acts.” John Trayner, *Trayner's Latin Maxims* 457 (4th ed. 1894).

PETENS

petens (pet-enz). [Latin] Hist. A demandant; a plaintiff in a real action.

PETER-PENCE

peter-pence. Hist. A tax levied on each house in England and paid to the Pope, so called because it was collected on St. Peter's Day. — Also termed hearth money.

PETIT

petit (pet-ee orpet-it), adj. [Law French “minor, small”] See PETTY.

PETIT CAPE

petit cape. See cape parvum under CAPE.

PETITE ASSIZE

petite assize. See ASSIZE(5).

PETITE POLICY

Petite policy. The Department of Justice rule forbidding a federal prosecution after a previous state or federal prosecution based on the same acts unless (1) the prosecution has been approved by the Assistant Attorney General, (2) there is a substantial federal interest supporting the prosecution, (3) the previous prosecution failed to vindicate the federal interest, and (4) there is sufficient evidence to sustain a conviction. United States Attorneys' Manual § 9-2.031 (Sept. 1997); *Petite v. United States*, 361 U.S. 529, 80 S.Ct. 450 (1960). [Cases: Criminal Law 29.C.J.S. Criminal Law § 14; Larceny §§ 53-54.]

“(‘Petite Policy’) The purpose of this policy is to vindicate substantial federal interests through appropriate federal prosecutions, to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions and punishments for substantially the same act(s) or transaction(s), to promote efficient utilization of Department resources, and to promote coordination and cooperation between federal and state prosecutors.” United States Attorneys' Manual § 9-2.031 (Sept. 1997).

“In response to the Court's continuing sensitivity to the fairness implications of the multiple prosecution power, the Justice Department adopted the policy of refusing to bring a federal prosecution following a state prosecution except when necessary to advance compelling interests of federal law enforcement. The Petite policy was designed to limit the exercise of the power to bring successive prosecutions for the same offense to situations comporting with the rationale for the existence of that power. Although not constitutionally mandated, this Executive policy serves to protect interests which, but for the ‘dual sovereignty’ principle inherent in our federal system, would be embraced by the Double Jeopardy Clause. In light of the parallel purposes of the Government's Petite policy and the fundamental constitutional guarantee against double jeopardy, the federal courts should be receptive, not circumspect, when the Government seeks leave to implement that policy.” *Rinaldi v. United States*, 434 U.S. 22, 28-29, 98 S.Ct. 81, 85 (1977)(citation omitted).

PETITIO

petitio (p<<schwa>>-tish-ee-oh), n.[Latin] 1.Civil law. A plaintiff's suit, esp. in an action in rem. 2.Hist. A petition or demand; esp., a count in a real action.

PETITION

petition, n.1. A formal written request presented to a court or other official body.

certiorari petition. A petition seeking discretionary review from an appellate court. See CERTIORARI.

debtor's petition. See voluntary petition.

involuntary petition. A petition filed in a bankruptcy court by a creditor seeking to declare a debtor bankrupt. • This type of petition may be filed only under Chapter 7 or Chapter 11 of the Bankruptcy Code. [Cases: Bankruptcy 2290. C.J.S. Bankruptcy § 57.]

juvenile petition. A juvenile-court petition alleging delinquent conduct by the accused. • The accusations made in a juvenile petition are tried in an adjudication hearing. See adjudication hearing (3) under HEARING. [Cases: Infants 197. C.J.S. Infants § 55.]

petition for probate. A written application by which a party requests that a court admit a will to probate.

petition in error. See APPEAL(1).

voluntary petition. A petition filed with a bankruptcy court by a debtor seeking protection from creditors. — Also termed debtor's petition. [Cases: Bankruptcy 2257. C.J.S. Bankruptcy § 51.]

2. In some states, the first pleading in a lawsuit; COMPLAINT. [Cases: Pleading 38.5. C.J.S. Pleading §§ 94–95.] 3. Patents. A patent applicant's request to a patent office's administrative head for supervision of a procedural or jurisdictional matter related to the patent application. — petition, vb.

PETITION DE DROIT

petition de droit. See PETITION OF RIGHT.

PETITIONER

petitioner. A party who presents a petition to a court or other official body, esp. when seeking relief on appeal. — Also termed (archaically) plaintiff in error. Cf. RESPONDENT(2). [Cases: Appeal and Error 321. C.J.S. Appeal and Error §§ 232–233.]

PETITION FOR ACCESS

petition for access. Patents. Application to inspect a patent application, made by someone who does not usu. have the authority to do so. • The petition must demonstrate a special need for access, and show that the applicant has been notified of the petition. The patent applicant is entitled to a hearing before access is granted. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

PETITION IN BANKRUPTCY

petition in bankruptcy. A formal written request, presented to a bankruptcy court, seeking protection for an insolvent debtor. • The debtor (in a voluntary bankruptcy) or the debtor's creditors (in an involuntary bankruptcy) can file such a petition to initiate a bankruptcy proceeding. [Cases: Bankruptcy 2257, 2290. C.J.S. Bankruptcy §§ 51, 57.]

PETITION OF RIGHT

petition of right. 1. (cap.) One of the four great charters of English liberty (3 Car. (1628)), establishing that “no man be compelled to make or yield any gift, loan, benevolence, tax, or such

like charge, without common consent by act of parliament.” • The other three great charters are Magna Carta, the Habeas Corpus Act (31 Car. 2 (1679)), and the Bill of Rights (1 W. & M. (1689)).2.Hist. A proceeding in chancery by which a subject claims that a debt is owed by the Crown or that the Crown has broken a contract or wrongfully detained the subject's property. • Although the petition is addressed directly to the Crown, the courts adjudicate the claim just as in an action between private parties. — Also termed petition de droit.

PETITION TO MAKE SPECIAL

petition to make special.Patents. A petition asking the U.S. Patent and Trademark Office to expedite a patent prosecution. • Special processing is available, for example, in favored areas of science (such as cancer research and energy conservation), where the inventor is sick or elderly, and where infringement is already taking place. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.]

PETIT JUROR

petit juror.See JUROR.

PETIT JURY

petit jury.See JURY.

PETIT LARCENY

petit larceny.See LARCENY.

PETITOR

petitor (pet-<<schwa>>-t<<schwa>>r), n.[Latin] Roman law. A plaintiff in a civil action; ACTOR(4).

PETITORIUM

petitorium (pet-<<schwa>>-tor-ee-<<schwa>>m). See petitory action under ACTION (4).

PETITORY ACTION

petitory action.See ACTION(4).

PETITORY SUIT

petitory suit.See petitory action under ACTION(4).

PETIT SERJEANTY

petit serjeanty.See SERJEANTY.

PETIT TREASON

petit treason.See petty treason under TREASON.

PETRINE PRIVILEGE

Petrine privilege. Eccles. law. The Pope's power to dissolve a marriage between a baptized spouse and an unbaptized spouse when the Pauline privilege is unavailable and the dissolution would be beneficial to the interests of the church. • The privilege is usu. exercised to dissolve a previous marriage of a Roman Catholic. But sometimes it is applied in the case of a baptized non-Catholic who wishes to marry a Catholic. On rare occasions, the privilege has also been extended to dissolve the marriage of two unbaptized non-Catholics if one of them wishes to marry a Catholic. Cf. PAULINE PRIVILEGE.

PETROLEUM-CONSERVATION LAW

petroleum-conservation law. Oil & gas. A state law that limits the rule of capture and defines the correlative-rights doctrine by regulating the drilling and operation of oil-and-gas wells. • Petroleum-conservation laws are intended to prevent waste and protect correlative rights.

PETTIFOGGER

pettifogger (pet-i-fog-*<<schwa>>r*), n. 1. A lawyer lacking in education, ability, sound judgment, or common sense. 2. A lawyer who clouds an issue with insignificant details. — pettifoggery (pet-i-fog-*<<schwa>>r-ee*), n.

PET TRUST

pet trust. See TRUST.

PETTY

petty, adj. Relatively insignificant or minor <a petty crime>. Cf. GRAND.

PETTY ASSIZE

petty assize. See ASSIZE(6).

PETTY AVERAGE

petty average. See particular average under AVERAGE.

PETTY CASH

petty cash. See CASH.

PETTY JURY

petty jury. See petit jury under JURY.

PETTY LARCENY

petty larceny. See petit larceny under LARCENY.

PETTY OFFENSE

petty offense. See OFFENSE(1).

PETTY OFFICER

petty officer.See OFFICER(2).

PETTY PATENT

petty patent.See UTILITY MODEL.

PETTY SESSIONS

petty sessions.Hist. English law. Sessions of justice-of-the-peace court held to try minor misdemeanors summarily (i.e., without a jury).

PETTY THEFT

petty theft.See THEFT.

PETTY TREASON

petty treason.See TREASON.

P . FAT

p.fat.abbr.PRAEFATUS.

PFPA

PFPA.abbr.PENTAGON FORCE PROTECTION AGENCY.

PGS

PGS.abbr.See pictorial, graphic, and sculptural work under WORK(2).

PHANTOM JURY

phantom jury.See shadow jury under JURY.

PHANTOM STOCK

phantom stock.See STOCK.

PHANTOM STOCK PLAN

phantom stock plan.A long-term benefit plan under which a corporate employee is given units having the same characteristics as the employer's stock shares. • It is termed a “phantom” plan because the employee does not actually hold any shares but instead holds the right to the value of those shares. — Also termed shadow stock plan. [Cases: Pensions 28.C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

PHENOTYPE

phenotype.Patents. A living organism's physical characteristics and behavior. • A patent on living matter must disclose its genetic makeup rather than just describe its phenotype. Cf. GENOTYPE.

PHILADELPHIA LAWYER

Philadelphia lawyer. A shrewd and learned lawyer. • This term can have positive or negative connotations today, but when it first appeared (in colonial times), it carried only a positive sense deriving from Philadelphia's position as America's center of learning and culture.

PHILOSOPHIE DU DROIT

philosophie du droit. See ethical jurisprudence under JURISPRUDENCE.

PHILOSOPHY OF LAW

philosophy of law. See general jurisprudence (2) under JURISPRUDENCE.

PHONOGRAMS CONVENTION

Phonograms Convention. See GENEVA PHONOGRAMS CONVENTION.

PHONORECORD

phonorecord (foh-noh-rek-<<schwa>>rd). A physical object (such as a phonographic record, cassette tape, or compact disc) from which fixed sounds can be perceived, reproduced, or otherwise communicated directly or with a machine's aid. • The term is fairly common in copyright contexts since it is defined in the U.S. Copyright Act of 1976 (17 USCA § 101). [Cases: Copyrights and Intellectual Property 10.2. C.J.S. Copyrights and Intellectual Property § 17.]

PHOTOFIT

photofit. See IDENTIKIT.

P. H. I. IV

p.hi.iv.abbr. PRO HAC VICE.

PHYLACIST

phylacist (fī-l<<schwa>>-sist), n. Archaic. A jailer. — Also spelled phylasist.

PHYSICAL CHILD ENDANGERMENT

physical child endangerment. See CHILD ENDANGERMENT.

PHYSICAL CRUELTY

physical cruelty. See CRUELTY.

PHYSICAL CUSTODY

physical custody. 1. Custody of a person (such as an arrestee) whose freedom is directly controlled and limited. 2. Family law. The right to have the child live with the person awarded custody by the court. — Also termed residential custody. [Cases: Child Custody 147, 209.] 3. Possession of a child during visitation.

PHYSICAL DIAGNOSIS

physical diagnosis. See DIAGNOSIS.

PHYSICAL DISABILITY

physical disability. See DISABILITY(2).

PHYSICAL ENDANGERMENT

physical endangerment. See physical child endangerment under CHILD ENDANGERMENT .

PHYSICAL EVIDENCE

physical evidence. See real evidence (1) under EVIDENCE.

PHYSICAL FACT

physical fact. See FACT.

PHYSICAL-FACTS RULE

physical-facts rule. Evidence. The principle that oral testimony may be disregarded when it is inconsistent or irreconcilable with the physical evidence in the case. — Also termed doctrine of incontrovertible physical facts; incontrovertible-physical-facts doctrine. [Cases: Criminal Law 553; Evidence 588. C.J.S. Criminal Law §§ 1099, 1101–1102; Evidence §§ 1318–1320, 1322, 1329.]

PHYSICAL FORCE

physical force. See actual force under FORCE.

PHYSICAL HARM

physical harm. See HARM.

PHYSICAL HAZARD

physical hazard. See HAZARD(2).

PHYSICAL-IMPACT RULE

physical-impact rule. See IMPACT RULE.

PHYSICAL IMPOSSIBILITY

physical impossibility. See factual impossibility under IMPOSSIBILITY.

PHYSICAL INCAPACITY

physical incapacity. See IMPOTENCE.

PHYSICAL INJURY

physical injury. See bodily injury under INJURY.

PHYSICAL-INVENTORY ACCOUNTING METHOD

physical-inventory accounting method. See ACCOUNTING METHOD.

PHYSICAL NECESSITY

physical necessity. See NECESSITY.

PHYSICAL NEGLECT

physical neglect. See NEGLECT.

PHYSICAL-PROXIMITY TEST

physical-proximity test. Criminal law. A common-law test for the crime of attempt, focusing on how much more the defendant would have needed to do to complete the offense. See ATTEMPT(2). [Cases: Criminal Law 44.C.J.S. Criminal Law §§ 114–123.]

PHYSICAL SHOCK

physical shock. See SHOCK.

PHYSICAL TAKING

physical taking. See TAKING(2).

PHYSICIAN-ASSISTED SUICIDE

physician-assisted suicide. See assisted suicide under SUICIDE.

PHYSICIAN-CLIENT PRIVILEGE

physician-client privilege. See doctor-patient privilege under PRIVILEGE(3).

PHYSICIAN-PATIENT PRIVILEGE

physician-patient privilege. See doctor-patient privilege under PRIVILEGE(3).

PHYSICIAN'S DIRECTIVE

physician's directive. See ADVANCE DIRECTIVE(2).

P.I.

P.I. abbr. 1. See personal injury under INJURY. 2. Private investigator.

PIACLE

piacle (pI-⟨schwa⟩-k⟨schwa⟩l), n. Archaic. A serious crime.

PIA FRAUS

pia fraus (pI-⟨schwa⟩ fraws). [Latin “pious fraud”] A subterfuge or evasion considered morally justifiable; esp., evasion or disregard of the law in the interests of a religious institution, such as the church's circumventing the mortmain statutes.

PICAROON

picaroon (pik-<<schwa>>-roon). A robber or plunderer.

PICKERY

pickery.Hist. Scots law. Petty theft.

PICKETING

picketing. The demonstration by one or more persons outside a business or organization to protest the entity's activities or policies and to pressure the entity to meet the protesters' demands; esp., an employees' demonstration aimed at publicizing a labor dispute and influencing the public to withhold business from the employer. • Picketing is usu. considered a form of fair persuasion of third persons if access to the place of business is not materially obstructed. Cf. BOYCOTT; STRIKE.

common-situs picketing.The illegal picketing by union workers of a construction site, stemming from a dispute with one of the subcontractors. [Cases: Labor Relations 300. C.J.S. Labor Relations §§ 285, 316–317.]

informational picketing.Picketing to inform the public about a matter of concern to the union.

organizational picketing.Picketing by a union in an effort to persuade the employer to accept the union as the collective-bargaining agent of the employees; esp., picketing by members of one union when the employer has already recognized another union as the bargaining agent for the company's employees. — Also termed recognition picketing.

secondary picketing.The picketing of an establishment with which the picketing party has no direct dispute in order to pressure the party with which there is a dispute. See secondary boycott under BOYCOTT; secondary strike under STRIKE. [Cases: Labor Relations 344. C.J.S. Labor Relations §§ 309–313, 315–319, 323.]

unlawful picketing.Picketing carried on in violation of law, as when the picketers use threats or violence to dissuade other employees from returning to work.

PICKPOCKET

pickpocket. A thief who steals money or property from the person of another, usu. by stealth but sometimes by physical diversion such as bumping into or pushing the victim.

PICKPOCKETING

pickpocketing,n. See larceny from the person under LARCENY.

PICKUP TAX

pickup tax.See TAX.

PICTORIAL, GRAPHIC, AND SCULPTURAL WORK

pictorial, graphic, and sculptural work.See WORK(2).

PIECEMEAL ZONING

piecemeal zoning. See partial zoning under ZONING.

PIECEWORK

piecework. Work done or paid for by the piece or job.

PIEPOWDER COURT

piepowder court (pI-pow-d<<schwa>>r). Hist. In medieval England, a court having jurisdiction over a fair or market and presided over by the organizer's steward. • The name is a corruption of two French words (pied and poudre) meaning “dusty feet.” — Also termed court of piepowder. — Also spelled piepoudre; piedpoudre; pipowder; py-powder.

PIERCING THE CORPORATE VEIL

piercing the corporate veil. The judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corporation's wrongful acts. — Also termed disregarding the corporate entity; veil-piercing. See CORPORATE VEIL. [Cases: Corporations 1.4(1). C.J.S. Corporations §§ 9, 13.]

“[C]ourts sometimes apply common law principles to ‘pierce the corporate veil’ and hold shareholders personally liable for corporate debts or obligations. Unfortunately, despite the enormous volume of litigation in this area, the case law fails to articulate any sensible rationale or policy that explains when corporate existence should be disregarded. Indeed, courts are remarkably prone to rely on labels or characterizations of relationships (such as ‘alter ego,’ ‘instrumentality,’ or ‘sham’) and the decisions offer little in the way of predictability or rational explanation of why enumerated factors should be decisive.” Barry R. Furrow et al., *Health Law* § 5-4, at 182 (2d ed. 2000).

PIERRINGER RELEASE

Pierringer release. A release agreement in which the plaintiff releases a codefendant but reserves the right to proceed against the other defendants. • Under this release, the plaintiff agrees to reduce the claim against the remaining defendants by the amount of consideration paid for the release. The term derives from *Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963), in which the court ruled that a trial court could give immediate effect to a release as long as the plaintiff would satisfy any portion of a judgment against a nonsettling party in excess of that party's proportionate share of damages. So the trial court could enter judgment only for the nonsettlor's proportionate share of damages.

PIGEON DROP

pigeon drop. See JAMAICAN SWITCH.

PIGNERATIO

pigneratio. See PIGNORATIO(1).

PIGNERATITIA ACTIO

pigneratitia actio. See ACTIO.

PIGNORATE

pignorate (pig-n<<schwa>>-rayt), vb. 1. To give over as a pledge; to pawn. 2. To take in pawn. Cf. OPPIGNORATE. — pignorative, adj.

PIGNORATIO

pignoratio (pig-n<<schwa>>-ray-shee-oh), n. [Latin] 1. Roman law. The real contract (pignus) under which a debtor handed something over to a creditor as security; the act of depositing as a pledge. — Also spelled pigneratio. 2. Civil law. The impounding of another's cattle (or other animals) that have damaged property until the cattle's owner pays for the damage. Pl. pignorationes (pig-n<<schwa>>-ray-shee-oh-nee-z).

PIGNORATITIA ACTIO

pignoratitia actio (pig-n<<schwa>>-r<<schwa>>-tish-ee-<<schwa>> ak-shee-oh). [Latin] Roman law. An action founded on a pledge, either by the debtor (an action directa) or by a creditor (an action contraria). Cf. cautio pigneratitia under CAUTIO.

PIGNORATIVE CONTRACT

pignorative contract. See CONTRACT.

PIGNORIS CAPIO

pignoris capio (pig-n<<schwa>>-ris kap-ee-oh). [Latin “taking a pledge”] Roman law. A form of extrajudicial execution by which a creditor took a pledge from a debtor's property.

PIGNUS

pignus (pig-n<<schwa>>s), n. [Latin “pledge”] 1. Roman & civil law. (ital.) A bailment in which goods are delivered to secure the payment of a debt or performance of an engagement, accompanied by a power of sale in case of default. • This type of bailment is for the benefit of both parties. — Also termed pawn; pledge. See PIGNORATIO. 2. A lien. Pl. pignora or pignera.

pignus giudiciale (pig-n<<schwa>>s joo-dish-ee-ay-lee). [Latin] Civil law. The lien that a judgment creditor has on the property of the judgment debtor.

pignus legale (pig-n<<schwa>>s l<<schwa>>-gay-lee). [Latin] Civil law. A lien arising by operation of law, such as a landlord's lien on the tenant's property.

pignus praetorium (pig-n<<schwa>>s pri-tor-ee-<<schwa>>m). [Latin “a magisterial pledge”] Roman law. A pledge given to a creditor by order of a magistrate.

PIH

PIH. abbr. OFFICE OF PUBLIC AND INDIAN HOUSING.

PILFERAGE

pilferage (pil-f<<schwa>>r-ij), n.1. The act or an instance of stealing. 2. The item or items stolen. See LARCENY; THEFT. — **pilfer** (pil-f<<schwa>>r), vb.

PILL

pill. See POISON PILL.

PILLAGE

pillage (pil-ij), n.1. The forcible seizure of another's property, esp. in war; esp., the wartime plundering of a city or territory. 2. The property so seized or plundered; BOOTY. — Also termed **plunder**. [Cases: War and National Emergency 21. C.J.S. War and National Defense § 16.] — **pillage**, vb.

PILLORY

pillory (pil-<<schwa>>-ree), n. Hist. A wooden framework with holes through which an offender's head and hands are placed. • A person put in a pillory usu. had to stand rather than sit (as with the stocks). Cf. STOCKS.

finger pillory. Hist. Eccles. law. A miniature stock used to confine the fingers of a person who misbehaved during church services.

PILOT

pilot. 1. A person in control of an airplane. 2. Maritime law. A person in control of a vessel.

compulsory pilot. A ship pilot entitled by law to guide a ship for a particular purpose, such as piloting the ship into harbor. • The compulsory nature of the appointment relieves the vessel's owner of personal liability if the pilot causes a collision. Cf. **voluntary pilot**. [Cases: Pilots 7. C.J.S. Pilots of Vessels § 8.]

“The compulsory pilot presents a special problem. Statutes that impose a fine or imprisonment for the failure to take a pilot obviously create compulsory pilotage. Some statutes, however, allow the ship to refuse the pilot provided she pays his fee or half of it (‘half-pilotage’). The Supreme Court has indicated that it does not regard the tendering of this alternative as amounting to compulsion. It makes a difference, because it is pretty well settled that if the pilotage is ‘compulsory’ the respondeat superior nexus is broken, and the shipowner cannot be held personally liable for the fault of the pilot resulting in collision. The ship's liability in rem, however, is unaffected by the fact that the pilotage is compulsory. This is one of the more striking consequences of the endowment of the ship with a juristic personality independent of that of her owner.” Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 7-16, at 520–21 (2d ed. 1975).

voluntary pilot. A ship pilot who controls a ship with the permission of the vessel's owner. • The vessel's owner is personally liable for damage resulting from a collision caused by a voluntary pilot. Cf. **compulsory pilot**. [Cases: Pilots 7. C.J.S. Pilots of Vessels § 8.]

“If a vessel is in the hands of a harbor pilot at the time of the collision, the question arises

whether the fault of the pilot is imputed to the vessel owner or operator. American law draws an unwarranted distinction between the 'voluntary pilot,' who is taken on voluntarily, and the 'compulsory pilot,' who is mandated by a statute or local regulation. The voluntary pilot is considered to be the same as any crew member, and his fault is fully attributable to the vessel owner. A compulsory pilot's fault, however, cannot be imputed to the shipowner personally; the doctrine of respondeat superior does not apply. At most, the vessel is liable in rem since the compulsory pilot's negligence is attributable to the ship. The distinction makes little sense in that it throws the loss upon potentially innocent parties and ignores the fact that the vessel owner commonly carries insurance against this liability. In any collision case, therefore, care should be taken to assert a maritime lien and to sue the vessel in rem if a compulsory pilot may be involved." Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 1-31, at 450-51 (1987).

PILOTAGE

pilotage (pī-l<<schwa>>-tij). 1. The navigating of vessels; the business of navigating vessels. [Cases: Pilots 14. C.J.S. Pilots of Vessels § 9.] 2. Compensation that a pilot receives for navigating a vessel, esp. into and out of harbor or through a channel or passage. [Cases: Pilots 9.C.J.S. Pilots of Vessels §§ 12, 15.]

compulsory pilotage. A requirement, imposed by law in some jurisdictions, that vessels approaching or leaving a harbor must take on a licensed pilot to guide the vessel into or out of the harbor. [Cases: Pilots 7. C.J.S. Pilots of Vessels § 8.]

half-pilotage. Compensation equaling half the value of services that a pilot has offered to perform. • Shipowners can avoid compulsory pilotage in some jurisdictions by payment of half-pilotage. [Cases: Pilots 11. C.J.S. Pilots of Vessels § 14.]

PIMP

pimp, n. A person who solicits customers for a prostitute, usu. in return for a share of the prostitute's earnings. See PANDERING(1). Cf. BAWD. [Cases: Prostitution 1. C.J.S. Prostitution and Related Offenses §§ 2-4, 8-13, 17, 21-24.] — pimp, vb. — pimping, n.

PINCITE

pincite. See pinpoint citation under CITATION(3).

PINKERTON

pinkerton. Slang. A private detective or security guard, usu. one who is armed. • The name comes from the Pinkerton Detective Agency, the first private detective agency in the United States, established in 1852.

PINKERTON<TT> RULE

Pinkerton rule. Criminal law. The doctrine imposing liability on a conspirator for all offenses committed in furtherance of the conspiracy, even if those offenses are actually performed by coconspirators. *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180 (1946). [Cases: Conspiracy 41. C.J.S. Conspiracy §§ 134-137; RICO (Racketeer Influenced and Corrupt

Organizations)§ 12.]

PINK SHEET

pink sheet. A daily publication listing over-the-counter stocks, their market-makers, and their prices. • Printed on pink paper, pink sheets are published by the National Quotation Bureau, a private company. — Also termed National Daily Quotation Service.

PINK SLIP

pink slip. Slang. A notice of employment termination given to an employee by an employer.

PINPOINT CITATION

pinpoint citation. See CITATION(3).

PINS

PINS. abbr. PERSON IN NEED OF SUPERVISION.

PIONEER DRUG

pioneer drug. See DRUG.

PIONEER PATENT

pioneer patent. See PATENT(3).

PIOUS GIFT

pious gift. See charitable gift under GIFT.

PIOUS USE

pious use. See USE(1).

PIPE ROLLS

Pipe Rolls. Hist. The Exchequer's records of royal revenue, including revenue from feudal holdings, judicial fees, and tax revenue collected by the sheriffs. • The Pipe Rolls comprise 676 rolls, covering the years 1131 and 1156 to 1833 (except for gaps in 1216 and 1403). — Also termed Great Rolls of the Exchequer.

“The Pipe rolls (so called possibly because of their pipe-like appearance when rolled up and stacked) were the rolls of the Exchequer and consist of parchment skins sewn together. Roger of Salisbury, Henry I's Treasurer, had established a rudimentary national financial system and the Pipe roll recording financial details at the end of Henry's reign is in existence The rolls contain much information concerning royal debtors, administration, and personnel of the King's government.” L.B. Curzon, *English Legal History* 64–65 (2d ed. 1979).

PIR

PIR. abbr. PRESENTENCE-INVESTIGATION REPORT.

PIRACY

piracy,n.1. Robbery, kidnapping, or other criminal violence committed at sea. [Cases: Criminal Law 45.50.] 2. A similar crime committed aboard a plane or other vehicle; hijacking. [Cases: Aviation 16. C.J.S. Aeronautics and Aerospace §§ 284–285, 287.]

air piracy.The crime of using force or threat to seize control of an aircraft; the hijacking of an aircraft, esp. one in flight. — Also termed aircraft piracy. [Cases: Aviation 16. C.J.S. Aeronautics and Aerospace §§ 284–285, 287.]

3. The unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law. See INFRINGEMENT. [Cases: Copyrights and Intellectual Property 53; Patents 226; Trade Regulation 332. C.J.S. Copyrights and Intellectual Property §§ 10, 41, 61, 73; Patents §§ 400, 404, 406–407; Trade-Marks, Trade-Names, and Unfair Competition § 72.] — pirate,vb. — piratical (pI-rat-<<schwa>>-k<< schwa>>l), adj. — pirate,n.“[T]he test of piracy [is] not whether the identical language, the same words, are used, but whether the substance of the production is unlawfully appropriated.” Eaton S. Drone, *A Treatise on the Law of Property in Intellectual Productions* 97 (1879).

“[I]n some countries the problem is what might be called the ‘cycle of piracy’ — legitimate copyright owners refuse to sell in the country because of the piracy problem, which means that the only way the public can obtain the goods it wants is to turn to piracy. This in turn only strengthens the resolve of copyright owners not to do business in the country.” *Intellectual Property in the New Technological Age* 514 (Robert P. Merges et al. eds., 1997).

video piracy.The illegal copying and sale or rental of copyrighted motion pictures.

PIRATE RECORDING

pirate recording.Copyright. An unauthorized copy of the sounds on a copyright-protected recording, including digital duplication made available over the Internet. — Sometimes also termed bootleg recording. [Cases: Copyrights and Intellectual Property 67.2. C.J.S. Copyrights and Intellectual Property § 58.]

PISCARY

piscary. 1.FISHERY. 2. See common of piscary under COMMON(1).

PIT AND GALLOWS

pit and gallows.Hist. Scots law. An ancient form of capital punishment for theft by which a condemned woman was drowned in a pit and a condemned man was hanged on a gallows.

PITI

PITI.abbr.Principal, interest, taxes, and insurance — the components of a monthly mortgage payment.

P.J

P.J. See presiding judge under JUDGE.

PKPA

PKPA.abbr.PARENTAL KIDNAPPING PREVENTION ACT.

PL

pl.abbr.PLACITUM(7).

P.L.

P.L.abbr.PUBLIC LAW.

PLACARD

placard (plak-ahrd or plak-<<schwa>>rd).1.Hist. An official document, such as a license or permit. 2. An advertisement posted in a public place.

PLACE LAND

place land.See INDEMNITY LAND.

PLACEMENT

placement. 1. The act of selling a new issue of securities or arranging a loan or mortgage. 2. The act of finding employment for a person, esp. as done by an employment agency.

PLACE OF ABODE

place of abode.A person's residence or domicile. See ABODE; RESIDENCE; DOMICILE. [Cases: Domicile 1–5. C.J.S. Domicile §§ 2–9, 11–40.]

PLACE OF BUSINESS

place of business.A location at which one carries on a business. Cf. DOMICILE (2). [Cases: Corporations 52. C.J.S. Corporations §§ 107–109, 886.]

principal place of business.The place of a corporation's chief executive offices, which is typically viewed as the “nerve center.” [Cases: Corporations 52, 503(1). C.J.S. Corporations §§ 107–109, 717, 886.]

PLACE OF CONTRACTING

place of contracting.The country or state in which a contract is entered into. [Cases: Contracts 145. C.J.S. Contracts § 372.]

PLACE OF DELIVERY

place of delivery.The place where goods sold are to be sent by the seller. • If no place is specified in the contract, the seller's place of business is usu. the place of delivery. UCC § 2-308. [Cases: Sales 79. C.J.S. Sales § 168.]

PLACE OF EMPLOYMENT

place of employment. The location at which work done in connection with a business is carried out; the place where some process or operation related to the business is conducted.

PLACE OF PERFORMANCE

place of performance. The place where a promise is to be performed, either by specific provision or by interpretation of the language of the promise.

PLACE OF WRONG

place of wrong. The place, esp. the state, where the last event necessary to make an actor liable for an alleged tort takes place.

PLACE-OF-WRONG LAW

place-of-wrong law. See LEX LOCI DELICTI.

PLACE-OF-WRONG RULE

place-of-wrong rule. See LEX LOCI DELICTI.

PLACER CLAIM

placer claim. See MINING CLAIM.

PLACITA

placita (plas-<<schwa>>-t<<schwa>>), n. [Latin] pl. PLACITUM.

PLACITABILE

placitabile (plas-<<schwa>>-tay-b<<schwa>>-lee), adj. [Law Latin] That may be pleaded; pleadable.

PLACITA COMMUNIA

placita communia (plas-<<schwa>>-t<<schwa>> k<<schwa>>-myoo-nee-<<schwa>>). [Latin] Common pleas; civil actions between subject and subject.

PLACITA CORONAE

placita coronae (plas-<<schwa>>-t<<schwa>> k<<schwa>>-roh-nee). [Latin] Pleas of the Crown; criminal actions.

PLACITA JURIS

placita juris (plas-<<schwa>>-t<<schwa>> joor-is). [Law Latin "pleas of law"] Hist. Positive statements or guiding principles of the law, in contrast to legal conclusions or maxims.

PLACITARE

placitare (plas-<<schwa>>-tair-ee), vb. [Law Latin] To plead; to bring an action in a court of law.

PLACITORY

placitory (plas-⟨schwa⟩-tor-ee), adj.[Law Latin] Of or relating to pleas or pleading.

PLACITUM

placitum (plas-⟨schwa⟩-t⟨schwa⟩m), n.[Latin] Hist. 1.Roman law. An imperial constitution. 2. A judicial decision. 3. A court; a judicial tribunal. 4. A judicial proceeding; a trial. 5. A fine, mulct, or pecuniary punishment. 6. A pleading or plea. 7. A paragraph or section of a title or page where the point decided in a case is set forth separately. — Abbr. (in sense 7) pl. Pl. placita.

PLACITUM ET CONVENTIO

placitum et conventio. See consensus ad idem under CONSENSUS.

PLACITUM FRACTUM

placitum fractum (plas-⟨schwa⟩-t⟨schwa⟩m frak-t⟨schwa⟩m). [Law Latin] Hist. A day past or lost to the defendant.

PLACITUM NOMINATUM

placitum nominatum (plas-⟨schwa⟩-t⟨schwa⟩m nom-⟨schwa⟩-nay-t⟨schwa⟩m). [Law Latin] Hist. The day appointed for a defendant to appear and plead.

PLACUIT REGI ET CONCILIO SUO

placuit regi et concilio suo (plak-yoo-it ree-jI et k⟨schwa⟩n-sil-ee-oh s[y]oo oo-oh). [Law Latin] Hist. It has pleased the king and his council.

PLAGIARISM

plagiarism. The deliberate and knowing presentation of another person's original ideas or creative expressions as one's own. • Generally, plagiarism is immoral but not illegal. If the expression's creator gives unrestricted permission for its use and the user claims the expression as original, the user commits plagiarism but does not violate copyright laws. If the original expression is copied without permission, the plagiarist may violate copyright laws, even if credit goes to the creator. And if the plagiarism results in material gain, it may be deemed a passing-off activity that violates the Lanham Act. Cf. INFRINGEMENT. [Cases: Copyrights and Intellectual Property 53(1).] — plagiarize (play-j⟨schwa⟩-rIz), vb. — plagiarist (play-j⟨schwa⟩-rist), n.

“Plagiarism, which many people commonly think has to do with copyright, is not in fact a legal doctrine. True plagiarism is an ethical, not a legal, offense and is enforceable by academic authorities, not courts. Plagiarism occurs when someone — a hurried student, a neglectful professor, an unscrupulous writer — falsely claims someone else's words, whether copyrighted or not, as his own. Of course, if the plagiarized work is protected by copyright, the unauthorized reproduction is also a copyright infringement.” Paul Goldstein, *Copyright's Highway* 12 (1994).

“That the supporting evidence for the accusation of plagiarism may on occasion be elusive, insufficient, or uncertain, is not the same as thinking that the definition of plagiarism is uncertain. The gray areas may remain resistant to adjudication without being resistant to definition. It may be perfectly clear what constitutes plagiarism (‘using the work of another with an intent to deceive’) without its being clear that what faces us is truly a case of this.” Christopher Ricks, “Plagiarism,” in 97 Proceedings of the British Academy 149, 151 (1998).

PLAGIARIUS

plagiarius (play-jee-air-ee-<<schwa>>s), n.[Latin] Roman law. A kidnapper.

PLAGIUM

plagium (play-jee-<<schwa>>m), n.[Latin] Roman law. The act of kidnapping, esp. a slave or child, which included harboring another's slave. — Also termed *crimen plagii*.

PLAIDEUR

plaideur (play- or ple-d<<schwa>>r), n.[Law French “pleader”] Archaic. An attorney at law; an advocate.

PLAIDOYER

plaidoyer (ple-dwah-yay), n.[French] Hist. An advocate's plea.

PLAIN BOND

plain bond. See DEBENTURE(3).

PLAIN ERROR

plain error. See ERROR(2).

PLAIN-FEEL DOCTRINE

plain-feel doctrine. Criminal procedure. The principle that a police officer, while conducting a legal pat-down search, may seize any contraband that the officer can immediately and clearly identify, by touch but not by manipulation, as being illegal or incriminating. — Also termed plain-touch doctrine. [Cases: Searches and Seizures 47.1. C.J.S. Searches and Seizures §§ 66–67, 71–72.]

PLAIN-LANGUAGE LAW

plain-language law. Legislation requiring nontechnical, readily comprehensible language in consumer contracts such as residential leases or insurance policies. • Many of these laws have genuinely simplified the needlessly obscure language in which consumer contracts have traditionally been couched. [Cases: Consumer Protection 6; Insurance 1773. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 29–31, 33–39, 60–65; Insurance § 300.]

PLAIN-LANGUAGE MOVEMENT

plain-language movement. 1. The loosely organized campaign to encourage legal writers and

business writers to write clearly and concisely — without legalese — while preserving accuracy and precision. 2. The body of persons involved in this campaign.

PLAIN MEANING

plain meaning. See MEANING.

PLAIN-MEANING RULE

plain-meaning rule. 1. The rule that if a writing, or a provision in a writing, appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence. • Though often applied, this rule is often condemned as simplistic because the meaning of words varies with the verbal context and the surrounding circumstances, not to mention the linguistic ability of the users and readers (including judges). See PAROL EVIDENCE RULE. Cf. GOLDEN RULE; MISCHIEF RULE; EQUITY-OF-THE STATUTE RULE E. [Cases: Contracts 143, 152; Statutes 188.C.J.S. Contracts §§ 302, 307, 318–322, 327, 331; Statutes §§ 321, 324–326, 330, 334.]

“On its positive side, the plain meaning rule states a tautology: Words should be read as saying what they say. The rule tells us to respect meaning but it does so without disclosing what the specific meaning is. At best, it reaffirms the preeminence of the statute over materials extrinsic to it. In its negative aspect, on the other hand, the rule has sometimes been used to read ineptly expressed language out of its proper context, in violation of established principles of meaning and communication. To this extent it is an impediment to interpretation.” Reed Dickerson, *The Interpretation and Application of Statutes* 229 (1975).

2. ORDINARY-MEANING RULE.

PLAIN-SIGHT RULE

plain-sight rule. See PLAIN-VIEW DOCTRINE.

PLAINT

plaint. 1. Archaic. A complaint, esp. one filed in a replevin action. See COMPLAINT(1). 2. Civil law. A complaint or petition, esp. one intended to set aside an allegedly invalid testament.

PLAINTIFF

plaintiff. The party who brings a civil suit in a court of law. — Abbr. pltf. Cf. DEFENDANT.

use plaintiff. See USE PLAINTIFF.

PLAINTIFF IN ERROR

plaintiff in error. Archaic. 1. APPELLANT. 2. PETITIONER.

PLAINTIFF'S-VIEWPOINT RULE

plaintiff's-viewpoint rule. The principle that courts should measure the amount in controversy

in a case by analyzing only the amount of damages claimed by the plaintiff. [Cases: Courts 167; Federal Courts 339.]

PLAIN-TOUCH DOCTRINE

plain-touch doctrine. See PLAIN-FEEL DOCTRINE.

PLAIN-VANILLA SWAP

plain-vanilla swap. See INTEREST-RATE SWAP.

PLAIN-VIEW DOCTRINE

plain-view doctrine. Criminal procedure. The rule permitting a police officer's warrantless seizure and use as evidence of an item seen in plain view from a lawful position or during a legal search when the officer has probable cause to believe that the item is evidence of a crime. — Also termed clear-view doctrine; plain-sight rule. Cf. OPEN-FIELDS DOCTRINE. [Cases: Controlled Substances 106, 115, 131; Searches and Seizures 47. C.J.S. Searches and Seizures §§ 66–67, 71–72.]

PLAM

PLAM. See price-level-adjusted mortgage under MORTGAGE.

PLAN

plan, n. 1. BANKRUPTCY PLAN. 2. EMPLOYEE BENEFIT PLAN.

PLANNED OBSOLESCENCE

planned obsolescence. See OBSOLESCENCE.

PLANNED-UNIT DEVELOPMENT

planned-unit development. A land area zoned for a single-community subdivision with flexible restrictions on residential, commercial, and public uses. — Abbr. PUD. Cf. RESIDENTIAL CLUSTER. [Cases: Zoning and Planning 245. C.J.S. Zoning and Land Planning § 101.]

“A PUD is primarily an alternative to traditional zoning since it provides a mixing of uses. The location and identification of the permitted uses are provided on the PUD map or plat, which closely resembles a subdivision plat. Development approval is generally granted for the PUD at one time rather than on a lot by lot basis and in that way closely tracks the subdivision approval process.” Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Development Regulation Law* § 7.15, at 288 (2003).

PLANNING BOARD

planning board. A local government body responsible for approving or rejecting proposed building projects. • In most jurisdictions, the planning board's decisions are subject to the review of the city council. — Also termed planning commission. [Cases: Zoning and Planning 351.]

C.J.S. Zoning and Land Planning §§ 97, 177, 181–183, 185.]

PLAN OF REHABILITATION

plan of rehabilitation. See BANKRUPTCY PLAN.

PLAN OF REORGANIZATION

plan of reorganization. See BANKRUPTCY PLAN.

PLAN-OF-THE-CONVENTION DOCTRINE

plan-of-the-convention doctrine. The principle that each U.S. state, by ratifying the U.S. Constitution, has consented to the possibility of being sued by each of the other states, and has no immunity from such a suit under the 11th Amendment. [Cases: Federal Courts 273.]

PLANT PATENT

plant patent. See PATENT(3).

PLANT PATENT ACT

Plant Patent Act. Patents. The 1930 federal law that extended patent protection for developing “any distinct and new” varieties of asexually reproducing plants. • Before passage of the Act, plant patents were rejected because the subject matter was considered naturally occurring and therefore unpatentable. 35 USCA §§ 161–164. — Abbr. PPA.

PLANT-PATENT CLAIM

plant-patent claim. See PATENT CLAIM.

PLANT VARIETY PROTECTION ACT

Plant Variety Protection Act. Patents. The 1970 federal law that extended patent-like protection for developing new and distinct varieties of seed-producing plants. • A Certificate of Plant Variety Protection gives the holder exclusive rights to sell, reproduce, and develop further hybrids from a plant. 7 USCA §§ 2321–2582. — Abbr. PVPA. [Cases: Patents 14. C.J.S. Patents § 22.]

PLAT

plat. 1. A small piece of land; PLOT(1). 2. A map describing a piece of land and its features, such as boundaries, lots, roads, and easements. [Cases: Zoning and Planning 245. C.J.S. Zoning and Land Planning § 101.]

PLATFORM

platform. A statement of principles and policies adopted by a political party as the basis of the party's appeal for public support. [Cases: Elections 121(1). C.J.S. Elections §§ 84–85, 87–88.]

PLATFORM COMMITTEE

platform committee. See COMMITTEE.

PLAT MAP

plat map. A document that gives the legal descriptions of pieces of real property by lot, street, and block number. • A plat map is usu. drawn after the property has been described by some other means, such as a government survey. Once a plat map is prepared, property descriptions are defined by referring to the appropriate map.

PLEA

plea, n. 1. An accused person's formal response of "guilty," "not guilty," or "no contest" to a criminal charge. — Also termed criminal plea. [Cases: Criminal Law 267–275. C.J.S. Criminal Law §§ 365–378, 384–408, 410–418.]

Alford plea. See ALFORD PLEA.

blind plea. A guilty plea made without the promise of a concession from either the judge or the prosecutor. Cf. negotiated plea.

conditional plea. A plea of guilty or nolo contendere entered with the court's approval and the government's consent, the defendant reserving the right to appeal any adverse determinations on one or more pretrial motions. • If an appeal is successful, the plea is withdrawn and a new one entered. Fed. R. Crim. P. 11(a)(2).

guilty plea. An accused person's formal admission in court of having committed the charged offense. • A guilty plea is usu. part of a plea bargain. It must be made voluntarily, and only after the accused has been informed of and understands his or her rights. A guilty plea ordinarily has the same effect as a guilty verdict and conviction after a trial on the merits. [Cases: Criminal Law 272–274. C.J.S. Criminal Law §§ 365–374, 384–397, 400–407, 410.]

insanity plea. See INSANITY DEFENSE.

negotiated plea. The plea agreed to by a criminal defendant and the prosecutor in a plea bargain. See PLEA BARGAIN. Cf. blind plea. [Cases: Criminal Law 273.1(2). C.J.S. Criminal Law §§ 365–374.]

no-contest plea. See NO CONTEST.

nolo plea. A plea by which the defendant does not contest or admit guilt. See Fed. R. Crim. P. 11(b); NOLO CONTENDERE.

not-guilty plea. An accused person's formal denial in court of having committed the charged offense. • The prosecution must then prove all elements of the charged offense beyond a reasonable doubt if the defendant is to be convicted. [Cases: Criminal Law 299. C.J.S. Criminal Law § 378.]

provident plea. Military law. A plea that is entered knowingly, intelligently, and consciously, and is legally and factually consistent and accurate.

2. At common law, the defendant's responsive pleading in a civil action. Cf. DECLARATION(7). [Cases: Pleading 76–100, 101–111. C.J.S. Abatement and Revival §§ 2–3,

5, 9, 11–12, 16; Pleading §§ 159–162, 164, 166, 168–182, 202, 764, 769.] 3. A factual allegation offered in a case; a pleading. See DEMURRER.

affirmative plea. See pure plea.

anomalous plea. An equitable plea consisting in both affirmative and negative matter. • That is, it is partly confession and avoidance and partly traverse. The plea is appropriate when the plaintiff, in the bill, has anticipated the plea, and the defendant then traverses the anticipatory matters. — Also termed plea not pure. Cf. pure plea.

common plea. 1. A common-law plea in a civil action as opposed to a criminal prosecution. — Also termed common cause; common suit. 2. Hist. A plea made by a commoner.

“By ‘common pleas’ Magna Carta meant no more than ordinary pleas between commoners.” Alan Harding, *A Social History of English Law* 51 (1966).

dilatory plea (dil-*<<schwa>>*-tor-ee). A plea that does not challenge the merits of a case but that seeks to delay or defeat the action on procedural grounds. [Cases: Pleading 101–111.49. C.J.S. Abatement and Revival §§ 2–3, 5, 9, 11–12, 16; Pleading §§ 179–182.]

“Dilatory pleas are those which do not answer the general right of the plaintiff, either by denial or in confession and avoidance, but assert matter tending to defeat the particular action by resisting the plaintiff’s present right of recovery. They may be divided into two main classes: (1) Pleas to the jurisdiction and venue. (2) Pleas in abatement. A minor class, sometimes recognized, is pleas in suspension of the action.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 220, at 382 (Henry Winthrop Ballantine ed., 3d ed. 1923).

double plea. A plea consisting in two or more distinct grounds of complaint or defense for the same issue. Cf. alternative pleading under PLEADING(2); DUPLICITY(2).

general plea. See general denial under DENIAL.

issuable plea. A plea on the merits presenting a complaint to the court. Cf. issuable defense under DEFENSE(1).

jurisdictional plea. A plea asserting that the court lacks jurisdiction either over the defendant or over the subject matter of the case. — Also termed plea to the jurisdiction. [Cases: Pleading 104. C.J.S. Pleading § 179.]

negative plea. A plea that traverses some material fact or facts stated in the bill. — Also termed plea to the action.

nonissuable plea. A plea on which a court ruling will not decide the case on the merits, such as a plea in abatement.

peremptory plea. A plea that responds to the merits of the plaintiff’s claim.

plea in abatement. A plea that objects to the place, time, or method of asserting the plaintiff’s claim but does not dispute the claim’s merits. • A defendant who successfully asserts a plea in abatement leaves the claim open for continuation in the current action or reassertion in a later

action if the defect is cured. — Also termed abater. [Cases: Federal Civil Procedure 740; Pleading 106. C.J.S. Pleading § 180.]

plea in bar. See PLEA IN BAR.

plea in confession and avoidance. See CONFESSION AND AVOIDANCE.

plea in discharge. A plea alleging that the defendant has previously satisfied and discharged the plaintiff's claim.

plea in equity. A special defense relying on one or more reasons why the suit should be dismissed, delayed, or barred. • The various kinds are (1) pleas to the jurisdiction, (2) pleas to the person, (3) pleas to the form of the bill, and (4) pleas in bar of the bill. Pleas in equity generally fall into two classes: pure pleas and anomalous pleas.

plea in estoppel. Common-law pleading. A plea that neither confesses nor avoids but rather pleads a previous inconsistent act, allegation, or denial on the part of the adverse party to preclude that party from maintaining an action or defense.

plea in reconvention. Civil law. A plea that sets up a new matter, not as a defense, but as a cross-complaint, setoff, or counterclaim. [Cases: Pleading 143. C.J.S. Pleading § 200.]

plea in suspension. A plea that shows some ground for not proceeding in the suit at the present time and prays that the proceedings be stayed until that ground is removed, such as a party's being a minor or the plaintiff's being an alien enemy. [Cases: Pleading 105.]

plea not pure. See anomalous plea.

plea of confession and avoidance. See CONFESSION AND AVOIDANCE.

plea of privilege. A plea that raises an objection to the venue of an action. See CHANGE OF VENUE. [Cases: Venue 58. C.J.S. Venue §§ 224, 227, 231.]

plea of release. A plea that admits the claim but sets forth a written discharge executed by a party authorized to release the claim. See RELEASE(2).

plea puis darrein continuance (pwis dar-ayn k<<schwa>>n-tin-yoo-<<schwa>>nts). [Law French “plea since the last continuance”] A plea that alleges new defensive matter that has arisen during a continuance of the case and that did not exist at the time of the defendant's last pleading. [Cases: Pleading 272.]

plea to further maintenance to the action. Hist. A defensive plea asserting that events occurring after the commencement of the action necessitate its dismissal. • The plea is obsolete because of the pleading requirements in federal and state rules of civil procedure.

plea to the action. See negative plea.

plea to the declaration. A plea in abatement that objects to the declaration and applies immediately to it. — Also termed plea to the count.

plea to the jurisdiction. See jurisdictional plea.

plea to the person of the defendant. A plea in abatement alleging that the defendant has a legal disability to be sued.

plea to the person of the plaintiff. A plea in abatement alleging that the plaintiff has a legal disability to sue.

plea to the writ. A plea in abatement that objects to the writ (summons) and applies (1) to the form of the writ for a matter either apparent on the writ's face or outside the writ, or (2) to the way in which the writ was executed or acted on.

pure plea. An equitable plea that affirmatively alleges new matters that are outside the bill. • If proved, the effect is to end the controversy by dismissing, delaying, or barring the suit. A pure plea must track the allegations of the bill, not evade it or mistake its purpose. Originally, this was the only plea known in equity. — Also termed affirmative plea. Cf. anomalous plea.

rolled-up plea. Defamation. A defendant's plea claiming that the statements complained of are factual and that, to the extent that they consist of comment, they are fair comment on a matter of public interest. See FAIR COMMENT. [Cases: Libel and Slander 48(1), 93, 94. C.J.S. Libel and Slander; Injurious Falsehood §§ 91–92, 96, 98, 102–104, 150–151.]

special plea. A plea alleging one or more new facts rather than merely disputing the legal grounds of the action or charge. • All pleas other than general issues are special pleas. See general issue under ISSUE(1).

PLEA BARGAIN

plea bargain, n. A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usu. a more lenient sentence or a dismissal of the other charges. — Also termed plea agreement; negotiated plea; sentence bargain. [Cases: Criminal Law 273.1(2). C.J.S. Criminal Law §§ 365–374.] — plea-bargain, vb. — plea-bargaining, n.

charge bargain. A plea bargain in which a prosecutor agrees to drop some of the counts or reduce the charge to a less serious offense in exchange for a plea of either guilty or no contest from the defendant.

sentence bargain. A plea bargain in which a prosecutor agrees to recommend a lighter sentence in exchange for a plea of either guilty or no contest from the defendant.

PLEAD

plead, vb. 1. To make a specific plea, esp. in response to a criminal charge < he pleaded not guilty>. [Cases: Criminal Law 267. C.J.S. Criminal Law § 375.] 2. To assert or allege in a pleading <fraud claims must be pleaded with particularity>. [Cases: Federal Civil Procedure 621; Pleading 1. C.J.S. Pleading §§ 2–3, 6–7, 593.] 3. To file or deliver a pleading <the plaintiff hasn't pleaded yet>.

PLEADER

pleader. 1. A party who asserts a particular pleading. 2. A person who pleads in court on behalf of another. 3.Hist. At common law, a person who (though not an attorney) specialized in preparing pleadings for others. — Also termed special pleader. 4.Hist. NARRATOR.

PLEADING

pleading.n.1. A formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses. • In federal civil procedure, the main pleadings are the plaintiff's complaint and the defendant's answer. [Cases: Federal Civil Procedure 621; Pleading 1. C.J.S. Pleading §§ 2–3, 6–7, 593.]

accusatory pleading.An indictment, information, or complaint by which the government begins a criminal prosecution.

amended pleading.A pleading that replaces an earlier pleading and that contains matters omitted from or not known at the time of the earlier pleading. Cf. supplemental pleading. [Cases: Federal Civil Procedure 821–852.1; Pleading 229–271. C.J.S. Architects § 42; Pleading §§ 323–455.]

“An amendment is the correction of an error or the supplying of an omission in the process or pleadings. An amended pleading differs from a supplemental pleading in that the true function of the latter is to spread upon the record matter material to the issue which has arisen subsequent to the filing of a pleading, while matter of amendment purely is matter that might well have been pleaded at the time the pleading sought to be amended was filed, but which through error or inadvertence was omitted or misstated. It has been declared that the allowance of amendments is incidental to the exercise of all judicial power and is indispensable to the ends of justice.” Eugene A. Jones, *Manual of Equity Pleading and Practice* 68 (1916).

anomalous pleading.A pleading that is partly affirmative and partly negative in its allegations.

argumentative pleading.A pleading that states allegations rather than facts, and thus forces the court to infer or hunt for supporting facts. • Conclusory statements in court papers are a form of argumentative pleading. — Also termed inferential pleading.

articulated pleading.A pleading that states each allegation in a separately numbered paragraph. [Cases: Pleading 52. C.J.S. Pleading §§ 148–151.]

defective pleading.A pleading that fails to meet minimum standards of sufficiency or accuracy in form or substance.

hypothetical pleading.A pleading asserting that if a certain fact is true, then a certain result must follow. • Hypothetical pleadings are generally improper.

inferential pleading.See argumentative pleading.

pleading to the merits.A responsive pleading that addresses the plaintiff's cause of action, in whole or in part.

responsive pleading.A pleading that replies to an opponent's earlier pleading. See ANSWER. [Cases: Pleading 76. C.J.S. Pleading § 159.]

sham pleading.An obviously frivolous or absurd pleading that is made only for purposes of vexation or delay. — Also termed sham plea; false plea; (archaically) deceitful plea. [Cases: Federal Civil Procedure 1139; Pleading 359, 362(3). C.J.S. Pleading §§ 652–655, 680.]

shotgun pleading.A pleading that encompasses a wide range of contentions, usu. supported by vague factual allegations.

supplemental pleading.A pleading that either corrects a defect in an earlier pleading or addresses facts arising since the earlier pleading was filed. • Unlike an amended pleading, a supplemental pleading merely adds to the earlier pleading and does not replace it. Cf. amended pleading. [Cases: Federal Civil Procedure 861–871; Pleading 273. C.J.S. Pleading §§ 456–460.]

2. A system of defining and narrowing the issues in a lawsuit whereby the parties file formal documents alleging their respective positions.

alternative pleading.A form of pleading whereby the pleader alleges two or more independent claims or defenses that are not necessarily consistent with each other, such as alleging both intentional infliction of emotional distress and negligent infliction of emotional distress based on the same conduct. Fed. R. Civ. P. 8(e)(2). — Also termed pleading in the alternative. Cf. DUPLICITY(2); double plea under PLEA(3). [Cases: Federal Civil Procedure 675; Pleading 50, 52. C.J.S. Pleading §§ 147–151.]

artful pleading.A plaintiff's disguised phrasing of a federal claim as solely a state-law claim in order to prevent a defendant from removing the case from state court to federal court. [Cases: Removal of Cases 25(1). C.J.S. Removal of Causes §§ 30, 34–37, 44, 65.]

code pleading.A procedural system requiring that the pleader allege merely the facts of the case giving rise to the claim, not the legal conclusions necessary to sustain the claim. — Also termed fact pleading. Cf. issue pleading. [Cases: Pleading 8, 48. C.J.S. Pleading §§ 16, 116–124, 132–133.]

common-law pleading.The system of pleading historically used in the three common-law courts of England (the King's Bench, the Common Pleas, and the Exchequer) up to 1873.

equity pleading.The system of pleading used in courts of equity. • In most jurisdictions, rules unique to equity practice have been largely supplanted by rules of court, esp. where law courts and equity courts have merged. [Cases: Equity 128–335.]

fact pleading.See code pleading.

issue pleading.The common-law method of pleading, the main purpose of which was to frame an issue. Cf. code pleading. [Cases: Pleading 1, 16, 48. C.J.S. Pleading §§ 2–3, 6–7, 9, 116–124, 132–133, 162, 164, 593.]

notice pleading.A procedural system requiring that the pleader give only a short and plain

statement of the claim showing that the pleader is entitled to relief, and not a complete detailing of all the facts. Fed. R. Civ. P. 8(a). [Cases: Federal Civil Procedure 673; Pleading 16, 48. C.J.S. Pleading §§ 9, 116–124, 132–133, 162, 164.]

pleading in the alternative. See alternative pleading.

special pleading. See SPECIAL PLEADING.

3. The legal rules regulating the statement of the plaintiff's claims and the defendant's defenses <today, pleading is a much simpler subject than it was in former years>.

PLEADING THE BABY ACT

pleading the baby act. See BABY ACT, PLEADING THE.

PLEAD (ONE'S) BELLY

plead (one's) belly. Hist. Slang. (Of a female defendant) to claim pregnancy as a defense, usu. to postpone or avoid a court's sentence of capital punishment or transportation. • A female defendant who pleaded that she was pregnant was treated with suspicion. The judge would appoint a jury of matrons (often consisting of 12 married mothers) to examine the claimant (under the writ de ventre inspiciendo). If the woman was declared to be “quick with child” (in an advanced state of pregnancy rather than “barely with child” or only newly or just possibly pregnant), she enjoyed a reprieve from execution or transportation until after the child's birth (or miscarriage). Because juries of matrons often declared barren defendants to be pregnant, a court would keep track of a reprieved woman to see if the delay was justified or if she should be made to suffer the sentence (“called down”) at the next session. Although the plea and the special jury are no longer in use, the prohibition against executing a pregnant woman persists in modern law. 18 USCA § 3596(b).

PLEAD OVER

plead over, vb. 1. To fail to notice a defective allegation in an opponent's pleading. [Cases: Pleading 406(3), 409(3). C.J.S. Pleading §§ 829–831.] 2. Hist. To plead the general issue after a defendant has had a dilatory plea overruled. See AIDER BY PLEADING OVER.

PLEAD THE FIFTH

plead the Fifth. See TAKE THE FIFTH.

PLEA IN AVOIDANCE

plea in avoidance. See affirmative defense under DEFENSE(1).

PLEA IN BAR

plea in bar. A plea that seeks to defeat the plaintiff's or prosecutor's action completely and permanently.

general plea in bar. A criminal defendant's plea of not guilty by which the defendant denies every fact and circumstance necessary to be convicted of the crime charged. [Cases: Criminal Law 299. C.J.S. Criminal Law § 378.]

special plea in bar. A plea that, rather than addressing the merits and denying the facts alleged, sets up some extrinsic fact showing why a criminal defendant cannot be tried for the offense charged. • Examples include the plea of autrefois acquit and the plea of pardon. [Cases: Criminal Law 286. C.J.S. Criminal Law §§ 380, 453.]

PLEA IN CONFESSION AND AVOIDANCE

PLEA IN DISCHARGE

plea in discharge. See PLEA(3).

PLEA IN EQUITY

plea in equity. See PLEA(3).

PLEA IN ESTOPPEL

plea in estoppel. See PLEA(3).

PLEA IN JUSTIFICATION

plea in justification. See affirmative defense under DEFENSE(1).

PLEA IN RECONVENTION

plea in reconvention. See PLEA(3).

PLEA IN SUSPENSION

plea in suspension. See PLEA(3).

PLEA NOT PURE

plea not pure. See anomalous plea under PLEA(3).

PLEA OF CONFESSION AND AVOIDANCE

PLEA OF PREGNANCY

plea of pregnancy. Hist. A plea of a woman convicted of a capital crime to stay her execution until she gives birth. See PLEAD (ONE'S) BELLY.

PLEA OF PRIVILEGE

plea of privilege. See PLEA(3).

PLEA OF RELEASE

plea of release. See PLEA(3).

PLEA OF SANCTUARY

plea of sanctuary. See DECLINATORY PLEA.

PLEA OF TENDER

plea of tender. At common law, a pleading asserting that the defendant has consistently been willing to pay the debt demanded, has offered it to the plaintiff, and has brought the money into court ready to pay the plaintiff. See TENDER.

PLEA PUIS DARREIN CONTINUANCE

plea puis darrein continuance. See PLEA(3).

PLEASURE APPOINTMENT

pleasure appointment. The assignment of someone to employment that can be taken away at any time, with no requirement for notice or a hearing. [Cases: Officers and Public Employees 60. C.J.S. Officers and Public Employees §§ 119, 130, 134.]

PLEA TO FURTHER MAINTENANCE TO THE ACTION

plea to further maintenance to the action. See PLEA(3).

PLEA TO THE ACTION

plea to the action. See negative plea under PLEA(3).

PLEA TO THE COUNT

plea to the count. See plea to the declaration under PLEA(3).

PLEA TO THE DECLARATION

plea to the declaration. See PLEA(3).

PLEA TO THE JURISDICTION

plea to the jurisdiction. See jurisdictional plea under PLEA(3).

PLEA TO THE PERSON OF THE DEFENDANT

plea to the person of the defendant. See PLEA(3).

PLEA TO THE PERSON OF THE PLAINTIFF

plea to the person of the plaintiff. See PLEA(3).

PLEA TO THE WRIT

plea to the writ. See PLEA(3).

PLEBEIAN

plebeian (pli-bee-*<<schwa>>n*), n. Roman law. A member of the Roman plebs; an ordinary citizen, not a member of the upper class (patricians).

PLEBISCITE

plebiscite (pleb-*<<schwa>>-s*It or pleb-*<<schwa>>-sit*), n.1. A binding or nonbinding referendum on a proposed law, constitutional amendment, or significant public issue. 2. Int'l law. A

direct vote of a country's electorate to decide a question of public importance, such as union with another country or a proposed change to the constitution. — plebiscitary (pl<<schwa>>-bi-s<<schwa>>-ter-ee), adj.

PLEBISCITUM

plebiscitum (pleb-<<schwa>>-sI-t<<schwa>>m), n.[Latin] Roman law. An enactment passed at the request of a tribune by the assembly of the common people (the concilium plebis). Pl. plebiscita. See CONCILIUM PLEBIS.

PLEBS

plebs (plebz), n.[Latin] Roman law. The common people in ancient Rome; the general body of citizens, excluding the patricians. Pl. plebes (plee-beez).

PLEDGE

pledge, n. 1. A formal promise or undertaking. 2. The act of providing something as security for a debt or obligation. [Cases: Pledges 1.C.J.S. Pledges §§ 2–4, 6–10.] 3. A bailment or other deposit of personal property to a creditor as security for a debt or obligation; PAWN (2). See contract to pledge under CONTRACT. Cf. LIEN(1); PIGNUS(1). 4. The item of personal property so deposited; PAWN(1). 5. The thing so provided. — Formerly also termed safe-pledge. 6. A security interest in personal property represented by an indispensable instrument, the interest being created by a bailment or other deposit of personal property for the purpose of securing the payment of a debt or the performance of some other duty. 7. Hist. A person who acts as a surety for the prosecution of a lawsuit. • In early practice, pledges were listed at the end of the declaration. Over time the listing of pledges became a formality, and fictitious names (such as “John Doe” or “Richard Roe”) were allowed. — pledge, vb. — pledgeable, adj.

“A pledge is something more than a mere lien and something less than a mortgage.” Leonard A. Jones, *A Treatise on the Law of Collateral Securities and Pledges* § 2, at 4 (Edward M. White rev., 3d ed. 1912).

“A pledge is a bailment of personal property to secure an obligation of the bailor. If the purpose of the transaction is to transfer property for security only, then the courts will hold the transaction a pledge, even though in form it may be a sale or other out-and-out transfer.” Ray Andrews Brown, *The Law of Personal Property* § 128, at 622 (2d ed. 1936).

“The pledge is as old as recorded history and is still in use, as the presence of pawnbrokers attests. In this transaction the debtor borrows money by physically transferring to a secured party the possession of the property to be used as security, and the property will be returned if the debt is repaid. Since the debtor does not retain the use of pledged goods, this security device has obvious disadvantages from the debtor's point of view.” Ray D. Henson, *Secured Transactions* § 3-1, at 17 (3d ed. 1983).

PLEDGED ACCOUNT

pledged account. See ACCOUNT.

PLEDGEE

pledgee. One with whom a pledge is deposited. [Cases: Pledges 8.C.J.S. Pledges § 6.]

PLEDGERY

pledgery. Archaic. See SURETYSHIP(1).

PLEDGOR

pledgor. One who gives a pledge to another. — Also spelled pledger. [Cases: Pledges 8.C.J.S. Pledges § 6.]

PLEGIIS ACQUIETANDIS

plegiis acquietandis. See DE PLEGIIS ACQUIETANDIS.

PLENA AETAS

plena aetas (plee-n<<schwa>> ee-tas). [Latin] Full age. See AGE OF MAJORITY.

PLENA FORISFACTURA

plena forisfactura (plee-n<<schwa>> for-is-fak-ch<<schwa>>r-<<schwa>>). [Latin “complete forfeiture”] A forfeiture of all that one possesses. [Cases: Forfeitures 1.]

PLENA PROBATIO

plena probatio. See probatio plena under PROBATIO.

PLENARTY

plenarty (plee-n<<schwa>>r-tee or plen-<<schwa>>r-tee), n. Hist. The condition of being full or occupied; esp., the state of a benefice that is lawfully occupied by an incumbent.

PLENARY

plenary (plee-n<<schwa>>-ree or plen-<<schwa>>-ree), adj. 1. Full; complete; entire <plenary authority>. 2. (Of an assembly) intended to have the attendance of all members or participants <plenary session>.

PLENARY ACTION

plenary action. See ACTION(4).

PLENARY CONFESSION

plenary confession. See CONFESSION.

PLENARY GUARDIANSHIP

plenary guardianship. See GUARDIANSHIP.

PLENARY JURISDICTION

plenary jurisdiction. See JURISDICTION.

PLENARY POWER

plenary power. See POWER(3).

PLENARY REVIEW

plenary review. See JUDICIAL REVIEW.

PLENARY SESSION

plenary session. See SESSION(1).

PLENARY SUIT

plenary suit. See SUIT.

PLENE

plene (plee-nee), adv. [Latin] Fully; completely; sufficiently.

PLENE ADMINISTRAVIT

plene administravit (plee-nee ad-min-<<schwa>>-stray-vit). [Law Latin “he has fully administered”] Hist. A defensive plea in which an executor or administrator asserts that no assets remain in the estate to satisfy the plaintiff's demand.

PLENE ADMINISTRAVIT PRAETER

plene administravit praeter (plee-nee ad-min-<<schwa>>-stray-vit pree-t<< schwa>>r). [Law Latin “he has fully administered, except”] Hist. A defensive plea in which an executor or administrator asserts that no assets remain in the estate, except a stated few that are insufficient to satisfy the plaintiff's demand.

PLENE COMPUTAVIT

plene computavit (plee-nee kom-pyoo-tay-vit). [Law Latin “he has fully accounted”] Hist. A plea in an action of account render, alleging that the defendant has fully accounted. See ACCOUNTING(3).

PLENIPOTENTIARY

plenipotentiary (plen-<<schwa>>-p<<schwa>>-ten-shee-er-ee). A person who has full power to do a thing; a person fully commissioned to act for another. See minister plenipotentiary under MINISTER.

PLENO JURE

pleno jure (plee-noh joor-ee). [Latin] Hist. With full right. • The phrase usu. referred to a conveyance of the full rights to property.

PLENUM DOMINIUM

plenum dominium. See dominium plenum under DOMINIUM.

PLEVIN

plevin (plev-in), n. Archaic. An assurance or warrant; a pledge.

PLIMSOLL MARKS

Plimsoll marks. See LOAD LINE(2).

PLOT

plot, n. 1. A measured piece of land; LOT(1). 2. A plan forming the basis of a conspiracy. [Cases: Conspiracy 1.1, 24(1). C.J.S. Conspiracy §§ 2-3, 8, 14-17, 113-116.]

PLOT PLAN

plot plan. A plan that shows a proposed or present use of a plot of land, esp. of a residential area. [Cases: Zoning and Planning 245. C.J.S. Zoning and Land Planning § 101.]

PLOTTAGE

plottage. The increase in value achieved by combining small, undeveloped tracts of land into larger tracts of land.

PLOW BACK

plow back, vb. To reinvest earnings and profits into a business instead of paying them out as dividends or withdrawals. [Cases: Corporations 151. C.J.S. Corporations § 293.]

PLOWBOTE

plowbote. See BOTE(1).

PLOWLAND

plowland. See CARUCATE.

PLOWMAN'S FEE

plowman's fee. See FEE(2).

PLR

PLR. abbr. PUBLIC-LENDING RIGHT.

PLTF

pltf. abbr. PLAINTIFF.

PLUNDER

plunder. See PILLAGE.

PLUNDERAGE

plunderage. Maritime law. The embezzling of goods on a ship.

PLURALITY

plurality. The greatest number (esp. of votes), regardless of whether it is a simple or an absolute majority <a four-member plurality of the Supreme Court agreed with this view, which received more votes than any other>. — Also termed plural majority. Cf. MAJORITY(2).

PLURALITY OPINION

plurality opinion. See OPINION(1).

PLURALITY VOTE

plurality vote. See PLURALITY.

PLURALITY VOTING

plurality voting. 1. PLURALITY. 2. VOTING.

PLURAL MAJORITY

plural majority. See PLURALITY.

PLURAL MARRIAGE

plural marriage. 1. MARRIAGE(1). 2. POLYGAMY.

PLURAL WIFE

plural wife. See WIFE.

PLURIES

pluries (pluur-ee-eez), n. [Latin “many times”] A third or subsequent writ issued when the previous writs have been ineffective; a writ issued after an alias writ. — Also termed pluries writ. [Cases: Process 45. C.J.S. Process §§ 24, 49.]

PLURINATIONAL ADMINISTRATIVE INSTITUTION

plurinational administrative institution. Int'l law. An entity designed to perform transnational administrative activities when politically oriented international organizations and traditional international agreements are unsuitable. • These institutions usu. arise in fields where transnational arrangements are necessary (such as natural-resource management, transportation, or utilities), and they are often organized as international corporations, national agencies, or private corporations.

PLURIS PETITIO

pluris petitio. See PLUS PETITIO.

PLURIUM DEFENSE

plurium defense. See multiple access under ACCESS.

PLUS FACTOR

plus factor. A fact that supports finding that a specified legal test has been satisfied.

PLUS PETERE TEMPORE

plus petere tempore (pl<<schwa>>s p<<schwa>>-tair-ay tem-p<<schwa>>-ree). [Latin “to overclaim in point of time”] Roman law. To claim before payment was due.

PLUS PETITIO

plus petitio (pl<<schwa>>s p<<schwa>>-tish-ee-oh). [Latin “overclaim” or “claiming too much”] Roman law. A claim for more than is due; esp., the mistake of claiming more in one's pleadings than is due. • This was fatal to the action under classical law. Under cognitio extraordinaria, however, a claimant could continue the action, but could be liable for treble damages to any person injured by the overstated claim. — Also spelled (erroneously) pluspetitio. — Also termed pluris petitio.

“A plaintiff may overclaim ... in substance (re) when he claims a bigger amount than is due to him; in time (tempore) when he claims before the payment is due; in place (loco), when he claims at a place (in a city) other than that where the payment had to be performed ... or in cause (causa) when he claims a certain thing although the debtor had the right to choose between two or more things.... After the abolition of the formula-regime the pluspetitio lost its actuality. Imperial legislation modified the severe provisions against overclaims.... In Justinian's law the plaintiff lost the case only if he maliciously persisted during the whole trial in his overclaim.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 633 (1953).

PLUS QUAM TOLERABILE

plus quam tolerabile (pl<<schwa>>s kwam tol-<<schwa>>-rab-<<schwa>>-lee). [Latin] Hist. More than can be endured. • The phrase appeared in reference to damage to crops from unavoidable causes (vis major).

P.M.

p.m.abbr.POST MERIDIEM.

PM

PM.abbr.1.POSTMASTER. 2.PRIME MINISTER. 3.BUREAU OF POLITICAL–MILITARY AFFAIRS .

PMI

PMI.abbr.Private mortgage insurance. See mortgage insurance under INSURANCE.

PMM

PMM. See purchase-money mortgage under MORTGAGE.

PMRT

PMRT. See purchase-money resulting trust under TRUST.

PMSI

PMSI. See purchase-money security interest under SECURITY INTEREST.

PNEUMOCONIOSIS

pneumoconiosis. Chronic lung disease and related conditions characterized by respiratory and pulmonary impairments and caused or aggravated by coal-dust exposure during coal-mine employment. • The disease is usu. latent and often does not manifest until after coal-dust exposure has ended. 20 CFR § 718.201. — Also termed black-lung disease.

clinical pneumoconiosis. Any medically recognized condition caused by coal-dust exposure while working in a coal mine and characterized by large, permanent deposits of particulate matter in the lungs, coupled with the lung tissue's fibrotic reaction. • Some examples of clinical pneumoconioses are silicosis or silicotuberculosis, massive pulmonary fibrosis, and anthrosilicosis. Cf. legal pneumoconiosis.

legal pneumoconiosis. Any chronic restrictive or obstructive pulmonary disease or impairment and related conditions arising out of coal-mine employment. Cf. clinical pneumoconiosis.

P.O.

P.O.abbr.Post office.

POACHING

poaching,n. The illegal taking or killing of fish or game on another's land. [Cases: Fish 13(1); Game 7.] — poach,vb.

POCKET IMMUNITY

pocket immunity. See IMMUNITY(3).

POCKET JUDGMENT

pocket judgment. Hist. See STATUTE MERCHANT(1).

POCKET MONEY

pocket money. See HAT MONEY.

POCKET PART

pocket part. A supplemental pamphlet inserted usu. into the back inside cover of a lawbook, esp. a treatise or code, to update the material in the main text until the publisher issues a new edition of the entire work. • Legal publishers frequently leave a little extra room inside their hardcover books so that pocket parts may later be added. — Also termed cumulative supplement.

POCKET VETO

pocket veto. See VETO.

P.O.D.

P.O.D. abbr. Pay on delivery.

POD ACCOUNT

POD account. See pay-on-death account under ACCOUNT.

POENA

poena (pee-n<<schwa>>). [Latin] Punishment; penalty.

POENA ARBITRARIA

poena arbitraria (pee-n<<schwa>> ahr-bi-trair-ee-<<schwa>>). [Law Latin] Hist. Arbitrary punishment; punishment left to a judge's discretion.

POENA CORPORALIS

poena corporalis (pee-n<<schwa>> kor-p<<schwa>>-ray-lis). [Latin] Hist. Corporal punishment.

POENA ORDINARIA

poena ordinaria (pee-n<<schwa>> or-di-nair-ee-<<schwa>>). [Law Latin] Hist. Ordinary punishment; punishment fixed by law.

POENA PECUNIARY

poena pecuniary. A fine.

POENAE SECUNDARUM NUPTIARUM

poenae secundarum nuptiarum (pee-nee sek-<<schwa>>n-dair-<<schwa>>m n<<schwa>>p-shee-air-<<schwa>>m). [Latin “penalties of second marriages”] Roman law. Disabilities that, for the protection of children of a first marriage, are imposed on a parent who remarries.

“If either parent re-married, the interests of the children of the first marriage were protected (in the later Roman Empire) by a number of legal rules the effect of which was to confer certain benefits on the children and to impose certain disabilities — the so-called poenae secundarum nuptiarum — on the parens binubus. The most important of these rules was that which declared that all the property which the parens binubus had acquired gratuitously from his or her deceased spouse, whether by way of gift, dos, donatio propter nuptias, or testamentary disposition — the so-called lucra nuptialia — should become ipso jure the property of the children of the first marriage at the moment of the conclusion of the second marriage, and that only a usufruct should be reserved for the parens binubus.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 477 (James Crawford Ledlie trans., 3d ed. 1907).

POENALIS

poenalis (pi-nay-lis), adj.[Latin] Roman law. Imposing a penalty; penal.

POENA PILLORALIS

poena pilloralis (pee-n<<schwa>> pil-<<schwa>>-ray-lis). [Latin] Hist. Punishment of the pillory.

POENITENTIA

poenitentia (pee-n<<schwa>>-ten-shee-<<schwa>> or pen-<<schwa>>-), n. [Latin “repentance”] Roman law. Reconsideration; changing one's mind.

POINDING

poinding (pin-ding), n. Scots law. A judgment creditor's seizing of a debtor's corporeal movable property to satisfy the debt. — poind,vb.

POINT

point,n.1. A pertinent and distinct legal proposition, issue, or argument < point of error>.2.Parliamentary law. Any of several kinds of requests made in a deliberative body. See REQUEST.

point of clarification.A question about procedure or substance.

point of information.An inquiry asking a question about a motion's merits or effect. • A point of information can be made only to seek information, not to volunteer information. It may request an objective fact or an expert opinion, but may not request anyone — including the chair or the mover — to speculate about how he or she expects or intends that the present or future leadership will interpret or apply a motion. See INQUIRY(2). — Also termed question of information.

point of order.A request suggesting that the meeting or a member is not following the applicable rules and asking the chair to enforce the rules. • Some organizations use the term “point of order” as a generic term that also includes a parliamentary inquiry and a question of privilege. — Also termed question of order. See parliamentary inquiry under INQUIRY; question of privilege under QUESTION(3).

point of privilege.A motion that raises a question of privilege. See question of privilege under QUESTION(3); RAISE A QUESTION OF PRIVILEGE.

procedural point.A request that raises a personal privilege relating to a member's ability to participate effectively in the meeting, such as the member's ability to see or hear the proceedings. See personal privilege under PRIVILEGE(5).

3. One percent of the face value of a loan (esp. a mortgage loan), paid up front to the lender as a service charge or placement fee <the borrower hoped for only a two-point fee on the mortgage>. — Also termed mortgage point. See MORTGAGE DISCOUNT. 4. A unit used for quoting stock, bond, or commodity prices <the stock closed up a few points today>.

POINT-AND-CLICK AGREEMENT

point-and-click agreement. An electronic version of a shrink-wrap license in which a computer user agrees to the terms of an electronically displayed agreement by pointing the cursor to a particular location on the screen and then clicking. • Point-and-click agreements usu. require express acceptance only once but may include a clause providing for a user's ongoing acceptance of any changes to the agreement's terms, whether or not the user is notified of the changes. — Also termed e-contract; click-wrap license; click-wrap agreement; user agreement; website-user agreement; web-wrap agreement. See E-CONTRACT T; shrink-wrap license under LICENSE. [Cases: Copyrights and Intellectual Property 107.]

POINT OF ATTACHMENT

point of attachment. Copyright. A connection with a copyright-convention member nation sufficient to make a work eligible for protection under that convention. • For example, a work is eligible for Berne Convention protection if the author is a citizen of a Berne member nation or if the work originated in a Berne member nation. — Also termed connecting factor.

POINT OF ERROR

point of error. An alleged mistake by a lower court asserted as a ground for appeal. See ERROR(2); WRIT OF ERROR. [Cases: Appeal and Error 758.3; Criminal Law 1130(5).]

POINT OF FACT

point of fact. A discrete factual proposition at issue in a case.

POINT OF LAW

point of law. A discrete legal proposition at issue in a case.

reserved point of law. An important or difficult point of law that arises during trial but that the judge sets aside for future argument or decision so that testimony can continue. — Also termed point reserved.

POINT RESERVED

point reserved. See reserved point of law under POINT OF LAW.

POINT SOURCE

point source. Environmental law. The discernible and identifiable source from which pollutants are discharged.

POINT SYSTEM

point system. Criminal law. A system that assigns incremental units to traffic violations, the accumulation of a certain number within a year resulting in the automatic suspension of a person's driving privileges. [Cases: Automobiles 144.1(3). C.J.S. Motor Vehicles § 315.]

POISONOUS-TREE DOCTRINE

poisonous-tree doctrine. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

POISON PILL

poison pill.A corporation's defense against an unwanted takeover bid whereby shareholders are granted the right to acquire equity or debt securities at a favorable price to increase the bidder's acquisition costs. — Often shortened to pill. See TAKEOVER DEFENSE. Cf. PORCUPINE PROVISION. [Cases: Corporations 310(1). C.J.S. Corporations §§ 475, 477–484, 487–489.]

“Another recent tactic is the ‘poison pill’ which is a conditional stock right that is triggered by a hostile takeover and makes the takeover prohibitively expensive. The poison pill is a variation of the scorched earth defense” Thomas Lee Hazen, *The Law of Securities Regulation* § 11.20, at 575 (2d ed. 1990).

POLAROID<TT> TEST

Polaroid test.Trademarks. A judicial test for trademark infringement, analyzing eight factors: (1) strength of the mark, (2) similarity between the marks, (3) proximity of the products' markets, (4) effects on market expansion (ability to “bridge the gap”), (5) actual confusion, (6) the defendant's good or bad faith, (7) quality of the products, and (8) sophistication of the buyer. *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492, 495 (2d Cir. 1961). [Cases: Trade Regulation 334.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 87–89.]

POLICE

police,n.1. The governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime. [Cases: Municipal Corporations 180. C.J.S. Municipal Corporations §§ 450–451, 453, 473–476, 497, 502, 505, 508, 534.] 2. The officers or members of this department. [Cases: Municipal Corporations 184. C.J.S. Municipal Corporations §§ 478–484.] — police,vb.

POLICE ACTION

police action.See ARMED CONFLICT.

POLICE-ASSISTED SUICIDE

police-assisted suicide.See suicide-by-cop under SUICIDE.

POLICE BLOTTER

police blotter.See ARREST RECORD.

POLICE CHIEF

police chief.The head of a police department.

POLICE COURT

police court.See magistrate's court (1) under COURT.

POLICE JURY

police jury.Civil law. The governing body of a parish. [Cases: Counties 38. C.J.S. Counties

§ 63.]

POLICE JUSTICE

police justice. See police magistrate under MAGISTRATE.

POLICE MAGISTRATE

police magistrate. See MAGISTRATE.

POLICE OFFICER

police officer. A peace officer responsible for preserving public order, promoting public safety, and preventing and detecting crime. Cf. PEACE OFFICER . [Cases: Municipal Corporations 179. C.J.S. Municipal Corporations §§ 450–453, 474–476, 505, 508.]

POLICE POWER

police power. 1. The inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice. • It is a fundamental power essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government. [Cases: Constitutional Law 81. C.J.S. Constitutional Law §§ 61, 432–443, 451–452; Insurance § 51.]

“[I]t is possible to evolve at least two main attributes or characteristics which differentiate the police power: it aims directly to secure and promote the public welfare, and it does so by restraint or compulsion.” Ernst Freund, *The Police Power* § 3, at 3 (1904).

2. A state's Tenth Amendment right, subject to due-process and other limitations, to establish and enforce laws protecting the public's health, safety, and general welfare, or to delegate this right to local governments. [Cases: States 18.13. C.J.S. States § 23.] 3. Loosely, the power of the government to intervene in the use of privately owned property, as by subjecting it to eminent domain. See EMINENT DOMAIN. [Cases: Eminent Domain 1–5. C.J.S. Eminent Domain §§ 2–21, 23, 82–83, 87–88, 90–97, 104, 106–108, 115; Zoning and Land Planning §§ 24, 47.]

POLICE SCIENCE

police science. See CRIMINAL JUSTICE(2).

POLICE STATE

police state. See STATE.

POLICY

policy. 1. The general principles by which a government is guided in its management of public affairs. See PUBLIC POLICY. 2. A document containing a contract of insurance; INSURANCE POLICY. [Cases: Insurance 1712–1713. C.J.S. Insurance §§ 253, 255, 261, 272, 282–283, 285.] 3. A type of lottery in which bettors select numbers to bet on and place the bet with a “policy writer.” [Cases: Lotteries 3. C.J.S. Lotteries §§ 2–7, 11.]

POLICYHOLDER

policyholder. One who owns an insurance policy, regardless of whether that person is the insured party. — Also termed policyowner. [Cases: Insurance 1717.]

POLICY LIMITS

policy limits. See LIABILITY LIMIT.

POLICY LOAN

policy loan. See LOAN.

POLICY OF INSURANCE

policy of insurance. See INSURANCE POLICY.

POLICY OF THE LAW

policy of the law. See PUBLIC POLICY.

POLICYOWNER

policyowner. See POLICYHOLDER.

POLICY PROOF OF INTEREST

policy proof of interest. Insurance. Evidence — shown by possession of a policy — that a person making a claim has an insurable interest in the loss. — Abbr. PPI. [Cases: Insurance 1779–1795. C.J.S. Insurance §§ 218–231, 233–252.]

POLICY RESERVE

policy reserve. See RESERVE.

POLICY STACKING

policy stacking. See STACKING.

POLICY VALUE

policy value. Insurance. The amount of cash available to a policyholder on the surrender or cancellation of the insurance policy. [Cases: Insurance 2037. C.J.S. Insurance §§ 518–519, 742–745, 749–754.]

POLICY YEAR

policy year. Insurance. The year beginning on the date that a policy becomes effective. Cf. ANNIVERSARY DATE.

POLITICAL

political, adj. Pertaining to politics; of or relating to the conduct of government.

POLITICAL-ACTION COMMITTEE

political-action committee. An organization formed by a special-interest group to raise money and contribute it to the campaigns of political candidates who the group believes will promote its interests. — Abbr. PAC. [Cases: Elections 317.1. C.J.S. Elections § 329.]

POLITICAL ASSESSMENT

political assessment. See ASSESSMENT.

POLITICAL ASYLUM

political asylum. See ASYLUM(2).

POLITICAL CORPORATION

political corporation. See public corporation (2) under CORPORATION.

POLITICAL CORRECTNESS

political correctness, n. 1. The inclination to avoid language and practices that might offend anyone's political sensibilities, esp. in racial or sexual matters. 2. An instance in which a person conforms to this doctrine. — Abbr. P.C. — politically correct, adj.

POLITICAL CORRUPTION

political corruption. See official misconduct under MISCONDUCT.

POLITICAL CRIME

political crime. See POLITICAL OFFENSE.

POLITICAL ECONOMY

political economy. See ECONOMY.

POLITICAL EQUALITY

political equality. See EQUALITY.

POLITICAL GERRYMANDERING

political gerrymandering. See GERRYMANDERING(1).

POLITICAL LAW

political law. See POLITICAL SCIENCE.

POLITICAL LIBERTY

political liberty. 1. LIBERTY. 2. See political right under RIGHT.

POLITICAL–MILITARY AFFAIRS BUREAU

Political–Military Affairs Bureau. See BUREAU OF POLITICAL–MILITARY AFFAIRS.

POLITICAL OFFENSE

political offense.A crime directed against the security or government of a nation, such as treason, sedition, or espionage. • Under principles of international law, the perpetrator of a political offense cannot be extradited. — Also termed political crime. [Cases: Extradition and Detainers 5.]

POLITICAL PARTY

political party.An organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office. • The United States has traditionally maintained a two-party system, which today comprises the Democratic and Republican parties. — Often shortened to party.

POLITICAL PATRONAGE

political patronage.See PATRONAGE(3).

POLITICAL POWER

political power.The power vested in a person or body of persons exercising any function of the state; the capacity to influence the activities of the body politic. — Also termed civil power.

sovereign political power.Power that is absolute and uncontrolled within its own sphere. • Within its designated limits, its exercise and effective operation do not depend on, and are not subject to, the power of any other person and cannot be prevented or annulled by any other power recognized within the constitutional system. — Often shortened to sovereign power. — Also termed supreme power. [Cases: States 1. C.J.S. States §§ 2, 16.]

subordinate political power.Power that, within its own sphere of operation, is subject in some degree to external control because there exists some superior constitutional power that can prevent, restrict, direct, or annul its operation. — Often shortened to subordinate power.

POLITICAL QUESTION

political question.A question that a court will not consider because it involves the exercise of discretionary power by the executive or legislative branch of government. — Also termed nonjusticiable question. Cf. JUDICIAL QUESTION . [Cases: Constitutional Law 68. C.J.S. Constitutional Law § 176.]

POLITICAL-QUESTION DOCTRINE

political-question doctrine.The judicial principle that a court should refuse to decide an issue involving the exercise of discretionary power by the executive or legislative branch of government. [Cases: Constitutional Law 68. C.J.S. Constitutional Law § 176.]

POLITICAL RIGHT

political right.See RIGHT.

POLITICAL SCIENCE

political science.The branch of learning concerned with the study of the principles and

conduct of government. — Also termed political law.

POLITICAL SOCIETY

political society. See STATE(1).

POLITICAL SUBDIVISION

political subdivision. A division of a state that exists primarily to discharge some function of local government. [Cases: Municipal Corporations 54. C.J.S. Municipal Corporations §§ 5–6, 110, 155.]

POLITICAL TRIAL

political trial. See TRIAL.

POLITICAL-VOTE PRIVILEGE

political-vote privilege. See PRIVILEGE (3).

POLITICS

politics. 1. The science of the organization and administration of the state. 2. The activity or profession of engaging in political affairs.

POLITY

polity (pol-<<schwa>>-tee). 1. The total governmental organization as based on its goals and policies. 2. A politically organized body or community.

POLITY APPROACH

polity approach. A method of resolving church-property disputes by which a court examines the structure of the church to determine whether the church is independent or hierarchical, and then resolves the dispute in accordance with the decision of the proper church-governing body. [Cases: Religious Societies 11, 14. C.J.S. Religious Societies §§ 5, 38–42, 85–86, 88–92.]

POLL

poll, n. 1. A sampling of opinions on a given topic, conducted randomly or obtained from a specified group. 2. The act or process of voting at an election. 3. The result of the counting of votes. 4. (usu. pl.) The place where votes are cast.

poll, vb. 1. To ask how each member of (a group) individually voted <after the verdict was read, the judge polled the jury>. [Cases: Criminal Law 874; Trial 325. C.J.S. Criminal Law §§ 1399–1401; Trial §§ 839–845.] 2. To question (people) so as to elicit votes, opinions, or preferences <the committee polled 500 citizens about their views>. 3. To receive (a given number of votes) in an election <the third-party candidate polled only 250 votes in the county>.

POLLICITATION

pollicitation. Contracts. The offer of a promise.

“By a promise we mean an accepted offer as opposed to an offer of a promise, or, as Austin called it, a pollicitation.” William R. Anson, *Principles of the Law of Contract* 6 (Arthur L. Corbin ed., 3d Am. ed. 1919).

POLL TAX

poll tax. See TAX.

POLLUTE

pollute, vb. To corrupt or defile; esp., to contaminate the soil, air, or water with noxious substances. [Cases: Environmental Law 161–389.] — pollution, n. — polluter, n.

POLLUTION EXCLUSION

pollution exclusion. See EXCLUSION(3).

PO. LO. SUO

po. lo. suo. abbr. PONIT LOCO SUO.

POLYANDRY

polyandry (pol-ee-an-dree). The condition or practice of having more than one husband at the same time. Cf. POLYGYNRY. [Cases: Bigamy 1. C.J.S. Bigamy §§ 2–6, 8.]

POLYARCHY

polyarchy (pol-ee-ahr-kee). Government by many persons. — Also termed polygarchy (pol-<<schwa>>-gahr-kee). Cf. MONARCHY. — polyarchal, adj.

POLYGAMIST

polygamist (p<<schwa>>-lig-<<schwa>>-m<<schwa>>st). 1. A person who has several spouses simultaneously. 2. An advocate of polygamy.

POLYGAMY

polygamy (p<<schwa>>-lig-<<schwa>>-mee), n. 1. The state or practice of having more than one spouse simultaneously. — Also termed simultaneous polygamy; plural marriage. [Cases: Bigamy 1. C.J.S. Bigamy §§ 2–6, 8.] 2. Hist. The fact or practice of having more than one spouse during one's lifetime, though never simultaneously. • Until the third century, polygamy included remarriage after a spouse's death because a valid marriage bond was considered indissoluble. — Also termed successive polygamy; serial polygamy; sequential marriage. Cf. BIGAMY; MONOGAMY. — polygamous, adj. — polygamist, n.

“Polygamy (many marriages) is employed at times as a synonym of bigamy and at other times to indicate the simultaneous marriage of two or more spouses.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 458 (3d ed. 1982).

“[T]his one-marriage-at-a-time rule behind which the legal systems of the West have seemingly thrown so much weight is not what a sociologist would call a general prohibition of

polygamy. Polygamy can be simultaneous (if more than one spouse is simultaneously present) or successive (if spouses are married one after the other). Only simultaneous polygamy is prohibited by the laws with which we are here concerned. These statutes reserve the use of the word polygamy for that kind which is not very common among us. They do not affect the serial form, which is so very popular in the United States and Western Europe that ... the law is fast changing to adapt to it." Mary Ann Glendon, *The Transformation of Family Law* 52 (1989).

POLYGARCHY

polygarchy. See POLYARCHY.

POLYGRAPH

polygraph, n. A device used to evaluate truthfulness by measuring and recording involuntary physiological changes in the human body during interrogation. • Polygraph results are inadmissible as evidence in most states but are commonly used by the police as an investigative tool. — Also termed lie detector. [Cases: Criminal Law 388.5; Evidence 150. C.J.S. Criminal Law § 760; Evidence §§ 216–226.] — polygraphic, adj. — polygraphy, n.

POLYGYNY

polygyny (p<<schwa>>-lij-<<schwa>>-nee). The condition or practice of having more than one wife at the same time. Cf. POLYANDRY. [Cases: Bigamy 1.C.J.S. Bigamy §§ 2–6, 8.]

PONDERE, NUMERO, ET MENSURA

pondere, numero, et mensura (pon-d<<schwa>>r-ee, n[y]oo-m<<schwa>>r-oh, et men-s[y]uur-<<schwa>>). [Latin] Hist. By weight, number, and measure. • The phrase appeared in reference to methods for determining fungibles.

“Pondere, numero, et mensura.... These are the tests proposed by our law, by which to ascertain whether a certain subject falls within that class of subjects known as fungibles, which class includes all those things which perish in the using, and which can be estimated generally by weight, number and measure; such, for example, are corn, wine, money, &c.” John Trayner, *Trayner's Latin Maxims* 462 (4th ed. 1894).

PONE

pone (poh-nee). [Latin “put”] Hist. An original writ used to remove an action from an inferior court (such as a manorial court or county court) to a superior court. • The writ was so called from the initial words of its mandate, which required the recipient to “put” the matter before the court issuing the writ.

PONENDIS IN ASSISIS

ponendis in assisis (p<<schwa>>-nen-dis in <<schwa>>-sI-zis). [Latin “to be placed in assizes”] Hist. A writ directing the sheriff to empanel a jury for an assize or real action.

PONENDO SIGILLUM AD EXCEPTIONEM

ponendo sigillum ad exceptionem. See DE PONENDO SIGILLUM AD EXCEPTIONEM.

PONENDUM IN BALLIUM

ponendum in ballium (p<<schwa>>-nen-d<<schwa>>m in bal-ee-<<schwa>>m). [Latin “to be placed in bail”] Hist. A writ commanding that a prisoner be bailed in aailable matter.

PONE PER VADIUM

pone per vadium (poh-nee p<<schwa>>r vay-dee-<<schwa>>m). [Latin] Hist. A writ commanding the sheriff to summon a defendant who has failed to appear in response to an initial writ by attaching some of the defendant's property and requiring the defendant to find sureties. • It was so called from the words of the writ, pone per vadium et salvos plegios (“put by gage and safe pledges”).

PONIT LOCO SUO

ponit loco suo (poh-nit loh-ko s[y]oo-oh). [Latin] Puts in his place. • This phrase was formerly used in a power of attorney. — Abbr. po. lo. suo.

PONIT SE SUPER PATRIAM

ponit se super patriam (poh-nit see s[y]oo-p<<schwa>>r pay-tree-<<schwa>>m orpa-tree-<<schwa>>m). [Latin “he puts himself upon the country”] Hist. A defendant's plea of not guilty in a criminal action. — Abbr. po. se. See GOING TO THE COUNTRY; PATRIA(3).

PONTIFEX

pontifex (pon-ti-feks), n. Roman law. A member of the college of pontiffs, one of several groups of priests, who had control of religion in Rome. — Also termed pontiff. Pl. pontifices (pon-tif-i-seez).

PONTIFF

pontiff. 1. Roman law. A member of the council of priests in ancient Rome. — Also termed pontifex.

“The specialists who interpreted the Twelve Tables and the unwritten part of the law were called pontiffs. At first they dealt with both sacred law (how to appease the gods) and secular law (how to secure peace among men). Some of them later confined themselves to secular law. As an example of how they interpreted the law, the Twelve Tables said that if a father sells his son three times (into bondage, to pay off debts) the son is to be free from his father's power. The Twelve Tables said nothing about a daughter. The pontiffs held that if a father sold his daughter once, she was free.” Tony Honoré, *About Law* 13 (1995).

2. The leader of the Catholic Church; the Pope. See PONTIFEX.

PONY HOMESTEAD

pony homestead. See constitutional homestead under HOMESTEAD.

PONZI SCHEME

Ponzi scheme (pon-zee). A fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments. • Money from the new investors is used directly to repay or pay interest to earlier investors, usu. without any operation or revenue-producing activity other than the continual raising of new funds. This scheme takes its name from Charles Ponzi, who in the late 1920s was convicted for fraudulent schemes he conducted in Boston. See GIFTING CLUB. Cf. PYRAMID SCHEME. [Cases: Consumer Protection 12. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 56–58.]

POOL

pool,n.1. An association of individuals or entities who share resources and funds to promote their joint undertaking; esp., an association of persons engaged in buying or selling commodities. • If such an association is formed to eliminate competition throughout a single industry, it is a restraint of trade that violates federal antitrust laws. [Cases: Monopolies 12(1.16). C.J.S. Monopolies §§ 54–55, 73–74, 77, 143, 153.] 2. A gambling scheme in which numerous persons contribute stakes for betting on a particular event (such as a sporting event). [Cases: Gaming 73.]

POOLED TRUST

pooled trust.See TRUST.

POOLING

pooling,n. Oil & gas. The bringing together of small tracts of land or fractional mineral interests over a producing reservoir for the purpose of drilling an oil or gas well. • Pooling is usu. associated with collecting a large enough tract to meet well-spacing regulations. — Also termed communitization. Cf. UNITIZATION.

compulsory pooling.Pooling done by order of a regulatory agency. — Also termed forced pooling.

forced pooling.See compulsory pooling.

voluntary pooling.Pooling arranged by agreement of the owners of mineral interests.

POOLING AGREEMENT

pooling agreement.A contractual arrangement by which corporate shareholders agree that their shares will be voted as a unit. — Also termed voting agreement; shareholder voting agreement; shareholder-control agreement. [Cases: Corporations 198.1(1). C.J.S. Corporations § 380.]

POOLING CLAUSE

pooling clause.Oil & gas. A provision found in most oil-and-gas leases granting the lessee the right to combine part or all of the leased acreage with other properties for development or

operation.

POOLING OF INTERESTS

pooling of interests.A method of accounting used in mergers, whereby the acquired company's assets are recorded on the acquiring company's books at their cost when originally acquired. • No goodwill account is created under the pooling method.

POOR LAW

Poor Law.Hist. The British law that provided relief to paupers, originally on the parish level and supported by property taxes. • The Poor Law was supplanted in 1948 by the National Assistance Act.

POOR MAN'S COURT

poor man's court.See RUSTICUM FORUM.

POOR RELIEF

poor relief.See WELFARE(2).

POP

pop,n. Telecommunications. A calculation of the potential customer base for a mobile-phone-service provider, calculated by the number of people living in the area multiplied by the company's percentage ownership of the area's cellular service.

POPPEAN LAW

Poppean law.See LEX PAPIA POPPEA.

POPULAR ACTION

popular action.See QUI TAM ACTION.

POPULAR ELECTION

popular election.See ELECTION(3).

POPULARIS

popularis (pop-y<<schwa>>-lair-is), adj.[Latin] Roman law. (Of an action) available to any male member of the public. See actio popularis under ACTIO.

POPULAR JUSTICE

popular justice.See JUSTICE(1).

POPULAR SOVEREIGNTY

popular sovereignty.See SOVEREIGNTY(1).

POPULAR USE

popular use. See USE(1).

POPULUS

populus (pop-y<<schwa>>-l<<schwa>>s), n. & adj. [Latin] Roman law. The people; the whole body of Roman citizens, patricians, and plebeians.

PORCUPINE PROVISION

porcupine provision. A clause in a corporation's charter or bylaws designed to prevent a takeover without the consent of the board of directors. Cf. SHARK REPELLENT ; POISON PILL.

PORK-BARREL LEGISLATION

pork-barrel legislation. See LEGISLATION.

PORNOGRAPHY

pornography, n. Material (such as writings, photographs, or movies) depicting sexual activity or erotic behavior in a way that is designed to arouse sexual excitement. • Pornography is protected speech under the First Amendment unless it is determined to be legally obscene. See OBSCENITY. [Cases: Obscenity 5. C.J.S. Obscenity §§ 5–13.] — pornographic, adj.

child pornography. Material depicting a person under the age of 18 engaged in sexual activity. • Child pornography is not protected by the First Amendment — even if it falls short of the legal standard for obscenity — and those directly involved in its distribution can be criminally punished. [Cases: Infants 13; Obscenity 5. C.J.S. Infants §§ 5, 92–93, 95–98; Obscenity §§ 5–13.]

virtual child pornography. Material that includes a computer-generated image that appears to be a minor engaged in sexual activity but that in reality does not involve a person under the age of 18.

PORT

port. 1. A harbor where ships load and unload cargo. [Cases: Navigable Waters 14. C.J.S. Navigable Waters § 37.] 2. Any place where persons and cargo are allowed to enter a country and where customs officials are stationed. — Also termed (in sense 2) port of entry.

foreign port. 1. One exclusively within the jurisdiction of another country or state. 2. A port other than a home port.

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.

home port. The port that is either where a vessel is registered or where its owner resides.

port of call. A port at which a ship stops during a voyage.

port of delivery. The port that is the terminus of any particular voyage and where the ship

unloads its cargo.

port of departure. The port from which a vessel departs on the start of a voyage.

port of destination. The port at which a voyage is to end. • This term generally includes any stopping places at which the ship receives or unloads cargo.

port of discharge. The place where a substantial part of the cargo is discharged.

PORTABLE BUSINESS

portable business. A portfolio of legal business that an attorney can take from one firm or geographic location to another, with little loss in client relationships. — Also termed portable practice.

PORT AUTHORITY

port authority. A state or federal agency that regulates traffic through a port or that establishes and maintains airports, bridges, tollways, and public transportation. [Cases: Shipping 15. C.J.S. Shipping § 11.]

PORTFOLIO

portfolio. The various securities or other investments held by an investor at any given time. • An investor will often hold several different types of investments in a portfolio for the purpose of diversifying risk.

market portfolio. A value-weighted portfolio of every asset in a particular market.

PORTFOLIO INCOME

portfolio income. See INCOME.

PORTFOLIO-PUMPING

portfolio-pumping. Securities. The practice of purchasing additional shares of a stock near the end of a fiscal period in an attempt to improve an investment fund's apparent performance. — Also termed window-dressing.

PORTIO LEGITIMA

portio legitima (por-shee-oh l<<schwa>>-jit-i-m<<schwa>>). [Latin “lawful portion”] Roman & civil law. The portion of an estate required by law to be left to close relatives; specif., the portion of an inheritance that a given heir is entitled to, and of which the heir cannot be deprived by the testator without special cause. Pl. portiones legitimae. Cf. LEGITIME.

PORTION

portion. A share or allotted part (as of an estate).

PORTIONER

portioner (por-sh<<schwa>>-n<<schwa>>r), n.1. Scots law. One who owns a portion of a

decedent's estate.

heir portioner. 1. One of two or more female heirs who, in the absence of male heirs, inherit equal shares of an estate. 2. One of two or more usu. female heirs in the same degree who take equal shares per capita.

2. The proprietor of a small fee. 3.Hist. A minister who serves a benefice with others. • The person was called a portioner because he had only a portion of the tithes or allowance that a vicar commonly has out of a rectory or impropriation.

PORTIONIBUS HAEREDITARIIS

portionibus haereditariis (por-shee-oh-n<<schwa>>-b<<schwa>>s
h<<schwa>>-red-i-tair-ee-is). [Law Latin] Hist. In hereditary portions.

PORT OF CALL

port of call.See PORT.

PORT OF DELIVERY

port of delivery.See PORT.

PORT OF DEPARTURE

port of departure.See PORT.

PORT OF DESTINATION

port of destination.See PORT.

PORT OF DISCHARGE

port of discharge.See PORT.

PORT OF ENTRY

port of entry.See PORT(2).

PORTORIUM

portorium (por-tohr-ee-<<schwa>>m). [Law Latin] Hist. 1.A tax or toll levied at a port or at the gates of a city. 2. A toll for passing over a bridge.

PORT-RISK INSURANCE

port-risk insurance.See INSURANCE.

PORTSALE

portsale.Hist. A public sale of goods to the highest bidder; an auction.

PORT-STATE CONTROL

port-state control.Maritime law. The exercise of authority under international conventions for

a state to stop, board, inspect, and when necessary detain vessels sailing under foreign flags while they are navigating in the port state's territorial waters or are in one of its ports. • The purpose is to ensure the safety of the vessels as well as to enforce environmental regulations. Cf. COASTAL-STATE CONTROL; FLAG-STATE CONTROL.

PORT TOLL

port toll. A duty paid for bringing goods into a port.

PORTWARDEN

portwarden. An official responsible for the administration of a port.

PO. SE

po. se. abbr. PONIT SE SUPER PATRIAM.

POSIT

posit, vb. 1. To presume true or to offer as true. 2. To present as an explanation.

POSITION

position. The extent of a person's investment in a particular security or market.

POSITIONAL-RISK DOCTRINE

positional-risk doctrine. The principle by which the workers'-compensation requirement that the injury arise out of employment is satisfied if the injured worker's employment required the worker to be at the place where the injury occurred at the time it occurred. — Also termed positional risk analysis; positional risk test.

POSITION OF THE UNITED STATES

position of the United States. The legal position of the federal government in a lawsuit, esp. in a case involving the Equal Access to Justice Act. • Under the EAJA, the reasonableness of the position in light of precedent determines whether the government will be liable for the opposing party's attorney's fees. [Cases: United States 147(10).]

POSITIVE ACT

positive act. 1. OVERT ACT. 2. ACT(2).

POSITIVE CONDITION

positive condition. See CONDITION(2).

POSITIVE COVENANT

positive covenant. See COVENANT(1).

POSITIVE DUTY

positive duty. See DUTY(1).

POSITIVE EASEMENT

positive easement. See affirmative easement under EASEMENT.

POSITIVE EVIDENCE

positive evidence. See direct evidence (1) under EVIDENCE.

POSITIVE EXTERNALITY

positive externality. See EXTERNALITY.

POSITIVE FRAUD

positive fraud. See actual fraud under FRAUD.

POSITIVE JUSTICE

positive justice. See JUSTICE(1).

POSITIVE LAW

positive law. A system of law promulgated and implemented within a particular political community by political superiors, as distinct from moral law or law existing in an ideal community or in some nonpolitical community. • Positive law typically consists of enacted law — the codes, statutes, and regulations that are applied and enforced in the courts. The term derives from the medieval use of *positum* (Latin “established”), so that the phrase positive law literally means law established by human authority. — Also termed *jus positivum*; made law. Cf. NATURAL LAW.

“A judge is tethered to the positive law but should not be shackled to it.” Patrick Devlin, *The Enforcement of Morals* 94 (1968).

POSITIVE MISPRISION

positive misprision. See MISPRISION.

POSITIVE NOTICE

positive notice. See direct notice under NOTICE.

POSITIVE PRESCRIPTION

positive prescription. See PRESCRIPTION(5).

POSITIVE PROOF

positive proof. See PROOF.

POSITIVE REPRISAL

positive reprisal. See REPRISAL.

POSITIVE RIGHT

positive right. See RIGHT.

POSITIVE SERVITUDE

positive servitude. See SERVITUDE(2).

POSITIVE TESTIMONY

positive testimony. See affirmative testimony under TESTIMONY.

POSITIVE WRONG

positive wrong. See WRONG.

POSITIVI JURIS

positivi juris (poz-*<<schwa>>-tI-vIjoor-is*). [Law Latin] Of positive law. See POSITIVE LAW.

POSITIVISM

positivism. The doctrine that all true knowledge is derived from observable phenomena, rather than speculation or reasoning. See LEGAL POSITIVISM; LOGICAL POSITIVISM; positivist jurisprudence under JURISPRUDENCE.

POSITIVISTIC

positivistic, adj. Of or relating to legal positivism. See LEGAL POSITIVISM.

POSITIVISTIC JURISPRUDENCE

positivistic jurisprudence. See positivist jurisprudence under JURISPRUDENCE.

POSITIVIST JURISPRUDENCE

positivist jurisprudence. See JURISPRUDENCE.

POSSE

posse (pos-ee). [Latin] 1. A possibility. See IN POSSE. Cf. IN ESSE. 2. Power; ability. 3. POSSE COMITATUS.

POSSE COMITATUS

posse comitatus (pos-ee kom-*<<schwa>>-tay-t<<schwa>>s*), n. [Latin “power of the county”] A group of citizens who are called together to help the sheriff keep the peace or conduct rescue operations. — Often shortened to posse. [Cases: Armed Services 3; Sheriffs and Constables 27. C.J.S. Armed Services §§ 7–10, 31, 33, 41; Sheriffs and Constables § 49.]

POSSE COMITATUS ACT

Posse Comitatus Act. A federal law that, with a few exceptions, prohibits the Army or Air Force from directly participating in civilian law-enforcement operations, as by making arrests, conducting searches, or seizing evidence. • The Act was originally enacted in 1878. It does not usu.

apply to members of the Navy, the National Guard, or the Coast Guard. 18 USCA § 1385. — Abbr. PCA.

POSSESS

possess, vb. To have in one's actual control; to have possession of.

POSSESSIO

possessio (p<<schwa>>-zes[h]-ee-oh), n. [Latin] The de facto control of a thing that the holder intends to control.

pedis possessio (pee-dis orped-is p<<schwa>>-zes[h]-ee-oh). [Latin] A foothold; an actual possession of real property, implying either actual occupancy or enclosure or use. See PEDIS POSSESSIO DOCTRINE. — Also termed substantial possession; possessio pedis.

possessio bona fide (p<<schwa>>-zes[h]-ee-oh boh-n<<schwa>> fī-dee). [Latin] Possession in good faith. Cf. possessio mala fide.

possessio bonorum (p<<schwa>>-zes[h]-ee-oh b<<schwa>>-nor-<<schwa>>m). [Latin] Roman law. Possession of goods.

possessio civilis (p<<schwa>>-zes[h]-ee-oh s<<schwa>>-vī-lis). [Latin] Roman law. Legal possession; that is, possession accompanied by an intent to hold it as one's own. — Also termed possession in law. See possessory interdict under INTERDICT(1); USUCAPIO; possession in law under POSSESSION. Cf. possessio naturalis.

possessio corporis. See corporeal possession under POSSESSION.

possessio fictitia. See constructive possession under POSSESSION.

possessio fratris (p<<schwa>>-zes[h]-ee-oh fray-tris orfra-tris). [Latin] Hist. The possession or seisin of a brother; that is, a possession of an estate by a brother that would entitle his full sister to succeed him as heir, to the exclusion of a half-brother.

possessio juris. See incorporeal possession under POSSESSION.

possessio mala fide (p<<schwa>>-zes[h]-ee-oh mal-<<schwa>> fī-dee). [Latin] Possession in bad faith, as by a thief. Cf. possessio bona fide.

possessio naturalis (p<<schwa>>-zes[h]-ee-oh nach-<<schwa>>-ray-lis). [Latin “natural possession”] Roman law. The simple holding of a thing, often under a contract, with no intent of keeping it permanently. • This type of possession exists when the possessor's holding of the object is limited by a recognition of another person's outstanding right. The holder may be a usufructuary, a bailee, or a servant. — Also termed naturalis possessio; nuda detentio; detentio; possession in fact. See natural possession under POSSESSION. Cf. possessio civilis.

possessio pedis. See pedis possessio.

POSSESSION

possession. 1. The fact of having or holding property in one's power; the exercise of dominion over property. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.] 2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. 3. Civil law. The detention or use of a physical thing with the intent to hold it as one's own. La. Civ. Code art. 3421(1). 4. (usu. pl.) Something that a person owns or controls; PROPERTY(2). Cf. OWNERSHIP; TITLE(1). 5. A territorial dominion of a state or nation.

“[A]s the name of Possession is ... one of the most important in our books, so it is one of the most ambiguous. Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. In common speech a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others.... [A]ny of the usual outward marks of ownership may suffice, in the absence of manifest power in some one else, to denote as having possession the person to whom they attach. Law takes this popular conception as a provisional groundwork, and builds up on it the notion of possession in a technical sense, as a definite legal relation to something capable of having an owner, which relation is distinct and separable both from real and from apparent ownership, though often concurrent with one or both of them.” Frederick Pollock & Robert Samuel Wright, *An Essay on Possession in the Common Law* 1–2 (1888).

“In the whole range of legal theory there is no conception more difficult than that of possession. The Roman lawyers brought their usual acumen to the analysis of it, and since their day the problem has formed the subject of a voluminous literature, while it still continues to tax the ingenuity of jurists. Nor is the question one of mere curiosity or scientific interest, for its practical importance is not less than its difficulty. The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title.” John Salmond, *Jurisprudence* 285 (Glanville L. Williams ed., 10th ed. 1947).

actual possession. Physical occupancy or control over property. Cf. constructive possession. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

adverse possession. See ADVERSE POSSESSION.

bona fide possession. Possession of property by a person who in good faith does not know that the property's ownership is disputed. [Cases: Vendor and Purchaser 220. C.J.S. Vendor and Purchaser §§ 482–485, 517.]

civil possession. 1. Civil law. Possession existing by virtue of a person's intent to own property even though the person no longer occupies or has physical control of it. 2. Louisiana law. The continuation of possession through the possessor's presumed intent to continue holding the thing as his or her own, after the possessor ceases to possess the thing corporeally. La. Civ. Code arts. 3431–3432. • Civil possession may be evidenced by such things as paying taxes on the property and granting rights of interest in it. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

constructive possession. 1. Control or dominion over a property without actual possession or custody of it. — Also termed effective possession. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.] 2. Civil law. Possession by operation of law of an entirety by virtue of corporeal possession of a part. • When a possessor holds title to a property and physically possesses part of it, the law will deem the possessor to hold constructive possession of the rest of the property described in the title. La. Civ. Code art. 3426. — Also termed *possessio fictitia*. Cf. actual possession.

corporeal possession. Possession of a material object, such as a farm or a coin. — Also termed natural possession; *possessio corporis*; (Ger.) *Sachenbesitz*. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

criminal possession. The unlawful possession of certain prohibited articles, such as illegal drugs or drug paraphernalia, firearms, or stolen property.

derivative possession. Lawful possession by one (such as a tenant) who does not hold title.

direct possession. See immediate possession.

double possession. The doctrine that, in a bailment, both the bailor and the bailee have possession of the item that has been bailed. • This doctrine does not apply in most Anglo-American jurisdictions.

“It has been suggested that the essence of bailment is that the bailee secures possession and therefore that the bailor loses possession. This elementary proposition is sometimes obscured by the fact that some dicta treat the possession of the bailee as the possession of the bailor. The theoretical justification for this is the doctrine of ‘double possession’ — a principal may have possession through the possession of an agent. This view is in accord with some foreign systems, but it does not suit the basic principles of English law which treats possession as exclusive.” G.W. Paton, *Bailment in the Common Law* 6 (1952).

effective possession. See constructive possession.

exclusive possession. The exercise of exclusive dominion over property, including the use and benefit of the property.

hostile possession. Possession asserted against the claims of all others, esp. the record owner. See ADVERSE POSSESSION. [Cases: Adverse Possession 58–85. C.J.S. Adverse Possession §§ 59–143, 145–148, 206–209, 263–264, 266–267, 269–274, 276–280, 282–288, 290, 292–293, 295–296, 298, 329–330, 333–338.]

immediate possession. Possession that is acquired or retained directly or personally. — Also termed direct possession.

immemorial possession. Possession that began so long ago that no one still living witnessed its beginning.

incorporeal possession. Possession of something other than a material object, such as an easement over a neighbor's land, or the access of light to the windows of a house. — Also termed

possessio juris; quasi-possession.

“It is a question much debated whether incorporeal possession is in reality true possession at all. Some are of opinion that all genuine possession is corporeal, and that the other is related to it by way of analogy merely. They maintain that there is no single generic conception which includes *possessio corporis* and *possessio juris* as its two specific forms. The Roman lawyers speak with hesitation and even inconsistency on the point. They sometimes include both forms under the title of *possessio*, while at other times they are careful to qualify incorporeal possession as *quasi possessio* — something which is not true possession, but is analogous to it. The question is one of no little difficulty, but the opinion here accepted is that the two forms do in truth belong to a single genus. The true idea of possession is wider than that of corporeal possession, just as the true idea of ownership is wider than that of corporeal ownership.” John Salmond, *Jurisprudence* 288–89 (Glanville L. Williams ed., 10th ed. 1947).

indirect possession. See mediate possession.

insular possession. An island territory of the United States, such as Puerto Rico. [Cases: Territories 7. C.J.S. Territories §§ 2, 5, 7, 9–10.]

joint possession. Possession shared by two or more persons.

mediate possession (mee-dee-it). Possession of a thing through someone else, such as an agent. • In every instance of mediate possession, there is a direct possessor (such as an agent) as well as a mediate possessor (the principal). — Also termed indirect possession.

“If I go myself to purchase a book, I acquire direct possession of it; but if I send my servant to buy it for me, I acquire mediate possession of it through him, until he has brought it to me, when my possession becomes immediate.” John Salmond, *Jurisprudence* 300 (Glanville L. Williams ed., 10th ed. 1947).

naked possession. The mere possession of something, esp. real estate, without any apparent right or colorable title to it. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

natural possession. Civil law. The exercise of physical detention or control over a thing, as by occupying a building or cultivating farmland. • Natural possession may be had without title, and may give rise to a claim of unlawful possession or a claim of ownership by acquisitive prescription. The term “natural possession” has been replaced by the term “corporeal possession” in the Louisiana Civil Code, by virtue of a 1982 revision. La. Civ. Code Ann. art. 3425. See corporeal possession; PRESCRIPTION(2). Cf. *possessio naturalis* under POSSESSIO. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

notorious possession. Possession or control that is evident to others; possession of property that, because it is generally known by people in the area where the property is located, gives rise to a presumption that the actual owner has notice of it. • Notorious possession is one element of adverse possession. — Also termed open possession; open and notorious possession. See ADVERSE POSSESSION. [Cases: Adverse Possession 28–33. C.J.S. Adverse Possession §§ 48–53, 263–264, 266–269, 274, 276, 278–281, 293–294.]

open and notorious possession. See notorious possession.

open possession. See notorious possession.

peaceable possession. Possession (as of real property) not disturbed by another's hostile or legal attempts to recover possession; esp., wrongful possession that the rightful possessor has appeared to tolerate. Cf. scrambling possession (1). Cf. ADVERSE POSSESSION.

pedal possession. Actual possession, as by living on the land or by improving it. • This term usu. appears in adverse-possession contexts.

possession animo domini. Civil law. Possession with the intent to own a thing, movable or immovable; possession as an owner. See La. Civ. Code art. 3427.

possession by relation of law. A person's legally recognized possession of land despite the person's not having actual possession after being improperly or unlawfully dispossessed by another.

possession in fact. Actual possession that may or may not be recognized by law. • For example, an employee's possession of an employer's property is for some purposes not legally considered possession, the term detention or custody being used instead. — Also termed *possessio naturalis*.

possession in law. 1. Possession that is recognized by the law either because it is a specific type of possession in fact or because the law for some special reason attributes the advantages and results of possession to someone who does not in fact possess. 2. See constructive possession. — Also termed *possessio civilis*.

“There is no conception which will include all that amounts to possession in law, and will include nothing else, and it is impossible to frame any definition from which the concrete law of possession can be logically deduced.” John Salmond, *Jurisprudence* 287 (Glanville L. Williams ed., 10th ed. 1947).

possession of a right. The continuing exercise and enjoyment of a right. • This type of possession is often unrelated to an ownership interest in property. For example, a criminal defendant possesses the right to demand a trial by jury. — Also termed *possessio juris*; (Ger.) *Rechtsbesitz*.

precarious possession. Civil law. Detention of property by someone other than the owner or possessor on behalf of or with permission of the owner or possessor. • A lessee has precarious possession of the leased property.

“[Article 3437 of the Louisiana Civil Code defines precarious possession as] ‘exercise of possession over a thing with the permission of or on behalf of the owner or possessor.’ The definition indicates the difference between possession in the proper sense of the word and precarious possession, that is, detention. A possessor is one who possesses as owner, whereas a precarious possessor or detainer is one who exercises factual authority over a thing with the permission of or on behalf of another person.” A.N. Yiannopoulos, *Civil Law Property* § 319, at

629 (4th ed. 2001).

quasi-possession. See incorporeal possession.

scrambling possession. 1. A wrongful possession that the rightful possessor has not appeared to tolerate. Cf. peaceable possession. 2. Possession that is uncertain because it is in dispute. • With scrambling possession, the dispute is over who actually has possession — not over whether a party's possession is lawful.

substantial possession. See *pedis possessio* under POSSESSIO.

POSSESSION UNITY

possession unity. See unity of possession under UNITY.

POSSESSIO PEDIS

possessio pedis. See *pedis possessio* under POSSESSIO.

POSSESSOR

possessor. One who has possession of real or personal property; esp., a person who is in occupancy of land with the intent to control it or has been but no longer is in that position, but no one else has gained occupancy or has a right to gain it. — possessorial (pos-<<schwa>>-sor-ee-<<schwa>>l), adj.

legal possessor. One with the legal right to possess property, such as a buyer under a conditional sales contract, as contrasted with the legal owner who holds legal title. See legal owner under OWNER.

possessor bona fide (boh-n<<schwa>> fl-dee). A possessor who believes that no other person has a better right to the possession.

possessor mala fide (mal-<<schwa>> fl-dee). A possessor who knows that someone else has a better right to the possession.

POSSESSORIUM

possessorium (pos-<<schwa>>-sor-ee-<<schwa>>m). See possessory action under ACTION(4).

POSSESSORY

possessory (p<<schwa>>-zes-<<schwa>>-ree), adj. Of, relating to, or having possession.

POSSESSORY ACTION

possessory action. See ACTION(4).

POSSESSORY CLAIM

possessory claim. Title to public land held by a claimant who has filed a declaratory statement but has not paid for the land. [Cases: Public Lands 31. C.J.S. Public Lands § 41.]

POSSESSORY CONSERVATOR

possessory conservator. See noncustodial parent under PARENT.

POSSESSORY ESTATE

possessory estate. See ESTATE(1).

POSSESSORY GARAGEMAN'S LIEN

possessory garageman's lien. See LIEN.

POSSESSORY INTERDICT

possessory interdict. See INTERDICT(1).

POSSESSORY INTEREST

possessory interest. 1. The present right to control property, including the right to exclude others, by a person who is not necessarily the owner. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.] 2. A present or future right to the exclusive use and possession of property.

“We shall use the term ‘possessory interest’ to include both present and future interests, and to exclude such interests as easements and profits. The reader should note that the Restatement of Property uses the term ‘possessory’ to refer only to interests that entitle the owner to present possession. See Restatement, Property § 7, 9, 153 (1936).” Thomas F. Bergin & Paul G. Haskell, Preface to Estates in Land and Future Interests 19–20 n.1 (2d ed. 1984).

POSSESSORY LIEN

possessory lien. See LIEN.

POSSESSORY WARRANT

possessory warrant. See WARRANT(1).

POSSIBILITAS

possibilitas (pos-<<schwa>>-bil-<<schwa>>-tas). [Latin] Possibility; a possibility.

POSSIBILITY

possibility. 1. An event that may or may not happen. 2. A contingent interest in real or personal property.

bare possibility. See naked possibility.

naked possibility. A mere chance or expectation that a person will acquire future property. • A conveyance of a naked possibility is usu. void for lack of subject matter, as in a deed conveying all rights to a future estate not yet in existence. — Also termed bare possibility; naked expectancy. [Cases: Assignments 8. C.J.S. Assignments §§ 17–18.]

possibility coupled with an interest. An expectation recognized in law as an estate or interest,

as occurs in an executory devise or in a shifting or springing use. • This type of possibility may be sold or assigned. [Cases: Assignments 9. C.J.S. Assignments § 16.]

possibility on a possibility. See remote possibility.

remote possibility. A limitation dependent on two or more facts or events that are contingent and uncertain; a double possibility. — Also termed possibility on a possibility. [Cases: Wills 7. C.J.S. Wills §§ 58, 63–64, 68.]

POSSIBILITY OF REVERTER

possibility of reverter. A reversionary interest that is subject to a condition precedent; specif., a future interest retained by a grantor after conveying a fee simple determinable, so that the grantee's estate terminates automatically and reverts to the grantor if the terminating event ever occurs. • In this type of interest, the grantor transfers an estate whose maximum potential duration equals that of the grantor's own estate and attaches a special limitation that operates in the grantor's favor. — Often shortened to reverter. See fee simple determinable under FEE SIMPLE. Cf. REMAINDER(1); REVERSION.

“Most treatise-writers define the possibility of reverter as the interest a transferor keeps when he transfers a fee simple determinable or a fee simple conditional. See, e.g., 1 American Law of Property § 4.12; Simes & Smith § 281. Although this definition is all right as far as it goes, it fails to provide for interests less than the fee simple that are granted on special limitation.... Although we call the possibility of reverter an ‘estate,’ the courts of an earlier era would probably have called it a ‘possibility of becoming an estate.’ ” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 58 n.5 (2d ed. 1984).

POSSIBILITY ON A POSSIBILITY

possibility on a possibility. See remote possibility under POSSIBILITY.

POSSIDERE

possidere (pos-*<<schwa>>*-dee-ree). [Latin fr. potis “having power” + sedere “to sit”] Hist. To possess (a thing), esp. as a person with an interest protected by law (e.g., an owner or mortgagee) rather than a mere custodian.

“A distinction was made in the civil law, and adopted by Bracton, between possidere, (to possess,) and esse in possessione, (to be in possession.) Thus, a guardian, holding in demesne though not in fee, was said to be in possession, though he did not possess. The same language was applied to a bailiff, ... a domestic, ... a fermor or lessee, ... and a tenant at will from day to day, and from year to year.” 2 Alexander M. Burrill, *A Law Dictionary and Glossary* 314 (2d ed. 1867).

POSSLQ

POSSLQ (pahs-*<<schwa>>*-l-kyoo). abbr. A person of opposite sex sharing living quarters. • Although this term (which is used by the Census Bureau) is intended to include only a person's roommate of the opposite sex to whom the person is not married, the phrase literally includes those who are married. This overbreadth has occasionally been criticized. See CUPOS.

“In the 1980 census, the United States Census Bureau — recognizing a societal change with numerous persons living together without being ‘officially’ married — counted not only persons who were ‘Single’ and ‘Married,’ but also ‘Persons of the Opposite Sex Sharing Living Quarters.’ The acronym is POSSLQ — and, of course, is pronounced possle-kew. It has been suggested that, although the source was stunningly unlikely, it was the Very Word that society has been looking for to describe these relationships: POSSLQ. Precise, businesslike, nonjudgmental. And, in its own way, sort of poetic, too.” *Fischer v. Dallas Fed. Sav. & Loan Ass'n*, 106 F.R.D. 465, 469 n.5 (N.D. Tex. 1985).

POST

post. [Latin] After. Cf. ANTE.

post,vb.1. To publicize or announce by affixing a notice in a public place < foreclosure notice was posted at the county courthouse>.2. To transfer (accounting entries) from an original record to a ledger <post debits and credits>.3. To place in the mail <post a letter>. [Cases: Postal Service 19. C.J.S. Postal Service and Offenses Against Postal Laws § 20.] 4. To make a payment or deposit; to put up <post bail>.

POSTAL CURRENCY

postal currency. See CURRENCY.

POSTAL RATE COMMISSION

Postal Rate Commission. An independent federal agency that recommends changes in postage rates, fees, and mail classifications to the governors of the United States Postal Service. • It was created by the Postal Reorganization Act. 39 USCA §§ 3601–3604. — Abbr. PRC.

POST-ANSWER DEFAULT JUDGMENT

post-answer default judgment. See DEFAULT JUDGMENT.

POST AUDIT

post audit. See AUDIT.

POST BAIL

post bail, vb. See GIVE BAIL.

POST CAUSAM COGNITAM

post causam cognitam (pohst kaw-z<<schwa>>m kog-ni-t<<schwa>>m). [Latin] Hist. After investigation. Cf. CAUSA COGNITA.

POST CONTRACTUM DEBITUM

post contractum debitum (pohst k<<schwa>>n-trak-t<<schwa>>m deb-i-t<<schwa>>m). [Latin] Hist. After debt has been contracted.

POSTCONVICTION-RELIEF PROCEEDING

postconviction-relief proceeding. A state or federal procedure for a prisoner to request a court to vacate or correct a conviction or sentence. — Also termed postconviction-remedy proceeding; PCR action; postconviction proceeding. [Cases: Criminal Law 1400–1669.]

POSTDATE

postdate, vb. To put a date on (an instrument, such as a check) that is later than the actual date. Cf. ANTEDATE; BACKDATE. [Cases: Bills and Notes 8. C.J.S. Bills and Notes; Letters of Credit § 14.]

POSTDATED CHECK

postdated check. See CHECK.

POST DIEM

post diem (pohst dī-*<<schwa>>*m). [Latin] After the day. • A plea of payment post diem is made after the day when the money becomes due.

POST DISSEISINA

post disseisina. See DE POST DISSEISINA.

POSTEA

postea (poh-stee-*<<schwa>>*), n. [Latin “afterwards”] Hist. A formal statement, endorsed on the trial record, giving an account of the proceedings at trial; a record of what occurred at nisi prius after the issue had been joined.

“With the verdict of the jury [in the 15th–18th centuries] ... the proceedings at nisi prius closed, and the case was sent back to the court at Westminster from which it issued for judgment, after a statement of the holding of the trial and of the verdict had been added to the record. This statement, from the fact that it began with the Latin word ‘postea,’ or ‘afterwards,’ was known as the ‘postea’ and was in fact drafted by the party in whose favour the verdict had gone, whence the phrase ‘postea to the plaintiff’ or ‘the defendant,’ which is found in the old reports.” Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System 185* (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

POSTED WATER

posted water. See WATER.

POSTERIORES

posteriores (pah-steer-ee-or-eez), n. pl. [Latin] Roman law. Descendants in a direct line beyond the sixth degree.

POSTERIORITY

posteriority (pah-steer-ee-or-*<<schwa>>*-tee). The condition or state of being subsequent. • This word was formerly used to describe the relationships existing between a tenant and the two or

more lords the tenant held of; the tenant held the older tenancy "by priority" and the more recent one "by posteriority."

POSTERITY

posterity, n. 1. Future generations collectively. 2. All the descendants of a person to the furthest generation.

POST-EXPIRATION-SALES THEORY

post-expiration-sales theory. Patents. A theory of lost-profits remedy by which compensation is sought for sales lost after a patent expired, on the basis that infringement gave the competitor a head start on entering the market. — Also termed accelerated-reentry theory. [Cases: Patents 318(3). C.J.S. Patents §§ 564, 566.]

POST FACTO

post facto (pohst fak-toh). [Latin] After the fact. See EX POST FACTO.

POST-FACTUM

post-factum (pohst-fak-t<<schwa>>m). [Latin] An after-act; an act done afterwards. — Also spelled postfactum.

POST-FINE

post-fine. See KING'S SILVER.

POSTGLOSSATORS

postglossators (pohst-glah-say-t<<schwa>>rz), n. pl. (often cap.) A group of mainly Italian juriconsults who were active during the 14th and 15th centuries writing commentaries and treatises that related Roman law to feudal and Germanic law, canon law, and other contemporary bodies of law. • The postglossators constituted the second wave of Roman-law study after its revival in the 11th century, the first being that of the glossators. — Also termed commentators. See GLOSSATORS.

POST HOC

post hoc (pohst hok). [Latin fr. post hoc, ergo propter hoc "after this, therefore because of this"] 1. adv. After this; consequently. 2. adj. Of or relating to the fallacy of assuming causality from temporal sequence; confusing sequence with consequence.

POSTHUMOUS

posthumous (pos-ch<<schwa>>-m<<schwa>>s), adj. Occurring or existing after death; esp., (of a child) born after the father's death.

POSTHUMOUS ADOPTION

posthumous adoption. See ADOPTION.

POSTHUMOUS CHILD

posthumous child. See CHILD.

POSTHUMOUS WORK

posthumous work. See WORK(2).

POSTING

posting. 1. Accounting. The act of transferring an original entry to a ledger. 2. The act of mailing a letter. 3. A method of substituted service of process by displaying the process in a prominent place (such as the courthouse door) when other forms of service have failed. See SERVICE(1). [Cases: Process 81. C.J.S. Process § 55.] 4. A publication method, as by displaying municipal ordinances in designated localities. [Cases: Municipal Corporations 110. C.J.S. Municipal Corporations §§ 277–280, 282–284.] 5. The act of providing legal notice, as by affixing notices of judicial sales at or on the courthouse door. 6. The procedure for processing a check, including one or more of the following steps: (1) verifying any signature, (2) ascertaining that sufficient funds are available, (3) affixing a “paid” or other stamp, (4) entering a charge or entry to a customer's account, and (5) correcting or reversing an entry or erroneous action concerning the check. [Cases: Banks and Banking 137; Judicial Sales 11. C.J.S. Banks and Banking §§ 328, 330; Judicial Sales §§ 9–10.]

POST-ISSUE ACTIVITY

post-issue activity. Patents. Any acts done during a patent's term, including making, using, or selling a patented invention or process, esp. without authorization.

POSTJUDGMENT DISCOVERY

postjudgment discovery. See DISCOVERY.

POSTLIMINIUM

postliminium (pohst-l<<schwa>>-min-ee-<<schwa>>m), n. [fr. Latin post “after” + limen “threshold”] 1. Roman & civil law. The reentering of one's residence. 2. Roman & civil law. The doctrine that a restoration of a person's lost rights or status relates back to the time of the original loss or deprivation, esp. in regard to the restoration of the status of a prisoner of war.

“[A] person who is taken captive and comes back within the limits of the Empire is correctly described as returning by postliminium. By ‘limen’ (threshold) we mean the frontier of a house, and the old lawyers applied the word to the frontier of the Roman State; so that the word postliminium conveys the idea of recrossing the frontier. If a prisoner is recovered from a beaten foe he is deemed to have come back by postliminium.” R.W. Lee, *The Elements of Roman Law* 85–86 (4th ed. 1956).

3. Int'l law. The act of invalidating all of an occupying force's illegal acts, and the post-occupation revival of all illegitimately modified legal relations to their former condition, esp. the restoration of property to its rightful owner. — Also termed postliminy.

POST LITEM MOTAM

post litem motam (pohst II-t<<schwa>>m moh-t<<schwa>>m). [Law Latin] After suit commenced. • Depositions held after litigation had begun were formerly sometimes so called.

POSTMAN

postman (pohst-m<<schwa>>n).Hist. A barrister in the Court of Exchequer who had precedence in motions. • The postman was so called because of the post he stood next to when making motions. Cf. TUBMAN.

“The postman was an experienced member of the junior Bar who had a place in the Court of Exchequer by the post anciently used as a measure of length in excise cases. He had precedence in motions over all other juniors” Sir Robert Megarry, *A Second Miscellany-at-Law* 122 (1973).

POSTMARITAL

postmarital,adj.1. Of, relating to, or occurring after marriage. Cf. PREMARITAL. 2. Of, relating to, or occurring after divorce.

POSTMARK

postmark. An official mark put by the post office on an item of mail to cancel the stamp and to indicate the place and date of sending or receipt. [Cases: Postal Service 15. C.J.S. Postal Service and Offenses Against Postal Laws §§ 18–19.]

POSTMASTER

postmaster. A U.S. Postal Service official responsible for a local branch of the post office. — Abbr. PM. [Cases: Postal Service 7. C.J.S. Postal Service and Offenses Against Postal Laws §§ 12–13.]

POSTMASTER GENERAL

Postmaster General.The head of the U.S. Postal Service. [Cases: Postal Service 4. C.J.S. Postal Service and Offenses Against Postal Laws § 5.]

POST MERIDIEM

post meridiem (pohst m<<schwa>>-rid-ee-<<schwa>>m). [Latin] After noon. — Abbr. p.m.; PM.

POSTMORTEM

postmortem,adj. Done or occurring after death <a postmortem examination>.

postmortem,n. See AUTOPSY(1).

POSTNATUS

postnatus (pohst-nay-t<<schwa>>s). [Latin] A person born after a certain political event that affected the person's political rights; esp., a person born after the Declaration of Independence. Pl.

postnati.Cf. ANTENATUS.

POST NOTE

post note.A banknote payable at a future time rather than on demand. See time note under NOTE(1).

POSTNUP

postnup,n. Slang. See POSTNUPTIAL AGREEMENT.

POSTNUPTIAL

postnuptial (pohst-n<<schwa>>p-sh<<schwa>>l), adj. Made or occurring during marriage <a postnuptial contract>. Cf. PRENUPTIAL. [Cases: Husband and Wife 30.]

POSTNUPTIAL AGREEMENT

postnuptial agreement (pohst-n<<schwa>>p-sh<<schwa>>l). An agreement entered into during marriage to define each spouse's property rights in the event of death or divorce. • The term commonly refers to an agreement between spouses during the marriage at a time when separation or divorce is not imminent. When dissolution is intended as the result, it is more properly called a property settlement or marital agreement. — Often shortened to postnup. — Also termed postnuptial settlement. Cf. PRENUPTIAL AGREEMENT. [Cases: Husband and Wife 30–31.]

POSTNUPTIAL SETTLEMENT

postnuptial settlement.See POSTNUPTIAL AGREEMENT.

POSTNUPTIAL WILL

postnuptial will.See WILL.

POST-OBIT AGREEMENT

post-obit agreement.See BOND(3).

POST-OBIT BOND

post-obit bond.See BOND(3).

POSTPONE

postpone,vb.1. To put off to a later time. 2. To place lower in precedence or importance; esp., to subordinate (a lien) to a later one. 3.Parliamentary law. To temporarily or permanently suppress a main motion. — postponement,n.

postpone definitely.To delay a main motion's consideration to a specified time or until a specified condition occurs, usu. by the next meeting — or to the next meeting as unfinished business. — Also termed postpone to a certain time; postpone to a definite time; postpone to a time certain. See TIME CERTAIN.

postpone indefinitely.To dispose of a main motion without taking a view on its merits while

preventing its further consideration during the same session. • This motion's ancient form in the English Parliament was to postpone consideration until “this day six months” (or “three months”) — that is, some time beyond the current session, sufficiently remote that the body expected not to consider the matter again. — Also termed indefinite postponement.

postpone temporarily. See TABLE.

postpone to a certain time. See postpone definitely.

postpone to a definite time. See postpone definitely.

postpone to a time certain. See postpone definitely.

POST PROLEM SUSCITATAM

post prolem suscitata (pohst proh-l<<schwa>>m s<<schwa>>s-<<schwa>>-tay-t<<schwa>>m). [Law Latin] After issue born.

POSTREMOGENITURE

postremogeniture. See BOROUGH ENGLISH.

POST TANTUM TEMPORIS

post tantum temporis (pohst tan-t<<schwa>>m tem-p<<schwa>>-ris). [Latin] Hist. After so long a time.

POST-TERMINAL SITTING

post-terminal sitting. A court session held after the normal term.

POST TERMINUM

post terminum (pohst t<<schwa>>r-m<<schwa>>-n<<schwa>>m). [Law Latin] After term, as a writ returned after the ending of a judicial term.

POSTTRIAL DISCOVERY

posttrial discovery. See postjudgment discovery under DISCOVERY.

POSTTRIAL MOTION

posttrial motion. See MOTION(1).

POSTTRIAL PROCEEDING

posttrial proceeding. See PROCEEDING.

POSTULATE

postulate, vb. Eccles. law. To name someone to an ecclesiastical position, subject to approval by a higher authority.

POSTULATIO

postulatio (pos-ch<<schwa>>-lay-shee-oh). [Latin] Hist. Eccles. law. A petition requesting the naming or transfer of a bishop.

POSTULATIO ACTIONIS

postulatio actionis (pos-ch<<schwa>>-lay-shee-oh ak-shee-oh-nis). [Latin] Roman law. A request to a magistrate having jurisdiction for permission to bring an action.

POTENTATE

potentate (poh-t<<schwa>>n-tayt). A ruler who possesses great power or sway; a monarch.

POTENTIA

potentia (p<<schwa>>-ten-shee-<<schwa>>). [Latin] Possibility; power.

POTENTIAL

potential,adj. Capable of coming into being; possible <things having a potential existence may be the subject of mortgage, assignment, or sale>.

POTENTIAL PARETO SUPERIORITY

potential Pareto superiority. See WEALTH MAXIMIZATION.

POTENTIA PROPINQUA

potentia propinqua (p<<schwa>>-ten-shee-<<schwa>> pr<<schwa>>-ping-kw<< schwa>>). [Latin] Common possibility.

POTESTAS

potestas (p<<schwa>>-tes-t<<schwa>>s or -tas), n. [Latin “power”] Roman law. Authority or power, such as the power of a magistrate to enforce the law, or the authority of an owner over a slave.

patria potestas (pay-tree-<<schwa>> orpa-tree-<<schwa>>). [Latin “paternal power”] The authority held by the male head of a family (the senior ascendant male) over his legitimate and adopted children, as well as further descendants in the male line, unless emancipated. • Initially, the father had extensive powers over the family, including the power of life and death; until Justinian's time, the father alone in his familia had proprietary capacity but he could give a son or slave a peculium. Over time, the broad nature of the patria potestas gradually became more in the nature of a responsibility to support and maintain family members. But except in early Roman history, a wife did not fall into her husband's power but remained in her father's until she became sui juris by his death. — Also termed fatherly power.

“The power of the father continued ordinarily to the close of his life, and included not only his own children, but also the children of his sons, and those of his sons' sons, if any such were born during his lifetime.... Originally and for a long time the patria potestas had a terribly despotic character. Not only was the father entitled to all the service and all the acquisitions of his child, as much as to those of a slave, but he had the same absolute control over his person. He could inflict

upon him any punishment however severe.... Consider now that the patria potestas had this character and extent down to the Christian era: that, in general, every citizen of the republic who had a living father was in this condition, unable to hold property, unable to acquire any thing for himself, wholly dependent on his father in property and person ... without help or vindication from the law.... The reason which caused the Romans to accept and uphold the patria potestas, to maintain it with singular tenacity against the influence of other systems with which they came in contact, must have been the profound impression of family unity, the conviction that every family was, and of right ought to be, one body, with one will and one executive.” James Hadley, *Introduction to Roman Law* 119–21 (1881).

“Nature and Extent of Patria Potestas. — From the most remote ages the power of a Roman father over his children, including those by adoption as well as by blood, was unlimited. A father might, without violating any law, scourge or imprison his son, or sell him for a slave, or put him to death, even after that son had risen to the highest honours in the state. This jurisdiction was not merely nominal, but, in early times, was not infrequently exercised to its full extent, and was confirmed by the laws of the XII Tables.... By degrees the right of putting a child to death (*ius vitae et necis*) fell into desuetude; and long before the close of the republic, the execution of a son by order of his father, although not forbidden by any positive statute, was regarded as something strange, and, unless under extraordinary circumstances, monstrous. But the right continued to exist in theory ... after the establishment of the empire. [In the Christian empire, these extreme punishments were forbidden and disciplinary powers were reduced to those of reasonable chastisement. — Ed.]” William Ramsay, *A Manual of Roman Antiquities* 291–92 (Rodolfo Lanciani ed., 15th ed. 1894).

potestas gladii (glad-ee-I). [Latin “the power of the sword”] Roman law. See *JUS GLADII*.

potestas maritalis (mar-~~<<schwa>>~~-tay-lis). [Latin] Hist. The marital power. • In Roman law, this was an institution, one that was decaying by the end of the Republic.

POTESTATIVE CONDITION

potestative condition. See *CONDITION*(2).

POUND

pound, n. 1. A place where impounded property is held until redeemed. 2. A place for the detention of stray animals. [Cases: *Animals* 103. C.J.S. *Animals* § 333.] 3. A measure of weight equal to 16 avoirdupois ounces or 7,000 grains. [Cases: *Weights and Measures* 3. C.J.S. *Weights and Measures* § 3.] 4. The basic monetary unit of the United Kingdom, equal to 100 pence. — Also termed (in sense 4) pound sterling.

POUNDAGE FEE

poundage fee. A percentage commission awarded to a sheriff for moneys recovered under judicial process, such as execution or attachment. [Cases: *Sheriffs and Constables* 51.]

POUND-BREACH

pound-breach.Hist. The offense of breaking a pound for the purpose of taking out something that has been impounded.

POUND OF LAND

pound of land.An uncertain quantity of land, usu. thought to be about 52 acres.

POUND STERLING

pound sterling.See POUND(4).

POUR ACQUIT

pour acquit (poor a-kee), n.[French “for acquittance”] French law. The formula that a creditor adds when signing a receipt.

POUR APPUYER

pour appuyer (poor a-poo-yay). [Law French] For the support of; in the support of.

POUR AUTRUI

pour autrui (poor oh-troo-ee). [Law French] For others. [Cases: Contracts 187. C.J.S. Contracts §§ 612–622, 624–629.]

POUR FAIRE PROCLAIMER

pour faire proclaimer (poor fair pr<<schwa>>-klay-m<<schwa>>r), n.[Law French “for making a proclamation”] Hist. A writ addressed to the mayor or bailiff of a city or town, requiring that official to make a proclamation about some matter, such as a nuisance.

POUR OUT

pour out,vb. Slang. To deny (a claimant) damages or relief in a lawsuit <the plaintiff was poured out of court by the jury's verdict of no liability>.

POUOVER TRUST

pouover trust.See TRUST.

POUOVER WILL

pouover will.See WILL.

POURPARLER

pourparler (poor-pahr-l<<schwa>>r), vb.[French] To informally discuss before actual negotiating begins. — pourparler,n.

POURPARTY

pourparty (poor-pahr-tee). [Law French] See PURPART.

POURPRESTURE

pourpresture (poor-pres-ch<<schwa>>r). [Law French] See PURPRESTURE.

POUR SEISIR TERRES

pour seisir terres (poor sI-z<<schwa>>r ter-eez). [Law French “for seizing the lands”] Hist. A writ by which the Crown could seize land that the wife of its deceased tenant, who held in capite, had for her dower if she married without leave.

POVERTY

poverty. 1. The condition of being indigent; the scarcity of the means of subsistence <war on poverty>.2. Dearth of something desirable <a poverty of ideas>.

POVERTY AFFIDAVIT

poverty affidavit.See AFFIDAVIT.

POW

POW.abbr.PRISONER OF WAR.

POWELL DOCTRINE

Powell doctrine.See CORRUPT-MOTIVE DOCTRINE.

POWER

power. 1. The ability to act or not act; esp., a person's capacity for acting in such a manner as to control someone else's responses. 2. Dominance, control, or influence over another; control over one's subordinates. 3. The legal right or authorization to act or not act; a person's or organization's ability to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another.

“A power is the capacity to change a legal relationship. In this terminology the offeree has, before the contract is made, a power to create a contract by means of acceptance.” E. Allan Farnsworth, *Contracts* § 3.4, at 114 n.3 (3d ed. 1999).

agent's power.The ability of an agent or apparent agent to act on behalf of the principal in matters connected with the agency or apparent agency.

concurrent power.A political power independently exercisable by both federal and state governments in the same field of legislation.

congressional power.The authority vested in the U.S. Senate and House of Representatives to enact laws and take other constitutionally permitted actions. U.S. Const. art. I. [Cases: United States 22. C.J.S. United States §§ 30, 33.]

delegated power.Power normally exercised by an authority that has temporarily conferred the power on a lower authority.

derivative power.Power that arises only from a grant of authority. • Power may be derived, for example, by an agent from a principal, or by a head of state from a constitution.

discretionary power.A power that a person may choose to exercise or not, based on the person's judgment.

enumerated power.A political power specifically delegated to a governmental branch by a constitution. — Also termed express power. [Cases: Constitutional Law 25. C.J.S. Constitutional Law § 53.]

faterly power.See patria potestas under POTESTAS.

implied power.A political power that is not enumerated but that nonetheless exists because it is needed to carry out an express power. [Cases: Administrative Law and Procedure 325. C.J.S. Public Administrative Law and Procedure § 51.]

incident power.A power that, although not expressly granted, must exist because it is necessary to the accomplishment of an express purpose. — Also termed incidental power.

inherent power.A power that necessarily derives from an office, position, or status.

institorial power (in-st<<schwa>>-tor-ee-<<schwa>>l).Civil law. The power given by a business owner to an agent to act in the owner's behalf.

investigatory power (in-ves-t<<schwa>>-g<<schwa>>-tor-ee). (usu. pl.) The authority conferred on a governmental agency to inspect and compel disclosure of facts germane to an investigation. [Cases: Administrative Law and Procedure 346. C.J.S. Public Administrative Law and Procedure § 78.]

judicial power.See JUDICIAL POWER.

mediate powers.See MEDIATE POWERS.

naked power.The power to exercise rights over something (such as a trust) without having a corresponding interest in that thing. Cf. power coupled with an interest.

particular power.See special power.

plenary power (plee-n<<schwa>>-ree or plen-<<schwa>>-ree). Power that is broadly construed; esp., a court's power to dispose of any matter properly before it. [Cases: Courts 1, 26, 30, 207.1. C.J.S. Courts §§ 2–3, 6, 9, 12–15, 64–65, 67, 71–73.]

police power.See POLICE POWER.

power coupled with an interest.A power to do some act, conveyed along with an interest in the subject matter of the power. • A power coupled with an interest is not held for the benefit of the principal, and it is irrevocable due to the agent's interest in the subject property. For this reason, some authorities assert that it is not a true agency power. — Also termed power given as security; proprietary power. See irrevocable power of attorney under POWER OF ATTORNEY. Cf. naked power. [Cases: Powers 27. C.J.S. Powers § 6.]

“[S]uppose that the principal borrows money from the agent and by way of security authorizes the agent to sell Blackacre if the loan is not repaid and pay himself out of the proceeds.

In such case there is no more reason why the principal should be permitted to revoke than if he had formally conveyed or mortgaged Blackacre to the agent. Hence it would be highly unfair to the agent to allow his principal to revoke. The reason why such a case is not properly governed by the considerations usually making an agency revocable is that this is in reality not a case of agency at all. In a normal agency case the power is conferred upon the agent to enable him to do something for the principal while here it is given to him to enable him to do something for himself. Coupled with an interest means that the agent must have a present interest in the property upon which the power is to operate.” Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 47, at 99 (1990).

power given as security. See power coupled with an interest.

power of acceptance. An offeree's power to bind an offeror to a contract by accepting the offer. [Cases: Contracts 16, 22(1). C.J.S. Contracts §§ 37–41, 44, 46–51, 53–56, 58; Trading Stamps and Coupons § 7–9.]

power of revocation (rev-<<schwa>>-kay-sh<<schwa>>n). A power that a person reserves in an instrument (such as a trust) to revoke the legal relationship that the person has created. [Cases: Contracts 217; Powers 19; Trusts 59. C.J.S. Contracts §§ 436–443, 446, 448–449, 500–501; Powers § 15–16; Trover and Conversion §§ 103–116.]

power of sale. A power granted to sell the property that the power relates to. • The power's exercise is often conditioned on the occurrence of a specific event, such as nonpayment of a debt. [Cases: Powers 20. C.J.S. Powers §§ 17–18.]

power over oneself. See CAPACITY(2).

power over other persons. See AUTHORITY(1).

primary powers. See PRIMARY POWERS.

private power. A power vested in a person to be exercised for personal ends and not as an agent for the state.

proprietary power. See power coupled with an interest.

public power. A power vested in a person as an agent or instrument of the functions of the state. • Public powers comprise the various forms of legislative, judicial, and executive authority. [Cases: Officers and Public Employees 103. C.J.S. Officers and Public Employees §§ 224–227, 232–233.]

quasi-judicial power. An administrative agency's power to adjudicate the rights of those who appear before it. [Cases: Administrative Law and Procedure 108. C.J.S. Public Administrative Law and Procedure §§ 10–11.]

quasi-legislative power. An administrative agency's power to engage in rulemaking. 5 USCA § 553. [Cases: Administrative Law and Procedure 106, 385. C.J.S. Public Administrative Law and Procedure §§ 10, 88, 91.]

reserved power.A political power that is not enumerated or prohibited by a constitution, but instead is reserved by the constitution for a specified political authority, such as a state government. See TENTH AMENDMENT.

restraining power.A power to restrict the acts of others.

resulting power.A political power derived from the aggregate powers expressly or impliedly granted by a constitution.

special power. 1. An agent's limited authority to perform only specific acts or to perform under specific restrictions. [Cases: Powers 19. C.J.S. Powers §§ 15–16.] 2. See limited power of appointment under POWER OF APPOINTMENT. — Also termed particular power.

spending power.The power granted to a governmental body to spend public funds; esp., the congressional power to spend money for the payment of debt and provision of the common defense and general welfare of the United States. U.S. Const. art. I, § 8, cl. 1. [Cases: United States 82. C.J.S. United States § 155.]

taxing power.The power granted to a governmental body to levy a tax; esp., the congressional power to levy and collect taxes as a means of effectuating Congress's delegated powers. U.S. Const. art. I, § 8, cl. 1. See SIXTEENTH AMENDMENT. [Cases: Internal Revenue 3001–3008; Taxation 2–36. C.J.S. Indians §§ 131–133; Internal Revenue §§ 2, 4; Taxation §§ 4, 7–11, 13–18, 20–25, 170, 198, 200–205, 227–228, 242–243, 250, 252–255, 260, 299, 1094.]

trust power.See beneficial power.

visitatorial power.The power to inspect or make decisions about an entity's operations. — Also termed visitorial power.

4. A document granting legal authorization. See AUTHORITY. 5. An authority to affect an estate in land by (1) creating some estate independently of any estate that the holder of the authority possesses, (2) imposing a charge on the estate, or (3) revoking an existing estate. See POWER OF APPOINTMENT. [Cases: Powers 1. C.J.S. Powers § 2.]“The word ‘power’ is normally used in the sense of an authority given to a person to dispose of property which is not his. The person giving the power is called the donor and the person to whom it is given the donee.” Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 253 (4th ed. 1969).

appendant power (<<schwa>>-pen-d<<schwa>>nt).1. A power that gives the donee a right to appoint estates that attach to the donee's own interest. 2. A power held by a donee who owns the property interest in the assets subject to the power, and whose interest can be divested by the exercise of the power. • The appendant power is generally viewed as adding nothing to the ownership and thus is not now generally recognized as a true power. — Also termed power appendant; power appurtenant. [Cases: Powers 23. C.J.S. Powers § 5.]

avoiding power.Bankruptcy. The power of a bankruptcy trustee or debtor in possession to void certain transfers made or obligations incurred by a debtor, including fraudulent conveyances, preferences transferred to creditors, unperfected security interests in personal property, and unrecorded mortgages. 11 USCA §§ 544–553.

beneficial power.A power that is executed for the benefit of the power's donee, as distinguished from a trust power, which is executed for the benefit of someone other than the power's donee (i.e., a trust beneficiary). [Cases: Powers 25. C.J.S. Powers § 19.]

collateral power.A power created when the donee has no estate in the land, but simply the authority to appoint. [Cases: Powers 25. C.J.S. Powers § 19.]

general power.See POWER OF APPOINTMENT.

limited power.See POWER OF APPOINTMENT.

mandatory power.A power that the donee must exercise and must do so only as instructed, without discretion.

power appendant.See appendant power.

power appurtenant.See appendant power.

power collateral.See power in gross.

power in gross.A power held by a donee who has an interest in the assets subject to the power but whose interest cannot be affected by the exercise of the power. • An example is a life tenant with a power over the remainder. — Also termed power collateral. [Cases: Powers 23. C.J.S. Powers § 5.]

power of appointment.See POWER OF APPOINTMENT.

relative power.A power that relates directly to land, as distinguished from a collateral power.

testamentary power.See POWER OF APPOINTMENT.

6. Physical strength. 7. Moral or intellectual force. 8. A person of influence <a power in the community>.9. One of the great nations of the world <one of the world's two great powers>. See PROTECTING POWER. 10.The military or unit of it, such as a troop of soldiers.

POWER-DELEGATING LAW

power-delegating law.See LAW OF COMPETENCE.

POWER OF ALIENATION

power of alienation.The capacity to sell, transfer, assign, or otherwise dispose of property.

POWER OF APPOINTMENT

power of appointment.A power created or reserved by a person having property subject to disposition, enabling the donee of the power to designate transferees of the property or shares in which it will be received; esp., a power conferred on a donee by will or deed to select and determine one or more recipients of the donor's estate or income. • If the power is exercisable before the donee's death, it is exercisable wholly in favor of the donee. If the power is testamentary, it is exercisable wholly in favor of the donee's estate. — Often shortened to power. — Also termed enabling power. [Cases: Powers 19; Wills 589. C.J.S. Powers §§ 15–16.]

general power of appointment.A power of appointment by which the donee can appoint — that is, dispose of the donor's property — in favor of anyone at all, including oneself or one's own estate; esp., a power that authorizes the alienation of a fee to any alienee. — Often shortened to general power. [Cases: Powers 19; Wills 589. C.J.S. Powers §§ 15–16.]

limited power of appointment.A power of appointment that either does not allow the entire estate to be conveyed or restricts to whom the estate may be conveyed; esp., a power by which the donee can appoint to only the person or class specified in the instrument creating the power, but cannot appoint to oneself or one's own estate. — Often shortened to limited power. — Also termed special power of appointment. [Cases: Powers 19; Wills 589. C.J.S. Powers §§ 15–16.]

special power of appointment.See limited power of appointment.

testamentary power of appointment (tes-t<<schwa>>-men-t<<schwa>>-ree or - tree). A power of appointment created by a will. — Often shortened to testamentary power. [Cases: Wills 589.]

POWER-OF-APPOINTMENT TRUST

power-of-appointment trust.See TRUST.

POWER OF ATTORNEY

power of attorney. 1. An instrument granting someone authority to act as agent or attorney-in-fact for the grantor. • An ordinary power of attorney is revocable and automatically terminates upon the death or incapacity of the principal. — Also termed letter of attorney. [Cases: Principal and Agent 51.] 2. The authority so granted; specif., the legal ability to produce a change in legal relations by doing whatever acts are authorized. Pl. powers of attorney.See ATTORNEY(1).

durable power of attorney.A power of attorney that remains in effect during the grantor's incompetency. • Such instruments commonly allow an agent to make healthcare decisions for a patient who has become incompetent. [Cases: Principal and Agent 51.]

general power of attorney.A power of attorney that authorizes an agent to transact business for the principal. Cf. special power of attorney. [Cases: Principal and Agent 97. C.J.S. Agency §§ 150–152.]

irrevocable power of attorney (i-rev-<<schwa>>-k<<schwa>>-b<<schwa>>l). A power of attorney that the principal cannot revoke. — Also termed power of attorney coupled with an interest. See power coupled with an interest under POWER(3). [Cases: Principal and Agent 37.]

power of attorney coupled with an interest.See irrevocable power of attorney.

power of attorney for healthcare.See ADVANCE DIRECTIVE(1).

special power of attorney.A power of attorney that limits the agent's authority to only a specified matter. Cf. general power of attorney.

springing power of attorney.A power of attorney that becomes effective only when needed, at

some future date or upon some future occurrence, usu. upon the principal's incapacity. — Also termed springing durable power of attorney. See durable power of attorney; ADVANCE DIRECTIVE.

POWER OF REVOCATION

power of revocation (rev-<<schwa>>-kay-sh<<schwa>>n). See POWER(3).

POWER OF SALE

power of sale. See POWER(3).

POWER-OF-SALE CLAUSE

power-of-sale clause. A provision in a mortgage or deed of trust permitting the mortgagee or trustee to sell the property without court authority if the payments are not made. [Cases: Mortgages 21. C.J.S. Mortgages § 4.]

POWER-OF-SALE FORECLOSURE

power-of-sale foreclosure. See FORECLOSURE.

POWER OF TERMINATION

power of termination. A future interest retained by a grantor after conveying a fee simple subject to a condition subsequent, so that the grantee's estate terminates (upon breach of the condition) only if the grantor exercises the right to retake it. — Also termed right of entry; right of reentry; right of entry for breach of condition; right of entry for condition broken. See fee simple subject to a condition subsequent under FEE SIMPLE. Cf. POSSIBILITY OF REVERTER . [Cases: Deeds 159. C.J.S. Deeds § 320.]

POWER OVER ONESELF

POWER OVER OTHER PERSONS

POWER POLITICS

power politics. Int'l law. An approach to foreign policy that encourages a nation to use its economic and military strength to enlarge its own power as an end in itself; a system in which a country is willing to bring its economic and (esp.) military strength to bear in an effort to increase its own power.

POWER TO INSPECT

power to inspect. Patents. The authority of a third party to review a patent application. • The power may be given by the applicant or an assignee, often to a potential buyer. It must specify which application the person is authorized to see, and it becomes part of the record of the application. See ACCESS(4), (5). [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

P.P.

p.p. abbr. 1. PER PROCURATIONEM. 2. PROPRIA PERSONA.

PPA

PPA.abbr. 1. See provisional application under PATENT APPLICATION. 2.PLANT PATENT ACT .

PPI

PPI.abbr.POLICY PROOF OF INTEREST.

PPO

PPO.abbr.1.PREFERRED-PROVIDER ORGANIZATION. 2. See permanent protective order under PROTECTIVE ORDER.

P. PRO

p. pro.abbr.PER PROCURATIONEM.

P. PROC

p. proc.abbr.PER PROCURATIONEM.

PR

PR.abbr.PUBLIC RELATIONS.

PRACTICABLE

practicable,adj. (Of a thing) reasonably capable of being accomplished; feasible.

PRACTICABLY IRRIGABLE ACREAGE

practicably irrigable acreage.Land that is susceptible to prolonged irrigation, at reasonable cost.

PRACTICAL CONSTRUCTION

practical construction.See contemporaneous construction under CONSTRUCTION.

PRACTICAL FINALITY

practical finality.The situation in which a court order directs immediate delivery of physical property, subjecting the losing party to irreparable harm if an immediate appeal were not possible.

- Practical finality provides an exception to the usual rule that interlocutory orders are not appealable. See FINALITY DOCTRINE.

PRACTICAL INTERPRETATION

practical interpretation.See contemporaneous construction under CONSTRUCTION.

PRACTICAL LOCATION

practical location. See AGREED-BOUNDARY DOCTRINE.

PRACTICALLY AVOIDABLE

practically avoidable. See AVOIDABLE.

PRACTICE

practice, n. 1. The procedural methods and rules used in a court of law <local practice requires that an extra copy of each motion be filed with the clerk>. 2. PRACTICE OF LAW <where is your practice?>.

practice, vb. Patents. 1. To make and use (a patented invention) <the employer had a shop right to practice the patent, but not to sell it>. 2. To build a physical embodiment of an invention. See REDUCTION TO PRACTICE.

PRACTICE ACT

practice act. A statute governing practice and procedure in courts. • Practice acts are usu. supplemented with court rules such as the Federal Rules of Civil Procedure.

PRACTICE BOOK

practice book. A volume devoted to the procedures in a particular court or category of courts, usu. including court rules, court forms, and practice directions.

PRACTICE COURT

practice court. 1. MOOT COURT. 2. (cap.) BAIL COURT.

PRACTICE GUIDE

practice guide. A written explanation of how to proceed in a particular area of law or in a particular court or locality.

PRACTICE OF LAW

practice of law. The professional work of a duly licensed lawyer, encompassing a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate-planning documents, and advising clients on legal questions. • The term also includes activities that comparatively few lawyers engage in but that require legal expertise, such as drafting legislation and court rules. — Also termed legal practice. Cf. LAW PRACTICE . [Cases: Attorney and Client 11. C.J.S. Attorney and Client § 30.]

unauthorized practice of law. The practice of law by a person, typically a nonlawyer, who has not been licensed or admitted to practice law in a given jurisdiction. — Abbr. UPL. [Cases: Attorney and Client 11. C.J.S. Attorney and Client § 30.]

“The definitions and tests employed by courts to delineate unauthorized practice by non-lawyers have been vague or conclusory, while jurisdictions have differed significantly in describing what constitutes unauthorized practice in particular areas.

“Certain activities, such as the representation of another person in litigation, are generally

proscribed. Even in that area, many jurisdictions recognize exceptions for such matters as small-claims and landlord-tenant tribunals and certain proceedings in administrative agencies. Moreover, many jurisdictions have authorized law students and others not locally admitted to represent indigent persons or others as part of clinical legal education programs. "Controversy has surrounded many out-of-court activities such as advising on estate planning by bank trust officers, advising on estate planning by insurance agents, stock brokers, or benefit-plan and similar consultants, filling out or providing guidance on forms for property transactions by real estate agents, title companies, and closing-service companies, and selling books or individual forms containing instructions on self-help legal services accompanied by personal, non-lawyer assistance on filling them out in connection with legal procedures such as obtaining a marriage dissolution. The position of bar associations has traditionally been that non-lawyer provisions of such services denies the person served the benefit of such legal measures as the attorney-client privilege, the benefits of such extraordinary duties as that of confidentiality of client information and the protection against conflicts of interest, and the protection of such measures as those regulating lawyer trust accounts and requiring lawyers to supervise non-lawyer personnel. Several jurisdictions recognize that many such services can be provided by non-lawyers without significant risk of incompetent service, that actual experience in several states with extensive non-lawyer provision of traditional legal services indicates no significant risk of harm to consumers of such services, that persons in need of legal services may be significantly aided in obtaining assistance at a much lower price than would be entailed by segregating out a portion of a transaction to be handled by a lawyer for a fee, and that many persons can ill afford, and most persons are at least inconvenienced by, the typically higher cost of lawyer services." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 cmt. c (1998).

PRACTICKS

practicks (prak-tiks). Hist. Scots law. (usu. pl.) An old collection of notes about points of practice, decisions of the Court of Sessions, statutes, and forms, compiled by members of the court.

- An example is Balfour's Practicks (1469–1579). A precursor of law reports, the notes remain historical legal literature of some authority.

PRACTITIONER

practitioner. A person engaged in the practice of a profession, esp. law or medicine.

PRAEBENTES CAUSAM MORTIS

praebentes causam mortis (pri-ben-teez kaw-z<<schwa>>m mor-tis). [Latin] Hist. (Persons) occasioning the cause of death.

PRAECEPTIO HAEREDITATIS

praeceptio haereditatis (pri-sep-shee-oh h<<schwa>>-red-i-tay-tis). [Law Latin] Scots law. A taking of the inheritance in advance. — Also termed lucrative succession.

"Praeceptio haereditatis This is one of the passive titles known in law, which, if incurred by the heir, renders him in some measure liable for his ancestor's debts. It was introduced to

prevent an heir from receiving and enjoying, under a gratuitous disposition *inter vivos* from his ancestor, that heritable estate to which he would be entitled to succeed on the ancestor's death, and of thus avoiding responsibility for his ancestor's debts and other obligations." John Trayner, Trayner's Latin Maxims 466–67 (4th ed. 1894).

PRAECEPTORES

praeceptores (pree-sep-tor-eez). [Law Latin "masters"] Hist. The chief clerks of Chancery, responsible for preparing remedial writs.

PRAECIPE

praecipe (pree-s<<schwa>>-pee or pres-<<schwa>>-pee), n. [Latin "command"] 1. At common law, a writ ordering a defendant to do some act or to explain why inaction is appropriate. — Also termed writ of praecipe. 2. A written motion or request seeking some court action, esp. a trial setting or an entry of judgment. — Also spelled *precipe*. — praecipe, vb.

praecipe quod reddat (pree-s<<schwa>>-pee or pres-<<schwa>>-pee kwod red-at). [Latin "command that he render"] Hist. A writ directing the defendant to return certain property. • An action for common recovery was often begun with this writ. When the writ was brought to recover land, it was termed *ingressu*. See COMMON RECOVERY.

"The praecipe quod reddat was the proper writ when the plaintiff's action was for a specific thing; as for the recovery of a debt certain, or for the restoration of such a chattel, or for giving up such a house, or so much land, specifying the nature and quantity of it. By this writ the sheriff was commanded to summon the tenant or defendant to appear at Westminster, at such a day in term." 1 George Crompton, *Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xxxix (3d ed. 1787).

PRAECIPITIUM

praecipitium (pree-s<<schwa>>-pish-ee-<<schwa>>m or pres-<<schwa>>-), n. [Latin "headlong fall"] Roman law. The punishment of casting a criminal from the Tarpeian rock.

PRAECIPUUM

praecipuum (pri-sip-yoo-<<schwa>>m), n. [Latin] Hist. The estate portion that is not subject to rules of division; the part of an estate that one claimant (*usu.* the eldest heir-portioner) receives to the exclusion of all others.

PRAECO

praeco (pree-koh), n. [Latin] Roman law. A herald or crier.

PRAEDIA

praedia (pree-dee-<<schwa>>), n. [Latin] The plural of *praedium* (land; an estate). See PRAEDIUM.

praedia bellica (pree-dee-<<schwa>> bel-<<schwa>>-k<<schwa>>). [Latin] Property seized

in war; booty.

praedia stipendiaria (pree-dee-⟨⟨schwa⟩⟩ stl-pen-dee-air-ee-⟨⟨schwa⟩⟩). [Latin] Provincial lands belonging to the res publicae; the senatorial provinces.

praedia tributaria (pree-dee-⟨⟨schwa⟩⟩ trib-yoo-tair-ee-⟨⟨schwa⟩⟩). [Latin] Provincial lands belonging to the emperor; the imperial provinces.

PRAEDIAL

praedial (pree-dee-⟨⟨schwa⟩⟩l), adj. See PREDIAL.

PRAEDIAL TITHE

praedial tithe. See predial tithe under TITHE.

PRAEDICTUS

praedictus (pri-dik-t⟨⟨schwa⟩⟩s), adj. [Law Latin] Hist. Aforesaid. • In pleading, praedictus usu. referred to a defendant, a town, or lands, idem to a plaintiff, and praefatus to a person other than a party. Cf. PRAEFATUS.

PRAEDIUM

praedium (pree-dee-⟨⟨schwa⟩⟩m), n. [Latin] Roman law. Land; an estate. Pl. praedia.

praedium dominans (pree-dee-⟨⟨schwa⟩⟩m dom-⟨⟨schwa⟩⟩-nanz). [Latin] A dominant estate; an estate benefiting from a servitude. See SERVITUDE. Cf. dominant estate under ESTATE(4).

praedium rusticum (pree-dee-⟨⟨schwa⟩⟩m r⟨⟨schwa⟩⟩s-ti-k⟨⟨schwa⟩⟩m). [Latin] An estate used for agricultural purposes. Cf. rural servitude under SERVITUDE (2).

praedium serviens (pree-dee-⟨⟨schwa⟩⟩m s⟨⟨schwa⟩⟩r-vee-enz). [Latin] An estate burdened by a servitude; a servient estate. See SERVITUDE. Cf. servient estate under ESTATE(4).

praedium urbanum (pree-dee-⟨⟨schwa⟩⟩m ⟨⟨schwa⟩⟩r-bay-n⟨⟨schwa⟩⟩m). [Latin] An estate used for business or for dwelling; any estate other than a praedium rusticum. See urban servitude (2) under SERVITUDE(2).

PRAEDO

praedo (pree-doh), n. [Latin] Roman law. A robber. Pl. praedones.

PRAEFATUS

praefatus (pri-fay-t⟨⟨schwa⟩⟩s), adj. [Latin] Aforesaid. — Abbr. praefat; p. fat. Cf. PRAEDICTUS.

PRAEFECTURA

praefectura (pri-fek-ch⟨⟨schwa⟩⟩r-⟨⟨schwa⟩⟩), n. [Latin] Roman law. 1. The office of

prefect. 2. A town or territory administered by a prefect.

PRAEFECTUS URBI

praefectus urbi (pri-fek-t<<schwa>>s <<schwa>>r-bI). [Latin “prefect of the city”] Roman law. A senator charged with keeping law and order in the city of Rome. • This duty originated in the early Empire. The praefectus had both criminal and civil jurisdiction; the latter was gradually taken over from the praetor, although the praefectus's civil jurisdiction was always *cognitio*. — Also termed urban prefect; prefect of the city.

“Praefectus urbi. The prefect of the city was originally a mere delegate appointed in case of the temporary absence of the emperor, but the office became a permanency owing to Tiberius' continued residence away from Rome in the latter part of his reign, and under subsequent emperors the prefect remained in office even when the emperor was present. His duties included generally the maintenance of order in the city, and he had under his command the urban cohorts, in effect a police force numbering between 4,000 and 6,000 men. He early assumed criminal jurisdiction, and in the end became the chief criminal court not only for Rome but for the district within 100 miles.” H.F. Jolowicz, *Historical Introduction to the Study of Roman Law* 345–46 (1952).

PRAEFECTUS VIGILUM

praefectus vigilum (pri-fek-t<<schwa>>s vi-jil-<<schwa>>m). [Latin “prefect of the watch”] Roman law. An officer, immediately subordinate to the praefectus urbi, with police and fire-prevention duties. • This officer had the authority to punish offenses relating to the public peace. See PRAEFECTUS URBI .

PRAEFECTUS VILLAE

praefectus villae (pri-fek-t<<schwa>>s vil-ee). [Latin] Hist. The mayor of a town.

PRAEFINE

praefine (pree-fIn). See PRIMER FINE.

PRAEJURAMENTUM

praejuramentum (pree-juur-<<schwa>>-men-t<<schwa>>m), n.[Law Latin] Hist. A preparatory oath.

PRAELEGATUM

praelegatum (pree-l<<schwa>>-gay-t<<schwa>>m), n.[Latin] Roman law. A legacy to one of several heirs whereby the legatee was entitled to the legacy before the estate was divided. • This was similar to an advancement.

PRAELIBATIO MATRIMONII

praelibatio matrimonii (pree-II-bay-shee-oh ma-tr<<schwa>>-moh-nee-I). [Law Latin] Hist. A foretaste of marriage.

PRAEMATURA DILIGENTIA

praematura diligentia (pree-m<<schwa>>-t[y]uur-<<schwa>> [or -chuur-<<schwa>>] dil-<<schwa>>-jen-shee-<<schwa>>). [Law Latin] Scots law. Premature execution of a judgment.

PRAEMIUM EMANCIPATIONIS

praemium emancipationis (pree-mee-<<schwa>>m i-man-s<<schwa>>-pay-shee-oh-nis). [Latin “reward for emancipation”] Roman law. A compensation allowed by Constantine to a father on the emancipation of his child, consisting of one-third of the property that came to the child from his mother's side. • Justinian replaced this with the usufruct of half the child's separate property.

PRAEMIUM PUDICITIAE

praemium pudicitiae (pree-mee-<<schwa>>m pyoo-d<<schwa>>-sish-ee-ee. [Latin “the price of chastity”] Hist. Compensation paid by a man who seduced a chaste woman. — Also written premium pudicitiae. — Also termed praemium pudoris.

PRAEMUNIRE

praemunire (pree-myoo-nI-ree), n.[Latin praemoneri “to be forewarned”] Hist. The criminal offense of obeying an authority other than the king. • Praemunire stems from the efforts of Edward I (1272–1307) to counter papal influence in England, and takes its name from the writ's initial words: praemunire facias (“that you cause to be forewarned”). One type of praemunire was to appeal to the pope rather than the monarch. Another was to bring a suit in a temporal court instead of a royal court, in part because the monarch wanted all fines levied as punishment to go to the royal coffers, not those of the church.

PRAENOMEN

praenomen (pree-noh-m<<schwa>>n), n.[Latin] Roman law. The first of a person's three names, given to distinguish the person from family members.

PRAEPOSITA NEGOTIIS VEL REBUS DOMESTICIS

praeposita negotiis vel rebus domesticis (pri-poz-<<schwa>>-t<<schwa>> ni-goh-shee-is vel ree-b<<schwa>>s d<<schwa>>-mes-ti-sis). [Latin] Hist. Set over domestic affairs. • The phrase usu. referred to a wife's status.

PRAEPOSITOR

praepositor (pri-poz-<<schwa>>-t<<schwa>>r or -tor), n. [Law Latin “supervisor, reeve”] Hist. One who delegates duties (esp. of a business's management) to another; one who places (another) in a position over others.

PRAEPOSITURA

praepositura (pri-poz-<<schwa>>-t[y]uur-<<schwa>>), n. [Latin “management” or “supervisory office”] Hist. 1.One to whom management duties are delegated. 2. The area of

responsibility delegated to a person to manage, esp. a wife's authority to manage the household.

PRAEPOSITUS

praepositus (pree-poz-*<<schwa>>-t<<schwa>>s*), n.[Latin] Hist. 1. An officer next in authority to the alderman of a hundred. 2. A steward or bailiff of an estate.

PRAEPOSITUS NEGOTIIS

praepositus negotiis (pri-poz-*<<schwa>>-t<<schwa>>s* ni-goh-shee-is). [Latin] Hist. Put in charge of another's business.

PRAEPOSITUS NEGOTIIS SOCIETATIS

praepositus negotiis societatis (pri-poz-*<<schwa>>-t<<schwa>>s* ni-goh-shee-is s*<<schwa>>-sI<<schwa>>-tay-tis*). [Latin] Hist. Put in charge of a partnership's business.

PRAEPOSITUS VILLAE

praepositus villae (pree-poz-*<<schwa>>-t<<schwa>>s* vil-ee). [Latin] Hist. A constable of a town; a petty constable.

PRAEROGATIVA REGIS

praerogativa regis (pree-rog-*<<schwa>>-tI-v<<schwa>>* ree-jis). [Law Latin “of the Crown's prerogative”] Hist. A declaration made at the time of Edward I (1272–1307) defining certain feudal and political rights of the Crown, including the right to wardship of an idiot's lands to protect the idiot's heirs from disinheritance or alienation. — Also termed *de praerogativa regis* (dee pree-rog-*<<schwa>>-tI-v<<schwa>>* ree-jis).

“The king's right is distinctly stated in the document known as *praerogativa Regis*, which we believe to come from the early years of Edward I. The same document seems to be the oldest that gives us any clear information about a wardship of lunatics. The king is to provide that the lunatic and his family are properly maintained out of the income of his estate, and the residue is to be handed over to him upon his restoration to sanity, or, should he die without having recovered his wits, is to be administered by the ordinary for the good of his soul; but the king is to take nothing to his own use.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 481 (2d ed. 1898).

PRAESCRIPTIO

praescriptio (pri-skrip-shee-oh), n.[Latin] Roman law. 1. A preliminary portion of a formula that defines the scope of action. 2. A defensive plea in an action to recover land by which the defendant asserts ownership based on continuous possession for a prescribed time. — Also termed (in sense 2) *praescriptio longi temporis*. Pl. *praescriptiones* (pri-skrip-shee-oh-nee-z).

PRAESCRIPTIO FORI

praescriptio fori (pri-skrip-shee-oh for-I). [Latin] Roman law. An objection on the ground that the person objecting is not subject to the court's jurisdiction.

PRAESCRIPTIS VERBIS

praescriptis verbis (pri-skrip-tis v<<schwa>>r-bis). [Latin “in the words before written”]
 1.Roman law. An action on a bilateral agreement under which one party had performed and required the other to perform in turn. 2.Roman law. The grounds given for the existence of a contract that falls into the class later described as innominate. • Innominate contracts were developed and recognized late in classical law. See innominate contract under CONTRACT.
 3.Hist. (Of a clause) restricted in scope by introductory words — esp., in a pleading, words defining the issue.

PRAESES

praeses (pree-seez), n.[Latin] 1.Roman law. A governor of a province. 2. The president of a college or university.

PRAESTARE

praestare (pree-stair-ee), vb.[Latin] Roman law. 1. To perform an obligation. 2. To undertake liability.

PRAESTATIO CULPAE LEVIS

praestatio culpae levis (pri-stay-shee-oh k<<schwa>>l-pee lee-vis). [Law Latin] Hist. An obligation for the middle degree of diligence — that is, the diligence and care required by a person of ordinary prudence. • This phrase was a forerunner of the modern terms reasonable care and reasonable person.

PRAESUMITUR PRO NEGANTE

praesumitur pro negante (pri-zyoo-m<<schwa>>-t<<schwa>>r proh ni-gan-tee). [Latin] It is presumed for the negative. • This is the rule of the House of Lords when the votes are equal on a motion.

PRAESUMPTIO

praesumptio (pri-z<<schwa>>mp-shee-oh), n. [Latin] A presumption. Pl. praesumptiones (pri-z<<schwa>>mp-shee-oh-nee-z).

praesumptio fortior (pri-z<<schwa>>mp-shee-oh for-shee-<<schwa>>r or -or). [Latin] A strong presumption (of fact); a presumption strong enough to shift the burden of proof to the opposing party.

praesumptio hominis (pri-z<<schwa>>mp-shee-oh hom-<<schwa>>-nis). [Latin] The presumption of an individual; that is, a natural presumption unfettered by rules.

praesumptio juris (pri-z<<schwa>>mp-shee-oh joor-is). [Latin] A presumption of law; that is, one in which the law assumes the existence of something until it is disproved. See presumption of law, rebuttable presumption under PRESUMPTION.

praesumptio Muciana (pri-z<<schwa>>mp-shee-oh myoo-shee-ay-n<<schwa>>). [Latin]

Roman law. The rebuttable presumption that in case of doubt a thing possessed by a married woman had been given to her by her husband. • The presumption was named after the jurist Quintus Mucius.

PRAETER DOTE M

praeter dotem (pree-t<<schwa>>r doh-t<<schwa>>m or -tem). [Latin] Hist. Over and above the dowry.

PRAETERITIO

praeteritio (pree-t<<schwa>>-rish-ee-oh or pret-<<schwa>>), n. [Latin] Roman law. A testator's exclusion of an heir by passing the heir over. • In Roman law, passing over sui heredes usu. invalidated the will. See SUI HEREDES.

PRAETER LEGEM

praeter legem. See EQUITY PRAETER LEGEM.

PRAETOR

praetor (pree-t<<schwa>>r), n. [Latin] Roman law. The magistrate responsible for identifying and framing the legal issues in a case and for ordering a lay judge (judex) to hear evidence and decide the case in accordance with the formula. See FORMULA(1).

praetor fideicommissarius (pree-t<<schwa>>r fi-dee-I-kom-<<schwa>>-sair-ee-<<schwa>>s). A special praetor having jurisdiction over cases involving trusts.

PRAETORIAN EDICT

praetorian edict. See edictum praetoris under EDICTUM.

PRAEVARICATIO

praevaricatio (pri-var-<<schwa>>-kay-shee-oh), n. [Latin “collusion with an opponent”] Roman law. An accuser's colluding with the defense in such a way that the accused will be acquitted. • An accuser might do this in various ways, as by deemphasizing the most important charges, refraining from calling the most important witnesses, or refraining from exercising peremptory challenges against jurors who would tend to favor the accused. See CALUMNIA. Cf. TERGIVERSATIO.

PRAEVARICATOR

praevaricator (pree-var-<<schwa>>-kay-t<<schwa>>r). See PREVARICATOR.

PRAEVENTO TERMINO

praevento termino (pri-ven-toh t<<schwa>>r-m<<schwa>>-noh). [Law Latin “by anticipating the term”] Scots law. An action in the Court of Session to prevent a delay in a suspension or an appeal. See SUSPENSION(6).

PRATIQUÉ

pratique (pra-teekorprat-ik).Maritime law. A license allowing a vessel to trade in a particular country or port after complying with quarantine requirements or presenting a clean bill of health.

PRAXIS

praxis (prak-sis). [Greek “doing; action”] In critical legal studies, practical action; the practice of living the ethical life in conjunction and in cooperation with others.

PRAYER CONFERENCE

prayer conference.See CHARGE CONFERENCE.

PRAYER FOR RELIEF

prayer for relief.A request addressed to the court and appearing at the end of a pleading; esp., a request for specific relief or damages. — Often shortened to prayer. — Also termed demand for relief. See AD DAMNUM CLAUSE. [Cases: Federal Civil Procedure 680; Pleading 72. C.J.S. Pleading §§ 110–115.]

“The prayer for relief.The plaintiff prays in his bill for the relief to which he supposes himself entitled on the case made out in the bill. This is called the special prayer. He then prays for general relief, usually in these words: ‘And the plaintiff (or your orator) prays for such further or other relief as the nature of the case may require, and as may be agreeable to equity and good conscience.’ Both prayers are generally inserted in the bill, — the special prayer first, the general following.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 69 (2d ed. 1899).

general prayer.A prayer for additional unspecified relief, traditionally using language such as, “Plaintiff additionally prays for such other and further relief to which she may show herself to be justly entitled.” • The general prayer typically follows a special prayer. [Cases: Judgment 252; Pleading 72. C.J.S. Judgments § 53; Pleading §§ 110–115.]

special prayer.A prayer for the particular relief to which a plaintiff claims to be entitled. [Cases: Judgment 252; Pleading 72. C.J.S. Judgments § 53; Pleading §§ 110–115.]

PRAYER IN AID

prayer in aid.See AID PRAYER.

PRAYER OF PROCESS

prayer of process.A conclusion in a bill in equity requesting the issuance of a subpoena if the defendant fails to answer the bill. [Cases: Equity 139.]

PRC

PRC.abbr. POSTAL RATE COMMISSION.

PREAMBLE

preamble (pree-am-b<<schwa>>l), n.1. An introductory statement in a constitution, statute,

or other document explaining the document's basis and objective; esp., a statutory recital of the inconveniences for which the statute is designed to provide a remedy. • A preamble often consists of a series of clauses introduced by the conjunction whereas. Such a preamble is sometimes called the whereas clauses. [Cases: Statutes 210.]

“The preamble cannot control the enacting part of the statute, in cases where the enacting part is expressed in clear, unambiguous terms; but in case any doubt arises on the enacting part, the preamble may be resorted to to explain it, and show the intention of the law maker.” *Den v. Urison*, 2 N.J.L. 212 (1807).

2.Patents. The first words of a patent claim, often a single phrase indicating the field of art. • The preamble is typically nonlimiting unless it “breathes life and meaning into the claims.” *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989). Elements, the later parts of the claim, narrow this broad identification more and more specifically. Cf. BODY OF A CLAIM; TRANSITION PHRASE. — preambulatory (pree-am-by<<schwa>>-ler-ee), preambular (pree-am-by<<schwa>>-l<<schwa>>r), adj.

PREAPPOINTED EVIDENCE

preappointed evidence. See EVIDENCE.

PREARGUMENT-CONFERENCE ATTORNEY

preargument-conference attorney. See CIRCUIT MEDIATOR.

PREAUDIENCE

preaudience. English law. The right of a senior barrister to be heard in court before other barristers.

PREBANKRUPTCY

prebankruptcy, adj. Occurring before the filing of a bankruptcy petition < prebankruptcy transactions>.

PREBEND

prebend (preb-<<schwa>>nd), n.1. A stipend granted in a cathedral church for the support of the members of the chapter. 2. The property from which the stipend comes.

PREBENDARY

prebendary (preb-<<schwa>>n-der-ee). A person serving on the staff of a cathedral who receives a stipend from the cathedral's endowment.

PRECARIAE

precariae (pri-kair-ee-ee). [Law Latin “favors”] Hist. Day labor that tenants of certain manors were bound to give their lords at harvest time. — Also termed preces.

PRECARIOUS

precarious,adj. Dependent on the will or pleasure of another; uncertain.

PRECARIOUS LOAN

precarious loan.See LOAN.

PRECARIOUS POSSESSION

precarious possession.See POSSESSION.

PRECARIOUS RIGHT

precarious right.See RIGHT.

PRECARIOUS TRADE

precarious trade.See TRADE.

PRECARIUM

precarium (pri-kair-ee-<<schwa>>m), n. [Latin] 1.Roman law. The gratuitous grant of the enjoyment of property, revocable at will. 2. The property so granted. 3.Hist. An estate or tenure arising from a precarious grant, and usu. characterized by uncertainty or arduous conditions of tenure.

PRECATORY

precatory (prek-<<schwa>>-tor-ee), adj. (Of words) requesting, recommending, or expressing a desire for action, but usu. in a nonbinding way. • An example of precatory language is “it is my wish and desire to” [Cases: Trusts 29; Wills 467. C.J.S. Trover and Conversion § 43; Wills §§ 855–856.]

PRECATORY TRUST

precatory trust.See TRUST.

PRECAUTIONARY APPEAL

precautionary appeal.See protective appeal under APPEAL.

PRECEDENCE

precedence (pres-<<schwa>>-d<<schwa>>nts or pr<<schwa>>-seed-<<schwa>>nts), n.1. The order or priority in place or time observed by or for persons of different statuses (such as political dignitaries) on the basis of rank during ceremonial events. 2. Generally, the act or state of going before something else according to some system of priorities. 3.Parliamentary law. The ranked priority that determines whether a motion is in order while another motion is pending, or whether a pending motion yields to another motion.

“There is a principle that determines the precedence of motions. The closer a motion is to final disposition of the matter under consideration, the lower it is in the order of precedence. The further removed the motion is from final disposition of the matter, the higher it is in the order of

precedence.” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* 6 (2000).

4.Parliamentary law. The priority in which a member is entitled to the floor. — Also termed precedence in recognition; preference in being recognized. 5. The order in which persons may claim the right to administer an intestate's estate. • The traditional order is (1) surviving spouse, (2) next of kin, (3) creditors, and (4) public administrator. [Cases: Executors and Administrators 17. C.J.S. Executors and Administrators § 34.]

PRECEDENT

precedent (pr<<schwa>>-seed-<<schwa>>nt alsopres-<<schwa>>-d<<schwa>>nt), adj. Preceding in time or order <condition precedent>.

precedent (pres-<<schwa>>-d<<schwa>>nt), n.1. The making of law by a court in recognizing and applying new rules while administering justice. [Cases: Courts 87. C.J.S. Courts §§ 135–136.] 2. A decided case that furnishes a basis for determining later cases involving similar facts or issues. See STARE DECISIS. [Cases: Courts 89. C.J.S. Courts §§ 139–140, 144–146, 161–164, 166–167.] — precedential,adj.

“In law a precedent is an adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike, or, if the facts are different, that the principle which governed the first case is applicable to the variant facts.” William M. Lile et al., *Brief Making and the Use of Law Books* 288 (3d ed. 1914).

“A precedent ... is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large.” John Salmond, *Jurisprudence* 191 (Glanville L. Williams ed., 10th ed. 1947).

“One may say, roughly, that a case becomes a precedent only for such a general rule as is necessary to the actual decision reached, when shorn of unessential circumstances.” 1 James Parker Hall, *Introduction, American Law and Procedure* xlviii (1952).

“One may often accord respect to a precedent not by embracing it with a frozen logic but by drawing from its thought the elements of a new pattern of decision.” Lon L. Fuller, *Anatomy of the Law* 151 (1968).

binding precedent.A precedent that a court must follow. • For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. — Also termed authoritative precedent; binding authority. Cf. imperative authority under AUTHORITY(4). [Cases: Courts 88, 107. C.J.S. Courts §§ 139, 165, 175; Criminal Law § 1665; Trade-Marks, Trade-Names, and Unfair Competition § 187.]

declaratory precedent.A precedent that is merely the application of an already existing legal

rule.

original precedent.A precedent that creates and applies a new legal rule.

persuasive precedent.A precedent that is not binding on a court, but that is entitled to respect and careful consideration. • For example, if the case was decided in a neighboring jurisdiction, the court might evaluate the earlier court's reasoning without being bound to decide the same way. [Cases: Courts 89, 96(5), 97(1, 5). C.J.S. Courts §§ 139–140, 144–146, 152–153, 158–159, 161–164, 166–167.]

precedent sub silentio (s<<schwa>>b s<<schwa>>-len-shee-oh). A legal question that was neither argued nor explicitly discussed in a judicial decision but that seems to have been silently ruled on and might therefore be treated as a precedent.

3.DOCTRINE OF PRECEDENT. 4. A form of pleading or property-conveyancing instrument. • Precedents are often compiled in book form and used by lawyers as guides for preparing similar documents.“Collections of Precedents have existed from very early times. In this connection precedents must not be confused with judicial precedents or case law. We refer here simply to common-form instruments compiled for use in practice, whereby the lawyer can be more or less certain that he is using the correct phraseology for the particular case before him. They were used both in conveyancing and litigation.... It is interesting to note that these precedents were apparently among the first legal works to be published after printing was introduced. Collections of conveyancing precedents continued to be brought up to date or new volumes issued” A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 42–43 (5th ed. 1958).

PRECE PARTIUM

prece partium (pree-see pah-r-shee-<<schwa>>m). [Law Latin] On the prayer of the parties.

PRECEPT

precept (pree-sept).1. A standard or rule of conduct; a command or principle < several legal precepts govern here>. [Cases: Courts 87–100. C.J.S. Courts §§ 135–136, 139–164, 166–169; Trade-Marks, Trade-Names, and Unfair Competition§ 187.] 2. A writ or warrant issued by an authorized person demanding another's action, such as a judge's order to an officer to bring a party before the court <the sheriff executed the precept immediately>. [Cases: Courts 189.]

PRECEPTIVE STATUTE

preceptive statute.See STATUTE.

PRECEPTUM AMISSIONIS SUPERIORITATIS

preceptum amissionis superioritatis (pri-sep-t<<schwa>>m <<schwa>>-mis[h]-ee-oh-nis suu-peer-ee-or-<<schwa>>-tay-tis). [Law Latin “a precept of a lost superiority”] Hist. A precept to force a superior to give a vassal's disponee entry to the land.

PRECES

preces (pree-seez), n. [Latin “prayers”] Roman law. A petition, esp. one addressed to the

emperor by a private person. Cf. RESCRIPT(3).

PRECES PRIMARIAE

preces primariae (pree-seez prI-mair-ee-ee). [Latin] Hist. The right of the sovereign to appoint a person to fill a vacant prebendary office after the sovereign's accession. • This right was exercised during the reign of Edward I. — Also termed primae preces. See PREBENDARY.

PRECINCT

precinct. A geographical unit of government, such as an election district, a police district, or a judicial district. [Cases: Municipal Corporations 40.]

magisterial precinct. A county subdivision that defines the territorial jurisdiction of a magistrate, constable, or justice of the peace. — Also termed magisterial district. [Cases: Justices of the Peace 52. C.J.S. Justices of the Peace § 41.]

PRECIPE

precipe (pre-s<<schwa>>-pee). See PRAECIPE.

PRÉCIS

précis (pray-seeorpray-see), n.[French] A concise summary of a text's essential points; an abstract. Pl. précis (pray-seezorpray-seez).

PRECLUDI NON DEBET

precludi non debet (pri-kloo-dI non dee-bet ordebet). [Latin “he ought not to be barred”] Hist. The beginning of a plaintiff's reply to a plea in bar in which the plaintiff objects to being barred from maintaining the action. — Sometimes shortened to precludi non.

PRECLUSION ORDER

preclusion order. See ORDER(2).

PRECOGNITION

precognition (pree-kog-nish-<<schwa>>n). Scots law. 1. A preliminary examination under oath of persons believed to have knowledge about the facts of a case, esp., in a criminal case, to determine whether there is sufficient evidence for a trial. 2. The written record of the statement that a prospective witness can give as evidence.

PRECOMPOUNDED PRESCRIPTION DRUG

precompounded prescription drug. See DRUG.

PRECONCEIVED MALICE

preconceived malice. See MALICE AFORETHOUGHT.

PRECONTRACT

precontract. See CONTRACT.

PREDATE

predate,vb. See ANTEDATE.

PREDATOR

predator. See SEXUAL PREDATOR.

PREDATORY CRIME

predatory crime. See CRIME.

PREDATORY INTENT

predatory intent. See INTENT(1).

PREDATORY PRICING

predatory pricing. Unlawful below-cost pricing intended to eliminate specific competitors and reduce overall competition; pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run. See ANTITRUST. [Cases: Monopolies 17(1.7). C.J.S. Monopolies §§ 83–85, 87.]

“In its most orthodox form, ‘predatory pricing’ refers to a practice of driving rivals out of business by selling at a price below cost. The predator's intent — and the only intent that can make predatory pricing rational, profit-maximizing behavior — is to charge monopoly prices after rivals have been dispatched or disciplined. Predatory pricing is analyzed under the antitrust laws as illegal monopolization or attempt to monopolize under § 2 of the Sherman Act, or sometimes as a violation of the Clayton Act § 2, generally called the Robinson–Patman Act.” Herbert Hovenkamp, *Federal Antitrust Policy* 335 (2d ed. 1999).

PREDECEASE

predecease,vb. To die before (another) <she predeceased her husband>.

PREDECESSOR

predecessor. 1. One who precedes another in an office or position. 2. An ancestor.

PREDECISIONAL

predecisional,adj. Of, relating to, or occurring during the time before a decision.

PREDIAL

predial (pree-dee-<<schwa>>l), adj. Of, consisting of, relating to, or attached to land <predial servitude>. — Also spelled praedial.

PREDIAL SERVITUDE

predial servitude. See servitude appurtenant under SERVITUDE(2).

PREDIAL TITHE

predial tithe. See TITHE.

PREDICATE ACT

predicate act. 1. See predicate offense under OFFENSE(1). 2. See lesser included offense under OFFENSE(1). 3. Under RICO, one of two or more related acts of racketeering necessary to establish a pattern. See RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. [Cases: Racketeer Influenced and Corrupt Organizations 5, 103.]

PREDICATE FACT

predicate fact. See FACT.

PREDICATE OFFENSE

predicate offense. 1. See lesser included offense under OFFENSE(1).

PREDICTION THEORY

prediction theory. 1. BAD-MAN THEORY. 2. PREDICTIVE THEORY OF LAW.

PREDICTIVE THEORY OF LAW

predictive theory of law. The view that the law is nothing more than a set of predictions about what the courts will decide in given circumstances. • This theory is embodied in Holmes's famous pronouncement, "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 460–61 (1897). — Also termed prediction theory. Cf. BAD-MAN THEORY.

PREDISPOSITION

predisposition. A person's inclination to engage in a particular activity; esp., an inclination that vitiates a criminal defendant's claim of entrapment. [Cases: Criminal Law 37(4); C.J.S. Criminal Law § 62.]

PREDOMINANT-ASPECT TEST

predominant-aspect test. See PREDOMINANT-PURPOSE TEST.

PREDOMINANT-PURPOSE TEST

predominant-purpose test. An assessment of whether Article 2 of the UCC applies to an exchange, conducted by considering whether the exchange's chief aspect, viewed in light of all the circumstances, is the sale of goods. • If goods account for most of the exchange's value, it is probably a sale; if services account for most of the value, it probably is not. The leading case is *Bonebrake v. Cox*, 499 F.2d 951, 960 (8th Cir. 1974). — Also termed predominant-aspect test.

PREEMPTION

preemption (pree-emp-sh<<schwa>>n), n. 1. The right to buy before others. See RIGHT OF

PREEMPTION. [Cases: Contracts 16; Sales 24; Vendor and Purchaser 18(.5). C.J.S. Contracts §§ 37–41, 44, 46, 55–56, 58; Sales §§ 41–42; Vendor and Purchaser §§ 98–100, 103–106, 115–116.] 2. The purchase of something under this right. 3. An earlier seizure or appropriation. 4. The occupation of public land so as to establish a preemptive title. [Cases: Public Lands 34. C.J.S. Public Lands § 50.] 5. Constitutional law. The principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation. — Also termed (in sense 5) federal preemption. See COMPLETE-PREEMPTION DOCTRINE. [Cases: States 18.3. C.J.S. States § 22.] — preempt,vb. — preemptive,adj.

conflict preemption. See obstacle preemption.

Garmon preemption. Labor law. A doctrine prohibiting state and local regulation of activities that are actually or arguably (1) protected by the National Labor Relations Act's rules relating to the right of employees to organize and bargain collectively, or (2) prohibited by the National Labor Relations Act's provision that governs unfair labor practices. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773 (1959). — Also termed Garmon doctrine. See COLLECTIVE BARGAINING; UNFAIR LABOR PRACTICE. [Cases: Labor Relations 45. C.J.S. Labor Relations § 23.]

Machinists preemption. Labor law. The doctrine prohibiting state regulation of an area of labor activity or management–union relations that Congress has intentionally left unregulated. *Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S.Ct. 2548 (1976). [Cases: Labor Relations 45. C.J.S. Labor Relations § 23.]

obstacle preemption. The principle that federal or state law can supersede or supplant state or local law that stands as an obstacle to accomplishing the full purposes and objectives of the overriding federal or state law. — Also termed conflict preemption.

PREEMPTION CLAIMANT

preemption claimant. One who has settled on land subject to preemption, intending in good faith to acquire title to it.

PREEMPTION RIGHT

preemption right. The privilege to take priority over others in claiming land subject to preemption. • The privilege arises from the holder's actual settlement of the land. See PREEMPTION(3).

PREEMPTIVE RIGHT

preemptive right. A shareholder's privilege to purchase newly issued stock — before the shares are offered to the public — in an amount proportionate to the shareholder's current holdings in order to prevent dilution of the shareholder's ownership interest. • This right must be exercised within a fixed period, usu. 30 to 60 days. — Also termed subscription privilege. See SUBSCRIPTION RIGHT. Cf. rights offering under OFFERING. [Cases: Corporations 158. C.J.S. Corporations §§ 133–137.]

PREEXISTING CONDITION

preexisting condition. See **CONDITION**(2).

PREEXISTING DUTY

preexisting duty. See **DUTY**(1).

PREEXISTING-DUTY RULE

preexisting-duty rule. **Contracts**. The rule that if a party does or promises to do what the party is already legally obligated to do — or refrains or promises to refrain from doing what the party is already legally obligated to refrain from doing — the party has not incurred detriment. • This rule's result is that the promise does not constitute adequate consideration for contractual purposes. For example, if a builder agrees to construct a building for a specified price but later threatens to walk off the job unless the owner promises to pay an additional sum, the owner's new promise is not enforceable because, under the preexisting-duty rule, there is no consideration for that promise. — Also termed preexisting-legal-duty rule. [Cases: **Contracts** 75. C.J.S. **Contracts** § 120.]

PREFECT

prefect (pree-fekt), n.1. A high official or magistrate put in charge of a particular command, department, or region. 2. In New Mexico, a probate judge.

PREFECT OF THE CITY

prefect of the city. See **PRAEFECTUS URBI**.

PREFER

prefer, vb.1. To put forward or present for consideration; esp. (of a grand jury), to bring (a charge or indictment) against a criminal suspect <the defendant claimed he was innocent of the charges preferred against him>.2. To give priority to, such as to one creditor over another <the statute prefers creditors who are first to file their claims>.

PREFERENCE

preference. 1. The act of favoring one person or thing over another; the person or thing so favored. 2. Priority of payment given to one or more creditors by a debtor; a creditor's right to receive such priority. 3. **Bankruptcy**. **PREFERENTIAL TRANSFER**.

insider preference. A transfer of property by a bankruptcy debtor to an insider more than 90 days before but within one year after the filing of the bankruptcy petition. [Cases: **Bankruptcy** 2608(2). C.J.S. **Bankruptcy** §§ 138–139.]

liquidation preference. A preferred shareholder's right, once the corporation is liquidated, to receive a specified distribution before common shareholders receive anything. [Cases: **Corporations** 629. C.J.S. **Corporations** §§ 875–878.]

voidable preference. See **PREFERENTIAL TRANSFER**.

PREFERENCE CASE

preference case. See preferred cause under CAUSE(3).

PREFERENCE CAUSE

preference cause. See preferred cause under CAUSE(3).

PREFERENCE IN BEING RECOGNIZED

preference in being recognized. See PRECEDENCE(4).

PREFERENCE SHARES

preference shares. See preferred stock under STOCK.

PREFERENTIAL ASSIGNMENT

preferential assignment. See PREFERENTIAL TRANSFER.

PREFERENTIAL BALLOT

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

PREFERENTIAL DEBT

preferential debt. See DEBT.

PREFERENTIAL NONUNION SHOP

preferential nonunion shop. See SHOP.

PREFERENTIAL RULE

preferential rule. Evidence. A rule that prefers one kind of evidence to another. • It may work provisionally, as when a tribunal refuses to consider one kind of evidence until another kind (presumably better) is shown to be unavailable, or it may work absolutely, as when the tribunal refuses to consider anything but the better kind of evidence. [Cases: Criminal Law 398. C.J.S. Criminal Law §§ 833–836, 843–844.]

“There are only three or four ... sets of [preferential] rules. There is a rule preferring the production of the original of a document, in preference to a copy. There is a rule requiring the attesting witness to a will to be summoned to evidence its execution. And there is a rule preferring the magistrate's official report of testimony taken before him. Then there are a few miscellaneous rules, such as the officially certified enrollment of a statute, etc.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 219 (1935).

PREFERENTIAL SHOP

preferential shop. See preferential union shop under SHOP.

PREFERENTIAL TARIFF

preferential tariff. See TARIFF(2).

PREFERENTIAL TRANSFER

preferential transfer. **Bankruptcy.** A prebankruptcy transfer made by an insolvent debtor to or for the benefit of a creditor, thereby allowing the creditor to receive more than its proportionate share of the debtor's assets; specif., an insolvent debtor's transfer of a property interest for the benefit of a creditor who is owed on an earlier debt, when the transfer occurs no more than 90 days before the date when the bankruptcy petition is filed or (if the creditor is an insider) within one year of the filing, so that the creditor receives more than it would otherwise receive through the distribution of the bankruptcy estate. • Under the circumstances described in 11 USCA § 547, the bankruptcy trustee may recover — for the estate's benefit — a preferential transfer from the transferee. — Also termed preference; voidable preference; voidable transfer; preferential assignment. Cf. FRAUDULENT CONVEYANCE(2). [Cases: Bankruptcy 2601–2623. C.J.S. Bankruptcy §§ 135–151, 166.]

PREFERENTIAL UNION SHOP

preferential union shop. See SHOP.

PREFERENTIAL VOTE

preferential vote. See VOTE(1).

PREFERENTIAL VOTING

preferential voting. See VOTING.

PREFERRED

preferred, adj. Possessing or accorded a priority or privilege <a preferred claim>.

PREFERRED CAUSE

preferred cause. See CAUSE(3).

PREFERRED CREDITOR

preferred creditor. See CREDITOR.

PREFERRED DIVIDEND

preferred dividend. See DIVIDEND.

PREFERRED DOCKET

preferred docket. See DOCKET(2).

PREFERRED-PROVIDER ORGANIZATION

preferred-provider organization. A group of healthcare providers (such as doctors, hospitals, and pharmacies) that agree to provide medical services at a discounted cost to covered persons in a given geographic area. — Abbr. PPO. Cf. HEALTH-MAINTENANCE ORGANIZATION. [Cases: Health 294; Insurance 1259, 2501.]

PREFERRED STOCK

preferred stock. See STOCK.

PREFERRING OF CHARGES

preferring of charges. Military law. The formal completion of a charge sheet, which includes signing and swearing to the charges and specifications. • Only a person subject to the Uniform Code of Military Justice can prefer charges. Cf. INITIATION OF CHARGES. [Cases: Armed Services 47(2); Military Justice 951. C.J.S. Armed Services § 164; Military Justice § 180.]

PREFILED BILL

prefiled bill. See BILL(3).

PREGNANCY-DISCRIMINATION ACT

Pregnancy-Discrimination Act. A federal statute that prohibits workplace discrimination against a pregnant woman or against a woman affected by childbirth or a related medical condition. 42 USCA § 2000. • The Pregnancy-Discrimination Act is part of Title VII of the Civil Rights Act of 1964. — Abbr. PDA.

PREGNANT CHAD

pregnant chad. See dimpled chad under CHAD.

PREHEARING CONFERENCE

prehearing conference. An optional conference for the discussion of procedural and substantive matters on appeal, usu. held in complex civil, criminal, tax, and agency cases. • Those attending are typically the attorneys involved in the case as well as a court representative such as a judge, staff attorney, or deputy clerk. Fed. R. App. P. 33. [Cases: Appeal and Error 808; Criminal Law 632(5); Federal Courts 741. C.J.S. Appeal and Error §§ 662–663; Criminal Law §§ 448–450, 458.]

“The prehearing conference, if held, generally is scheduled after the time for appeal and cross-appeal has passed, and as soon as it becomes apparent that the case is complex due to the legal issues, the length of the record, or the number of parties. In a complex or multiparty case, the conference provides a forum in which to discuss briefing responsibilities, timing, and handling the record and joint appendix. There may be some discussion of the amount of oral argument the parties desire and how that argument will be divided” Michael E. Tigar, *Federal Appeals: Jurisdiction and Practice* § 8.06, at 309–10 (2d ed. 1993).

PREHIRE AGREEMENT

prehire agreement. An employment contract between a union and an employer, in which the employer agrees to hire union members. See closed shop under SHOP.

PREJUDGMENT ATTACHMENT

prejudgment attachment. See provisional attachment under ATTACHMENT.

PREJUDGMENT INTEREST

prejudgment interest. See INTEREST(3).

PREJUDICE

prejudice, n.1. Damage or detriment to one's legal rights or claims. See dismissal with prejudice, dismissal without prejudice under DISMISSAL.

legal prejudice. A condition that, if shown by a party, will usu. defeat the opposing party's action; esp., a condition that, if shown by the defendant, will defeat a plaintiff's motion to dismiss a case without prejudice. • The defendant may show that dismissal will deprive the defendant of a substantive property right or preclude the defendant from raising a defense that will be unavailable or endangered in a second suit. [Cases: Federal Civil Procedure 1700; Pretrial Procedure 510. C.J.S. Dismissal and Nonsuit §§ 24–27.]

undue prejudice. The harm resulting from a fact-trier's being exposed to evidence that is persuasive but inadmissible (such as evidence of prior criminal conduct) or that so arouses the emotions that calm and logical reasoning is abandoned.

2. A preconceived judgment formed without a factual basis; a strong bias. [Cases: Judges 49. C.J.S. Judges § 108.] — prejudice, vb. — prejudicial, adj.

PREJUDICIAL ERROR

prejudicial error. See reversible error under ERROR(2).

PREJUDICIAL PUBLICITY

prejudicial publicity. Extensive media attention devoted to an upcoming civil or criminal trial. • Under the Due Process Clause, extensive coverage of a criminal trial may deprive the defendant of a fair trial. [Cases: Criminal Law 633(1); Federal Civil Procedure 1951; Trial 20. C.J.S. Criminal Law §§ 564, 1134, 1140, 1145–1149, 1191; Trial § 97.]

PRELIMINARY

preliminary, adj. Coming before and usu. leading up to the main part of something <preliminary negotiations>.

PRELIMINARY AMENDMENT

preliminary amendment. See PATENT-APPLICATION AMENDMENT.

PRELIMINARY AVAILABILITY SEARCH

preliminary availability search. Trademarks. A cursory or moderate search of registered trademarks and common-law uses of proposed trademark names or phrases, done to narrow the list of names or phrases before conducting a thorough search.

PRELIMINARY COMPLAINT

preliminary complaint. See COMPLAINT.

PRELIMINARY CRIME

preliminary crime. See inchoate offense under OFFENSE(1).

PRELIMINARY EVIDENCE

preliminary evidence. See EVIDENCE.

PRELIMINARY EXAMINATION

preliminary examination. 1. EXAMINATION(3). 2. PRELIMINARY HEARING.

PRELIMINARY HEARING

preliminary hearing. A criminal hearing (usu. conducted by a magistrate) to determine whether there is sufficient evidence to prosecute an accused person. • If sufficient evidence exists, the case will be set for trial or bound over for grand-jury review, or an information will be filed in the trial court. — Also termed preliminary examination; probable-cause hearing; bindover hearing; examining trial. Cf. ARRAIGNMENT. [Cases: Criminal Law 222–238. C.J.S. Criminal Law §§ 282, 339–350.]

PRELIMINARY INJUNCTION

preliminary injunction. See INJUNCTION.

PRELIMINARY INQUIRY

preliminary inquiry. Military law. The initial investigation of a reported or suspected violation of the Uniform Code of Military Justice. Cf. PRETRIAL INVESTIGATION .

PRELIMINARY-INQUIRY OFFICER

preliminary-inquiry officer. See OFFICER(2).

PRELIMINARY LETTER

preliminary letter. See INVITATION TO NEGOTIATE.

PRELIMINARY OBJECTION

preliminary objection. Int'l law. In a case before an international tribunal, an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary. • An objection to the court's jurisdiction is an example of a preliminary objection.

PRELIMINARY PROOF

preliminary proof. See PROOF.

PRELIMINARY PROSPECTUS

preliminary prospectus. See PROSPECTUS.

PRELIMINARY PROTECTIVE HEARING

preliminary protective hearing. See shelter hearing under HEARING.

PRELIMINARY STATEMENT

preliminary statement. The introductory part of a brief or memorandum in support of a motion, in which the advocate summarizes the essence of what follows. • In at least two jurisdictions, New York and New Jersey, the preliminary statement is a standard part of court papers. In many other jurisdictions, advocates do not routinely include it. But preliminary statements are typically allowed, even welcomed, though not required. — Also termed summary of argument.

PRELIMINARY WARRANT

preliminary warrant. See WARRANT(1).

PREMARITAL

premarital, adj. Of, relating to, or occurring before marriage. Cf. POSTMARITAL.

PREMARITAL AGREEMENT

premarital agreement. See PRENUPTIAL AGREEMENT.

PREMARITAL ASSET

premarital asset. See ASSET.

PREMATURITY

prematurity. 1. The circumstance existing when the facts underlying a plaintiff's complaint do not yet create a live claim. Cf. RIPENESS. [Cases: Action 6, 62; Federal Courts 12.1. C.J.S. Actions §§ 38–45, 238.] 2. The affirmative defense based on this circumstance.

PREMEDITATED

premeditated, adj. Done with willful deliberation and planning; consciously considered beforehand <a premeditated killing>. [Cases: Homicide 535; Sentencing and Punishment 1676.]

PREMEDITATED MALICE

premeditated malice. See MALICE AFORETHOUGHT.

PREMEDITATION

premeditation, n. Conscious consideration and planning that precedes some act (such as committing a crime). [Cases: Homicide 535; Sentencing and Punishment 1676.] — premeditate, vb.

PREMIER SERJEANT

premier serjeant. See SERJEANT-AT-LAW.

PREMISE

premise (prem-is), n. A previous statement or contention from which a conclusion is deduced. — Also spelled (in BrE) premiss. — premise (prem-is or pri-mĭz), vb.

PREMISES

premises (prem-<<schwa>>-siz). 1. Matters (usu. preliminary facts or statements) previously referred to in the same instrument <wherefore, premises considered, the plaintiff prays for the following relief>. 2. The part of a deed that describes the land being conveyed, as well as naming the parties and identifying relevant facts or explaining the reasons for the deed. 3. A house or building, along with its grounds <smoking is not allowed on these premises>.

“Premises (= a house or building) has a curious history in legal usage. Originally, in the sense of things mentioned previously, it denoted the part of a deed that sets forth the names of the grantor and grantee, as well as the things granted and the consideration. Then, through hypallage in the early 18th century, it was extended to refer to the subject of a conveyance or bequest as specified in the premises of the deed. Finally, it was extended to refer to a house or building along with its grounds. In short, someone who says, ‘No alcohol is allowed on these premises,’ is engaging unconsciously in a popularized legal technicality.” Bryan A. Garner, *A Dictionary of Modern Legal Usage* 685 (2d ed. 1995).

demised premises. Leased property. — Also termed premises demised.

PREMISES LIABILITY

premises liability. A landowner's or landholder's tort liability for conditions or activities on the premises. [Cases: Negligence 1000, 1001. C.J.S. Negligence § 381.]

PREMISES RULE

premises rule. See PARKING-LOT RULE.

PREMIUM

premium, n. 1. The periodic payment required to keep an insurance policy in effect. — Also termed insurance premium. [Cases: Insurance 2000. C.J.S. Insurance §§ 436–437.]

advance premium. A payment made before the start of the period covered by the insurance policy. [Cases: Insurance 1760.]

earned premium. The portion of an insurance premium applicable to the coverage period that has already expired. • For example, if the total premium for a one-year insurance policy is \$1,200, the earned premium after three months is \$300. [Cases: Insurance 2000. C.J.S. Insurance §§ 436–437.]

gross premium. 1. The net premium plus expenses (i.e., the loading), less the interest factor. See LOADING; INTEREST FACTOR. [Cases: Insurance 1127, 2005. C.J.S. Insurance §§ 48, 438–439.] 2. The premium for participating life insurance. See participating insurance under INSURANCE.

natural premium. The actual cost of life insurance based solely on mortality rates. • This

amount will be less than a net premium. See net premium.

net level annual premium. A net premium that stays the same each year.

net premium. 1. Generally, the premium amount for an insurance policy less agent commissions. [Cases: Insurance 1652, 2000. C.J.S. Insurance §§ 205, 436–437.] 2. The portion of the premium that covers the estimated cost of claims. 3. The money needed to provide benefits under an insurance policy. • The net premium in a life-insurance policy is calculated by using an assumed interest and mortality-table rate; it does not include additional expense amounts that will be charged to the policyholder. — Also termed net valuation premium.

net single premium. The money that must be collected from a policyholder at one time to guarantee enough money to pay claims made on an insurance policy. • This amount assumes that interest accrues at an expected rate and is based on a prediction of the likelihood of certain claims. [Cases: Insurance 2037. C.J.S. Insurance §§ 518–519, 742–745, 749–754.]

net valuation premium. See net premium.

unearned premium. The portion of an insurance premium applicable to the coverage period that has not yet occurred. • In the same example as above under earned premium, the unearned premium after three months is \$900. [Cases: Insurance 1371, 1930, 2046. C.J.S. Insurance §§ 500–501.]

2. A sum of money paid in addition to a regular price, salary, or other amount; a bonus. 3. The amount by which a security's market value exceeds its face value. — Also termed (specif.) bond premium. Cf. DISCOUNT(3).

control premium. A premium paid for shares carrying the power to control a corporation. • The control premium is often computed by comparing the aggregate value of the controlling block of shares with the cost that would be incurred if the shares could be acquired at the going market price per share. [Cases: Corporations 174. C.J.S. Corporations § 312.]

4. The amount paid to buy a securities option. — Also termed (in sense 4) option premium.

PREMIUM BOND

premium bond. See BOND(3).

PREMIUM LOAN

premium loan. See LOAN.

PREMIUM NOTE

premium note. See NOTE(1).

PREMIUM ON CAPITAL STOCK

premium on capital stock. See paid-in surplus under SURPLUS.

PREMIUM PUDORIS

premium pudoris. See PRAEMIUM PUDICITIAE.

PREMIUM RATE

premium rate. Insurance. The price per unit of life insurance. • It is usu. expressed as a cost per thousands of dollars of coverage. Life insurers use three factors — the interest factor, the mortality factor, and the risk factor — to calculate premium rates. — Sometimes shortened to rate. See INTEREST FACTOR; MORTALITY FACTOR; RISK FACTOR. [Cases: Insurance 1541–1546. C.J.S. Insurance §§ 66–69, 71–73.]

PREMIUM STOCK

premium stock. See STOCK.

PREMIUM TAX

premium tax. See TAX.

PRENATAL INJURY

prenatal injury. Harm to a fetus or an embryo. Cf. BIRTH INJURY.

PRENATAL TORT

prenatal tort. See TORT.

PRENDER

prender. The right to take a thing before it is offered. — Also spelled prendré.

PRENDER DE BARON

prender de baron (pre-n<<schwa>>r d<<schwa>> bar-<<schwa>>n). [Law French “a taking of husband”] Hist. A plea asserting that the former wife of a murder victim should not be allowed to appeal a murder case against the alleged killer because she has since remarried.

PRENDRÉ

prendré. See PRENDER.

PRENUP

prenup, n. Slang. See PRENUPTIAL AGREEMENT.

PRENUPTIAL

prenuptial (pree-n<<schwa>>p-sh<<schwa>>l), adj. Made or occurring before marriage; premarital. — Also termed antenuptial (an-tee-n<<schwa>>p-sh<< schwa>>l). Cf. POSTNUPTIAL.

PRENUPTIAL AGREEMENT

prenuptial agreement. An agreement made before marriage usu. to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse. — Also termed

antenuptial agreement; antenuptial contract; premarital agreement; premarital contract; marriage settlement. — Sometimes shortened to prenup. Cf. POSTNUPTIAL AGREEMENT ; COHABITATION AGREEMENT . [Cases: Husband and Wife 29, 31.]

PRENUPTIAL GIFT

prenuptial gift.See GIFT.

PRENUPTIAL WILL

prenuptial will.See WILL.

PREPAID CARD

prepaid card.See STORED-VALUE CARD.

PREPAID EXPENSE

prepaid expense.See EXPENSE.

PREPAID INCOME

prepaid income.See INCOME.

PREPAID INTEREST

prepaid interest.See INTEREST(3).

PREPAID LEGAL SERVICES

prepaid legal services.An arrangement — usu. serving as an employee benefit — that enables a person to make advance payments for future legal services. [Cases: Attorney and Client 137. C.J.S. Attorney and Client §§ 282, 331.]

PREPARATION

preparation.Criminal law. The act or process of devising the means necessary to commit a crime. Cf. ATTEMPT.

PREPAYMENT CLAUSE

prepayment clause.A loan-document provision that permits a borrower to satisfy a debt before its due date, usu. without paying a penalty. [Cases: Bills and Notes 129, 429. C.J.S. Bills and Notes; Letters of Credit §§ 86–89, 91–100, 234–236, 238.]

PREPAYMENT PENALTY

prepayment penalty.See PENALTY(2).

PREPENSE

prepen (pree-pens), adj. Rare.Planned; deliberate <malice prepen>.

PREPETITION

prepetition (pree-p<<schwa>>-tish-<<schwa>>n), adj. Occurring before the filing of a petition (esp. in bankruptcy) <prepetition debts>.

PREPONDERANCE

preponderance (pri-pon-d<<schwa>>r-<<schwa>>nts), n. Superiority in weight, importance, or influence. — preponderate (pri-pon-d<<schwa>>r-ayt), vb. — preponderant (pri-pon-d<<schwa>>r-<<schwa>>nt), adj.

PREPONDERANCE OF THE EVIDENCE

preponderance of the evidence. The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. • This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. — Also termed preponderance of proof; balance of probability. See REASONABLE DOUBT. Cf. clear and convincing evidence under EVIDENCE. [Cases: Evidence 598. C.J.S. Evidence §§ 1310–1312, 1315.]

“Criminal convictions are so serious in their consequences that it is felt that an accused person should be freed, if there is any fair or reasonable doubt about his guilt, even though there seems to be considerable likelihood that he did commit the crime.... In civil cases, however, the consequence of losing a case, although serious enough in many cases, is not considered to be such as to require so stringent a rule. Accordingly the plaintiff is entitled to a verdict if he proves the case ‘by the preponderance of the evidence.’ In other words, he is entitled to a verdict even though there may be a reasonable doubt as to the liability of the accused, if the jury is satisfied nevertheless that the plaintiff has proved his case.” Charles Herman Kinnane, *A First Book on Anglo-American Law* 562 (2d ed. 1952).

PREROGATIVE

prerogative (pri-rog-<<schwa>>-tiv), n. An exclusive right, power, privilege, or immunity, usu. acquired by virtue of office. — prerogative, adj.

prerogative of mercy. The limited discretionary power of a supreme authority, such as a state governor, national president, or sovereign, to commute a death sentence, change the method of execution, or issue a pardon, esp. for a person convicted of a capital crime.

PREROGATIVE COURT

prerogative court. See COURT.

PREROGATIVE WRIT

prerogative writ. See extraordinary writ under WRIT.

PRES

pres (pray). [Law French] Near. See CY PRES.

PRESALE

presale. The sale of real property (such as condominium units) before construction has begun. [Cases: Condominium 4. C.J.S. Estates §§ 201, 207–209, 244.]

PRESCRIBABLE

prescribable (pri-skrĭb-*<<schwa>>-b<<schwa>>l*), adj. (Of a right) that can be acquired or extinguished by prescription.

PRESCRIBE

prescribe,vb.1. To dictate, ordain, or direct; to establish authoritatively (as a rule or guideline).2. To claim ownership through prescription. 3. To invalidate or otherwise make unenforceable through prescription. 4. To become invalid or otherwise unenforceable through prescription.

PRESCRIPT

prescript,adj. Having the nature of a rule or command.

prescript,n. Archaic. A rule, law, command, or ordinance; PRESCRIPTION(2). • A general term, prescript may also apply to an edict, a regulation, or any instructive guideline.

PRESCRIPTION

prescription,n.1. The act of establishing authoritative rules. Cf. PROSCRIPTION. 2. A rule so established. — Also termed (archaically) prescript. 3. The effect of the lapse of time in creating and destroying rights. [Cases: Limitation of Actions 1. C.J.S. Limitations of Actions §§ 2–4.] 4. The extinction of a title or right by failure to claim or exercise it over a long period. — Also termed negative prescription; extinctive prescription. 5. The acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period. — Also termed positive prescription; acquisitive prescription. Cf. ADVERSE POSSESSION. See (for senses 3–5) PERIOD OF PRESCRIPTION . [Cases: Adverse Possession 1–95. C.J.S. Adverse Possession §§ 2–225, 263–299, 327–338; Conflict of Laws§ 76.] 6.Int'l law. The acquisition of a territory through a continuous and undisputed exercise of sovereignty over it. 7.Oil & gas. A Louisiana doctrine that extinguishes unused mineral servitudes after ten years if there is no effort to discover or produce on the land or the land pooled with it.

acquisitive prescription (*<<schwa>>-kwiz-<<schwa>>-tiv*).1.PRESCRIPTION(5).2.Civil law. A mode of acquiring ownership or other legal rights through possession for a specified period of time.

liberative prescription (*lib-<<schwa>>-r<<schwa>>-tiv*).Civil law. A bar to a lawsuit resulting from its untimely filing. La. Civ. Code art. 3447. • This term is essentially the civil-law equivalent of a statute of limitations. See STATUTE OF LIMITATIONS. [Cases: Limitation of Actions 1. C.J.S. Limitations of Actions §§ 2–4.]

prescription in a que estate (ah kee). [Law French “prescription in whose estate”] A claim of prescription based on the immemorial enjoyment of the right by the claimant and the former owners whose estate the claimant has succeeded to.

prescription of nonuse.Civil law. A mode of extinction of a real right other than ownership (such as a servitude) as a result of failure to exercise the right for a specified period of time.

PRESCRIPTIVE EASEMENT

prescriptive easement.See EASEMENT.

PRESCRIPTIVE RIGHT

prescriptive right.A right obtained by prescription <after a nuisance has been continuously in existence for 20 years, a prescriptive right to continue it is acquired as an easement appurtenant to the land on which it exists>. [Cases: Nuisance 11–17. C.J.S. Nuisances §§ 77, 79–82.]

PRESENCE

presence,n.1. The state or fact of being in a particular place and time <his presence at the scene saved two lives>.2. Close physical proximity coupled with awareness <the agent was in the presence of the principal>.

constructive presence. 1.Criminal law. Legal imputation of having been at a crime scene, based on having been close enough to the scene to have aided and abetted the crime's commission. See CONSPIRACY. 2.Wills & estates. Legal imputation of a witness's having been in the room when a will was signed, based on the fact that the testator and the witness were able to see each other at the time of the signing. • This principle was commonly employed until the 20th century, when the presence-of-the-testator rule became dominant. See PRESENCE-OF-THE-TESTATOR RULEE.

PRESENCE-OF-DEFENDANT RULE

presence-of-defendant rule.The principle that a felony defendant is entitled to be present at every major stage of the criminal proceeding. Fed. R. Crim. P. 43. [Cases: Criminal Law 636. C.J.S. Criminal Law § 1161.]

PRESENCE OF THE COURT

presence of the court.The company or proximity of the judge or other courtroom official. • For purposes of contempt, an action is in the presence of the court if it is committed within the view of the judge or other person in court and is intended to disrupt the court's business.

“Some decisions indicate that the term ‘in the presence of the court’ is to be given a liberal interpretation, that ‘the court’ consists not of the judge, the courtroom, the jury, or the jury room individually, but of all of these combined, and that the court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to law.” 17 Am. Jur. 2d Contempt § 19 (1990).

PRESENCE-OF-THE-TESTATOR RULE

presence-of-the-testator rule. The principle that a testator must be aware (through sight or other sense) that the witnesses are signing the will. • Many jurisdictions interpret this requirement liberally, and the Uniform Probate Code has dispensed with it. [Cases: Wills 117. C.J.S. Wills §§ 285–293.]

PRESENT

present, adj. 1. Now existing; at hand <a present right to the property>. 2. Being considered; now under discussion <the present appeal does not deal with that issue>. 3. In attendance; not elsewhere <all present voted for him>.

PRESENT ABILITY

present ability. See ABILITY.

PRESENT AND VOTING

present and voting. Parliamentary law. (Of a member) casting a vote. • The result of a vote is ordinarily determined with reference to the members voting (often termed, somewhat redundantly, as “present and voting”). An answer of “present” when casting a vote amounts to an abstention because the voter is indicating that he or she is present but not voting. See ABSTAIN (1).

PRESENTATION

presentation. 1. The delivery of a document to an issuer or named person for the purpose of initiating action under a letter of credit; PRESENTMENT(3). [Cases: Banks and Banking 191. C.J.S. Bills and Notes; Letters of Credit §§ 341–366, 368–370, 372–376.] 2. Hist. Eccles. law. A benefice patron's nomination of a person to fill a vacant benefice. • If the bishop rejected the appointee, the patron could enforce the right to fill the vacancy by writ of quare impedit in the Court of Common Pleas. See QUARE IMPEDIT . Cf. ADVOWSON; INSTITUTION(5).

next presentation. Hist. Eccles. law. In the law of advowsons, the right to present to the bishop a clerk to fill the first vacancy that arises in a church or other ecclesiastical office.

PRESENT CASE

present case. See case at bar under CASE.

PRESENT CONVEYANCE

present conveyance. See CONVEYANCE.

PRESENT COVENANT

present covenant. See COVENANT(4).

PRESENTENCE HEARING

presentence hearing. A proceeding at which a judge or jury receives and examines all relevant information regarding a convicted criminal and the related offense before passing sentence. — Also termed sentencing hearing. [Cases: Sentencing and Punishment 325. C.J.S. Criminal Law

§§ 1480, 1492–1493, 1495, 1779.]

PRESENTENCE-INVESTIGATION REPORT

presentence-investigation report. A probation officer's detailed account of a convicted defendant's educational, criminal, family, and social background, conducted at the court's request as an aid in passing sentence. See Fed. R. Crim. P. 32(c). — Often shortened to presentence report. — Abbr. PSI; PIR. [Cases: Sentencing and Punishment 275–301. C.J.S. Criminal Law §§ 1488, 1491, 1506–1510, 1544, 1554, 1565.]

PRESENT ENJOYMENT

present enjoyment. See ENJOYMENT.

PRESENTER

presenter. Commercial law. Any person presenting a document (such as a draft) to an issuer for honor. UCC § 5-102(13).

PRESENT ESTATE

present estate. See present interest under INTEREST(2).

PRESENTING BANK

presenting bank. See BANK.

PRESENTING JURY

presenting jury. See GRAND JURY.

PRESENT INTEREST

present interest. See INTEREST(2).

PRESENTMENT

presentment (pri-zent-m<<schwa>>nt). 1. The act of presenting or laying before a court or other tribunal a formal statement about a matter to be dealt with legally. 2. Criminal procedure. A formal written accusation returned by a grand jury on its own initiative, without a prosecutor's previous indictment request. • Presentments are obsolete in the federal courts. [Cases: Grand Jury 42.]

“A grand jury has only two functions, either to indict or to return a ‘no bill.’ The Constitution speaks also of a ‘presentment,’ but this is a term with a distinct historical meaning now not well understood. Historically presentment was the process by which a grand jury initiated an independent investigation and asked that a charge be drawn to cover the facts should they constitute a crime. With United States attorneys now always available to advise grand juries, proceeding by presentment is an outmoded practice.” 1 Charles Alan Wright, *Federal Practice and Procedure* § 110, at 459 (3d ed. 1999).

3. The formal production of a negotiable instrument for acceptance or payment. [Cases: Bills

and Notes 385–407. C.J.S. Bills and Notes; Letters of Credit §§ 4, 97–98, 202, 204–209, 212, 257.]“Presentment and dishonor occur, for instance, when the holder of a check attempts to cash it at the drawee bank, but payment is refused because the drawer lacks sufficient funds on deposit. The demand for payment is presentment. The bank's refusal to pay is dishonor.” 2 James J. White & Robert S. Summers, Uniform Commercial Code § 16-8, at 100 (4th ed. 1995).

presentment for acceptance. Production of an instrument to the drawee, acceptor, or maker for acceptance. • This type of presentment may be made anytime before maturity, except that with bills payable at sight, after demand, or after sight, presentment must be made within a reasonable time. [Cases: Bills and Notes 388.]

presentment for payment. Production of an instrument to the drawee, acceptor, or maker for payment. • This type of presentment must be made on the date when the instrument is due. [Cases: Bills and Notes 399. C.J.S. Bills and Notes; Letters of Credit § 205.]

PRESENTMENT OF ENGLISHRY

presentment of Englishry. Hist. The offering of proof that a slain person was English rather than (before the Conquest) a Dane or (after the Conquest) a Norman. • This requirement was issued first by the conquering Danes and then by the Normans to protect these groups from the English by the threat of a village- or hundred-wide amercement if the inhabitants failed to prove that a dead person found among them was English.

PRESENTMENT WARRANTY

presentment warranty. See WARRANTY(2).

PRESENT RECOLLECTION REFRESHED

present recollection refreshed. Evidence. A witness's memory that has been enhanced by showing the witness a document that describes the relevant events. • The document itself is merely a memory stimulus and is not admitted in evidence. Fed. R. Evid. 612. — Also termed refreshing recollection; refreshing memory; present recollection revived. Cf. PAST RECOLLECTION RECORDED. [Cases: Witnesses 253. C.J.S. Witnesses §§ 435, 499.]

PRESENTS

presents, n. pl. Archaic. The instrument under consideration. • This is usu. part of the phrase these presents, which is part of the longer phrase know all men by these presents (itself a loan translation from the Latin *noverint universi per praesentes*). See KNOW ALL MEN BY THESE PRESENTS.

PRESENT SALE

present sale. See SALE.

PRESENT SENSE IMPRESSION

present sense impression. Evidence. One's perception of an event or condition, formed during or immediately after the fact. • A statement containing a present sense impression is admissible

even if it is hearsay. Fed. R. Evid. 803(1). Cf. EXCITED UTTERANCE. [Cases: Criminal Law 419(2.15); Evidence 120. C.J.S. Criminal Law § 868; Evidence § 349.]

PRESENT USE

present use. See USE(4).

PRESENT VALUE

present value. The sum of money that, with compound interest, would amount to a specified sum at a specified future date; future value discounted to its value today. — Also termed present worth.

adjusted present value. An asset's value determined by adding together its present value and the value added by capital-structure effects. — Abbr. APV.

net present value. The present value of net cash flow from a project, discounted by the cost of capital. • This value is used to evaluate the project's investment potential. — Abbr. NPV.

PRESERVATION ORDER

preservation order. A direction to a property owner to maintain a historic building or conserve a natural habitat.

PRESIDE

preside, vb. 1. To occupy the place of authority, esp. as a judge during a hearing or trial <preside over the proceedings>. 2. To exercise management or control <preside over the estate>.

PRESIDENT

president, n. 1. The chief political executive of a government; the head of state. [Cases: United States 26. C.J.S. United States §§ 45–47.] 2. The chief executive officer of a corporation or other organization. 3. CHAIR(1). 4. See CHAIR(3). See (in senses 3 & 4) presiding officer (3) under OFFICER(2). — presidential, adj.

immediate past president. The last president who held office before the incumbent. See EMERITUS.

president-elect. An officer who automatically succeeds to the presidency when the incumbent president's term expires. • If the organization's governing documents so provide, the president-elect may act as president in the incumbent president's absence, or may assume the presidency early if the incumbent does not finish the term.

PRESIDENT EMERITUS

president emeritus. See EMERITUS.

PRESIDENTIAL ELECTOR

presidential elector. See ELECTOR.

PRESIDENTIAL MESSAGE

Presidential message. See MESSAGE.

PRESIDENT JUDGE

president judge. See presiding judge under JUDGE.

PRESIDENT OF A COURT-MARTIAL

president of a court-martial. Military law. The senior member in rank present at a court-martial trial. [Cases: Armed Services 43; Military Justice 870. C.J.S. Armed Services §§ 158–160, 166–168; Military Justice §§ 138–139, 143, 145, 147, 153.]

PRESIDENT OF THE UNITED STATES

President of the United States. The highest executive officer of the federal government of the United States. • The President is elected to a four-year term by a majority of the presidential electors chosen by popular vote from the states. The President must be a natural citizen, must be at least 35 years old, and must have been a resident for 14 years within the United States. U.S. Const. art. II, § 1. [Cases: United States 26. C.J.S. United States §§ 45–47.]

PRESIDING JUDGE

presiding judge. See JUDGE.

PRESIDING JUROR

presiding juror. See JUROR.

PRESIDING OFFICER

presiding officer. See OFFICER(2).

PRESS

press, n.1. The news media; print and broadcast news organizations collectively. [Cases: Constitutional Law 90(2). C.J.S. Constitutional Law § 539.]

“The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, to play an important role in the discussion of public affairs.” *Mills v. Alabama*, 384 U.S. 214, 219, 86 S.Ct. 1434, 1437 (1966).

“ ‘Press’ could refer to one or more subsets of media, defined either by function or form. To the extent that existing law defines ‘the press’ at all, it does so mostly in terms of specific media forms. The Supreme Court has addressed the matter only obliquely [I]t has never had to decide whether a particular litigant was ‘press.’ In most cases the question does not arise because the claimed right would be protected as fully by the Speech Clause as by the Press Clause. The cases in which the Court seems to rely on the Press Clause have involved newspapers or magazines whose status as press was unquestioned. The Court on other occasions has mentioned ‘publishers and broadcasters,’ ‘the media,’ ‘editorial judgment,’ ‘editorial control,’ ‘journalistic discretion,’

and 'newsgathering' as possible objects of protection. The most famous discussion of the meaning of the Press Clause, a 1974 speech by Justice Stewart, identified its beneficiaries as 'the daily newspapers and other established media,' or 'newspapers, television, and magazines.' " David A. Anderson, *Freedom of the Press*, 80 *Texas L. Rev.* 429, 436 (2002).

2.Hist. A piece of parchment, as one sewed together to make up a roll or record of judicial proceedings.

PRESS CLAUSE

Press Clause.The First Amendment provision that "Congress shall make no law ... abridging the freedom ... of the press." U.S. Const. amend I. — Also termed Freedom of the Press Clause.

PREST

prest (prest).Hist. A duty to be paid by the sheriff upon his account in the Exchequer or for money remaining in his custody.

PRESTABLE

prestable (pres-t<<schwa>>-b<<schwa>>l), adj. Scots law. 1. Payable. 2. Enforceable; exigible. • This term appears generally in reference to a debt. Cf. EXIGIBLE.

PRESTATION

prestation (pre-stay-sh<<schwa>>n).Hist. 1. A payment (or presting) of money. 2. The rendering of a service.

PREST MONEY

prest money.Hist. A monetary payment made to a soldier or sailor on enlistment.

PRESUME

presume,vb. To assume beforehand; to suppose to be true in the absence of proof.

PRESUMED BIAS

presumed bias.See implied bias under BIAS.

PRESUMED CRIME

presumed crime.See constructive crime under CRIME.

PRESUMED FATHER

presumed father.See FATHER.

PRESUMED-SELLER TEST

presumed-seller test.A method of imposing product liability on a manufacturer if the manufacturer, having full knowledge of the product's dangerous propensities, would be negligent in placing the product on the market.

PRESUMPTION

presumption. A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts. • Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption. See BURDEN OF PRODUCTION . [Cases: Criminal Law 305; Evidence 53–89. C.J.S. Criminal Law § 695; Evidence §§ 2, 130–196, 1341.]

“A presumption may be defined to be an inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of their connection.” William P. Richardson, *The Law of Evidence* § 53, at 25 (3d ed. 1928).

absolute presumption. See conclusive presumption.

adverse presumption. See adverse inference under INFERENCE.

artificial presumption. See presumption of law.

conclusive presumption. A presumption that cannot be overcome by any additional evidence or argument <it is a conclusive presumption that a child under the age of seven is incapable of committing a felony>. — Also termed absolute presumption; irrebuttable presumption; mandatory presumption; presumption *juris et de jure*. Cf. rebuttable presumption. [Cases: Constitutional Law 253(5); Evidence 53–89. C.J.S. Constitutional Law § 972; Evidence §§ 2, 130–196, 1341.]

“ ‘Conclusive presumptions’ or ‘irrebuttable presumptions’ are usually mere fictions, to disguise a rule of substantive law (e.g., the conclusive presumption of malice from an unexcused defamation); and when they are not fictions, they are usually repudiated by modern courts.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 454 (1935).

“Conclusive presumptions, sometimes called irrebuttable presumptions of law, are really rules of law. Thus it is said that a child under the age of fourteen years is conclusively presumed to be incapable of committing rape. This is only another way of saying that such a child cannot be found guilty of rape.” Richard Eggleston, *Evidence, Proof and Probability* 92 (1978).

conditional presumption. See rebuttable presumption.

conflicting presumption. One of two or more presumptions that would lead to opposite results. — Also termed inconsistent presumption. [Cases: Evidence 88. C.J.S. Evidence § 136.]

“ ‘Conflicting presumptions’ are simply two ordinary presumptions that would give opposite results; usually they are really successive presumptions. E.g., where A proves himself to be the son of N, wife of M, but M and N were already separated, and later M married P, and had a son B, the later marriage of M might presume a prior divorce from N before separation to make it valid, and yet the birth of A from a married mother might be presumed legitimate, and thus the question whether A or B was the legitimate son would be attended by opposing presumptions. But in this aspect the doctrine of presumptions is clouded with difficulties and leads to much vain speculation

and logical unrealism.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 454 (1935).

disputable presumption. See rebuttable presumption.

dry presumption. A presumption that has no probative value unless the party with the burden of proof presents evidence to support the presumption.

factual presumption. See presumption of fact.

heeding presumption. A rebuttable presumption that an injured product user would have followed a warning label had the product manufacturer provided one. [Cases: Products Liability 75. C.J.S. Products Liability § 72.]

inconsistent presumption. See conflicting presumption.

irrebuttable presumption. See conclusive presumption.

legal presumption. See presumption of law.

mandatory presumption. See conclusive presumption.

McClanahan presumption. See MCCLANAHAN PRESUMPTION.

mixed presumption. A presumption containing elements of both law and fact.

Morgan presumption. See MORGAN PRESUMPTION.

natural presumption. A deduction of one fact from another, based on common experience. [Cases: Evidence 53. C.J.S. Evidence §§ 2, 130–132, 134, 1341.]

permissive presumption. A presumption that a trier of fact is free to accept or reject from a given set of facts. — Also termed permissive inference. [Cases: Evidence 53, 87. C.J.S. Evidence §§ 2, 130–135, 152–154, 156, 173, 1341.]

presumption juris et de jure. See conclusive presumption.

presumption of a quorum. Parliamentary law. The presumption that a quorum, once established, is present until the chair or a member notices otherwise.

presumption of fact. A type of rebuttable presumption that may be, but as a matter of law need not be, drawn from another established fact or group of facts <the possessor of recently stolen goods is, by presumption of fact, considered the thief>. — Also termed factual presumption. [Cases: Evidence 53, 87. C.J.S. Evidence §§ 2, 130–135, 152–154, 156, 173, 1341.]

presumption of general application. A presumption that applies across the board to all legislation, as a result of which lawmakers need not list each such presumption in all bills. [Cases: Evidence 53–89. C.J.S. Evidence §§ 2, 130–196, 1341.]

“One function of the word ‘presumption’ in the context of statutory interpretation is to state the result of this legislative reliance (real or assumed) on firmly established legal principles. There is a ‘presumption’ that mens rea is required in the case of statutory crimes, and a ‘presumption’

that statutory powers must be exercised reasonably. These presumptions apply although there is no question of linguistic ambiguity in the statutory wording under construction, and they may be described as 'presumptions of general application.' At the level of interpretation, their function is the promotion of brevity on the part of the draftsman. Statutes make dreary enough reading as it is, and it would be ridiculous to insist in each instance upon an enumeration of the general principles taken for granted." Rupert Cross, *Statutory Interpretation* 142–43 (1976).

presumption of innocence. See PRESUMPTION OF INNOCENCE.

presumption of intent. A permissive presumption that a criminal defendant who intended to commit an act did so. [Cases: Criminal Law 312. C.J.S. Criminal Law § 40.]

presumption of law. A legal assumption that a court is required to make if certain facts are established and no contradictory evidence is produced <by presumption of law, a criminal defendant is considered innocent until proven guilty beyond a reasonable doubt>. — Also termed legal presumption; artificial presumption; praesumptio juris; pseudopresumption of law. [Cases: Evidence 86. C.J.S. Evidence §§ 131, 134.]

presumption of maternity. See PRESUMPTION OF MATERNITY.

presumption of natural and probable consequences. See PRESUMPTION OF NATURAL AND PROBABLE CONSEQUENCES.

presumption of paternity. See PRESUMPTION OF PATERNITY.

presumption of survivorship. See PRESUMPTION OF SURVIVORSHIP.

presumption of validity. See PRESUMPTION OF VALIDITY.

prima facie presumption. See rebuttable presumption.

procedural presumption. A presumption that may be rebutted by credible evidence. [Cases: Evidence 53. C.J.S. Evidence §§ 2, 130–132, 134, 1341.]

pseudopresumption of law. See presumption of law.

rebuttable presumption. An inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. — Also termed prima facie presumption; disputable presumption; conditional presumption; praesumptio juris. Cf. conclusive presumption. [Cases: Evidence 89. C.J.S. Evidence §§ 131, 135, 152–156, 160.]

statutory presumption. A rebuttable or conclusive presumption that is created by statute. [Cases: Evidence 53. C.J.S. Evidence §§ 2, 130–132, 134, 1341.]

Thayer presumption. See THAYER PRESUMPTION.

PRESUMPTION OF DEATH

presumption of death. A presumption that arises on the unexpected disappearance and continued absence of a person for an extended period, commonly seven years. [Cases: Damages 2. C.J.S. Aeronautics and Aerospace §§ 272–273; Damages §§ 10–11.]

PRESUMPTION-OF-FERTILITY RULE

presumption-of-fertility rule. See FERTILE-OCTOGENARIAN RULE.

PRESUMPTION-OF-IDENTITY RULE

presumption-of-identity rule. The common-law rule that unless there is a specific, applicable statute in another state, a court will presume that the common law has developed elsewhere identically with how it has developed in the court's own state, so that the court may apply its own state's law. • Today this rule applies primarily in Georgia. See *Shorewood Packaging Corp. v. Commercial Union Ins.*, 865 F. Supp. 1577 (N.D. Ga. 1994). [Cases: Evidence 80. C.J.S. Evidence § 149.]

PRESUMPTION OF INNOCENCE

presumption of innocence. Criminal law. The fundamental principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence. [Cases: Criminal Law 308; Evidence 60. C.J.S. Criminal Law § 697; Evidence §§ 146, 150, 179.]

PRESUMPTION OF LEGITIMACY

presumption of legitimacy. See PRESUMPTION OF PATERNITY.

PRESUMPTION OF MATERNITY

presumption of maternity. Family law. The presumption that the woman who has given birth to a child is both the genetic mother and the legal mother of the child. — Also termed maternity presumption. Cf. PRESUMPTION OF PATERNITY.

PRESUMPTION OF NATURAL AND PROBABLE CONSEQUENCES

presumption of natural and probable consequences. Criminal law. The presumption that mens rea may be derived from proof of the defendant's conduct. [Cases: Criminal Law 312. C.J.S. Criminal Law § 40.]

PRESUMPTION OF PATERNITY

presumption of paternity. Family law. The presumption that the father of a child is the man who (1) is married to the child's mother when the child was conceived or born (even though the marriage may have been invalid), (2) 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 (3) welcomed the child into his home and later held out the child as his own. — Also termed paternity presumption; presumption of legitimacy; legitimacy presumption. See presumed father under FATHER. [Cases: Children Out-of-Wedlock 3. C.J.S. Children Out-of-Wedlock §§ 13–17.]

PRESUMPTION OF SURVIVORSHIP

presumption of survivorship. The presumption that one of two or more victims of a common disaster survived the others, based on the supposed survivor's youth, good health, or other reason

rendering survivorship likely. [Cases: Death 5. C.J.S. Death §§ 6, 15.]

PRESUMPTION OF VALIDITY

presumption of validity.Patents. The doctrine that the holder of a patent is entitled to a statutory presumption that the patent is valid and that the burden is on a challenger to prove invalidity. See BORN VALID. [Cases: Patents 112.1. C.J.S. Patents §§ 194, 203–205, 207.]

PRESUMPTIVE

presumptive (pri-z<<schwa>>mp-tiv), adj.1. Giving reasonable grounds for belief or presumption. 2. Based on a presumption. [Cases: Evidence 53. C.J.S. Evidence §§ 2, 130–132, 134, 1341.] — presumptively,adv.

PRESUMPTIVE AUTHORITY

presumptive authority.See implied authority under AUTHORITY(1).

PRESUMPTIVE DAMAGES

presumptive damages.See punitive damages under DAMAGES.

PRESUMPTIVE DEATH

presumptive death.See DEATH.

PRESUMPTIVE EVIDENCE

presumptive evidence.See EVIDENCE.

PRESUMPTIVE HEIR

presumptive heir.See heir presumptive under HEIR.

PRESUMPTIVE NOTICE

presumptive notice.See implied notice under NOTICE.

PRESUMPTIVE PROOF

presumptive proof.See conditional proof under PROOF.

PRESUMPTIVE SENTENCE

presumptive sentence.See SENTENCE.

PRESUMPTIVE TAKER

presumptive taker.See TAKER.

PRESUMPTIVE TITLE

presumptive title.See TITLE(2).

PRESUMPTIVE TRUST

presumptive trust.See resulting trust under TRUST.

PRET A USAGE

pret a usage.Civil law. A gratuitous loan for use.

PRETAX

pretax,adj. Existing or occurring before the assessment or deduction of taxes <pretax income>. [Cases: Internal Revenue 3110; Taxation 978. C.J.S. Internal Revenue §§ 59–60; Taxation §§ 1715–1716, 1721–1722, 1727.]

PRETAX EARNINGS

pretax earnings.See EARNINGS.

PRÊTE-NOM

prête-nom (pret-nohm). [French] One who lends his name.

PRETENSIVE JOINDER

pretensive joinder.See JOINDER.

PRETERLEGAL

preterlegal (pree-t<<schwa>>r-lee-g<<schwa>>l), adj. Rare. Beyond the range of what is legal; not according to law <preterlegal customs>.

PRETERMISSION

pretermission (pree-t<<schwa>>r-mish-<<schwa>>n).1. The condition of one who is pretermitted, as an heir of a testator. 2. The act of omitting an heir from a will. [Cases: Descent and Distribution 47. C.J.S. Descent and Distribution §§ 51–54.]

PRETERMISSION STATUTE

pretermission statute.See PRETERMITTED-HEIR STATUTE.

PRETERMIT

pretermit (pree-t<<schwa>>r-mit), vb.1. To ignore or disregard purposely <the court pretermitted the constitutional question by deciding the case on procedural grounds>.2. To neglect, overlook, or omit accidentally <the third child was pretermitted in the will>. • Although in ordinary usage sense 1 prevails, in legal contexts (esp. involving heirs) sense 2 is usual. [Cases: Descent and Distribution 47. C.J.S. Descent and Distribution §§ 51–54.]

PRETERMITTED CHILD

pretermitted child.See pretermitted heir under HEIR.

PRETERMITTED DEFENSE

pretermitted defense.See DEFENSE(1).

PRETERMITTED HEIR

pretermitted heir. See HEIR.

PRETERMITTED-HEIR STATUTE

pretermitted-heir statute. A state law that, under certain circumstances, grants an omitted heir the right to inherit a share of the testator's estate, usu. by treating the heir as though the testator had died intestate. • Most states have a pretermitted-heir statute, under which an omitted child or spouse receives the same share of the estate as if the testator had died intestate, unless the omission was intentional. The majority rule, and that found in the Uniform Probate Code, is that only afterborn children — that is, children born after the execution of a will — receive protection as pretermitted heirs. Under that circumstance, an inference arises that their omission was inadvertent rather than purposeful. — Also termed pretermittance statute. [Cases: Descent and Distribution 47. C.J.S. Descent and Distribution §§ 51–54.]

PRETERMITTED SPOUSE

pretermitted spouse. See pretermitted heir under HEIR.

PRETEXT

pretext (pree-tekst), n. A false or weak reason or motive advanced to hide the actual or strong reason or motive. [Cases: Civil Rights 1137. C.J.S. Civil Rights §§ 34, 39–40.] — pretextual (pree-tekst-choo-*<<schwa>>l*), adj.

PRETEXTUAL ARREST

pretextual arrest. See ARREST.

PRETEXTUS

pretextus (pree-tekst-t*<<schwa>>s*). [Latin] A pretext.

PRETIUM

pretium (pree-shee-*<<schwa>>m*). [Latin] Price; value; worth.

pretium affectionis (pree-shee-*<<schwa>>m <<schwa>>-fek-shee-oh-nis*). An enhanced value placed on a thing by the fancy of its owner, growing out of an attachment for the specific article and its associations; sentimental value. • This value is not taken as a basis for measuring damages.

pretium periculi (pree-shee-*<<schwa>>m p<<schwa>>-rik-y<<schwa>>-II*). The price of the risk, such as the premium paid on an insurance policy.

PRETORIAL COURT

pretorial court (pri-tor-ee-*<<schwa>>l*). See COURT.

PRETRIAL CONFERENCE

pretrial conference. An informal meeting at which opposing attorneys confer, usu. with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried. See Fed. R. Civ. P. 16; Fed. R. Crim. P. 17.1. • The conference takes place shortly before trial and ordinarily results in a pretrial order. — Often shortened to pretrial. — Also termed pretrial hearing. [Cases: Federal Civil Procedure 1921; Pretrial Procedure 741. C.J.S. Trial §§ 43–46.]

PRETRIAL DETENTION

pretrial detention. See DETENTION.

PRETRIAL DISCOVERY

pretrial discovery. See DISCOVERY.

PRETRIAL DIVERSION

pretrial diversion. See DIVERSION PROGRAM(1).

PRETRIAL HEARING

pretrial hearing. See PRETRIAL CONFERENCE.

PRETRIAL INTERVENTION

pretrial intervention. 1. DIVERSION PROGRAM(1). 2. See deferred judgment under JUDGMENT.

PRETRIAL INVESTIGATION

pretrial investigation. Military law. An investigation to decide whether a case should be recommended for forwarding to a general court-martial. [Cases: Armed Services 47(3); Military Justice 921. C.J.S. Armed Services § 165; Military Justice §§ 166–169.]

PRETRIAL ORDER

pretrial order. A court order setting out the claims and defenses to be tried, the stipulations of the parties, and the case's procedural rules, as agreed to by the parties or mandated by the court at a pretrial conference. See Fed. R. Civ. P. 16(e). • In federal court, a pretrial order supersedes the pleadings. [Cases: Federal Civil Procedure 1935; Pretrial Procedure 747. C.J.S. Trial § 47.]

PREVAIL

prevail, vb. 1. To obtain the relief sought in an action; to win a lawsuit <the plaintiff prevailed in the Supreme Court>. 2. To be commonly accepted or predominant <it's unclear which line of precedent will prevail>.

PREVAILING PARTY

prevailing party. See PARTY(2).

PREVARICATION

prevarication (pri-var-*<<schwa>>-kay-sh<<schwa>>n*), n. The act or an instance of lying or avoiding the truth; equivocation. — prevaricate (pri-var-*<< schwa>>-kayt*), vb.

PREVARICATOR

prevaricator (pri-var-*<<schwa>>-kay-t<<schwa>>r*), n. [Latin] 1. A liar; an equivocator. 2. Roman law. One who betrays another's trust, such as an advocate who aids the opposing party by betraying the client. — Also spelled (in sense 2) praevaricator.

PREVENT

prevent, vb. To hinder or impede <a gag order to prevent further leaks to the press>.

PREVENTION

prevention. Civil law. The right of one of several judges having concurrent jurisdiction to exercise that jurisdiction over a case that the judge is first to hear.

PREVENTION DOCTRINE

prevention doctrine. Contracts. The principle that each contracting party has an implied duty to not do anything that prevents the other party from performing its obligation. — Also termed prevention-of-performance doctrine. [Cases: Contracts 168, 303(4). C.J.S. Contracts §§ 346–347, 528–530.]

PREVENTIVE CUSTODY

preventive custody. See CUSTODY(1).

PREVENTIVE DETENTION

preventive detention. See DETENTION.

PREVENTIVE INJUNCTION

preventive injunction. See INJUNCTION.

PREVENTIVE JUSTICE

preventive justice. See JUSTICE(1).

PREVENTIVE LAW

preventive law. A practice of law that seeks to minimize a client's risk of litigation or secure more certainty with regard to the client's legal rights and duties. • Emphasizing planning, counseling, and the nonadversarial resolution of disputes, preventive law focuses on the lawyer's role as adviser and negotiator.

PREVENTIVE PUNISHMENT

preventive punishment. See PUNISHMENT.

PREVIOUSLY TAXED INCOME

previously taxed income. See INCOME.

PREVIOUS NOTICE

previous notice. See NOTICE(6).

PREVIOUS QUESTION

previous question. See CLOSE DEBATE.

PRICE

price. The amount of money or other consideration asked for or given in exchange for something else; the cost at which something is bought or sold. [Cases: Contracts 229(1); Sales 74.1. C.J.S. Contracts § 379; Sales § 94–96.]

agreed price. The price for a sale, esp. of goods, arrived at by mutual agreement. Cf. open price. [Cases: Sales 75.]

arm's-length price. The price at which two unrelated, unaffiliated, and nondesperate parties would freely agree to do business. See arm's-length transaction under TRANSACTION; fair market value under VALUE.

asked price. The lowest price at which a seller is willing to sell a security at a given time. See SPREAD(2).

asking price. The price at which a seller lists property for sale, often implying a willingness to sell for less. — Also termed ask price; offering price.

at-the-market price. A retail price that store owners in the same vicinity generally charge.

bid price. The highest price that a prospective buyer is willing to pay for a security at a given time. See SPREAD(2).

call price. 1. The price at which a bond may be retired before its maturity. [Cases: Corporations 468.1.] 2. See strike price.

ceiling price. 1. The highest price at which a buyer is willing to buy. 2. The highest price allowed by a government agency or by some other regulatory institution. [Cases: War and National Emergency 108.]

closing price. The price of a security at the end of a given trading day. — Also termed close.

exercise price. See strike price.

ex-works price. The price of goods as they leave the factory. See EX WORKS.

fixed price. A price that is agreed upon by a wholesaler and a retailer for the later sale or resale of an item. • Agreements to fix prices are generally prohibited by state and federal statutes.

floor price. The lowest price at which a seller is willing to sell.

liquidation price. A price that is paid for property sold to liquidate a debt. • Liquidation price

is usu. below market price. — Also termed liquidation value.

list price. A published or advertised price of goods; retail price.

market price. The prevailing price at which something is sold in a specific market. See fair market value under VALUE(2).

mean trading price. Securities. The average of the daily trading price of a security determined at the close of the market each day during a 90-day period.

net price. The price of something, after deducting cash discounts.

offering price. See asking price.

open price. The price for a sale, esp. of goods, that has not been settled at the time of a sale's conclusion. UCC § 2-305. Cf. agreed price. [Cases: Sales 78. C.J.S. Sales § 94.]

predatory price. See PREDATORY PRICING.

put price. See strike price.

redemption price. 1. The price of a bond that has not reached maturity, purchased at the issuer's option. 2. The price of shares when a mutual-fund shareholder sells shares back to the fund. — Also termed liquidating price; repurchase price. [Cases: Corporations 468.1.]

reserve price. In an auction, the amount that a seller of goods stipulates as the lowest acceptable offer. • The reserve price may or may not be announced. See WITH RESERVE; WITHOUT RESERVE.

sales price. The total amount for which property is sold, often including the costs of any services that are a part of the sale. • Under sales-tax statutes, the amount is typically valued in money even if the value is not received in money. — Also termed selling price.

spot price. The amount for which a commodity is sold in a spot market.

strike price. Securities. The price for which a security will be bought or sold under an option contract if the option is exercised. — Also termed striking price; exercise price; call price; put price. See OPTION.

subscription price. See SUBSCRIPTION PRICE.

suggested retail price. The sales price recommended to a retailer by a manufacturer of the product.

support price. A minimum price set by the federal government for a particular agricultural commodity. [Cases: Agriculture 3.5.]

target price. A price set by the federal government for particular agricultural commodities. • If the market price falls below the target price, farmers receive a subsidy from the government for the difference. [Cases: Agriculture 3.5.]

trade price. The price at which a manufacturer or wholesaler sells to others in the same

business or industry.

transfer price. The price charged by one segment of an organization for a product or service supplied to another segment of the same organization; esp., the charge assigned to an exchange of goods or services between a corporation's organizational units.

unit price. A price of a food product expressed in a well-known measure such as ounces or pounds.

upset price. The lowest amount that a seller is willing to accept for property or goods sold at auction. [Cases: Auctions and Auctioneers 10. C.J.S. Auctions and Auctioneers §§ 21–22.]

wholesale price. The price that a retailer pays for goods purchased (usu. in bulk) from a wholesaler for resale to consumers at a higher price.

PRICE AMENDMENT

price amendment. Securities. A change in a registration statement, prospectus, or prospectus supplement affecting the offering price, the underwriting and selling discounts or commissions, the amount of proceeds, the conversion rates, the call prices, or some other matter relating to the offering price.

PRICE/COST ANALYSIS

price/cost analysis. A technique of determining, for antitrust purposes, whether predatory pricing has occurred by examining the relationship between a defendant's prices and either its average variable cost or its average total cost.

PRICE DISCRIMINATION

price discrimination. The practice of offering identical or similar goods to different buyers at different prices when the costs of producing the goods are the same. • Price discrimination can violate antitrust laws if it reduces competition. It may be either direct, as when a seller charges different prices to different buyers, or indirect, as when a seller offers special concessions (such as favorable credit terms) to some but not all buyers. [Cases: Monopolies 17(2.9). C.J.S. Monopolies § 96.]

persistent price discrimination. A monopolist's systematic policy of obtaining different rates of return from different sales groupings.

PRICE-EARNINGS RATIO

price-earnings ratio. The ratio between a stock's current share price and the corporation's earnings per share for the last year. • Some investors avoid stocks with high price-earnings ratios because those stocks may be overpriced. — Abbr. P/E ratio. Cf. earnings yield under YIELD.

PRICE-EROSION THEORY

price-erosion theory. Patents. A theory of lost-profits remedy that measures the difference between what an item could have sold for with patent protection and what it actually sold for

while having to compete against an infringing item. [Cases: Patents 318(3). C.J.S. Patents §§ 564, 566.]

PRICE EXPECTANCY

price expectancy. See EXHIBITION VALUE.

PRICE-FIXING

price-fixing. The artificial setting or maintenance of prices at a certain level, contrary to the workings of the free market. • Price-fixing is usu. illegal per se under antitrust law. See FIX(3). [Cases: Monopolies 17(1.7). C.J.S. Monopolies §§ 83–85, 87.]

“Price-fixing agreements may or may not be aimed at complete elimination of price competition. The group making those agreements may or may not have the power to control the market. But the fact that the group cannot control the market prices does not necessarily mean that the agreement as to prices has no utility to the members of the combination. The effectiveness of price-fixing agreements is dependent on many factors, such as competitive tactics, position in the industry, the formula underlying price policies. Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy.” *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 225–26 n.59, 60 S.Ct. 811, 845 n.59 (1940).

horizontal price-fixing. Price-fixing among competitors on the same level, such as retailers throughout an industry. [Cases: Monopolies 17(1.7). C.J.S. Monopolies §§ 83–85, 87.]

vertical price-fixing. Price-fixing among parties in the same chain of distribution, such as manufacturers and retailers attempting to control an item's resale price. [Cases: Monopolies 17(1.7). C.J.S. Monopolies §§ 83–85, 87.]

PRICE INDEX

price index. An index of average prices as a percentage of the average prevailing at some other time (such as a base year). See CONSUMER PRICE INDEX ; PRODUCER PRICE INDEX.

PRICE LEADERSHIP

price leadership. A market condition in which an industry leader establishes a price that others in the field adopt as their own. • Price leadership alone does not violate antitrust laws without other evidence of an intent to create a monopoly.

PRICE-LEVEL-ADJUSTED MORTGAGE

price-level-adjusted mortgage. See MORTGAGE.

PRICE MEMORANDUM

price memorandum. Securities. A document created by an underwriter to explain how

securities are priced for a public offering and, typically, to show estimates and appraisals that are not allowed as part of the offering documents.

PRICE-RENEGOTIATION CLAUSE

price-renegotiation clause.Oil & gas. A provision in a gas contract allowing for price renegotiation from time to time or upon election of one of the parties.

PRICE SUPPORT

price support.The artificial maintenance of prices (as of a particular commodity) at a certain level, esp. by governmental action (as by subsidy). [Cases: Agriculture 3.5.]

PRICE WAR

price war.A period of sustained or repeated price-cutting in an industry (esp. among retailers), designed to undersell competitors or force them out of business.

PRIEST- PENITENT PRIVILEGE

priest-penitent privilege.See PRIVILEGE(3).

PRIMAE IMPRESSIONIS

primae impressionis (prĭ-mee im-pres[h]-ee-oh-nis). [Law Latin] Of the first impression. See case of first impression under CASE.

PRIMAE PRECES

primae preces.See PRECES PRIMARIAE.

PRIMA FACIE

prima facie,adj. Sufficient to establish a fact or raise a presumption unless disproved or rebutted <a prima facie showing>.

prima facie (prĭ-m<<schwa>> fay-sh<<schwa>> orfay-shee), adv.[Latin] At first sight; on first appearance but subject to further evidence or information < the agreement is prima facie valid>. [Cases: Evidence 53, 85, 584(1). C.J.S. Evidence §§ 2, 130-132, 134-135, 226, 729, 1300-1305, 1320, 1324, 1326-1327, 1341-1342, 1345.]

PRIMA FACIE CASE

prima facie case. 1. The establishment of a legally required rebuttable presumption. [Cases: Evidence 53, 85. C.J.S. Evidence §§ 2, 130-132, 134-135, 1341.] 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. [Cases: Evidence 584(1). C.J.S. Evidence §§ 226, 729, 1300-1305, 1320, 1324, 1326-1327, 1342, 1345.]

PRIMA FACIE EVIDENCE

prima facie evidence.See EVIDENCE.

PRIMA FACIE PRESUMPTION

prima facie presumption. See rebuttable presumption under **PRESUMPTION**.

PRIMA FACIE PRIVILEGE

prima facie privilege. See qualified immunity under **IMMUNITY**(1).

PRIMA FACIE TORT

prima facie tort. See **TORT**.

PRIMAGE

primage (prI-mij). See **HAT MONEY**.

PRIMARY

primary, n. See primary election under **ELECTION**(3).

PRIMARY ACTIVITY

primary activity. Labor law. Concerted action (such as a strike or picketing) directed against an employer with which a union has a dispute. Cf. **SECONDARY ACTIVITY** .

PRIMARY AGENT

primary agent. See **AGENT**(2).

PRIMARY ALLEGATION

primary allegation. See **ALLEGATION**.

PRIMARY AMENDMENT

primary amendment. See **AMENDMENT**(3).

PRIMARY ASSUMPTION OF THE RISK

primary assumption of the risk. See **ASSUMPTION OF THE RISK**.

PRIMARY AUTHORITY

primary authority. See **AUTHORITY**(4).

PRIMARY BENEFICIARY

primary beneficiary. See **BENEFICIARY**.

PRIMARY BOYCOTT

primary boycott. See **BOYCOTT**.

PRIMARY CAREGIVER

primary caregiver. Family law. 1. The parent who has had the greatest responsibility for the

daily care and rearing of a child. See TENDER-YEARS DOCTRINE ; PRIMARY-CAREGIVER DOCTRINE. 2. The person (including a nonparent) who has had the greatest responsibility for the daily care and rearing of a child. — Also termed primary caretaker.

PRIMARY-CAREGIVER DOCTRINE

primary-caregiver doctrine.Family law. The presumption that, in a custody dispute, the parent who is a child's main caregiver will be the child's custodian, assuming that he or she is a fit parent.

- This doctrine includes the quality and the quantity of care that a parent gives a child — but excludes supervisory care by others while the child is in the parent's custody. Under this doctrine, courts sometimes divide children into three age groups: those under the age of 6, those 6 to 14, and those 14 and older. For children under the age of 6, an absolute presumption exists in favor of the primary caretaker as custodian. For those 6 to 14, the trial court may hear the child's preference on the record but without the parents being present. For those 14 and older, the child may be allowed to choose which parent will be the custodian, assuming that both parents are fit. — Also termed primary-caretaker doctrine; primary-caregiver presumption; primary-caretaker presumption; primary-caregiver preference. Cf. MATERNAL-PREFERENCE PRESUMPTION ; TENDER-YEARS DOCTRINE.

PRIMARY CARETAKER

primary caretaker.See PRIMARY CAREGIVER.

PRIMARY CAUSE

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

PRIMARY COMMITTEE

primary committee.Bankruptcy. A group of creditors organized to help the debtor draw up a reorganization plan. [Cases: Bankruptcy 3024.C.J.S. Bankruptcy §§ 193, 373.]

PRIMARY CONVEYANCE

primary conveyance.See CONVEYANCE.

PRIMARY DEVISE

primary devise.See DEVISE.

PRIMARY DOMICILIARY PARENT

primary domiciliary parent.See PARENT.

PRIMARY-DUTY DOCTRINE

primary-duty doctrine.Maritime law. The principle that a seaman cannot recover damages if the injury arose from an unseaworthy condition created by the seaman's breach of duty.

PRIMARY ELECTION

primary election.See ELECTION(3).

PRIMARY EVIDENCE

primary evidence. See best evidence under EVIDENCE.

PRIMARY FACT

primary fact. See FACT.

PRIMARY INSURANCE

primary insurance. See INSURANCE.

PRIMARY INSURED

primary insured. See INSURED.

PRIMARY INSURER

primary insurer. See INSURER.

PRIMARY JURISDICTION

primary jurisdiction. See JURISDICTION.

PRIMARY-JURISDICTION DOCTRINE

primary-jurisdiction doctrine. A judicial doctrine whereby a court tends to favor allowing an agency an initial opportunity to decide an issue in a case in which the court and the agency have concurrent jurisdiction. See primary jurisdiction under JURISDICTION. [Cases: Administrative Law and Procedure 228.1.]

PRIMARY LEASE

primary lease. See HEADLEASE.

PRIMARY LIABILITY

primary liability. See LIABILITY.

PRIMARY-LINE COMPETITION

primary-line competition. See horizontal competition under COMPETITION.

PRIMARY-LINE INJURY

primary-line injury. Antitrust. Under the price-discrimination provisions of the Robinson-Patman Act, the practice of charging below-cost, predatory prices in an attempt to eliminate the seller's competition in the market. 15 USCA § 13(a). • A primary-line injury, which hinders or seeks to hinder competition among the seller's competitors, is distinguishable from a secondary-line injury, which refers to discriminatory pricing that hinders or seeks to hinder competition among the seller's customers, by favoring one customer over another in the prices the seller charges. Cf. SECONDARY-LINE INJURY .

“Liggett contends that Brown & Williamson's discriminatory volume rebates to wholesalers

threatened substantial competitive injury by furthering a predatory pricing scheme designed to purge competition from the economy segment of the cigarette market. This type of injury, which harms direct competitors of the discriminating seller, is known as a primary-line injury.” *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 220, 113 S.Ct. 2578, 2586 (1993).

PRIMARY MARKET

primary market. See MARKET.

PRIMARY MORTGAGE MARKET

primary mortgage market. See MORTGAGE MARKET.

PRIMARY OBLIGATION

primary obligation. See OBLIGATION.

PRIMARY OFFERING

primary offering. See OFFERING.

PRIMARY OFFICER

primary officer. See principal officer under OFFICER(1).

PRIMARY PLEA

primary plea. See primary allegation under ALLEGATION.

PRIMARY POWERS

primary powers. The chief powers given by a principal to an agent to accomplish the agent's tasks. Cf. **MEDIATE POWERS**.

PRIMARY PURPOSE OR EFFECT

primary purpose or effect. Copyright. The main reason for or consequence of using a product, as a test for whether its sale amounts to contributory negligence. • The Supreme Court rejected the test in a landmark copyright case, but four justices said that if the primary purpose or effect of the product's sale or use infringes the copyrights of others, its manufacturer could be enjoined from selling the product or required to pay a reasonable royalty to the copyright owners. *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 457–500, 104 S.Ct. 774, 796–818 (1984) (Blackmun, J., dissenting). Cf. **COMMERCIALLY SIGNIFICANT NONINFRINGEMENT USE**.

PRIMARY RECEIVER

primary receiver. See principal receiver under RECEIVER.

PRIMARY RESERVE RATIO

primary reserve ratio. See RESERVE RATIO.

PRIMARY RESIDENTIAL RESPONSIBILITY

primary residential responsibility. See RESIDENTIAL RESPONSIBILITY.

PRIMARY RIGHT

primary right. See RIGHT.

PRIMARY TERM

primary term. Oil & gas. The option period — set by the habendum clause in an oil-and-gas lease — during which the lessee has the right to search, develop, and produce from the property. • The primary term should be long enough to allow the lessee to evaluate the property and make arrangements to drill. In practice, the primary term may extend for 24 hours or 25 years, depending on how much competition there is for leases in the area. See HABENDUM CLAUSE. Cf. SECONDARY TERM.

PRIMATE

primate (prĭ-mit). A chief ecclesiastic; an archbishop or bishop having jurisdiction over other bishops within a province.

PRIME

prime, n. See prime rate under INTEREST RATE.

prime, vb. To take priority over <Watson's preferred mortgage primed Moriarty's lien>.

PRIME CONTRACTOR

prime contractor. See general contractor under CONTRACTOR.

PRIME COST

prime cost. See COST(1).

PRIME LENDING RATE

prime lending rate. See prime rate under INTEREST RATE.

PRIME MAKER

prime maker. See MAKER.

PRIME MINISTER

prime minister. (often cap.) The chief executive of a parliamentary government; the head of a cabinet. — Abbr. PM.

PRIMER

primer (prim-<<schwa>>r or prĭ-m<<schwa>>r). [Law French] First; primary < primer seisin>.

PRIME RATE

prime rate. See INTEREST RATE.

PRIMER ELECTION

primer election. A first choice; esp., the eldest coparcener's pick of land on division of the estate. See ELECTION.

PRIMER FINE

primer fine (prim-*<<schwa>>r* or *prI-m<<schwa>>r fIn*). [Latin] Hist. A fee payable to the Crown on the suing out of a writ of praecipe to begin a conveyance by fine. See FINE(1). — Also termed praefine.

PRIMER SEISIN

primer seisin. See SEISIN.

PRIME SERJEANT

prime serjeant. See premier serjeant under SERJEANT-AT-LAW.

PRIME TENANT

prime tenant. See TENANT.

PRIMITIAE

primitiae (pri-mish-ee-ee). [fr. Latin primus “first”] See FIRST FRUITS(2). — prinitial (pri-mish-*<<schwa>>l*), adj.

PRIMITIVE

primitive. See FIRST FRUITS(2).

PRIMITIVE OBLIGATION

primitive obligation. See OBLIGATION.

PRIMO FRONTE

primo fronte (prI-moh fron-tee). [Latin] Hist. At first sight.

PRIMOGENITURE

primogeniture (prI-m<<schwa>>-jen-<<schwa>>-ch<<schwa>>r). 1. The state of being the firstborn child among siblings. 2. The common-law right of the firstborn son to inherit his ancestor's estate, usu. to the exclusion of younger siblings. — Also termed (in sense 2) primogenitureship. See BOROUGH ENGLISH . [Cases: Descent and Distribution 7.]

“If by primogeniture we only mean ‘that the male issue shall be admitted before the female, and that, when there are two or more males in equal degrees, the eldest only shall inherit, but the females “all together” [Blackstone's definition], then ancient records may indeed contain but scant

references. But primogeniture embraces all the cases of single inheritance, and may indeed be defined as the prerogative enjoyed by an eldest son or occasionally an eldest daughter, through law or custom, to succeed to their ancestor's inheritance in preference to younger children. Nay, we might even make it more comprehensive, extending it to all cases of single succession depending upon priority in birth." Radhabinod Pal, *The History of the Law of Primogeniture* 11 (1929).

"We might note here, parenthetically, that the English preference for single-file male descent — that is, the system of descent known as primogeniture — was never cordially received in this country. Our statutes of descent and distribution uniformly provide for sons' and daughters' sharing the inheritance equally. Although this seems a fairer method than primogeniture, which was finally abolished in Britain with the 1925 reforms, the descent of property to an ever-expanding group of heirs can seriously complicate the clearing of old titles." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 9 (2d ed. 1984).

PRIMOGENITURESHIP

primogenitureship. See PRIMOGENTURE(2).

PRIMO LOCO

primo loco (prI-moh loh-koh). [Latin] Hist. In the first place.

PRIMO VENIENTI

primo venienti (prI-moh ven-ee-en-tI). [Latin] To the one first coming. • This refers to the former practice by estate executors of paying debts as they were presented without regard to whether the estate had enough assets to pay all the debts.

PRIMUM DECRETUM

primum decretum (prI-m<<schwa>>m di-kree-t<<schwa>>m). [Latin "first decree"] 1.Hist. Eccles. law. A preliminary decree granted in favor of the plaintiff on the nonappearance of a defendant. 2.Maritime law. A provisional decree.

PRINCEPS

princeps (prin-seps), n. [Latin] Roman law. A leading person, esp. the emperor.

PRINCIPAL

principal,adj. Chief; primary; most important.

principal,n.1. One who authorizes another to act on his or her behalf as an agent. Cf. AGENT. [Cases: Principal and Agent 1, 130. C.J.S. Agency §§ 2, 4–6, 23, 25–27, 33, 38–40, 58, 391; Architects§ 21.]

apparent principal.A person who, by outward manifestations, has made it reasonably appear to a third person that another is authorized to act as the person's agent.

disclosed principal.A principal whose identity is revealed by the agent to a third party. • A

disclosed principal is always liable on a contract entered into by the agent with the principal's authority, but the agent is usu. not liable. [Cases: Principal and Agent 92–137. C.J.S. Agency §§ 44, 47, 73, 143–165; Architects § 21–22, 24.]

partially disclosed principal. A principal whose existence — but not actual identity — is revealed by the agent to a third party. [Cases: Principal and Agent 138–146. C.J.S. Agency §§ 166, 369–371, 385, 387–388, 393, 412–419, 448–451.]

undisclosed principal. A principal whose identity is kept secret by the agent; a principal for whom the other party has no notice that the agent is acting. • An undisclosed principal and the agent are both liable on a contract entered into by the agent with the principal's authority. [Cases: Principal and Agent 138–146. C.J.S. Agency §§ 166, 369–371, 385, 387–388, 393, 412–419, 448–451.]

2. One who commits or participates in a crime. Cf. ACCESSORY(2); ACCOMPLICE (2). [Cases: Criminal Law 59–67. C.J.S. Criminal Law §§ 127–136, 143, 998–999, 1002.] “The student should notice that in criminal law the word ‘principal’ suggests the very converse of the idea which it represents in mercantile law. In the former, as we have seen, an accessory proposes an act, and the ‘principal’ carries it out. But in the law of contract, and in that of tort, the ‘principal’ only authorizes an act, and the ‘agent’ carries it out. Where the same transaction is both a tort and a crime, this double use of the word may cause confusion. For example, if, by an innkeeper's directions, his chamber-maid steals jewels out of a guest's portmanteau, the maid is the ‘principal’ in a crime, wherein her master is an accessory before the fact; whilst she is also the agent in a tort, wherein her master is the ‘principal’.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 89 (16th ed. 1952).

principal in the first degree. The perpetrator of a crime. — Also termed first-degree principal. [Cases: Criminal Law 61, 78. C.J.S. Criminal Law §§ 130, 143–144, 148.]

“By a principal in the first degree, we mean the actual offender — the man in whose guilty mind lay the latest blamable mental cause of the criminal act. Almost always, of course, he will be the man by whom this act itself was done. But occasionally this will not be so; for the felony may have been committed by the hand of an innocent agent who, having no blamable intentions in what he did, incurred no criminal liability by doing it. In such a case the man who instigates this agent is the real offender; his was the last mens rea that preceded the crime, though it did not cause it immediately but mediately.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 85–86 (16th ed. 1952).

principal in the second degree. One who helped the perpetrator at the time of the crime. — Also termed accessory at the fact; second-degree principal. See ABETTOR. [Cases: Criminal Law 63, 78. C.J.S. Criminal Law §§ 132, 143–144, 148.]

“The distinction between principals in the first and second degrees is a distinction without a difference except in those rare instances in which some unusual statute has provided a different penalty for one of these than for the other. A principal in the first degree is the immediate perpetrator of the crime while a principal in the second degree is one who did not commit the

crime with his own hands but was present and abetting the principal. It may be added, in the words of Mr. Justice Miller, that one may perpetrate a crime, not only with his own hands, but ‘through the agency of mechanical or chemical means, as by instruments, poison or powder, or by an animal, child, or other innocent agent’ acting under his direction.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 736 (3d ed. 1982) (quoting *Beausoliel v. United States*, 107 F.2d 292, 297 (D.C. Cir. 1939)).

3. One who has primary responsibility on an obligation, as opposed to a surety or indorser.
4. The corpus of an estate or trust. [Cases: Trusts 1. C.J.S. *Trover and Conversion* §§ 1–9, 14–18.]
5. The amount of a debt, investment, or other fund, not including interest, earnings, or profits.

PRINCIPAL ACTION

principal action. See main demand under DEMAND(1).

PRINCIPAL CHALLENGE

principal challenge. See CHALLENGE(2).

PRINCIPAL CONTRACT

principal contract. See CONTRACT.

PRINCIPAL COVENANT

principal covenant. See COVENANT(1).

PRINCIPAL CREDITOR

principal creditor. See CREDITOR.

PRINCIPAL DEMAND

principal demand. See main demand under DEMAND(1).

PRINCIPAL FACT

principal fact. 1. See fact in issue ultimate fact under FACT. 2. See under FACT.

PRINCIPAL IN THE FIRST DEGREE

principal in the first degree. See PRINCIPAL(2).

PRINCIPAL IN THE SECOND DEGREE

principal in the second degree. See PRINCIPAL(2).

PRINCIPALIS

principalis (prin-s<<schwa>>-pay-lis), adj. [Latin] Principal, as in principalis debitor (“principal debtor”).

PRINCIPAL MOTION

principal motion. See main motion under MOTION(2).

PRINCIPAL OBLIGATION

principal obligation. See primary obligation (2) under OBLIGATION.

PRINCIPAL OBLIGOR

principal obligor. See OBLIGOR.

PRINCIPAL OFFICER

principal officer. See OFFICER(1).

PRINCIPAL PLACE OF BUSINESS

principal place of business. See PLACE OF BUSINESS.

PRINCIPAL RECEIVER

principal receiver. See RECEIVER.

PRINCIPAL REGISTER

Principal Register. Trademarks. The list of distinctive marks approved for federal trademark registration. • The register is maintained by the U.S. Patent and Trademark Office. Only marks that are strong, distinctive, and famous are listed. 15 USCA § 1052. [Cases: Trade Regulation 151.C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 147, 153.]

PRINCIPAL RIGHT

principal right. See RIGHT.

PRINCIPLE

principle, n. A basic rule, law, or doctrine.

PRINCIPLE OF FINALITY

principle of finality. See FINALITY DOCTRINE.

PRINCIPLE OF LEGALITY

principle of legality. See LEGALITY(2).

PRINCIPLE OF NONINTERVENTION

principle of nonintervention. See NONINTERVENTION.

PRINCIPLE OF RETRIBUTION

principle of retribution. See LEX TALIONIS.

PRINT

print. 1. Copyright. The impression made in a material by a die, mold, stamp, or the like; a

distinctive stamped or printed mark or design. 2.FINGERPRINT.

PRINTED-MATTER DOCTRINE

printed-matter doctrine.Patents. The rule that printed matter may not be patented unless it is a physical part of a patentable invention. • For example, the doctrine has been used to deny patents for systems of representing sheet music and for methods of compiling directories. But it cannot be used to deny a patent for computer software. [Cases: Patents 5. C.J.S. Patents §§ 13–14, 16.]

PRINTERS INK STATUTE

Printers Ink Statute.A model statute drafted in 1911 and adopted in a number of states making it a misdemeanor to print an advertisement that contains a false or deceptive statement.

PRIOR

prior,adj.1. Preceding in time or order <under this court's prior order>.2. Taking precedence <a prior lien>.

prior,n. Criminal law. Slang. A previous conviction <because the defendant had two priors, the judge automatically enhanced his sentence>.

PRIOR-APPROPRIATION DOCTRINE

prior-appropriation doctrine.The rule that, among the persons whose properties border on a waterway, the earliest users of the water have the right to take all they can use before anyone else has a right to it. Cf. RIPARIAN-RIGHTS DOCTRINE . [Cases: Waters and Water Courses 140. C.J.S. Waters §§ 376, 380, 391–393.]

PRIOR ART

prior art. See ART.

PRIOR-CLAIM RULE

prior-claim rule.The principle that before suing for a tax refund or abatement, a taxpayer must first assert the claim to the Internal Revenue Service. [Cases: Internal Revenue 5003.]

PRIOR CONSISTENT STATEMENT

prior consistent statement.See STATEMENT.

PRIOR CREDITOR

prior creditor.See CREDITOR.

PRIOR-EXCLUSIVE-JURISDICTION DOCTRINE

prior-exclusive-jurisdiction doctrine.The rule that a court will not assume in rem jurisdiction over property that is already under the jurisdiction of another court of concurrent jurisdiction.

PRIOR INCONSISTENT STATEMENT

prior inconsistent statement. See STATEMENT.

PRIORI PETENTI

priori petenti (prĪ-or-I p<<schwa>>-ten-tĪ). [Latin “to the first person applying”] Wills & estates. The principle that when two or more persons are equally entitled to administer an estate, the court will appoint the person who applies first.

PRIORITY

priority. 1. The status of being earlier in time or higher in degree or rank; precedence. 2. Commercial law. An established right to such precedence; esp., a creditor's right to have a claim paid before other creditors of the same debtor receive payment. [Cases: Secured Transactions 138–145. C.J.S. Secured Transactions §§ 88, 90–102, 106–107, 118.] 3. The doctrine that, as between two courts, jurisdiction should be accorded the court in which proceedings are first begun. [Cases: Courts 475, 493, 514; Federal Courts 1145. C.J.S. Courts §§ 188, 211, 224.] 4. Patents & trademarks. The status of being first to invent something (and therefore be potentially eligible for patent protection) or to use a mark in trade (and therefore be potentially eligible for trademark registration). [Cases: Patents 90; Trade Regulation 66. C.J.S. Patents §§ 120–125; Trade-Marks, Trade-Names, and Unfair Competition §§ 29–30.]

priority of adoption. Trademarks. Priority in designing or creating a trademark. • Priority of adoption does not in itself confer the right to exclusive use of a mark if someone else was first to use it in commerce. — Also termed priority of appropriation; priority of invention. Cf. priority of use.

priority of appropriation. Trademarks. See priority of adoption.

priority of invention. 1. Patents. The determination that one among several patent applications, for substantially the same invention, should receive the patent when the U.S. Patent and Trademark Office has declared interference. • This determination depends on the date of conception, the date of reduction to practice, and diligence. [Cases: Patents 90, 106. C.J.S. Patents §§ 120–125, 159–162, 165.] 2. Trademarks. See priority of adoption.

priority of use. Trademarks. Priority in using a mark in actual commerce. • The priority of use, not the priority of adoption, determines who has the right to protection. Cf. priority of adoption. [Cases: Trade Regulation 66. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 29–30.]

PRIORITY AWARD

priority award. Patents. A final judgment by the U.S. Patent and Trademark Office designating one party in an interference contest as the first inventor. — Also termed award in interference.

PRIORITY CLAIM

priority claim. See CLAIM(5).

PRIORITY CONTEST

priority contest.See INTERFERENCE(3).

PRIORITY DATE

priority date.See DATE.

PRIORITY-JURISDICTION RULE

priority-jurisdiction rule.See FIRST-TO-FILE RULE.

PRIORITY LIEN

priority lien.See prior lien under LIEN.

PRIORITY OF LIENS

priority of liens.The ranking of liens in the order in which they are perfected.

PRIOR LAESIT

prior laesit (prĭ-lee-sit). [Law Latin] Scots law. He (or she) first injured. • The phrase usu. referred to the provocation for an assault.

PRIOR LIEN

prior lien.See LIEN.

PRIOR PETENS

prior petens (prĭ-pet-enz). [Latin] The person first applying.

PRIOR PREFERRED STOCK

prior preferred stock.See STOCK.

PRIOR PUBLICATION

prior publication.Patents. Public disclosure of the basis for or existence of an invention, made before filing a patent application for the invention. • If the publication was made more than a year before the application is filed, the patent is barred by statute. Publication occurs when the information is made available to any member of the general public. See limited publication under PUBLICATION. [Cases: Patents 67. C.J.S. Patents § 52.]

PRIOR-RELATIONSHIP RAPE

prior-relationship rape.See relationship rape under RAPE.

PRIOR RESTRAINT

prior restraint.A governmental restriction on speech or publication before its actual expression. • Prior restraints violate the First Amendment unless the speech is obscene, is defamatory, or creates a clear and present danger to society. [Cases: Constitutional Law 90(3). C.J.S. Constitutional Law §§ 502, 542, 546–550.]

“The legal doctrine of prior restraint (or formal censorship before publication) is probably the oldest form of press control. Certainly it is one of the most efficient, since one censor, working in the watershed, can create a drought of information and ideas long before they reach the fertile plain of people's minds. In the United States, the doctrine of prior restraint has been firmly opposed by the First Amendment to the Constitution, and by the Supreme Court, perhaps most notably in the case of *Near v. Minnesota*, decided in 1931. But the philosophy behind that doctrine lives zestfully on, and shows no signs of infirmities of age.” David G. Clark & Earl R. Hutchinson, *Mass Media and the Law* 11 (1970).

PRIOR SALE

prior sale. Patents. Sale or offer of sale of an invention before a patent is applied for. • If the sale occurred more than one year before the application is filed, the patent is barred by statute. 35 USCA § 102(b). [Cases: Patents 76. C.J.S. Patents §§ 107, 110–111.]

PRIOR SENTENCE

prior sentence. See SENTENCE.

PRIOR-USE BAR

prior-use bar. See PUBLIC-USE BAR.

PRIOR-USE DOCTRINE

prior-use doctrine. The principle that, without legislative authorization, a government agency may not appropriate property already devoted to a public use. [Cases: Eminent Domain 47. C.J.S. Eminent Domain § 58.]

PRIOR-USER RIGHT

prior-user right. Patents. The right of a first inventor to continue using an invention after someone else has patented it. • This right protects first inventors in most countries from the harsh effects of a first-to-file system. See PRIVATE-USE EXCEPTION(2).

PRISAGE

prisage (prĭ-zij). Hist. A royal duty on wine imported into England. • Prisage was replaced by butlerage in the reign of Edward I. Cf. BUTLERAGE.

PRISEL EN AUTER LIEU

prisel en auter lieu (prĭ-z<<schwa>>l awn oh-tayl-yoo). [Law French “a taking in another place”] A plea in abatement in a replevin action.

PRISON

prison. A state or federal facility of confinement for convicted criminals, esp. felons. — Also termed penitentiary; penal institution; adult correctional institution. Cf. JAIL. [Cases: Prisons 1. C.J.S. Prisons and Rights of Prisoners §§ 2–3.]

private prison.A prison that is managed by a private company, not by a governmental agency.

PRISON BREACH

prison breach.A prisoner's forcible breaking and departure from a place of lawful confinement; the offense of escaping from confinement in a prison or jail. • Prison breach has traditionally been distinguished from escape by the presence of force, but some jurisdictions have abandoned this distinction. — Also termed prison breaking; breach of prison. Cf. ESCAPE(2). [Cases: Escape 4. C.J.S. Escape §§ 8, 16–18.]

“Breach of prison by the offender himself, when committed for any cause, was felony at the common law: or even conspiring to break it. But this severity is mitigated by the statute de frangentibus prisonam, I Edw. II, which enacts that no person shall have judgment of life or member, for breaking prison, unless committed for some capital offence. So that to break prison, when lawfully committed for any treason or felony, remains still a felony as at the common law; and to break prison, when lawfully confined upon any other inferior charge, is still punishable as a high misdemeanor by fine and imprisonment.” 4 William Blackstone, Commentaries on the Laws of England 130–31 (1769).

PRISON CAMP

prison camp.A usu. minimum-security camp for the detention of trustworthy prisoners who are often employed on government projects.

PRISONER

prisoner. 1. A person who is serving time in prison. 2. A person who has been apprehended by a law-enforcement officer and is in custody, regardless of whether the person has yet been put in prison. Cf. CAPTIVE(1).

“While breach of prison, or prison breach, means breaking out of or away from prison, it is important to have clearly in mind the meaning of the word ‘prison.’ If an officer arrests an offender and takes him to jail the layman does not think of the offender as being ‘in prison’ until he is safely behind locked doors, but no one hesitates to speak of him as a ‘prisoner’ from the moment of apprehension. He is a prisoner because he is ‘in prison ... whether he were actually in the walls of a prison, or only in the stocks, or in the custody of any person who had lawfully arrested him ...’ ” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 566 (3d ed. 1982) (quoting 2 Hawk. P.C. ch. 18, § 1 (6th ed. 1788)).

PRISONER AT THE BAR

prisoner at the bar.Archaic. An accused person who is on trial.

PRISONER OF CONSCIENCE

prisoner of conscience.Int'l law.A person who, not having used or advocated the use of violence, has been imprisoned by reason of a political, religious, or other conscientiously held belief or by reason of ethnic origin, sex, color, or language.

PRISONER OF WAR

prisoner of war. A person, usu. a soldier, who is captured by or surrenders to the enemy in wartime. — Also termed captive. — Abbr. POW.

PRISONER'S DILEMMA

prisoner's dilemma. A logic problem — often used by law-and-economics scholars to illustrate the effect of cooperative behavior — involving two prisoners who are being separately questioned about their participation in a crime: (1) if both confess, they will each receive a 5-year sentence; (2) if neither confesses, they will each receive a 3-year sentence; and (3) if one confesses but the other does not, the confessing prisoner will receive a 1-year sentence while the silent prisoner will receive a 10-year sentence. See EXTERNALITY.

PRIST

prist (prist). [Law French] Hist. Ready. • In oral pleading, this term was used to express a joinder of issue.

PRIVACY

privacy. The condition or state of being free from public attention to intrusion into or interference with one's acts or decisions.

autonomy privacy. An individual's right to control his or her personal activities or intimate personal decisions without outside interference, observation, or intrusion. • If the individual's interest in an activity or decision is fundamental, the state must show a compelling public interest before the private interest can be overcome. If the individual's interest is acknowledged to be less than fundamental or is disputed, then a court must apply a balancing test. *Hill v. NCAA*, 865 P.2d 633, 653, 654 (Cal. 1994).

informational privacy. Tort. A private person's right to choose to determine whether, how, and to what extent information about oneself is communicated to others, esp. sensitive and confidential information.

PRIVACY, INVASION OF

privacy, invasion of. See INVASION OF PRIVACY.

PRIVACY, RIGHT OF

privacy, right of. See RIGHT OF PRIVACY.

PRIVACY ACT

privacy act. See PRIVACY LAW(1).

PRIVACY ACT OF 1974

Privacy Act of 1974. An act that regulates the government's creation, collection, use, and dissemination of records that can identify an individual by name, as well as other personal

information. • The Act was amended in 1990 and in 1994. 18 USCA § 552a.

PRIVACY LAW

privacy law. 1. A federal or state statute that protects a person's right to be left alone or that restricts public access to personal information such as tax returns and medical records. — Also termed privacy act. [Cases: Records 31. C.J.S. Criminal Law §§ 449–450; Records §§ 74–92.] 2. The area of legal studies dealing with a person's right to be left alone and with restricting public access to personal information such as tax returns and medical records.

PRIVACY PRIVILEGE

privacy privilege. See PRIVILEGE(3).

PRIVATA DELICTA

privata delicta (prI-vay-t<<schwa>> di-lik-t<<schwa>>). [Latin] Roman law. Private wrongs; torts. See DELICT. Cf. PUBLICA DELICTA.

PRIVATAE LEGES

privatae leges (prI-vay-tee lee-jeez). [Law Latin] Scots law. Personal laws. • These were laws, such as a pardon, that affected a single individual, not a class of people.

PRIVATE

private, adj. 1. Relating or belonging to an individual, as opposed to the public or the government. 2. (Of a company) not having shares that are freely available on an open market. 3. Confidential; secret.

PRIVATE ACT

private act. See special statute under STATUTE.

PRIVATE ACTION

private action. See civil action under ACTION(4).

PRIVATE ADOPTION

private adoption. See ADOPTION.

PRIVATE AGENT

private agent. See AGENT(2).

PRIVATE ANNUITY

private annuity. See ANNUITY.

PRIVATE ATTORNEY

private attorney. See ATTORNEY(1).

PRIVATE-ATTORNEY-GENERAL DOCTRINE

private-attorney-general doctrine. The equitable principle that allows the recovery of attorney's fees to a party who brings a lawsuit that benefits a significant number of people, requires private enforcement, and is important to society as a whole. [Cases: Costs 194.42; Federal Civil Procedure 2737.2. C.J.S. Costs § 130.]

PRIVATE BANK

private bank. See BANK.

PRIVATE BILL

private bill. See BILL(3).

PRIVATE BOUNDARY

private boundary. See BOUNDARY.

PRIVATE BRAND

private brand. See BRAND.

PRIVATE CARRIER

private carrier. See CARRIER.

PRIVATE CONTRACT

private contract. See CONTRACT.

PRIVATE CORPORATION

private corporation. See CORPORATION.

PRIVATE DELICT

private delict. See DELICT.

PRIVATE EASEMENT

private easement. See EASEMENT.

PRIVATEER

privateer (prĪ-v<<schwa>>-teer), n. 1. A vessel owned and operated by private persons, but authorized by a nation on certain conditions to damage the commerce of the enemy by acts of piracy. 2. A sailor on such a vessel.

PRIVATEERING

privateering, n. Int'l law. The practice of arming privately owned merchant ships for the purpose of attacking enemy trading ships. • Before the practice was outlawed, governments commissioned privateers by issuing letters of marque to their merchant fleets. Privateering was

prohibited by the Declaration of Paris Concerning Naval Warfare of 1856, which has been observed by nearly all nations since that time. — privateer,vb.

PRIVATE FACT

private fact.See FACT.

PRIVATE FOUNDATION

private foundation.See FOUNDATION.

PRIVATE GRANT

private grant.See GRANT.

PRIVATE INJURY

private injury.See personal injury (2) under INJURY.

PRIVATE INTERNATIONAL LAW

private international law.See INTERNATIONAL LAW.

PRIVATE JUDGING

private judging.A type of alternative dispute resolution whereby the parties hire a private individual to hear and decide a case. • This process may occur as a matter of contract between the parties or in connection with a statute authorizing such a process. — Also termed rent-a-judging.

“In contrast [to arbitration], private judging is a less contractual, less privatized process. Party agreement, usually formed post-dispute, does send a case to private judging. And the parties have the freedom of contract to determine the time and place of trial, as well as the identity of the judge. Unlike arbitration, however, privately judged trials may ... be: (1) required to use the same rules of procedure and evidence used in ordinary litigation, (2) exposed to public view by court order, (3) adjudicated only by a former judge, and (4) subject to appeal in the same manner as other trial verdicts. In sum, private judging is essentially an ordinary bench trial except that the parties select, and pay for, the judge.” Stephen J. Ware, *Alternative Dispute Resolution* § 2.54, at 113 (2001).

PRIVATE LAND GRANT

private land grant.See LAND GRANT.

PRIVATE LAW

private law. 1. The body of law dealing with private persons and their property and relationships. Cf. PUBLIC LAW(1). 2. See special law under LAW.

PRIVATE LETTER RULING

private letter ruling.See LETTER RULING.

PRIVATE MORALITY

private morality. See MORALITY.

PRIVATE MORTGAGE INSURANCE

private mortgage insurance. See mortgage insurance under INSURANCE.

PRIVATE NECESSITY

private necessity. See NECESSITY.

PRIVATE NONOPERATING FOUNDATION

private nonoperating foundation. See private foundation under FOUNDATION.

PRIVATE NUISANCE

private nuisance. See NUISANCE.

PRIVATE OFFERING

private offering. See OFFERING.

PRIVATE OPERATING FOUNDATION

private operating foundation. See FOUNDATION.

PRIVATE PERSON

private person. See PERSON(1).

PRIVATE PLACEMENT

private placement. 1. Family law. The placement of a child for adoption by a parent, lawyer, doctor, or private agency, rather than by a government agency. • At least eight states have prohibited private-placement adoptions. — Also termed direct placement. [Cases: Adoption 6–7.8.C.J.S. Adoption of Persons §§ 25–40, 51–72.] 2. Securities. See private offering under OFFERING.

PRIVATE-PLACEMENT ADOPTION

private-placement adoption. See private adoption under ADOPTION.

PRIVATE POWER

private power. See POWER(3).

PRIVATE PRISON

private prison. See PRISON.

PRIVATE PROPERTY

private property. See PROPERTY.

PRIVATE PROSECUTOR

private prosecutor. See PROSECUTOR(2).

PRIVATE PUBLICATION

private publication. See limited publication under PUBLICATION.

PRIVATE REPRIMAND

private reprimand. See REPRIMAND.

PRIVATE RIGHT

private right. See RIGHT.

PRIVATE RIGHT-OF-WAY

private right-of-way. See EASEMENT.

PRIVATE RIVER

private river. See RIVER.

PRIVATE SALE

private sale. See SALE.

PRIVATE SCHOOL

private school. See SCHOOL.

PRIVATE SEAL

private seal. See SEAL.

PRIVATE SEARCH

private search. See SEARCH.

PRIVATE SECTOR

private sector. The part of the economy or an industry that is free from direct governmental control. Cf. PUBLIC SECTOR.

PRIVATE SERVITUDE

private servitude. See SERVITUDE(2).

PRIVATE SIGNATURE

private signature. See SIGNATURE.

PRIVATE STATUTE

private statute. See special statute under STATUTE.

PRIVATE STREAM

private stream.See STREAM.

PRIVATE TREATY

private treaty.See TREATY(3).

PRIVATE TRUST

private trust.See TRUST.

PRIVATE-USE EXCEPTION

private-use exception.1.Copyright. FAIR USE. 2.Patents. An exception to the public-use statutory bar, allowing the inventor to use the invention for personal benefit for more than one year without abandoning patent rights under the statutory bars. — Also termed prior-user right. [Cases: Patents 75. C.J.S. Patents §§ 107–109.]

PRIVATE WAR

private war.See WAR.

PRIVATE WATER

private water.See WATER.

PRIVATE WAY

private way.See WAY.

PRIVATE WHARF

private wharf.See WHARF.

PRIVATE WRONG

private wrong.See WRONG.

PRIVATE ZONING

private zoning.See ZONING.

PRIVATION

privation (prI-vay-sh<<schwa>>n).1. The act of taking away or withdrawing. 2. The condition of being deprived.

PRIVATIZATION

privatization (prI-v<<schwa>>-t<<schwa>>-zay-sh<<schwa>>n), n. The act or process of converting a business or industry from governmental ownership or control to private enterprise. — privatize,vb.

PRIVATUM

privatum (prI-vay-t<<schwa>>m). [Latin] Private. • This term appeared in phrases such as

jus privatum (“private law”).

PRIVIES

privies (priv-eez). See PRIVY.

PRIVIGNA

privigna (prI-vig-n<<schwa>>), n.[Latin] Roman & civil law. A daughter of one's husband or wife by a previous marriage; a stepdaughter.

PRIVIGNUS

privignus (prI-vig-n<<schwa>>s). [Latin] Roman & civil law. A son of one's husband or wife by a previous marriage; a stepson.

PRIVILEGE

privilege. 1. A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. • A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.

absolute privilege.A privilege that immunizes an actor from suit, no matter how wrongful the action might be, and even though it is done with an improper motive. Cf. qualified privilege. [Cases: Libel and Slander 36; Torts 16. C.J.S. Libel and Slander; Injurious Falsehood §§ 58, 65, 69; Right of Privacy and Publicity §§ 20, 28, 31–33, 44; Torts § 7, 12, 14–15, 51, 64, 92–93.]

audit privilege.See AUDIT PRIVILEGE.

conditional privilege.See qualified privilege.

courtroom privilege.See judicial privilege.

deliberative-process privilege.A privilege permitting the government to withhold documents relating to policy formulation to encourage open and independent discussion among those who develop government policy. [Cases: Witnesses 216(1). C.J.S. Witnesses §§ 361–364, 366–367.]

judicial privilege.Defamation. The privilege protecting any statement made in the course of and with reference to a judicial proceeding by any judge, juror, party, witness, or advocate. — Also termed courtroom privilege. [Cases: Libel and Slander 38. C.J.S. Libel and Slander; Injurious Falsehood § 71.]

legislative privilege.Defamation. The privilege protecting (1) any statement made in a legislature by one of its members, and (2) any paper published as part of legislative business. — Also termed (in a parliamentary system) parliamentary privilege. [Cases: Libel and Slander 37. C.J.S. Libel and Slander; Injurious Falsehood § 76.]

litigation privilege.A privilege protecting the attorneys and parties in a lawsuit from defamation claims arising from statements made in the course of the suit. [Cases: Libel and Slander 38. C.J.S. Libel and Slander; Injurious Falsehood § 71.]

official privilege. The privilege immunizing from a defamation lawsuit any statement made by one state officer to another in the course of official duty. [Cases: Libel and Slander 39, 42. C.J.S. Libel and Slander; Injurious Falsehood §§ 69–70, 99–100, 103.]

privilege from arrest. An exemption from arrest, as that enjoyed by members of Congress during legislative sessions. U.S. Const. art. I, § 6, cl. 1. [Cases: Arrest 59. C.J.S. Arrest § 5.]

qualified privilege. A privilege that immunizes an actor from suit only when the privilege is properly exercised in the performance of a legal or moral duty. — Also termed conditional privilege. Cf. absolute privilege. [Cases: Libel and Slander 41; Officers and Public Employees 114; Torts 16. C.J.S. Libel and Slander; Injurious Falsehood §§ 59, 62–65, 83–87, 90; Officers and Public Employees § 247–248, 251–258; Right of Privacy and Publicity §§ 20, 28, 31–33, 44; Torts §§ 7, 12, 14–15, 51, 64, 92–93.]

“Qualified privilege ... is an intermediate case between total absence of privilege and the presence of absolute privilege.” R.F.V. Heuston, *Salmond on the Law of Torts* 165 (17th ed. 1977).

special privilege. 1. A privilege granted to a person or class of persons to the exclusion of others and in derogation of the common right. 2. See personal privilege under PRIVILEGE(5).

testimonial privilege. A right not to testify based on a claim of privilege; a privilege that overrides a witness's duty to disclose matters within the witness's knowledge, whether at trial or by deposition. [Cases: Witnesses 297. C.J.S. Witnesses § 522.]

viatorial privilege (vī-*tor-ee*). A privilege that overrides a person's duty to attend court in person and to testify.

work-product privilege. See WORK-PRODUCT RULE.

2. An affirmative defense by which a defendant acknowledges at least part of the conduct complained of but asserts that the defendant's conduct was authorized or sanctioned by law; esp., in tort law, a circumstance justifying or excusing an intentional tort. See JUSTIFICATION(2). Cf. IMMUNITY(2). [Cases: Torts 16. C.J.S. Right of Privacy and Publicity §§ 20, 28, 31–33, 44; Torts §§ 7, 12, 14–15, 51, 64, 92–93.] 3. An evidentiary rule that gives a witness the option to not disclose the fact asked for, even though it might be relevant; the right to prevent disclosure of certain information in court, esp. when the information was originally communicated in a professional or confidential relationship. • Assertion of a privilege can be overcome by proof that an otherwise privileged communication was made in the presence of a third party to whom the privilege would not apply. [Cases: Witnesses 184–223. C.J.S. Witnesses §§ 297–389.]

accountant–client privilege. The protection afforded to a client from an accountant's unauthorized disclosure of materials submitted to or prepared by the accountant. • The privilege is not widely recognized. [Cases: Witnesses 196.2. C.J.S. Witnesses § 356.]

antimarital-facts privilege. See marital privilege (2).

attorney–client privilege. The client's right to refuse to disclose and to prevent any other

person from disclosing confidential communications between the client and the attorney. — Also termed lawyer–client privilege; client's privilege. [Cases: Witnesses 197. C.J.S. Witnesses §§ 316–340.]

“There are a number of ways to organize the essential elements of the attorney–client privilege to provide for an orderly analysis. One of the most popular is Wigmore's schema: ‘(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the privilege be waived.’ Though this organization has its virtues, there is some question as to whether it completely states the modern privilege.” 24 Charles Alan Wright & Kenneth W. Graham Jr., *Federal Practice and Procedure* § 5473, at 103–04 (1986) (quoting 8 John Henry Wigmore, *Evidence* § 2292, at 554 (John T. McNaughton rev., 1961)).

“At the present time it seems most realistic to portray the attorney–client privilege as supported in part by its traditional utilitarian justification, and in part by the integral role it is perceived to play in the adversary system itself. Our system of litigation casts the lawyer in the role of fighter for the party whom he represents. A strong tradition of loyalty attaches to the relationship of attorney and client, and this tradition would be outraged by routine examination of the lawyer as to the client's confidential disclosures regarding professional business. To the extent that the evidentiary privilege, then, is integrally related to an entire code of professional conduct, it is futile to envision drastic curtailment of the privilege without substantial modification of the underlying ethical system to which the privilege is merely ancillary.” John W. Strong, *McCormick on Evidence* § 87, at 121–22 (4th ed. 1992).

clergyman–penitent privilege. See priest–penitent privilege.

client's privilege. See attorney–client privilege.

doctor–patient privilege. The right to exclude from discovery and evidence in a legal proceeding any confidential communication that a patient makes to a physician for the purpose of diagnosis or treatment, unless the patient consents to the disclosure. — Also termed patient–physician privilege; physician–patient privilege; physician–client privilege. [Cases: Witnesses 207. C.J.S. Witnesses §§ 341–355.]

editorial privilege. See journalist's privilege (2).

executive privilege. A privilege, based on the constitutional doctrine of separation of powers, that exempts the executive branch of the federal government from usual disclosure requirements when the matter to be disclosed involves national security or foreign policy. Cf. executive immunity under IMMUNITY(1). [Cases: Witnesses 216. C.J.S. Witnesses §§ 361–364.]

husband–wife privilege. See marital privilege.

informant's privilege. The qualified privilege that a government can invoke to prevent disclosure of the identity and communications of its informants. • In exercising its power to formulate evidentiary rules for federal criminal cases, the U.S. Supreme Court has consistently

declined to hold that the government must disclose the identity of informants in a preliminary hearing or in a criminal trial. *McCray v. Illinois*, 386 U.S. 300, 312, 87 S.Ct. 1056, 1063 (1967). A party can, however, usu. overcome the privilege by demonstrating that the need for the information outweighs the public interest in maintaining the privilege. — Also termed informer's privilege. [Cases: Criminal Law 627.6; Witnesses 216(4). C.J.S. Criminal Law § 495; Witnesses § 365.]

joint-defense privilege.The rule that a defendant can assert the attorney–client privilege to protect a confidential communication made to a codefendant's lawyer if the communication was related to the defense of both defendants. — Also termed common-interest doctrine. [Cases: Witnesses 199(2). C.J.S. Witnesses § 325.]

journalist's privilege. 1. A reporter's protection, under constitutional or statutory law, from being compelled to testify about confidential information or sources. — Also termed reporter's privilege; newsman's privilege. See SHIELD LAW(1). [Cases: Witnesses 196.1. C.J.S. Witnesses § 358.] 2. A publisher's protection against defamation lawsuits when the publication makes fair comment on the actions of public officials in matters of public concern. — Also termed editorial privilege. See FAIR COMMENT. [Cases: Libel and Slander 49. C.J.S. Libel and Slander; Injurious Falsehood §§ 98, 102–104.]

lawyer–client privilege.See attorney–client privilege.

marital privilege. 1. The privilege allowing a spouse not to testify, and to prevent another person from testifying, about confidential communications between the spouses during the marriage. — Also termed marital-communications privilege. [Cases: Witnesses 187. C.J.S. Witnesses §§ 299–315.] 2. The privilege allowing a spouse not to testify in a criminal case as an adverse witness against the other spouse, regardless of the subject matter of the testimony. — Also termed (in sense 2) privilege against adverse spousal testimony; antimarital-facts privilege. [Cases: Witnesses 51. C.J.S. Witnesses §§ 147, 159, 163–164, 171, 173.] 3. The privilege immunizing from a defamation lawsuit any statement made between husband and wife. — Also termed (in all senses) spousal privilege; husband–wife privilege.

national-security privilege.See state-secrets privilege.

newsman's privilege.See journalist's privilege (1).

parliamentary privilege. 1. See legislative privilege under PRIVILEGE(1).2.PRIVILEGE(5).

patient–physician privilege.See doctor–patient privilege.

peer-review privilege.A privilege that protects from disclosure the proceedings and reports of a medical facility's peer-review committee, which reviews and oversees the patient care and medical services provided by the staff. [Cases: Witnesses 184(1). C.J.S. Witnesses § 297.]

physician–client privilege.See doctor–patient privilege.

political-vote privilege.A privilege to protect from compulsory disclosure a vote cast in an election by secret ballot.

priest–penitent privilege. The privilege barring a clergy member from testifying about a confessor's communications. — Also termed clergyman–penitent privilege. [Cases: Witnesses 215. C.J.S. Witnesses §§ 359–360.]

privacy privilege. A defendant's right not to disclose private information unless the plaintiff can show that (1) the information is directly relevant to the case, and (2) the plaintiff's need for the information outweighs the defendant's need for nondisclosure. • This privilege is recognized in California but in few other jurisdictions.

privilege against adverse spousal testimony. See marital privilege (2).

privilege against self-incrimination. Criminal law. 1. RIGHT AGAINST SELF-INCRIMINATION. 2. A criminal defendant's right not to be asked any questions by the judge or prosecution unless the defendant chooses to testify. — Also termed right not to be questioned.

“According to the rule, neither the judge nor the prosecution is entitled at any stage to question the accused unless he chooses to give evidence.... This rule may be called the accused's right not to be questioned; in America it is termed the privilege against self-incrimination. The latter expression is more apt as the name for another rule, the privilege of any witness to refuse to answer an incriminating question; this is different from the rule under discussion, which, applying only to persons accused of crime, prevents the question from being asked. The person charged with crime has not merely the liberty to refuse to answer a question incriminating himself; he is freed even from the embarrassment of being asked the question.” Glanville Williams, *The Proof of Guilt* 37–38 (3d ed. 1963).

psychotherapist–patient privilege. A privilege that a person can invoke to prevent the disclosure of a confidential communication made in the course of diagnosis or treatment of a mental or emotional condition by or at the direction of a psychotherapist. • The privilege can be overcome under certain conditions, as when the examination is ordered by a court. — Also termed psychotherapist–client privilege. [Cases: Witnesses 214.5. C.J.S. Witnesses §§ 342, 349.]

reporter's privilege. See journalist's privilege (1).

self-critical-analysis privilege. A privilege protecting individuals and entities from divulging the results of candid assessments of their compliance with laws and regulations, to the extent that the assessments are internal, the results were intended from the outset to be confidential, and the information is of a type that would be curtailed if it were forced to be disclosed. • This privilege is founded on the public policy that it is beneficial to permit individuals and entities to confidentially evaluate their compliance with the law, so that they will monitor and improve their compliance with it. — Also termed self-policing privilege; self-evaluation privilege. [Cases: Witnesses 184(1). C.J.S. Witnesses § 297.]

spousal privilege. See marital privilege.

state-secrets privilege. A privilege that the government may invoke against the discovery of a material that, if divulged, could compromise national security. — Also termed national-security

privilege. [Cases: Witnesses 216(1). C.J.S. Witnesses §§ 361–364, 366–367.]

tax-return privilege. A privilege to refuse to divulge the contents of a tax return or certain related documents. • The privilege is founded on the public policy of encouraging honest tax returns.

4. Civil law. A creditor's right, arising from the nature of the debt, to priority over the debtor's other creditors. 5. Parliamentary law. The status of a motion as outranking other business because of its relationship to the meeting's or a member's rights. — Also termed parliamentary privilege. See question of privilege under QUESTION(3).

general privilege. A privilege that concerns the deliberative assembly as a body, rather than any particular member or members. — Also termed privilege of the assembly; privilege of the house. Cf. personal privilege.

parliamentary privilege. 1. A privilege under parliamentary law. 2. See legislative privilege under PRIVILEGE(1).

personal privilege. A privilege that concerns an individual member or members (e.g., a member's reputation or physical ability to hear the proceedings) rather than the deliberative assembly generally. — Also termed special privilege. See procedural point under POINT. Cf. general privilege.

privilege of the assembly. See general privilege.

privilege of the floor. Parliamentary law. (usu. pl.) The right of entering, passing through, and sitting on the floor during a meeting. See FLOOR(1).

“The expression ‘privileges of the floor,’ sometimes used in legislative bodies or conventions, has nothing to do with having the floor, but means merely that a person is permitted to enter the hall. It carries no right to speak or any other right of membership, except as may be determined by rules or action of the body.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 3, at 28 n. (10th ed. 2000).

privilege of the house. See general privilege.

special privilege. See personal privilege.

PRIVILEGED

privileged, adj. 1. Not subject to the usual rules or liabilities; esp., not subject to disclosure during the course of a lawsuit <a privileged document>. 2. Enjoying or subject to a privilege. See privileged motion under MOTION (2).

PRIVILEGED COMMUNICATION

privileged communication. See COMMUNICATION.

PRIVILEGED COPYHOLD

privileged copyhold. See COPYHOLD.

PRIVILEGED DEBT

privileged debt. See DEBT.

PRIVILEGED EVIDENCE

privileged evidence. See EVIDENCE.

PRIVILEGED MOTION

privileged motion. See MOTION(2).

PRIVILEGED QUESTION

privileged question. See QUESTION(3).

PRIVILEGED SUBSCRIPTION

privileged subscription. See RIGHTS OFFERING.

PRIVILEGED VILLEINAGE

privileged villeinage. See VILLEINAGE.

PRIVILEGE FROM ARREST

privilege from arrest. See PRIVILEGE(1).

PRIVILEGES AND IMMUNITIES CLAUSE

Privileges and Immunities Clause. The constitutional provision (U.S. Const. art. IV, § 2, cl. 1) prohibiting a state from favoring its own citizens by discriminating against other states' citizens who come within its borders. [Cases: Constitutional Law 207. C.J.S. Constitutional Law § 649.]

PRIVILEGES OR IMMUNITIES CLAUSE

Privileges or Immunities Clause. The constitutional provision (U.S. Const. amend. XIV, § 1) prohibiting state laws that abridge the privileges or immunities of U.S. citizens. • The clause was effectively nullified by the Supreme Court in the Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873). Cf. DUE PROCESS CLAUSE; EQUAL PROTECTION CLAUSE. [Cases: Constitutional Law 206. C.J.S. Constitutional Law § 649.]

PRIVILEGE TAX

privilege tax. See TAX.

PRIVILEGIUM

privilegium (priv-*<<schwa>>*-lee-jee-*<<schwa>>*m), n. [Latin] 1. Roman law. A law passed against or in favor of a specific individual. 2. Roman law. A special right, esp. one giving priority to a creditor. 3. Civil law. Every right or favor that is granted by the law but is contrary to the usual rule.

PRIVILEGIUM CLERICALE

privilegium clericale (priv-*<<schwa>>*-lee-jee-*<<schwa>>*m kler-*<<schwa>>*-kay-lee). [Law Latin] See BENEFIT OF CLERGY.

PRIVITY

privity (priv-*<<schwa>>*-tee).1. The connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest <privity of contract>. [Cases: Judgment 678(2). C.J.S. Judgments §§ 830, 861, 866.]

horizontal privity.Commercial law. The legal relationship between a party and a nonparty who is related to the party (such as a buyer and a member of the buyer's family). [Cases: Sales 255. C.J.S. Sales §§ 240–241, 284, 288–289.]

privity of blood. 1. Privity between an heir and an ancestor. 2. Privity between coparceners.

privity of contract.The relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so. • The requirement of privity has been relaxed under modern laws and doctrines of implied warranty and strict liability, which allow a third-party beneficiary or other foreseeable user to sue the seller of a defective product. [Cases: Contracts 186; Sales 255. C.J.S. Contracts §§ 610–611; Sales § 240–241, 284, 288–289.]

“To many students and practitioners of the common law privity of contract became a fetish. As such, it operated to deprive many a claimant of a remedy in cases where according to the mores of the time the claim was just. It has made many learned men believe that a chose in action could not be assigned. Even now, it is gravely asserted that a man cannot be made the debtor of another against his will. But the common law was gradually influenced by equity and by the law merchant, so that by assignment a debtor could become bound to pay a perfect stranger to himself, although until the legislature stepped in, the common-law courts characteristically made use of a fiction and pretended that they were not doing that which they really were doing.” William R. Anson, *Principles of the Law of Contract* 335 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“It is an elementary principle of English law — known as the doctrine of ‘Privity of Contract’ — that contractual rights and duties only affect the parties to a contract, and this principle is the distinguishing feature between the law of contract and the law of property. True proprietary rights are ‘binding on the world’ in the lawyer's traditional phrase. Contractual rights, on the other hand, are only binding on, and enforceable by, the immediate parties to the contract. But this distinction, fundamental though it be, wears a little thin at times. On the one hand, there has been a constant tendency for contractual rights to be extended in their scope so as to affect more and more persons who cannot be regarded as parties to the transaction. On the other hand, few proprietary rights are literally ‘binding on the world’.” P.S. Atiyah, *An Introduction to the Law of Contract* 265 (3d ed. 1981).

“The doctrine of privity means that a person cannot acquire rights or be subject to liabilities arising under a contract to which he is not a party. It does not mean that a contract between A and B cannot affect the legal rights of C indirectly.” G.H. Treitel, *The Law of Contract* 538 (8th ed. 1991).

privity of estate. A mutual or successive relationship to the same right in property, as between grantor and grantee or landlord and tenant. — Also termed privity of title; privity in estate. [Cases: Landlord and Tenant 20. C.J.S. Landlord and Tenant §§ 27, 202(1, 2, 3, 4, 5, 9, 10), 203.]

privity of possession. Privity between parties in successive possession of real property. • The existence of this type of privity is often at issue in adverse-possession claims. [Cases: Adverse Possession 43. C.J.S. Adverse Possession § 154.]

privity of title. See privity of estate.

vertical privity. 1. Commercial law. The legal relationship between parties in a product's chain of distribution (such as a manufacturer and a seller). [Cases: Sales 255. C.J.S. Sales §§ 240–241, 284, 288–289.] 2. Privity between one who signs a contract containing a restrictive covenant and one who acquires the property burdened by it.

2. Joint knowledge or awareness of something private or secret, esp. as implying concurrence or consent <privity to a crime>.

PRIVY

privy (priv-ee), n. pl. A person having a legal interest of privity in any action, matter, or property; a person who is in privity with another. • Traditionally, there were six types of privies: (1) privies in blood, such as an heir and an ancestor; (2) privies in representation, such as an executor and a testator or an administrator and an intestate person; (3) privies in estate, such as grantor and grantee or lessor and lessee; (4) privies in respect to a contract — the parties to a contract; (5) privies in respect of estate and contract, such as a lessor and lessee where the lessee assigns an interest, but the contract between lessor and lessee continues because the lessor does not accept the assignee; and (6) privies in law, such as husband and wife. The term also appears in the context of litigation. In this sense, it includes someone who controls a lawsuit though not a party to it; someone whose interests are represented by a party to the lawsuit; and a successor in interest to anyone having a derivative claim. Pl. privies.

PRIVY COUNCIL

Privy Council. In Britain, the principal council of the sovereign, composed of the cabinet ministers and other persons chosen by royal appointment to serve as privy councillors. • The functions of the Privy Council are now mostly ceremonial. See JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

PRIVY COUNCILLOR

privy councillor. A member of the Privy Council. — Abbr. P.C.

PRIVY PURSE

privy purse. English law. The income set apart for the sovereign's personal use.

PRIVY SEAL

privy seal. 1. A seal used in making out grants or letters patent before they are passed under

the great seal. 2. (cap.) LORD PRIVY SEAL.

PRIVY SIGNET

privy signet.Hist. The signet or seal used by the sovereign in making out grants and private letters.

PRIVY VERDICT

privy verdict.See VERDICT.

PRIZE

prize. 1. Something of value awarded in recognition of a person's achievement. 2. A vessel or cargo captured at sea or seized in port by the forces of a nation at war, and therefore liable to being condemned or appropriated as enemy property. [Cases: War and National Emergency 28. C.J.S. War and National Defense §§ 29–32, 34–45.]

PRIZE COURT

prize court.See COURT.

PRIZE FIGHTING

prize fighting.Fighting for a reward or prize; esp., professional boxing. [Cases: Theaters and Shows 3.60. C.J.S. Entertainment and Amusement; Sports §§ 24, 48.]

“Prize fighting ... was not looked upon with favor by the common law as was a friendly boxing match or wrestling match. On the other hand it was not punishable by the common law unless it was fought in a public place, or for some other reason constituted a breach of the peace.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 480 (3d ed. 1982).

PRIZE GOODS

prize goods.See GOODS.

PRIZE LAW

prize law.The system of laws applicable to the capture of prize at sea, dealing with such matters as the rights of captors and the distribution of the proceeds. [Cases: War and National Emergency 28. C.J.S. War and National Defense §§ 29–32, 34–45.]

PRIZE MONEY

prize money. 1. A dividend from the proceeds of a captured vessel, paid to the captors. 2. Money offered as an award.

PRM

PRM.abbr.BUREAU OF POPULATION, REFUGEES, AND MIGRATION.

PRO

PRO.abbr.PEER-REVIEW ORGANIZATION.

pro (proh). [Latin] For.

PROAMITA

proamita (proh-am-⟨schwa⟩-t⟨schwa⟩). [Latin] Roman & civil law. A great-great-aunt; the sister of one's great-grandfather.

PROAMITA MAGNA

proamita magna (proh-am-⟨schwa⟩-t⟨schwa⟩ mag-n⟨schwa⟩). [Latin] Civil law. A great-great-great-aunt.

PROAVIA

proavia (proh-ay-vee-⟨schwa⟩). [Latin] Roman & civil law. A great-grandmother.

PROAVUNCULUS

proavunculus (proh-⟨schwa⟩-v⟨schwa⟩ngk-y⟨schwa⟩-l⟨schwa⟩s). [Latin] Civil law. A great-grandmother's brother.

PROAVUS

proavus.Civil law. A great-grandfather.

PROBABILIS CAUSA

probabilis causa (pr⟨schwa⟩-bab-⟨schwa⟩-lis kaw-z⟨schwa⟩). [Latin] Probable cause.

PROBABILIS CAUSA LITIGANDI

probabilis causa litigandi (pr⟨schwa⟩-bab-⟨schwa⟩-lis kaw-z⟨schwa⟩ lit-i-gan-di). [Law Latin] Scots law. A probable cause of action. • A person applying for legal aid has to show a reasonable basis for the proposed legal action.

PROBABLE CAUSE

probable cause. 1.Criminal law. A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. • Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. — Also termed reasonable cause; sufficient cause; reasonable grounds; reasonable excuse. Cf. REASONABLE SUSPICION. [Cases: Arrest 63.4(2). C.J.S. Arrest § 22.]

“Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action. As emphasized in *Beck v. Ohio* [379 U.S. 89, 85 S.Ct. 223 (1964)]: ‘If subjective good faith alone were the test, the protection of the Fourth Amendment would evaporate, and the people would be “secure in their persons, houses, papers, and effects” only in the discretion of the police.’ The probable cause test,

then, is an objective one; for there to be probable cause, the facts must be such as would warrant a belief by a reasonable man.” Wayne R. LaFare & Jerold H. Israel, *Criminal Procedure* § 3.3, at 140 (2d ed. 1992).

2.Torts. A reasonable belief in the existence of facts on which a claim is based and in the legal validity of the claim itself. • In this sense, probable cause is usu. assessed as of the time when the claimant brings the claim (as by filing suit).

PROBABLE-CAUSE HEARING

probable-cause hearing. 1.PRELIMINARY HEARING. 2. See shelter hearing under HEARING.

PROBABLE CONSEQUENCE

probable consequence.An effect or result that is more likely than not to follow its supposed cause. [Cases: Negligence 386. C.J.S. Negligence § 196.]

PROBABLE-DESISTANCE TEST

probable-desistance test.Criminal law. A common-law test for the crime of attempt, focusing on whether the defendant has exhibited dangerous behavior indicating a likelihood of committing the crime. See ATTEMPT(2).

PROBABLE EVIDENCE

probable evidence.See presumptive evidence under EVIDENCE.

PROBANDUM

probandum (proh-ban-d<<schwa>>m), n. A fact to be proved. Pl. probanda.See fact in issue under FACT.

PROBATA

probata (proh-bay-t<<schwa>>). [Latin] pl.PROBATUM.

PROBATE

probate (proh-bayt), n.1. The judicial procedure by which a testamentary document is established to be a valid will; the proving of a will to the satisfaction of the court. • Unless set aside, the probate of a will is conclusive upon the parties to the proceedings (and others who had notice of them) on all questions of testamentary capacity, the absence of fraud or undue influence, and due execution of the will. But probate does not preclude inquiry into the validity of the will's provisions or on their proper construction or legal effect. — Also termed proof of will. [Cases: Wills 203–434. C.J.S. Wills §§ 52, 445–605, 607–818, 2026–2038, 2057–2062.]

independent probate.See informal probate.

informal probate.Probate designed to operate with minimal input and supervision of the probate court. • Most modern probate codes encourage this type of administration, with an

independent personal representative. — Also termed independent probate. Cf. independent executor under EXECUTOR. [Cases: Executors and Administrators 3(1). C.J.S. Executors and Administrators §§ 7, 9–10.]

probate in common form.Probate granted in the registry, without any formal procedure in court, on the executor's ex parte application. • The judgment is subject to being reopened by a party who has not been given notice. [Cases: Wills 213. C.J.S. Wills §§ 472–473.]

probate in solemn form.Probate granted in open court, as a final decree, when all interested parties have been given notice. • The judgment is final for all parties who have had notice of the proceeding, unless a later will is discovered. [Cases: Wills 214. C.J.S. Wills §§ 472–473.]

small-estate probate.An informal procedure for administering small estates, less structured than the normal process and usu. not requiring the assistance of an attorney.

2. Loosely, a personal representative's actions in handling a decedent's estate. 3. Loosely, all the subjects over which probate courts have jurisdiction. 4.Archaic. A nonresident plaintiff's proof of a debt by swearing before a notary public or other officer that the debt is correct, just, and due, and by having the notary attach a jurat.

probate,vb.1. To admit (a will) to proof. 2. To administer (a decedent's estate).3. To grant probation to (a criminal); to reduce (a sentence) by means of probation.

PROBATE ASSET

probate asset.See legal asset under ASSET.

PROBATE BOND

probate bond.See BOND(2).

PROBATE CODE

probate code.A collection of statutes setting forth the law (substantive and procedural) of decedents' estates and trusts. [Cases: Wills 204.C.J.S. Wills §§ 446, 469.]

PROBATE COURT

probate court.See COURT.

PROBATE DISTRIBUTION

probate distribution.See DISTRIBUTION.

PROBATE DUTY

probate duty.See DUTY(4).

PROBATE ESTATE

probate estate.A decedent's property subject to administration by a personal representative. • The probate estate comprises property owned by the decedent at the time of death and property

acquired by the decedent's estate at or after the time of death. — Also termed probate property. See decedent's estate under ESTATE(3). [Cases: Executors and Administrators 38–61; Wills 4. C.J.S. Executors and Administrators §§ 2, 121–127, 129–151; Wills § 53.]

net probate estate. The probate estate after the following deductions: (1) family allowances, (2) exempt property, (3) homestead allowances, (4) claims against the estate, and (5) taxes for which the estate is liable. — Also termed net estate. Cf. adjusted gross estate (1) under ESTATE(3). [Cases: Internal Revenue 4149–4185; Taxation 895. C.J.S. Internal Revenue §§ 500, 503–539, 541–546, 798; Taxation §§ 1900–1909, 1918–1931, 1941–1944, 1948.]

PROBATE FEE

probate fee. See FEE(1).

PROBATE HOMESTEAD

probate homestead. See HOMESTEAD.

PROBATE IN COMMON FORM

probate in common form. See PROBATE.

PROBATE IN SOLEMN FORM

probate in solemn form. See PROBATE.

PROBATE JUDGE

probate judge. See JUDGE.

PROBATE JURISDICTION

probate jurisdiction. See JURISDICTION.

PROBATE LAW

probate law. The body of statutes, rules, cases, etc. governing all subjects over which a probate court has jurisdiction.

PROBATE PROPERTY

probate property. See PROBATE ESTATE.

PROBATE REGISTER

probate register. See REGISTER.

PROBATIO

probatio (pr<<schwa>>-bay-shee-oh). [Latin] Roman & civil law. Proof.

plena probatio. See probatio plena.

probatio diabolica (pr<<schwa>>-bay-shee-oh dI-<<schwa>>-bol-i-k<<schwa>>). [Latin

“devil's proof”] Civil law. The (usu. difficult) proof of ownership of an immovable thing by tracing its title back to the sovereign.

probatio mortua (pr<<schwa>>-bay-shee-oh mor-choo-<<schwa>>). [Latin] Dead proof; proof by an inanimate object such as a deed or other instrument.

probatio plena (pr<<schwa>>-bay-shee-oh plee-n<<schwa>>). [Latin] Civil law. Full proof; proof by two witnesses or a public instrument. — Also termed plena probatio.

probatio probata (pr<<schwa>>-bay-shee-oh pr<<schwa>>-bay-t<<schwa>>). [Law Latin] A proven proof; evidence that could not be contradicted.

probatio prout de jure (pr<<schwa>>-bay-shee-oh proh-<<schwa>>t dee [or di] joor-ee). [Law Latin] A proof according to any of the legal modes of proof applicable to the circumstance.

probatio semiplena (pr<<schwa>>-bay-shee-oh sem-I-plee-n<<schwa>>). [Latin] Civil law. Half-full proof; half-proof; proof by one witness or a private instrument.

probatio viva (pr<<schwa>>-bay-shee-oh vI-v<<schwa>>). [Latin] Living proof; that is, proof by the mouth of a witness.

PROBATION

probation. 1. A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison. Cf. PAROLE. [Cases: Sentencing and Punishment 1811.] — probationary,adj.

bench probation.Probation in which the offender agrees to certain conditions or restrictions and reports only to the sentencing judge rather than a probation officer. — Also termed bench parole; court probation.

deferred-adjudication probation.See deferred judgment under JUDGMENT.

shock probation.Probation that is granted after a brief stay in jail or prison. • Shock probation is intended to awaken the defendant to the reality of confinement for failure to abide by the conditions of probation. This type of probation is discretionary with the sentencing judge and is usu. granted within 180 days of the original sentence. — Also termed split sentence. Cf. shock incarceration under INCARCERATION. [Cases: Sentencing and Punishment 1936.]

2. The act of judicially proving a will. See PROBATE. — probate, adj.

PROBATIONARY EMPLOYEE

probationary employee.See EMPLOYEE.

PROBATION BEFORE JUDGMENT

probation before judgment.See deferred judgment under JUDGMENT.

PROBATIONER

probationer. A convicted criminal who is on probation.

PROBATION OFFICER

probation officer. See OFFICER(1).

PROBATION TERMINATION

probation termination. The ending of a person's status as a probationer by (1) the routine expiration of the probationary period, (2) early termination by court order, or (3) probation revocation.

PROBATION-VIOLATION WARRANT

probation-violation warrant. See violation warrant under WARRANT(1).

PROBATION WITHOUT JUDGMENT

probation without judgment. See deferred judgment under JUDGMENT.

PROBATIO PLENA

probatio plena. See PROBATIO.

PROBATIO SEMIPLENA

probatio semiplena. See PROBATIO.

PROBATIO VIVA

probatio viva. See PROBATIO.

PROBATIVE

probative (proh-b<<schwa>>-tiv), adj. Tending to prove or disprove. • Courts can exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. [Cases: Evidence 99, 146. C.J.S. Evidence §§ 2–5, 197–200, 204, 206, 764.] — probativeness, probativity, n.

PROBATIVE EVIDENCE

probative evidence. See EVIDENCE.

PROBATIVE FACT

probative fact. See FACT.

PROBATOR

probator (proh-bay-t<<schwa>>r), n. Hist. An accused person who confesses to a crime but asserts that another also participated in the crime. • The probator had to undertake to prove the supposed accomplice's guilt.

PROBATORY TERM

probatory term. See term probatory (2) under TERM(5).

PROBATUM

probatum (proh-bay-t<<schwa>>m), n. [Latin] Something conclusively established or proved; proof. Pl. probata. Cf. ALLEGATUM.

PROBLEM-ORIENTED POLICING

problem-oriented policing. A method that law-enforcement officers use to reduce crime by identifying and remedying the underlying causes of criminal incidents rather than merely seeking basic information (such as the identity of the perpetrator) about the crime being investigated.

PRO BONO

pro bono (proh boh-noh), adv. & adj. [Latin pro bono publico “for the public good”] Being or involving uncompensated legal services performed esp. for the public good <took the case pro bono> <50 hours of pro bono work each year>. [Cases: Attorney and Client 132. C.J.S. Attorney and Client §§ 299–303.]

“The bar in this country has a long-standing tradition of service pro bono publico — legal services ‘for the public good,’ provided at no cost or a reduced fee. This concept encompasses a wide range of activities, including law reform efforts, participation in bar associations and civic organizations, and individual or group representation. Clients who receive such assistance also span a broad range including: poor people, nonprofit organizations, ideological or political causes, and friends, relatives, or employees of the lawyer.” Deborah L. Rhode & Geoffrey C. Hazard, *Professional Responsibility* 162 (2002).

PRO BONO ET MALO

pro bono et malo (proh boh-noh et mal-oh). [Latin] For good and ill. See DE BONO ET MALO .

PRO BONO PUBLICO

pro bono publico (proh boh-noh p<<schwa>>b-li-koh or poo-bli-koh). [Latin] Hist. For the public good. Cf. PRO PRIVATO COMMODO.

PROBUS ET LEGALIS HOMO

probus et legalis homo (proh-b<<schwa>>s et l<<schwa>>-gay-lis hoh-moh). [Law Latin] A good and lawful man. • This phrase referred to a juror who was legally competent to serve on a jury. Pl. probi et legales homines.

PROCEDENDO

procedendo (proh-s<<schwa>>-den-doh). [Latin] A higher court's order directing a lower court to determine and enter a judgment in a previously removed case.

PROCEDENDO AD JUDICIUM

procedendo ad iudicium.See DE PROCEDENDO AD JUDICIUM.

PROCEDURAL CONSOLIDATION

procedural consolidation.See JOINT ADMINISTRATION.

PROCEDURAL-DEFAULT DOCTRINE

procedural-default doctrine.The principle that a federal court lacks jurisdiction to review the merits of a habeas corpus petition if a state court has refused to review the complaint because the petitioner failed to follow reasonable state-court procedures. [Cases: Habeas Corpus 312–385.]

PROCEDURAL DUE PROCESS

procedural due process.See DUE PROCESS.

PROCEDURAL LAW

procedural law.The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves. — Also termed adjective law. Cf. SUBSTANTIVE LAW. [Cases: Statutes 242, 267. C.J.S. Statutes § 421.]

PROCEDURAL MAIN MOTION

procedural main motion.See incidental main motion under MOTION(2).

PROCEDURAL MOTION

procedural motion.See MOTION(2).

PROCEDURAL POINT

procedural point.See POINT.

PROCEDURAL PRESUMPTION

procedural presumption.See PRESUMPTION.

PROCEDURAL RIGHT

procedural right.See RIGHT.

PROCEDURAL UNCONSCIONABILITY

procedural unconscionability.See UNCONSCIONABILITY.

PROCEDURE

procedure. 1. A specific method or course of action. 2. The judicial rule or manner for carrying on a civil lawsuit or criminal prosecution. — Also termed rules of procedure. See CIVIL PROCEDURE; CRIMINAL PROCEDURE.

PROCEEDING

proceeding. 1. The regular and orderly progression of a lawsuit, including all acts and events

between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing. 5. Bankruptcy. A particular dispute or matter arising within a pending case — as opposed to the case as a whole. [Cases: Bankruptcy 2156. C.J.S. Bankruptcy § 26.]

“ ‘Proceeding’ is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word ‘action,’ but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment. As applied to actions, the term ‘proceeding’ may include — (1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of ne exeat; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in the action; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in code practice; (11) the taking of the appeal or writ of error; (12) the remittitur, or sending back of the record to the lower court from the appellate or reviewing court; (13) the enforcement of the judgment, or a new trial, as may be directed by the court of last resort.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3–4 (2d ed. 1899).

adjudicatory proceeding. See adjudication hearing under HEARING.

administrative proceeding. See ADMINISTRATIVE PROCEEDING.

collateral proceeding. A proceeding brought to address an issue incidental to the principal proceeding.

competency proceeding. A proceeding to assess a person's mental capacity. • A competency hearing may be held either in a criminal context to determine a defendant's competency to stand trial or as a civil proceeding to assess whether a person should be committed to a mental-health facility.

contempt proceeding. A judicial or quasi-judicial hearing conducted to determine whether a person has committed contempt. [Cases: Contempt 40. C.J.S. Contempt §§ 63–66, 74–75, 77, 83.]

core proceeding. See CORE PROCEEDING.

criminal proceeding. A proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial.

ex parte proceeding (eks pahr-tee). A proceeding in which not all parties are present or given the opportunity to be heard. — Also termed ex parte hearing.

in camera proceeding (in kam-<<schwa>>-r<<schwa>>). A proceeding held in a judge's chambers or other private place. [Cases: Pretrial Procedure 411; Witnesses 223. C.J.S. Discovery § 101; Witnesses § 377.]

informal proceeding. A trial conducted in a more relaxed manner than a typical court trial, such as an administrative hearing or a trial in small-claims court. [Cases: Administrative Law and Procedure 469; Courts 176. C.J.S. Public Administrative Law and Procedure §§ 134, 136, 138–139.]

involuntary proceeding. See involuntary bankruptcy under BANKRUPTCY.

judicial proceeding. Any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity.

noncore proceeding. See RELATED PROCEEDING.

posttrial proceeding. Action on a case that occurs after the trial is completed.

proceeding in rem. A proceeding brought to affect all persons' interests in a thing that is subject to the power of a state.

proceeding quasi in rem. A proceeding brought to affect particular persons' interests in a thing.

quasi-criminal proceeding. Procedure. A civil proceeding that is conducted in conformity with the rules of a criminal proceeding because a penalty analogous to a criminal penalty may apply, as in some juvenile proceedings. • For example, juvenile delinquency is classified as a civil offense. But like a defendant in a criminal trial, an accused juvenile faces a potential loss of liberty. So criminal procedure rules apply.

related proceeding. See RELATED PROCEEDING.

special proceeding. 1. A proceeding that can be commenced independently of a pending action and from which a final order may be appealed immediately. 2. A proceeding involving statutory or civil remedies or rules rather than the rules or remedies ordinarily available under rules of procedure; a proceeding providing extraordinary relief. [Cases: Action 20. C.J.S. Actions § 67.]

summary proceeding. A nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner. — Also termed summary trial. Cf. plenary action under ACTION(4).

“Summary proceedings were such as were directed by Act of Parliament, there was no jury, and the person accused was acquitted or sentenced only by such person as statute had appointed for his judge. The common law was wholly a stranger to summary proceedings.” A.H. Manchester, *Modern Legal History of England and Wales, 1750–1950* 160 (1980).

supplementary proceeding. 1. A proceeding held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor's assets available to satisfy the judgment. 2. A proceeding that in some way supplements another. [Cases: Execution 358; Federal Civil Procedure 2707. C.J.S. Executions §§ 345–347, 386.]

PROCEEDS

proceeds (proh-seedz), n.1. The value of land, goods, or investments when converted into money; the amount of money received from a sale <the proceeds are subject to attachment>.2. Something received upon selling, exchanging, collecting, or otherwise disposing of collateral. UCC § 9-102(a)(64). • Proceeds differ from other types of collateral because they constitute any collateral that has changed in form. For example, if a farmer borrows money and gives the creditor a security interest in the harvest, the harvested wheat is collateral. If the farmer then exchanges the harvest for a tractor, the tractor becomes the proceeds of the wheat. [Cases: Secured Transactions 164. C.J.S. Secured Transactions §§ 113, 115, 117–118.]

net proceeds. The amount received in a transaction minus the costs of the transaction (such as expenses and commissions). — Also termed net balance.

PROCEEDS AND AVAILS

proceeds and avails. The cash-surrender value of a life-insurance policy, together with values built up since the policy's issue date and the benefits payable on maturity and at the death of the insured.

PROCERES

proceres (pros-<<schwa>>-reez). [Latin] Nobles; lords. See DOMUS PROCERUM.

PROCESS

process, n.1. The proceedings in any action or prosecution <due process of law>.2. A summons or writ, esp. to appear or respond in court <service of process>. — Also termed judicial process; legal process. [Cases: Federal Civil Procedure 401; Process 1, 3. C.J.S. Process §§ 2–3.]

“Process is so denominated because it proceeds or issues forth in order to bring the defendant into court, to answer the charge preferred against him, and signifies the writs or judicial means by which he is brought to answer.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 338 (2d ed. 1826).

“The term ‘process’ is not limited to ‘summons.’ In its broadest sense it is equivalent to, or synonymous with, ‘procedure,’ or ‘proceeding.’ Sometimes the term is also broadly defined as the means whereby a court compels a compliance with its demands. “ ‘Process’ and ‘writ’ or ‘writs’ are synonymous, in the sense that every writ is a process, and in a narrow sense of the term ‘process’ is limited to judicial writs in an action, or at least to writs or writings issued from or out of a court, under the seal thereof and returnable thereto; but it is not always necessary to construe the term so strictly as to limit it to a writ issued by a court in the exercise of its ordinary jurisdiction.” 72 CJS Process § 2, at 589 (1987). alias process. A process issued after an earlier process has failed for some reason. • Among the types of alias process are alias execution, alias subpoena, alias summons, and alias writ.

bailable process. A process instructing an officer to take bail after arresting a defendant. • The defendant's discharge is required by law after the tender of suitable security.

civil process.A process that issues in a civil lawsuit. [Cases: Federal Civil Procedure 401; Process 1. C.J.S. Process § 2.]

compulsory process.A process, with a warrant to arrest or attach included, that compels a person to appear in court as a witness. [Cases: Witnesses 2. C.J.S. Criminal Law §§ 469–485.]

criminal process.A process (such as an arrest warrant) that issues to compel a person to answer for a crime. [Cases: Criminal Law 216. C.J.S. Criminal Law § 334.]

defective process.Void or voidable process. See void process; voidable process.

final process.A process issued at the conclusion of a judicial proceeding; esp., a writ of execution. [Cases: Execution 1. C.J.S. Executions §§ 2, 15.]

irregular process.A process not issued in accordance with prescribed practice. • Whether the process is void or merely voidable depends on the type of irregularity. Cf. regular process.

legal process.Process validly issued. — Also termed lawful process.

mesne process (meen).1. A process issued between the commencement of a lawsuit and the final judgment or determination. 2. The procedure by which a contumacious defendant is compelled to plead. — Also termed writ of mesne process; writ of mesne.

original process.A process issued at the beginning of a judicial proceeding. [Cases: Process 1. C.J.S. Process § 2.]

“Original process is any writ or notice by which a defendant is called upon to appear and answer the plaintiff’s declaration. The commencement of the suit at common law was formerly by original writ. Judicial process was by summons, attachment, arrest and outlawry.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 3, at 17 (Henry Winthrop Ballantine ed., 3d ed. 1923).

regular process.A process that issues lawfully according to prescribed practice. Cf. irregular process.

summary process. 1. An immediate process, issuing and taking effect without intermediate applications or delays. 2. A legal procedure used to resolve a controversy more efficiently and expeditiously than ordinary methods. 3. The legal documents achieving such a result. 4. A procedure for repossessing real property from a tenant upon default. See summary eviction under EVICTION. [Cases: Landlord and Tenant 293.] 5.SHOW-CAUSE PROCEEDING.

trust process.In some states (particularly in New England), garnishment or foreign attachment. [Cases: Garnishment 1.]

voidable process.A defective process with a curable defect.

void process.Legal process that, in some material way, does not comply with the required form.

3.Patents. A method, operation, or series of actions intended to achieve some new and useful

end or result by changing a material's chemical or physical characteristics. • Process is a statutory category of patentable invention. Cf. MACHINE; MANUFACTURE. [Cases: Patents 7. C.J.S. Patents §§ 17–19.]“A process is a way of doing something. If it is a patentable process, it must be a new, useful, and nonobvious way of doing something. If the process is patentable, the result of that process — the something getting done — need not of itself be new, useful, or nonobvious. In other words, the result of an inventive process need not be an invention itself.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 24 (2d ed. 1990).

PROCESS, ABUSE OF

process, abuse of. See ABUSE OF PROCESS.

PROCESS AGENT

process agent. See AGENT(2).

PROCESS BY FOREIGN ATTACHMENT

process by foreign attachment. See FACTORIZING PROCESS.

PROCESS CLAIM

process claim. See PATENT CLAIM.

PROCESSIONING

proceessioning. The survey and inspection of land boundaries, performed esp. in the former English colonies along the southeastern seaboard, and analogous to the English perambulation.

PROCESS PATENT

process patent. See PATENT(3).

PROCESS SERVER

process server. A person authorized by law or by a court to formally deliver process to a defendant or respondent. See SERVICE(1). [Cases: Federal Civil Procedure 418; Process 50. C.J.S. Process § 34.]

PROCESSUM CONTINUANDO

processum continuando (pr<<schwa>>-ses-<<schwa>>m k<<schwa>>n-tin-yoo-an-doh). [Latin “for continuing process”] Hist. A writ for the continuation of process after the death of a justice authorized to review cases by a commission of oyer and terminer.

PROCÈS-VERBAL

procès-verbal (proh-say-vair-bahl). [French “official record of oral proceedings”] Civil & int'l law. A detailed, authenticated written report of a proceeding, esp. of an international conference; PROTOCOL(3). • A procès-verbal may be cast in various forms, according to the style a country prefers.

PROCHEIN AMI

prochein ami (proh-shen <<schwa>>-mee). [Law French] See NEXT FRIEND.

PROCLAIM

proclaim,vb. To declare formally or officially.

PROCLAMATION

proclamation. A formal public announcement made by the government.

PROCLAMATION BY LORD OF MANOR

proclamation by lord of manor.Hist. A proclamation (repeated three times) made by the lord of a manor requiring an heir or devisee of a deceased copyholder to pay a fine and be admitted to the estate, failing which the lord could seize the lands provisionally.

PROCLAMATION OF EXIGENTS

proclamation of exigents (eks-<<schwa>>-j<<schwa>>nts).Hist. Repeated proclamations by the sheriff of an imminent outlawing of a person in the county where the person lived. See EXIGENT.

PROCLAMATION OF REBELLION

proclamation of rebellion.Hist. A proclamation made by the sheriff, warning a person who failed to obey a Chancery subpoena or attachment that a commission of rebellion would issue if the person continued to resist the Chancery process. See COMMISSION OF REBELLION.

PROCLAMATION OF RECUSANTS

proclamation of recusants (rek-y<<schwa>>-z<<schwa>>nts).Hist. A proclamation by which persons who willfully absented themselves from church could be convicted on nonappearance at the assizes.

PROCLAMATOR

proclamator (prok-l<<schwa>>-may-t<<schwa>>r).Hist. An official at the English Court of Common Pleas responsible for making proclamations.

PRO-CON DEBATE

pro-con debate.See DEBATE.

PRO-CON DIVORCE

pro-con divorce.See DIVORCE.

PRO CONFESSO

pro confesso (proh k<<schwa>>n-fes-oh). [Latin] Roman law. As having confessed or admitted liability, as by failing to appear when required. • A defendant who failed to answer a bill

in equity was often treated pro confesso.

PRO CONSILIO IMPENDENDO

pro consilio impendendo (proh k<<schwa>>n-sil-ee-oh im-pen-den-doh). [Law Latin] For counsel to be given. • The phrase describes consideration in the form of a commitment to give legal advice in exchange for an annuity.

PRO CONSILIO IMPENSO

pro consilio impenso (proh k<<schwa>>n-sil-ee-oh im-pen-soh). For counsel given.

PROCONSUL

proconsul (proh-kon-s<<schwa>>l), n. [Latin] Roman law. 1. An ex-consul whose consular powers were extended by the Senate or emperor after leaving office. 2. The governor of certain senatorial provinces.

PRO CONVICTO

pro convicto. As convicted.

PRO CORPORE REGNI

pro corpore regni (proh kor-p<<schwa>>-ree reg-nI). [Latin] In behalf of the body of the realm.

PROCTOR

proctor. 1. One appointed to manage the affairs of another. 2. An advocate who represents clients in ecclesiastical courts; PROCURATOR(4).3.DIVORCE PROCTOR . 4. An advocate who represents a party in the admiralty side of a district court. — Also termed (in sense 4) proctor in admiralty.

PROCTORSHIP

proctorship. See PROCURATORIUM.

PROCURACY

procuracy (prok-y<<schwa>>-r<<schwa>>-see). The document that grants power to an attorney-in-fact; a letter of agency.

PROCURARE

procurare (prok-y<<schwa>>-rair-ee), vb. [Latin] To take care of another's affairs.

PROCURATIO

procuratio (prok-y<<schwa>>-ray-shee-oh). [Latin] Management of another's affairs; agency.

PROCURATION

procuration (prok-y<<schwa>>-ray-sh<<schwa>>n). 1. The act of appointing someone as an

agent or attorney-in-fact. [Cases: Principal and Agent 10(1). C.J.S. Agency § 45.] 2. The authority vested in a person so appointed; the function of an attorney. 3.PROCUREMENT.

PROCURATIONES AD RESIGNANDUM IN FAVOREM

procurationes ad resignandum in favorem (prok-y<<schwa>>-ray-shee-oh-nee-z ad rez-ig-nan-d<<schwa>>m in f<<schwa>>-vor-<<schwa>>m). [Law Latin] Hist. Procuratories of resignation in favor of the disponent of a vassal. • The phrase referred to the rule requiring a vassal's resignation before a superior had to receive the disponent of a vassal to the property. See RESIGNATION(3).

PROCURATION FEE

procuration fee.English law. A commission or brokerage allowed to a solicitor for obtaining a loan. — Also termed procuration money.

PROCURATOR

procurator (prok-y<<schwa>>-ray-t<<schwa>>r), n. 1.Roman law. A person informally appointed to represent another in a judicial proceeding; PROCURATOR LITIS. Cf. COGNITOR. 2.Roman law. A government official, usu. subordinate in authority to a provincial governor; one of several imperial officers of the Roman Empire entrusted with the management of the financial affairs of the province and often having administrative powers in a province as agents of the emperor. 3.Hist. English law. An agent, attorney, or servant. 4.Eccles. law. An advocate of a religious house; a lawyer who represents a cleric or religious society in legal matters. — Also termed proctor. 5. An agent or attorney-in-fact. 6.Scots law. A solicitor who represents clients in the lower courts; formerly, any law agent.

PROCURATORES ECCLESIAE PAROCHIALIS

procuratores ecclesiae parochialis (prok-y<<schwa>>-r<<schwa>>-tor-eez e-klee-z [h]ee-ee p<<schwa>>-roh-kee-ay-lis). [Latin] Hist. A churchwarden; a representative of a parish church.

PROCURATOR FISCAL

procurator fiscal.Scots law. The representative of the Lord Advocate in inferior courts, responsible for investigating sudden deaths and crimes and for prosecuting in the sheriff or district court.

PROCURATOR IN REM SUAM

procurator in rem suam (prok-y<<schwa>>-ray-t<<schwa>>r in rem s[y]oo-<<schwa>>m). [Latin] 1.Roman law. An assignee of a right of action. • True agency did not exist in Roman law, so a principal whose agent had, for example, bought something on the principal's behalf would have to be made the agent's procurator to claim under that sale. 2.Scots law. Procurator in his own affair. • This phrase refers to a situation in which a person acts under a power of attorney with reference to property that the person has acquired.

PROCURATORIO NOMINE

procuratorio nomine (prok-y<<schwa>>-r<<schwa>>-tor-ee-oh nahm-<<schwa>>-nee). [Latin] Hist. In the name and character of a procurator. See PROCURATOR.

PROCURATORIUM

procuratorium (prok-y<<schwa>>-r<<schwa>>-tor-ee-<<schwa>>m), n. [Law Latin] Hist. The instrument by which a person appointed a procurator as the person's representative in litigation. — Also termed proctorship; proxy.

PROCURATOR LITIS

procurator litis (prok-y<<schwa>>-ray-t<<schwa>>r II-tis). [Latin] Roman law. A person who represents another in a lawsuit. — Often shortened to procurator. Cf. DEFENSOR(1).

PROCURATOR NEGOTIORUM

procurator negotiorum (prok-y<<schwa>>-ray-t<<schwa>>r ni-goh-shee-or-<<schwa>>m). [Latin] Civil law. An attorney-in-fact; a manager of business affairs for another.

PROCURATOR PROVINCIAE

procurator provinciae (prok-y<<schwa>>-ray-t<<schwa>>r pr<<schwa>>-vin-shee-ee). [Latin] Roman law. See PROCURATOR(2).

PROCURATORY

procuratory (prok-y<<schwa>>-r<<schwa>>-tor-ee), adj. Of, relating to, or authorizing a procuration. See PROCURATION.

procuratory,n.1.Civil law. Authorization of one person to act for another. 2.Scots law. A mandate or commission for one person to act for another; POWER OF ATTORNEY. See PROCURATOR(6).

PROCURATRIX

procuratrix (prok-y<<schwa>>-ray-triks). [Latin] Hist. A female agent or attorney-in-fact.

PROCUREMENT

procurement (proh-kyoor-m<<schwa>>nt), n.1. The act of getting or obtaining something. — Also termed procuration. 2. The act of persuading or inviting another, esp. a woman or child, to have illicit sexual intercourse. — procure,vb.

PROCUREMENT CONTRACT

procurement contract.See CONTRACT.

PROCUREMENT OF BREACH OF CONTRACT

procurement of breach of contract.See TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS .

PROCURER

procurer. One who induces or prevails upon another to do something, esp. to engage in an illicit sexual act. See PIMP.

PROCURING AGENT

procuring agent. See AGENT(2).

PROCURING AN ABORTION

procuring an abortion. See ABORTION.

PROCURING CAUSE

procuring cause. See CAUSE(1).

PROCURING MISCARRIAGE

procuring miscarriage. Hist. See ABORTION(1).

PRO DEF

pro def. abbr. PRO DEFENDENTE.

PRO DEFECTU EMPTORUM

pro defectu emptorum (proh di-fek-t[y]oo emp-tor-<<schwa>>m). [Latin] For want of purchasers.

PRO DEFECTU EXITUS

pro defectu exitus (proh di-fek-t[y]oo eks-<<schwa>>-t<<schwa>>s). [Latin] For, or in case of, default of issue.

PRO DEFECTU HAEREDIS

pro defectu haeredis (proh di-fek-t[y]oo h<<schwa>>-ree-dis). [Latin] For want of an heir.

PRO DEFECTU JUSTITIAE

pro defectu justitiae (proh di-fek-t[y]oo j<<schwa>>s-tish-ee-ee). [Latin] For defect or want of justice.

PRO DEFENDENTE

pro defendente (proh def-<<schwa>>n-den-tee). [Latin] For the defendant. — Abbr. pro def. Cf. PRO QUERENTE.

PRO DERELICTO

pro derelicto (proh der-<<schwa>>-lik-toh). [Latin] As derelict or abandoned. • This refers to property subject to usucapio. See USUCAPIO.

PRODIGAL

prodigal (prod-<<schwa>>-g<<schwa>>l), n. Civil law. A person whose affairs are managed

by a curator because of the person's wasteful spending or other bad conduct. • In Roman law, the agnatic family of a prodigal (prodigus) or spendthrift could result in that person's being prohibited from engaging in certain legal transactions, and the person's estate being put in the charge of a curator. See cura prodigi under CURA.

PRO DIGNITATE REGALI

pro dignitate regali (proh dig-n<<schwa>>-tay-tee ri-gay-II). [Latin] In consideration of the royal dignity.

PRODIGUS

prodigus (prod-<<schwa>>-g<<schwa>>s), n. & adj.[Latin “a spendthrift”] Roman law. See PRODIGAL.

PRODITIO

proditio (pr<<schwa>>-dish-<<schwa>>n).Archaic. Treason; treachery.

PRODITOR

proditor (prod-i-t<<schwa>>r), n. Roman law. 1. A traitor. 2. An informer.

PRODITORIE

proditorie (proh-di-tor-ee-ee), adv.[Latin] Treasonably. • This word formerly appeared in a treason indictment.

PRO DIVISO

pro diviso (proh di-vI-zoh). [Latin] As divided; i.e., in severalty.

PRO DOMINO

pro domino (proh dom-<<schwa>>-noh). [Latin] As master or owner; in the character of a master.

PRO DONATIONE

pro donatione (proh d<<schwa>>-nay-shee-oh-nee). [Latin] Roman & civil law. As a gift; as in case of gift. • This is a ground of usucapio. — Also written pro donato. See USUCAPIO.

PRO DOTE

pro dote (proh doh-tee). [Latin] Civil law. As a dowry; by title of dowry. • This is a ground of usucapio. See USUCAPIO.

PRODUCE

produce (proh-doo), n. The product of natural growth, labor, or capital; esp., agricultural products.

produce (pr<<schwa>>-doo), vb.1. To bring into existence; to create. 2. To provide (a

document, witness, etc.) in response to subpoena or discovery request. 3. To yield (as revenue).4. To bring (oil, etc.) to the surface of the earth.

PRODUCENT

producent (pr<<schwa>>-d[y]oo-s<<schwa>>nt), n. Hist. Eccles. law. The party calling a witness.

PRODUCER

producer. See INSURANCE AGENT.

PRODUCER PRICE INDEX

producer price index. An index of wholesale price changes, issued monthly by the U.S. Bureau of Labor Statistics. — Formerly also termed wholesale price index. Cf. CONSUMER PRICE INDEX.

PRODUCING CAUSE

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

PRODUCT

product. Something that is distributed commercially for use or consumption and that is usu. (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption. See MANUFACTURE; PRODUCTS LIABILITY . [Cases: Products Liability 1, 8. C.J.S. Products Liability §§ 2–3, 11–15.]

defective product. A product that is unreasonably dangerous for normal use, as when it is not fit for its intended purpose, inadequate instructions are provided for its use, or it is inherently dangerous in its design or manufacture. [Cases: Products Liability 8, 11, 14. C.J.S. Products Liability §§ 11–15, 19–21, 25–29.]

PRODUCT-BY-PROCESS CLAIM

product-by-process claim. See PATENT CLAIM.

PRODUCT CLAIM

product claim. See PATENT CLAIM.

PRODUCT DEFECT

product defect. See DEFECT.

PRODUCT DISPARAGEMENT

product disparagement. See TRADE DISPARAGEMENT.

PRODUCT-EXTENSION MERGER

product-extension merger. See MERGER.

PRODUCTION BURDEN

production burden. See BURDEN OF PRODUCTION.

PRODUCTION CASING

production casing. See CASING.

PRODUCTION FOR COMMERCE

production for commerce. The production of goods that an employer intends for interstate commerce. • This is one criterion by which an employer may be subject to the Fair Labor Standards Act. [Cases: Commerce 62.44–62.67. C.J.S. Commerce §§ 68; Labor Relations §§ 1046, 1049–1071, 1073–1081, 1083–1085, 1270, 1278, 1284.]

PRODUCTION OF SUIT

production of suit. Common-law pleading. The plaintiff's burden to produce evidence to confirm the allegations made in the declaration.

PRODUCTION PAYMENT

production payment. Oil & gas. A share of oil-and-gas production from property, free of the costs of production, ending when an agreed sum has been paid.

PRODUCTIO SECTAE

productio sectae (pr<<schwa>>-d<<schwa>>k-shee-oh sek-tee). [Latin] See PRODUCTION OF SUIT.

PRODUCT LIABILITY

product liability. See PRODUCTS LIABILITY.

PRODUCT-LINE EXCEPTION

product-line exception. An exception from the usual rule that a successor corporation is not liable for the acts of its predecessor, arising when the successor acquired all the predecessor's assets, held itself out as a continuation of the predecessor by producing the same product line under the same or a similar name, and benefited from the predecessor's goodwill.

PRODUCT MARK

product mark. See product trademark under TRADEMARK.

PRODUCT MARKET

product market. See MARKET.

PRODUCTS LIABILITY

products liability, n. 1. A manufacturer's or seller's tort liability for any damages or injuries

suffered by a buyer, user, or bystander as a result of a defective product. • Products liability can be based on a theory of negligence, strict liability, or breach of warranty. [Cases: Products Liability 1. C.J.S. Products Liability §§ 2–3.] 2. The legal theory by which liability is imposed on the manufacturer or seller of a defective product. 3. The field of law dealing with this theory. — Also termed product liability; (specif.) manufacturer's liability. See LIABILITY. — products-liability,adj.

“The law of products liability is that body of common and statutory law permitting money reparation for substandard conduct of others resulting in product-related injury to the injured party's person or property. Resistance to the description of products liability as a doctrine having receded, there is today a guiding tenet in the law of product-related injury that is the distillate of seventy years of decisional law. The birth of the doctrine can be dated at 1916, the publication of the immensely influential decision in *MacPherson v. Buick Motor Co.*, [217 N.Y. 382, 111 N.E. 1050 (1916)], in which the New York Court of Appeals held that the manufacturer of any product capable of serious harm if incautiously made owed a duty of care in the design, inspection, and fabrication of the product, a duty owed not only to the immediate purchaser but to all persons who might foreseeably come into contact with the product. Following *MacPherson*, the doctrine as formed by decisions of the ensuing decades is that a buyer, user, consumer or bystander in proximity to an unreasonably dangerous product, and who is injured in person or in property by its dangerous propensities, may recover in damages from the manufacturer or intermediate seller.” 1 M. Stuart Madden, *Products Liability* § 1.1, at 1–2 (2d ed. 1988).

strict products liability.Products liability arising when the buyer proves that the goods were unreasonably dangerous and that (1) the seller was in the business of selling goods, (2) the goods were defective when they were in the seller's hands, (3) the defect caused the plaintiff's injury, and (4) the product was expected to and did reach the consumer without substantial change in condition. [Cases: Products Liability 5. C.J.S. Products Liability §§ 7–8.]

PRODUCTS-LIABILITY ACTION

products-liability action.A lawsuit brought against a manufacturer, seller, or lessor of a product — regardless of the substantive legal theory or theories upon which the lawsuit is brought — for personal injury, death, or property damage caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. — Also termed product-liability action. [Cases: Limitation of Actions 30; Products Liability 1; Sales 425. C.J.S. Limitations of Actions §§ 68–70, 72; Products Liability §§ 2–3; Sales §§ 237, 278–280, 284–286, 288.]

PRODUCTS-LIABILITY INSURANCE

products-liability insurance.See INSURANCE.

PRODUCT TEST

product test.See DURHAM RULE.

PRODUCT TRADEMARK

product trademark.See TRADEMARK.

PRO EMPTORE

pro emptore (proh emp-tor-ee). [Latin] Civil law. As a purchaser; by the title of a purchaser. See USUCAPIO.

PRO ET DURANTE

pro et durante. For and during.

PRO FACTO

pro facto (proh fak-toh). [Latin] For the fact; considered or held as fact.

PRO FALSO CLAMORE SUO

pro falso clamore suo (proh fal-soh [orfaw1-soh] kl<<schwa>>-mor-ee s[y]oo-oh). [Latin "for his false claim"] A nominal amercement of a plaintiff for a false allegation, inserted in a judgment for the defendant.

PROFANE

profane, adj. (Of speech or conduct) irreverent to something held sacred.

PROFANITY

profanity. Obscene, vulgar, or insulting language; BLASPHEMY. • Profanity is distinguished from mere vulgarity and obscenity by the additional element of irreverence toward or mistreatment of something sacred.

PROFECTITIUM PECULIUM

profectitium peculium (pro-fek-tish-ee-<<schwa>>m p<<schwa>>-kyoo-lee-<<schwa>>m). Hist. Roman law. Property that a father allowed a son in patria potestas to manage and use while the father retained ownership. — Also written peculium profectitium.

PROFECTITIUS

profectitius (proh-fek-tish-ee-<<schwa>>s). [Latin] That which descends from an ancestor.

PROFER

profer (proh-f<<schwa>>r). Hist. 1. An offer or proffer. 2. A return made by a sheriff of an account into the Exchequer.

PROFERENS

proferens (proh-fer-enz). [Latin] The party that proposes a contract or a condition in a contract. Pl. proferentes (proh-f<<schwa>>-ren-teez).

PROFERT

profert (proh-f<<schwa>>rt). Common-law pleading. A declaration on the record stating that

a party produces in court the deed or other instrument relied on in the pleading. [Cases: Pleading 305. C.J.S. Pleading §§ 519, 522.]

PROFERT IN CURIA

profert in curia (proh-f<<schwa>>rt in kyoor-ee-<<schwa>>). [Law Latin] He produces in court. • In common-law pleading, this phrase was used in a declaration asserting that the plaintiff was ready to produce, or had produced, the deed or other instrument on which the action was founded.

PROFESS

profess,vb. To declare openly and freely; to confess.

PROFESSIO JURIS

professio juris (pr<<schwa>>-fes[h]-ee-oh joor-is). [Latin] A recognition of the right of a contracting party to stipulate the law that will govern the contract.

PROFESSION

profession. 1. A vocation requiring advanced education and training; esp., one of the three traditional learned professions — law, medicine, and the ministry.

“Learned professions are characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place, and in a profession like that of medicine by intimate and delicate personal ministrations. Traditionally, the learned professions were theology, law and medicine; but some other occupations have climbed, and still others may climb, to the professional plane.” *Commonwealth v. Brown*, 20 N.E.2d 478, 481 (Mass. 1939).

2. Collectively, the members of such a vocation.

PROFESSIONAL

professional,n. A person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.

PROFESSIONAL ASSOCIATION

professional association. See ASSOCIATION.

PROFESSIONAL CORPORATION

professional corporation. See CORPORATION.

PROFESSIONALISM

professionalism. The practice of a learned art in a characteristically methodical, courteous, and ethical manner.

PROFESSIONAL NEGLIGENCE

professional negligence. See MALPRACTICE.

PROFESSIONAL RELATIONSHIP

professional relationship. See RELATIONSHIP.

PROFFER

proffer (prof-<<schwa>>r), vb. To offer or tender (something, esp. evidence) for immediate acceptance. [Cases: Criminal Law 670; Trial 44.C.J.S. Criminal Law §§ 1203–1205; Trial § 163, 170.] — proffer, n.

PROFFERED EVIDENCE

proffered evidence. See EVIDENCE.

PROFICUA

proficua (pr<<schwa>>-fik-yoo-<<schwa>>). [Law Latin] Hist. Profits; esp., the profits of an estate in land.

PROFILING

profiling. See RACIAL PROFILING.

PROFIT

profit, n. 1. The excess of revenues over expenditures in a business transaction; GAIN(2). Cf. EARNINGS; INCOME. [Cases: Internal Revenue 3178; Taxation 996. C.J.S. Internal Revenue § 110; Taxation §§ 1732–1733.]

accumulated profit. Profit that has accrued but not yet been distributed; earned surplus. — Also termed undivided profit. See retained earnings under EARNINGS. [Cases: Internal Revenue 3833.]

gross profit. Total sales revenue less the cost of the goods sold, no adjustment being made for additional expenses and taxes. Cf. net profit. [Cases: Internal Revenue 3175; Taxation 979, 996. C.J.S. Internal Revenue §§ 107–108, 110, 112; Taxation §§ 1732–1733.]

lost profits. See LOST PROFITS.

mesne profits. The profits of an estate received by a tenant in wrongful possession between two dates. — Also termed (archaically) medium tempus. [Cases: Ejectment 124. C.J.S. Ejectment §§ 139–140.]

net profit. Total sales revenue less the cost of the goods sold and all additional expenses. — Also termed net revenue. Cf. gross profit. [Cases: Internal Revenue 3175; Taxation 980, 996. C.J.S. Internal Revenue §§ 107–108, 110, 112; Taxation §§ 1715–1716, 1732–1733.]

operating profit. Total sales revenue less all operating expenses, no adjustment being made for any nonoperating income and expenses, such as interest payments. [Cases: Internal Revenue 3175; Taxation 980, 996. C.J.S. Internal Revenue §§ 107–108, 110, 112; Taxation §§ 1715–1716,

1732–1733.]

paper profit. A profit that is anticipated but not yet realized. • Gains from stock holdings, for example, are paper profits until the stock is actually sold at a price higher than its original purchase price. — Also termed unrealized profit. [Cases: Internal Revenue 3178; Taxation 981. C.J.S. Internal Revenue § 110; Taxation § 1717.]

short-swing profits. See SHORT-SWING PROFITS.

surplus profit. Corporations. The excess of revenue over expenditures. • Some jurisdictions prohibit the declaration of a dividend from sources other than surplus profit. [Cases: Corporations 151. C.J.S. Corporations § 293.]

undistributed profit. See retained earnings under EARNINGS.

undivided profit. See accumulated profit.

unrealized profit. See paper profit.

2. A servitude that gives the right to pasture cattle, dig for minerals, or otherwise take away some part of the soil; PROFIT à PRENDRE. • A profit may be either appurtenant or in gross. See SERVITUDE(1). [Cases: Licenses 43. C.J.S. Easements § 9; Licenses § 88.]

profit appendant (<<schwa>>-pen-d<<schwa>>nt). A profit annexed to land by operation of law; esp., a common of pasture. See common appendant under COMMON.

profit appurtenant (<<schwa>>-p<<schwa>>rt-<<schwa>>n-<<schwa>>nt). A profit, whether several or in common, attached to land, for the benefit of certain other identified land, by the act of the parties (as by grant or by prescription). See common appurtenant under COMMON.

profit in gross (in grohs). A profit exercisable by the owner independently of his or her ownership of land. See common in gross under COMMON.

“[A] right to take fish from a canal without stint (i.e., without limit) can exist as a profit in gross, but not, as already seen, as a profit appurtenant. A profit in gross is an interest in land which will pass under the owner's will or intestacy or can be sold or dealt with in any of the usual ways.” Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 377 (6th ed. 1993).

profit pur cause de vicinage (p<<schwa>>r kawz d<<schwa>> vis-<<schwa>>-nij). A profit arising when the holders of adjoining commons have allowed their cattle to stray on each other's lands. • A claim for this profit fails if one of the commoners fences off the common or has in the past driven off the other commoner's cattle.

PROFIT-AND-LOSS ACCOUNT

profit-and-loss account. See ACCOUNT.

PROFIT-AND-LOSS STATEMENT

profit-and-loss statement. See INCOME STATEMENT.

PROFIT À PRENDRE

profit à prendre (a prawn-dr<<schwa>> or ah prahn-d<<schwa>>r). [Law French “profit to take”] (usu. pl.) A right or privilege to go on another's land and take away something of value from its soil or from the products of its soil (as by mining, logging, or hunting). — Also termed right of common. Pl. profits à prendre. Cf. EASEMENT. [Cases: Licenses 43. C.J.S. Easements § 9; Licenses § 88.]

“A profit à prendre has been described as ‘a right to take something off another person's land.’ This is too wide; the thing taken must be something taken out of the soil, i.e., it must be either the soil, the natural produce thereof, or the wild animals existing on it; and the thing taken must at the time of taking be susceptible of ownership. A right to ‘hawk, hunt, fish, and fowl’ may thus exist as a profit, for this gives the right to take creatures living on the soil which, when killed, are capable of being owned. But a right to take water from a spring or a pump, or the right to water cattle at a pond, may be an easement but cannot be a profit; for the water, when taken, was not owned by anyone nor was it part of the soil.” Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 375–76 (6th ed. 1993).

PROFITEERING

profiteering, n. The taking advantage of unusual or exceptional circumstances to make excessive profits, as in the selling of scarce goods at inflated prices during war. [Cases: War and National Emergency 59.] — profiteer, vb.

PROFIT INSURANCE

profit insurance. See INSURANCE.

PROFIT MARGIN

profit margin. 1. The difference between the cost of something and the price for which it is sold. 2. The ratio, expressed as a percentage, between this difference and the selling price. • For example, a widget costing a retailer \$10 and selling for \$15 has a profit margin of 33% (\$5 difference divided by \$15 selling price). — Often shortened to margin.

PROFIT-SHARING PLAN

profit-sharing plan. An employee benefit plan that allows an employee to share in the company's profits. • ERISA governs the administration of many profit-sharing plans, which provide for discretionary employer contributions and provide a definite predetermination formula for allocating the contributions to the plan among the participants. Contributions are frequently allocated in proportion to each participant's compensation. See EMPLOYEE BENEFIT PLAN; EMPLOYEE RETIREMENT INCOME SECURITY ACT. [Cases: Pensions 24.1, 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

qualified profit-sharing plan. A plan in which an employer's contributions are not taxed to the employee until distribution. • The employer is allowed to deduct the contributions. IRC (26 USCA) § 401(a). — Often shortened to qualified plan. [Cases: Internal Revenue 3578. C.J.S. Internal

Revenue §§ 294–295, 302–304.]

PRO FORMA

pro forma (proh for-m<<schwa>>), adj.[Latin “for form”] 1. Made or done as a formality. 2. (Of an invoice or financial statement) provided in advance to describe items, predict results, or secure approval.

PRO FORMA AMENDMENT

pro forma amendment.See AMENDMENT(3).

PRO FORMA EARNINGS

pro forma earnings.See operating earnings under EARNINGS.

PRO FORMA SESSION

pro forma session.See SESSION(1).

PROGENER

progener (proh-jee-n<<schwa>>r). [Latin] A grandson-in-law.

PROGENY

progeny (proj-<<schwa>>-nee), n. pl.1.Children or descendants; offspring < only one of their progeny attended law school>.2. In a figurative sense, a line of precedents that follow a leading case <Erie and its progeny>.

PROGNOSIS

prognosis (prog-noh-sis).1. The process of forecasting the probable outcome of a present medical condition (such as a disease).2. The forecast of such an outcome. Cf. DIAGNOSIS. [Cases: Health 637–640, 906.]

PROGRAM

program.Parliamentary law. 1. An agenda for a meeting or a convention, listing the order of business and possibly including educational or social events. See AGENDA; business meeting under MEETING. 2. A speech or other presentation within a meeting offered for the assembly's information or for the members' education or entertainment, but not for their formal consideration or action as a deliberative assembly.

PROGRAM COMMITTEE

program committee.See COMMITTEE.

PROGRAM TRADING

program trading.A form of computerized securities trading that usu. involves buying or selling large amounts of stocks while simultaneously selling or buying index futures in offsetting amounts.

PRO GRAVITATE ADMISSI

pro gravitate admissi (proh grav-*<<schwa>>*-tay-tee ad-mis-I). [Latin] Hist. According to the gravity of the offense.

PROGRESSIVE LOSS

progressive loss. See LOSS.

PROGRESSIVE TAX

progressive tax. See TAX.

PRO HAC VICE

pro hac vice (proh hahk vee-chay or hak vI-see also hahk vees). [Latin] For this occasion or particular purpose. • The phrase usu. refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted there temporarily for the purpose of conducting a particular case. — Abbr. p.h.v. See admission pro hac vice under ADMISSION(2). For owner pro hac vice, see demise charter under CHARTER(8). [Cases: Attorney and Client 10. C.J.S. Attorney and Client §§ 26–28.]

PROHIBIT

prohibit, vb. 1. To forbid by law. 2. To prevent or hinder.

PROHIBITED AND RESERVED TRADEMARK

prohibited and reserved trademark. See TRADEMARK.

PROHIBITED DEGREE

prohibited degree. See DEGREE.

PROHIBITED SUBSTITUTION

prohibited substitution. See SUBSTITUTION.

PROHIBITIO DE VASTO, DIRECTA PARTI

prohibitio de vasto, directa parti (proh-h*<<schwa>>*-bish-ee-oh dee vas-toh, di-rek-t*<<schwa>>* pahr-tI). [Latin “prohibition of waste, directed to the party”] Hist. A writ issued during litigation prohibiting a tenant from committing waste.

PROHIBITION

prohibition. 1. A law or order that forbids a certain action. 2. An extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a nonjudicial officer or entity from exercising a power. — Also termed (in sense 2) writ of prohibition; (in Scots law) inhibition. Cf. WRIT OF CONSULTATION. [Cases: Prohibition 1. C.J.S. Prohibition §§ 2–5.]

“Prohibition is a kind of common-law injunction to prevent an unlawful assumption of

jurisdiction.... It is a common-law injunction against governmental usurpation, as where one is called coram non judge (before a judge unauthorized to take cognizance of the affair), to answer in a tribunal that has no legal cognizance of the cause. It arrests the proceedings of any tribunal, board, or person exercising judicial functions in a manner or by means not within its jurisdiction or discretion.” Benjamin J. Shipman, Handbook of Common-Law Pleading § 341, at 542 (Henry Winthrop Ballantine ed., 3d ed. 1923).

3. (cap.) The period from 1920 to 1933, when the manufacture, transport, and sale of alcoholic beverages in the United States was forbidden by the 18th Amendment to the Constitution. • The 18th Amendment was repealed by the 21st Amendment. [Cases: Intoxicating Liquors 17. C.J.S. Intoxicating Liquors § 35.]

PROHIBITIVE STATUTE

prohibitive statute. See STATUTE.

PROHIBITORY INJUNCTION

prohibitory injunction. See INJUNCTION.

PROHIBITORY INTERDICT

prohibitory interdict. See INTERDICT(1).

PRO ILLA VICE

pro illa vice (proh il-<<schwa>> vI-see). [Latin] For that turn.

PRO INDEFENSO

pro indefenso (proh in-d<<schwa>>-fen-soh). [Latin] As undefended; as making no defense.

PRO INDIVISO

pro indiviso (proh in-d<<schwa>>-vI-zoh), adj. [Latin “as undivided”] (Of property) owned or possessed by several persons at the same time, without partition.

PRO INTERESSE SUO

pro interesse suo (proh in-t<<schwa>>r-es-ee s[y]oo-oh). [Latin] According to his interest; to the extent of his interest. • A third party, for example, may be allowed to intervene pro interesse suo.

PROJECT FINANCING

project financing. See FINANCING.

PROJECTIO

projectio (pr<<schwa>>-jek-shee-oh). [Latin] Alluvion created by the sea. See ALLUVION.

PROJECTOR

projector. See PROMOTER.

PROJET

projet (proh-zhay). [French] Int'l law. A draft of a proposed measure, treaty, or convention.

PRO LAESIONE FIDEI

pro laesione fidei (proh lee-zhee-oh-nee fi-dee-I). [Latin] For breach of faith.

PRO LEGATO

pro legato (proh l<<schwa>>-gay-toh). [Latin] As a legacy; by the title of a legacy. • This is a ground of usucapio. See USUCAPIO.

PROLES

proles (proh-leez). [Latin] Offspring; esp., the issue of a lawful marriage.

PROLETARIAT

proletariat (proh-l<<schwa>>-tair-ee-<<schwa>>t). The working class; those without capital who sell their labor to survive.

PROLETARIUS

proletarius (proh-l<<schwa>>-tair-ee-<<schwa>>s), n. [Latin] Roman law. One of the common people; a member of a lower class who owned little or no property.

PROLICIDE

prolicide (proh-l<<schwa>>-sId).1. The killing of offspring; esp., the crime of killing a child shortly before or after birth. 2. One who kills a child shortly before or after birth. Cf. INFANTICIDE. — prolicidal,adj.

PROLIXITY

prolixity (proh-lik-s<<schwa>>-tee). The unnecessary and superfluous stating of facts and arguments in pleading or evidence.

PROLIXITY REJECTION

prolixity rejection. See REJECTION.

PRO LOCO ET TEMPORE

pro loco et tempore (proh loh-koh et tem-p<<schwa>>-ree). [Latin] Hist. For the place and time.

PROLOCUTOR

prolocutor (proh-lok-y<<schwa>>-t<<schwa>>r).1.Eccles. law. The president or chair of a convocation. 2.Hist. The speaker of the British House of Lords. • This office now belongs to the Lord Chancellor. — Also termed (in sense 2) forspeca.

PRO MAJORI CAUTELA

pro majori cautela (proh m<<schwa>>-jor-I kaw-tee-l<<schwa>>). [Latin] For greater caution; by way of additional security. • This phrase usu. applies to an act done or to a clause put in an instrument as a precaution.

PROMATERTERA

promatertera (proh-m<<schwa>>-t<<schwa>>r-t<<schwa>>r-<<schwa>>). [Latin] Roman & civil law. A great-great-aunt; the sister of one's great-grandmother.

PROMATERTERA MAGNA

promatertera magna (proh-m<<schwa>>-t<<schwa>>r-t<<schwa>>r-<<schwa>> mag-n<<schwa>>). [Latin] Civil law. A great-great-great-aunt.

PROMISE

promise, n.1. The manifestation of an intention to act or refrain from acting in a specified manner, conveyed in such a way that another is justified in understanding that a commitment has been made; a person's assurance that the person will or will not do something. • A binding promise — one that the law will enforce — is the essence of a contract. [Cases: Contracts 1.C.J.S. Contracts §§ 2–3, 9, 12.]

“By common usage, a promise is an expression leading another person justifiably to expect certain conduct on the part of the promisor. Such an expression is a promise, whether enforceable at law or not. It is indeed an essential element in every contract. Society does not guarantee the fulfillment of all expectations so induced.” William R. Anson, *Principles of the Law of Contract* 6 n.3 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“[Promise] means not only the physical manifestations of assurance by words or conduct, but also the moral duty to make good the assurance by performance. If by reason of other operative facts the promise is recognized as creating a legal duty, the promise is a contract.” Samuel Williston, *A Treatise on the Law of Contracts* § 1A, at 4 (Walter H.E. Jaeger ed., 3d ed. 1957).

“It is well to make clear two points at the outset The first is that I do not believe that all promises are morally binding; accordingly, I use the term ‘promise’ without prejudging the question whether the promise creates an obligation. The second is that, where a promise does create an obligation, the reason for that may depend upon whether the promise was explicit or implied. There is thus, in my view, a fundamental distinction between explicit and implied promises, and when I use the word ‘promise’ without qualification, I normally mean an explicit promise.” P.S. Atiyah, *Promises, Morals, and Law* 8 (1981).

2. The words in a promissory note expressing the maker's intention to pay a debt. • A mere written acknowledgment that a debt is due is insufficient to constitute a promise. [Cases: Bills and Notes 30. C.J.S. Bills and Notes; Letters of Credit § 11.] — promise, vb.

aleatory promise (ay-lee-<<schwa>>-tor-ee). A promise conditional on the happening of a fortuitous event, or on an event that the parties believe is fortuitous. [Cases: Contracts 218. C.J.S.

Contracts §§ 355, 358.]

alternative promise. A contractual promise to do one of two or more things, any one of which qualifies as consideration.

“A promise in the alternative may be made because each of the alternative performances is the object of desire to the promisee. Or the promisee may desire one performance only, but the promisor may reserve an alternative which he may deem advantageous. In either type of case the promise is consideration if it cannot be kept without some action or forbearance which would be consideration if it alone were bargained for. But if the promisor has an unfettered choice of alternatives, and one alternative would not have been consideration if separately bargained for, the promise in the alternative is not consideration.” Restatement (Second) of Contracts § 77 cmt. b (1979).

bare promise. See gratuitous promise.

collateral promise. A promise to guarantee the debt of another, made primarily without benefit to the party making the promise. • Unlike an original promise, a collateral promise must be in writing to be enforceable. See MAIN-PURPOSE RULE. [Cases: Guaranty 1.]

conditional promise. A promise that is conditioned on the occurrence of an event other than the lapse of time <she made a conditional promise to sell the gold on April 2 unless the price fell below \$300 an ounce before that time>. • A conditional promise is not illusory as long as the condition is not entirely within the promisor's control. [Cases: Contracts 58, 218. C.J.S. Contracts §§ 107, 355, 358.]

corresponding promise. A mutual promise calling for the performance of an act substantially similar to the act called for by the other mutual promise, both acts being in pursuit of a common purpose.

counterpromise. See COUNTERPROMISE.

dependent promise. A promise to be performed by a party only when another obligation has first been performed by another party. [Cases: Contracts 173, 278(1). C.J.S. Contracts §§ 361, 475, 503–505, 510–512.]

divisible promises. Promises that are capable of being divided into independent parts.

false promise. A promise made with no intention of carrying it out. Cf. promissory fraud under FRAUD.

fictitious promise. See implied promise.

gratuitous promise. A promise made in exchange for nothing; a promise not supported by consideration. • A gratuitous promise is not ordinarily legally enforceable. — Also termed bare promise; naked promise. [Cases: Contracts 47. C.J.S. Contracts §§ 83–84.]

illusory promise. A promise that appears on its face to be so insubstantial as to impose no obligation on the promisor; an expression cloaked in promissory terms but actually containing no

commitment by the promisor. • An illusory promise typically, by its terms, makes performance optional with the promisor. For example, if a guarantor promises to make good on the principal debtor's obligation "as long as I think it's in my commercial interest," the promisor is not really bound. [Cases: Contracts 10(1). C.J.S. Contracts §§ 105–106, 108–113.]

"An apparent promise which, according to its terms, makes performance optional with the promisor no matter what may happen, or no matter what course of conduct in other respects he may pursue, is in fact no promise. Such an expression is often called an illusory promise." Samuel Williston, *A Treatise on the Law of Contracts* § 1A, at 5 (Walter H.E. Jaeger ed., 3d ed. 1957).

implied promise. A promise created by law to render a person liable on a contract so as to avoid fraud or unjust enrichment. — Also termed fictitious promise. [Cases: Implied and Constructive Contracts 1. C.J.S. Implied and Constructive Contracts §§ 2–3.]

"Under some circumstances the promise inferred is called an implied promise and in others it is referred to as a constructive promise. But whichever conclusion is reached, the result is the same. In other words an implied promise and a constructive promise are not treated differently. The theoretical difference between the two is that a promise implied from the conduct of the parties arises by construction of law, only when justice requires it under the circumstances." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 4–12, at 234–35 (3d ed. 1987).

independent promise. See unconditional promise.

marriage promise. Family law. A betrothal; an engagement to be married. — Also termed agreement to marry; promise to marry; promise of marriage. [Cases: Breach of Marriage Promise 1. C.J.S. Breach of Marriage Promise § 3.]

mutual promises. Promises given simultaneously by two parties, each promise serving as consideration for the other. See bilateral contract under CONTRACT.

naked promise. See gratuitous promise.

new promise. A previously unenforceable promise that a promisor revives and agrees to fulfill, as when a debtor agrees to pay a creditor an amount discharged in the debtor's bankruptcy.

original promise. A promise to guarantee the debt of another, made primarily for the benefit of the party making the promise. • An original promise need not be in writing to be enforceable. See MAIN-PURPOSE RULE. [Cases: Frauds, Statute of 23.]

promise implied in fact. A promise existing by inference from the circumstances or actions of the parties. See implied promise. [Cases: Contracts 27. C.J.S. Contracts § 6.]

promise in consideration of marriage. A promise for which the actual performance of the marriage is the consideration, as when a man agrees to transfer property to a woman if she will marry him. • A promise to marry, however, is not considered a promise in consideration of marriage. [Cases: Breach of Marriage Promise 5. C.J.S. Breach of Marriage Promise § 6.]

promise in restraint of trade. A promise whose performance would limit competition in any

business or restrict the promisor in the exercise of a gainful occupation. • Such a promise is usu. unenforceable. [Cases: Contracts 116. C.J.S. Contracts §§ 249–251, 253–254, 257–260.]

remedial promise.A seller's promise to repair or replace goods, or the like, or to refund the price if the goods (1) do not conform to the contract or to a representation at the time of the delivery of the goods, (2) conform at the time of delivery but later fail to perform as agreed, or (3) contain a defect.

unconditional promise.A promise that either is unqualified or requires nothing but the lapse of time to make the promise presently enforceable. • A party who makes an unconditional promise must perform that promise even though the other party has not performed according to the bargain. — Also termed independent promise. [Cases: Contracts 218. C.J.S. Contracts §§ 355, 358.]

voidable promise.A promise that one party may, under the law, declare void by reason of that party's incapacity or mistake, or by reason of the fraud, breach, or other fault of the other party. [Cases: Contracts 98. C.J.S. Contracts §§ 137, 139–140, 145, 153–155, 157, 171, 173–174, 185, 188.]

PROMISEE

promisee (prom-is-ee). One to whom a promise is made.

PROMISE NOT TO COMPETE

promise not to compete.See noncompetition covenant under COVENANT(1).

PROMISE OF MARRIAGE

promise of marriage.See marriage promise under PROMISE.

PROMISE TO MARRY

promise to marry.See marriage promise under PROMISE.

PROMISOR

promisor (prom-is-or). One who makes a promise; esp., one who undertakes a contractual obligation.

PROMISSOR

promissor (prom-is-*<<schwa>>r*). [Latin] 1.Civil law. A promisor; specif., a party who undertakes to do a thing in response to the interrogation of the other party (the stipulator).2.REUS PROMITTENDI.

PROMISSORY

promissory,adj. Containing or consisting of a promise <the agreement's promissory terms>.

PROMISSORY CONDITION

promissory condition.See CONDITION(2).

PROMISSORY ESTOPPEL

promissory estoppel. See ESTOPPEL.

PROMISSORY FRAUD

promissory fraud. See FRAUD.

PROMISSORY NOTE

promissory note. See NOTE(1).

PROMISSORY OATH

promissory oath. See OATH.

PROMISSORY REPRESENTATION

promissory representation. See REPRESENTATION(1).

PROMISSORY RESTRAINT

promissory restraint. An attempt by an otherwise effective conveyance or contract to discourage a later conveyance by imposing contractual liability on anyone who makes a later conveyance.

PROMISSORY WARRANTY

promissory warranty. See WARRANTY(3).

PRO MODO ADMISSI

pro modo admissi (proh moh-doh ad-mis-I). [Latin] Hist. According to the measure of the offense.

PROMOTER

promoter. 1. A person who encourages or incites. 2. A founder or organizer of a corporation or business venture; one who takes the entrepreneurial initiative in founding or organizing a business or enterprise. — Formerly also termed projector. [Cases: Corporations 30. C.J.S. Corporations § 67.]

“The complete judicial acceptance of the term ‘promoter’ is a matter of comparatively recent date. In some of the early cases, persons engaged in the formation of a corporation are spoken of as ‘projectors.’ Other cases of about the same period, though recognizing the obligations flowing therefrom, do not give any name to the relation in which such persons stand to the contemplated company. The word promoter, while undoubtedly employed in common parlance before that time, does not seem to have been used in any reported decision until after it had been used, and for the purposes of the act defined, in the Joint Stock Companies Act of 1844.... [A] person may be said to be a promoter of a corporation if before its organization, he directly or indirectly solicits subscriptions to its stock, or assumes to act in its behalf in the purchase of property, or in the securing of its charter, or otherwise assists in its organization.” Manfred W. Ehrlich, *The Law of*

Promoters § 1, at 2–3; § 13, at 15 (1916).

“A promoter is a person who takes the initiative in developing and organizing a new business venture. A promoter may act either alone or with co-promoters. The term ‘promoter’ is not one of opprobrium; indeed, the promoter is often an aggressive, imaginative entrepreneur who fulfills the essential economic function of taking an idea and creating a profitable business to capitalize on the idea.” Robert W. Hamilton, *The Law of Corporations in a Nutshell* 64 (3d ed. 1991).

PROMOTING PROSTITUTION

promoting prostitution. See PANDERING.

PROMULGARE

promulgare (proh-m<<schwa>>l-gair-ee), vb. [Latin] Roman law. To promulgate; to make (a law) publicly known after its enactment.

PROMULGATE

promulgate (pr<<schwa>>-m<<schwa>>l-gayt or prom-<<schwa>>l-gayt), vb. 1. To declare or announce publicly; to proclaim. 2. To put (a law or decree) into force or effect. 3. (Of an administrative agency) to carry out the formal process of rulemaking by publishing the proposed regulation, inviting public comments, and approving or rejecting the proposal. — promulgation (prom-<<schwa>>l-gay-sh<<schwa>>n or proh-m<<schwa>>l-), n.

PROMULGATION

promulgation (prom-<<schwa>>l-gay-sh<<schwa>>n or proh-m<<schwa>>l-). The official publication of a new law or regulation, by which it is put into effect.

PROMUTUUM

promutuum (proh-myoo-choo-<<schwa>>m). [Latin “as if lent”] Civil law. A quasi-contract in which a person who received money or property in error agrees to return what was received to the person who paid it.

PRONEPOS

pronepos (proh-nep-ohs). [Latin] Roman & civil law. A great-grandson. Pl. pronepotes.

PRONEPTIS

proneptis (proh-nep-tis). [Latin] Roman & civil law. A great-granddaughter. Pl. proneptes.

PRO NON ADJECTO

pro non adjecto (proh non <<schwa>>-jek-toh). [Latin] Hist. As not added. • For example, a nonessential deed provision might be treated pro non adjecto.

PRO NON SCRIPTO

pro non scripto (proh non skrip-toh). [Latin] As not written; as though it had not been written.

- The phrase usu. referred to testamentary conditions that a court would disregard because the conditions were impossible, illegal, or meaningless.

PRONOTARY

pronotary (proh-noh-t<<schwa>>-ree), n. First notary.

PRONOUNCE

pronounce, vb. To announce formally <pronounce judgment>.

PRONUNCIATION

pronunciation (pr<<schwa>>-n<<schwa>>n-see-ay-sh<<schwa>>n). Archaic. A sentence or decree.

PRONURUS

pronurus (proh-n<<schwa>>-r<<schwa>>s). [Latin] Roman & civil law. The wife of a grandson or great-grandson. Pl. pronurus.

PROOF

proof, n. 1. The establishment or refutation of an alleged fact by evidence; the persuasive effect of evidence in the mind of a fact-finder. [Cases: Evidence 584. C.J.S. Evidence §§ 729, 1301–1305, 1320, 1324, 1326–1327, 1342, 1345.] 2. Evidence that determines the judgment of a court. 3. An attested document that constitutes legal evidence.

affirmative proof. Evidence establishing the fact in dispute by a preponderance of the evidence. [Cases: Evidence 99. C.J.S. Evidence §§ 2–5, 197–199, 204, 206.]

conditional proof. A fact that amounts to proof as long as there is no other fact amounting to disproof. — Also termed presumptive proof.

double proof. 1. Bankruptcy. Proof of claims by two or more creditors against the same debt. • This violates the general rule that there can be only one claim with respect to a single debt. [Cases: Bankruptcy 2891. C.J.S. Bankruptcy § 268.] 2. Evidence. Corroborating government evidence (usu. by two witnesses) required to sustain certain convictions.

full proof. 1. Civil law. Proof by two witnesses or by public instrument. 2. Evidence that satisfies the minds of the jury of the truth of the fact in dispute beyond a reasonable doubt. [Cases: Evidence 584. C.J.S. Evidence §§ 729, 1301–1305, 1320, 1324, 1326–1327, 1342, 1345.]

literal proof. Civil law. Written evidence. Cf. testimonial proof.

negative proof. Proof that establishes a fact by showing that its opposite is not or cannot be true. Cf. positive proof. [Cases: Evidence 586. C.J.S. Evidence §§ 339, 1309, 1328.]

positive proof. Direct or affirmative proof. Cf. negative proof. [Cases: Evidence 586. C.J.S. Evidence §§ 339, 1309, 1328.]

preliminary proof. Insurance. The first proof offered of a loss occurring under a policy, usu.

sent in to the underwriters with a notification of the claim. [Cases: Insurance 3164. C.J.S. Insurance §§ 1280, 1316, 1627.]

presumptive proof. See conditional proof.

proof beyond a reasonable doubt. Proof that precludes every reasonable hypothesis except that which it tends to support. See REASONABLE DOUBT. • Formerly, this standard required evidence to “establish the truth of the fact to a reasonable and moral certainty” and “proof to a moral certainty as distinguished from an absolute certainty.” Moral certainty is no longer a synonym for proof beyond a reasonable doubt. See *Victor v. Nebraska*, 511 U.S. 1, 8, 12, 114 S.Ct. 1239, 1244, 1246 (1994). [Cases: Criminal Law 561. C.J.S. Criminal Law § 1108.]

testimonial proof. Civil law. Proof by the evidence of witnesses, rather than proof by written instrument. Cf. literal proof.

PROOF, BURDEN OF

proof, burden of. See BURDEN OF PROOF.

PROOF BRIEF

proof brief. See BRIEF.

PROOF OF ACKNOWLEDGMENT

proof of acknowledgment. An authorized officer's certification — based on a third party's testimony — that the signature of a person (who usu. does not appear before the notary) is genuine and was freely made. — Also termed certificate of proof. See ACKNOWLEDGMENT(5). [Cases: Acknowledgment 8–39. C.J.S. Acknowledgments §§ 24–78, 88–90.]

PROOF OF CLAIM

proof of claim. Bankruptcy. A creditor's written statement that is submitted to show the basis and amount of the creditor's claim. Pl. proofs of claim. [Cases: Bankruptcy 2891–2904. C.J.S. Bankruptcy §§ 268–279.]

informal proof of claim. A proof of claim stating a creditor's demand for payment and intent to hold the debtor's bankruptcy estate liable, but that does not comply with the Bankruptcy Code's form for proofs of claim. • A late-filed proof of claim may be given effect if the creditor had timely filed an informal proof of claim. [Cases: Bankruptcy 2902. C.J.S. Bankruptcy § 276.]

PROOF OF DEBT

proof of debt. The establishment by a creditor of a debt in some prescribed manner (as by affidavit) as a first step in recovering the debt from an estate or property; PROOF OF CLAIM.

PROOF OF LOSS

proof of loss. An insured's formal statement of loss required by an insurance company before it will determine whether the policy covers the loss. [Cases: Insurance 3164. C.J.S. Insurance §§ 1280, 1316, 1627.]

PROOF OF SERVICE

proof of service. 1. A document filed (as by a sheriff) in court as evidence that process has been successfully served on a party. — Also termed return of service; return of process. See SERVICE(1). [Cases: Federal Civil Procedure 511–518; Process 127–150. C.J.S. Process §§ 77–91.] 2.CERTIFICATE OF SERVICE.

PROOF OF WILL

proof of will.See PROBATE(1).

PRO OMNI ALIO ONERE

pro omni alio onere (proh om-nī [also -nee] ay-lee-oh on-*<<schwa>>r-ee*). [Law Latin “for every other burden”] Hist. A portion of a charter clause restricting the vassal's duties to those explicitly named in the charter.

PRO OPERE ET LABORE

pro opere et labore (proh op-*<<schwa>>-ree* et l*<<schwa>>-bor-ee*). [Latin] For work and labor.

PROPAGANDA

propaganda.Int'l law. 1. The systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause. 2. The ideas or information so disseminated. • The word propaganda originated as an abbreviated form of *Congregatio de propaganda fide*, a committee (of cardinals) for propagating the (Christian) faith.

defamatory propaganda.Propaganda used to promote dissatisfaction among a nation's citizens and undermine government authority. • Defamatory propaganda is common in wartime but is also used in peacetime as a means of incitement.

hostile propaganda.Propaganda employed by a nation to manipulate the people of another nation to support or oppose their government. — Also termed ideological aggression. See subversive propaganda.

“Ideological aggression ... is the spreading of ideas intentionally and deliberately so as to manipulate by symbols controversial attitudes and positions. It is hostile propaganda indulged in by a state directly or vicariously to incite and influence the people of another state so as to maintain or alter the institutions and policies of that state. The campaign of hostile propaganda may emanate from within or without the territory of the victim state and can be carried on by any means of communications.” Ann Van Wynen Thomas & A.J. Thomas, Jr., *The Concept of Aggression in International Law* 84 (1972).

subversive propaganda.Propaganda calculated to incite a civil war or revolution. • When the instigator is another nation, it is termed hostile propaganda or ideological aggression.

war-mongering propaganda.Propaganda calculated to produce national support for a war and to encourage the government to declare or join in a war regardless of any legal constraints.

PRO PARTE

pro parte (proh pahr-tee). [Latin] Hist. Partly; in part.

PRO PARTE LEGITIMUS, PRO PARTE ILLEGITIMUS

pro parte legitimus, pro parte illegitimus (proh pahr-tee l<<schwa>>-jit-<<schwa>>-m<<schwa>>s, proh pahr-tee il-l<<schwa>>-jit-<<schwa>>-m<<schwa>>s). [Law Latin] Hist. Partly legitimate, partly illegitimate. • In Roman and civil law, an illegitimate child could be later legitimated through the marriage of the child's parents. But England did not fully recognize this legitimate status.

PRO PARTE VIRILI

pro parte virili (proh pahr-tee v<<schwa>>-rI-II). [Latin “for the share per man”] Hist. In equal shares; for one's own proportion.

PRO PARTIBUS LIBERANDIS

pro partibus liberandis (proh pahr-ti-b<<schwa>>s lib-<<schwa>>-ran-dis). [Latin “to free the portions”] Hist. A writ for the partition of lands among coheirs.

PROPATRUUS

propatruus (proh-pay-troo-<<schwa>>s or -pa-troo-<<schwa>>s). [Latin] Roman & civil law. A great-grandfather's brother.

PROPATRUUS MAGNUS

propatruus magnus (proh-pay-troo-<<schwa>>s [or -pa-troo-<<schwa>>s] mag-n<<schwa>>s). [Latin] Roman & civil law. A great-great-uncle.

PRO PER

pro per.,adv. & adj. See PRO PERSONA.

pro per.,n.1.PRO SE. 2.PROPRIA PERSONA.

PROPER CARE

proper care.See reasonable care under CARE.

PROPER EVIDENCE

proper evidence.See admissible evidence under EVIDENCE.

PROPER FEUD

proper feud.See FEUD(1).

PROPER IMPROBATION

proper improbation.See IMPROBATION.

PROPER INDEPENDENT ADVICE

proper independent advice. See INDEPENDENT ADVICE.

PROPER LAW

proper law. Conflict of laws. The substantive law that, under the principles of conflict of laws, governs a transaction. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

PROPER LOOKOUT

proper lookout, n. The duty of a vehicle operator to exercise caution to avoid collisions with pedestrians or other vehicles. [Cases: Automobiles 150. C.J.S. Motor Vehicles §§ 568–571, 573.]

PROPER MEANS

proper means. Trade secrets. Any method of discovering trade secrets that does not violate property-protection statutes or standards of commercial ethics. • Proper means include independent invention, reverse engineering, observing the product in public, and studying published literature. Restatement (Second) of Torts § 757 cmt. f (1977).

“Trade secrets are protected ... in a manner akin to private property, but only when they are disclosed or used through improper means. Trade secrets do not enjoy the absolute monopoly afforded patented processes, for example, and trade secrets will lose their character as private property when the owner divulges them or when they are discovered through proper means.... Thus, it is the employment of improper means to produce the trade secret, rather than mere copy or use, which is the basis of liability.” *Chicago Lock Co. v. Fanberg*, 676 F.2d 400, 404 (9th Cir. 1982).

PROPER PARTY

proper party. See PARTY(2).

PRO PERSONA

pro persona (proh p<<schwa>>r-soh-n<<schwa>>), adv. & adj. [Latin] For one's own person; on one's own behalf <a pro persona brief>. — Sometimes shortened to pro per. See PRO SE.

PROPERTY

property. 1. The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership <the institution of private property is protected from undue governmental interference>. — Also termed bundle of rights. [Cases: Constitutional Law 277; Property 1. C.J.S. Constitutional Law § 982; Property § 2–10, 13.] 2. Any external thing over which the rights of possession, use, and enjoyment are exercised <the airport is city property>. [Cases: Property 1. C.J.S. Property §§ 2–10, 13.]

“In its widest sense, property includes all a person's legal rights, of whatever description. A man's property is all that is his in law. This usage, however, is obsolete at the present day, though

it is common enough in the older books.... In a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattels, shares, and the debts due to him are his property; but not his life or liberty or reputation.... In a third application, which is that adopted [here], the term includes not even all proprietary rights, but only those which are both proprietary and in rem. The law of property is the law of proprietary rights in rem, the law of proprietary rights in personam being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not.... Finally, in the narrowest use of the term, it includes nothing more than corporeal property — that is to say, the right of ownership in a material object, or that object itself.” John Salmond, *Jurisprudence* 423–24 (Glanville L. Williams ed., 10th ed. 1947).

abandoned property. Property that the owner voluntarily surrenders, relinquishes, or disclaims. Cf. *lost property*; *mislaid property*. [Cases: *Abandoned and Lost Property* 1. C.J.S. *Abandonment* §§ 4, 7–8.]

absolute property. Property that one has full and complete title to and control over.

adventitious property. 1. Roman law. Property coming to a son or daughter from anyone other than the pater familias. — Also termed *peculium adventitium*. 2. Hist. Property coming to one from a stranger or collateral relative.

appointive property. A property interest that is subject to a power of appointment. [Cases: *Powers* 4.]

common property. 1. Real property that is held by two or more persons with no right of survivorship. Cf. *joint property*. [Cases: *Common Lands* 1. C.J.S. *Common Lands* §§ 1–5.] 2. COMMON AREA.

community property. See COMMUNITY PROPERTY.

complete property. The entirety of the rights, privileges, powers, and immunities that it is legally possible for a person to have with regard to land or any other thing, apart from those that all other members of society have in the land or thing.

corporeal property. 1. The right of ownership in material things. 2. Property that can be perceived, as opposed to incorporeal property; tangible property. [Cases: *Property* 1, 2. C.J.S. *Property* §§ 2–13, 15–20.]

distressed property. Property that must be sold because of mortgage foreclosure or because it is part of an insolvent estate. [Cases: *Bankruptcy* 3067.1.]

domestic-partnership property. Property that would be marital property if the domestic partners were married to each other. See DOMESTIC PARTNERSHIP; DOMESTIC-PARTNERSHIP PERIOD.

dotal property. Civil law. Separate property that the wife brings to the marriage to assist the

husband with the marriage expenses. Cf. extradotal property. [Cases: Dower and Curtesy 10. C.J.S. Dower §§ 10, 12–17, 140.]

exempt property. See EXEMPT PROPERTY.

extradotal property. Civil law. 1. That portion of a wife's property over which she has complete control. 2. All of a wife's effects that have not been settled on her as dowry; any property that a wife owns apart from her dowry. • In Louisiana, after January 1, 1980, all property acquired by the wife that is not community is neither dotal nor extradotal; it is simply her separate property, as has always been true of the husband. La. Civ. Code art. 2341. — Also termed paraphernal property. Cf. dotal property.

general property. Property belonging to a general owner. See general owner under OWNER.

income property. Property that produces income, such as rental property.

incorporeal property. 1. An in rem proprietary right that is not classified as corporeal property. • Incorporeal property is traditionally broken down into two classes: (1) jura in re aliena (encumbrances), whether over material or immaterial things, examples being leases, mortgages, and servitudes; and (2) jura in re propria (full ownership over an immaterial thing), examples being patents, copyrights, and trademarks. 2. A legal right in property having no physical existence. • Patent rights, for example, are incorporeal property. — Also termed incorporeal chattel; incorporeal thing.

intangible property. Property that lacks a physical existence. • Examples include stock options and business goodwill. Cf. tangible property. [Cases: Property 1, 2. C.J.S. Property §§ 2–13, 15–20.]

intellectual property. See INTELLECTUAL PROPERTY.

joint property. Real or personal property held by two or more persons with a right of survivorship. Cf. common property.

limited-market property. See special-purpose property.

literary property. See LITERARY PROPERTY.

lost property. Property that the owner no longer possesses because of accident, negligence, or carelessness, and that cannot be located by an ordinary, diligent search. Cf. abandoned property; mislaid property. [Cases: Abandoned and Lost Property 10.]

marital property. Property that is acquired during marriage and that is subject to distribution or division at the time of marital dissolution. • Generally, it is property acquired after the date of the marriage and before a spouse files for separation or divorce. The phrase marital property is used in equitable-distribution states and is roughly equivalent to community property. — Also termed marital estate. See COMMUNITY PROPERTY; EQUITABLE DISTRIBUTION. [Cases: Divorce 248; Husband and Wife 6–15(6). C.J.S. Divorce §§ 508–511, 580–582; Estates § 19.]

maternal property. Property that comes from the mother of a party and other ascendants of the

maternal stock.

mislaid property.Property that has been voluntarily relinquished by the owner with an intent to recover it later — but that cannot now be found. Cf. abandoned property; lost property. [Cases: Abandoned and Lost Property 1, 10. C.J.S. Abandonment §§ 4, 7–8.]

“A distinction is drawn between lost property and mislaid property. An article is ‘mislaid’ if it is intentionally put in a certain place for a temporary purpose and then inadvertently left there when the owner goes away. A typical case is the package left on the patron's table in a bank lobby by a depositor who put the package there for a moment while he wrote a check and then departed without remembering to take it with him. There is always a ‘clue’ to the ownership of property which is obviously mislaid rather than lost, because of the strong probability that the owner will know where to return for his chattel when he realizes he has gone away without it.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 310–11 (3d ed. 1982).

mixed property.Property with characteristics of both real property and personal property — such as heirlooms and fixtures. [Cases: Property 4. C.J.S. Property §§ 14–21, 23.]

movable property.See MOVABLE(1).

neutral property.See NEUTRAL PROPERTY.

nonancestral property.See nonancestral estate under ESTATE(4).

nonexempt property.See NONEXEMPT PROPERTY.

paraphernal property.See extradotal property.

paternal property.Property that comes from the father of a party and other ascendants of the paternal stock.

personal property. 1. Any movable or intangible thing that is subject to ownership and not classified as real property. — Also termed personalty; personal estate; movable estate; (in plural) things personal. Cf. real property. [Cases: Property 4. C.J.S. Property §§ 14–21, 23.] 2.Tax. Property not used in a taxpayer's trade or business or held for income production or collection. [Cases: Taxation 67. C.J.S. Taxation §§ 114, 120, 122, 125, 129–130.]

“ ‘[P]ersonal property’ includes ... everything except real property. It includes credits, savings-bank deposits, notes, bonds, the proceeds arising from the sale of realty, and the right to a certificate in foreclosure, the time of redemption having passed.” 3 William Herbert Page, *A Treatise on the Law of Wills* § 964, at 44–45 (1941).

private property.Property — protected from public appropriation — over which the owner has exclusive and absolute rights.

public property.State- or community-owned property not restricted to any one individual's use or possession. [Cases: States 88. C.J.S. States § 147.]

qualified property.A temporary or special interest in a thing (such as a right to possess it), subject to being totally extinguished by the occurrence of a specified contingency over which the

qualified owner has no control.

qualified-terminable-interest property. Property that passes by a QTIP trust from a deceased spouse to the surviving spouse and that (if the executor so elects) qualifies for the marital deduction provided that the spouse is entitled to receive all income in payments made at least annually for life and that no one has the power to appoint the property to anyone other than the surviving spouse. • The purpose of the marital deduction is to permit deferral of estate taxes until the death of the surviving spouse. But this property is included in the surviving spouse's estate at death, where it is subject to the federal estate tax. — Abbr. QTIP. See QTIP trust under TRUST. [Cases: Internal Revenue 4169(4). C.J.S. Internal Revenue §§ 536–537.]

quasi-community property. See COMMUNITY PROPERTY.

real property. Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. • Real property can be either corporeal (soil and buildings) or incorporeal (easements). — Also termed realty; real estate; fast estate. Cf. personal property (1). [Cases: Property 4. C.J.S. Property §§ 14–21, 23.]

“Historically, the line between real and personal property stems from the types of assets administered on death respectively, in the king's and in the church's courts. The king's courts, concerned with the preservation of the feudal structure, dealt with fees simple, fees tail and life estates. Estates for years, gradually evolving out of contracts made by feudally unimportant persons, clearly became interests in land but never fully attained the historical dignity of being ‘real property.’ The early economic unimportance of money, goods and things other than land permitted the church courts to take over the handling of all such assets on the death of the owner. When the development of trade and of capitalism caused assets of these types to assume great, and sometimes paramount, importance we found ourselves with the two important categories of property, namely ‘real’ and ‘personal’ property, each with its set of rules evolved from a different matrix. The pressure of modern society has been strongly for assimilation and the resultant elimination of this line, but this movement is far from complete attainment of its goal.” 1 Richard R. Powell, *Powell on Real Property* § 5.04, at 5–7 to 5–8 (Patrick J. Rohan ed., rev. ed. 1998).

scheduled property. Insurance. Property itemized on a list (usu. attached to an insurance policy) that records property values, which provide the basis for insurance payments in the event of a loss under an insurance policy. [Cases: Insurance 2169.]

separate property. See SEPARATE PROPERTY.

special-design property. See special-purpose property.

special property. Property that the holder has only a qualified, temporary, or limited interest in, such as (from a bailee's standpoint) bailed property.

special-purpose property. Property that has a unique design or layout, incorporates special construction materials, or has other features that limit the property's utility for purposes other than the one for which it was built. • Because of the property's specialized nature, the market for the property may be quite limited. — Also termed limited-market property; special-design property.

specialty property. See SPECIALTY(3).

tangible personal property. Corporeal personal property of any kind; personal property that can be seen, weighed, measured, felt, or touched, or is in any other way perceptible to the senses, such as furniture, cooking utensils, and books.

tangible property. Property that has physical form and characteristics. Cf. intangible property. [Cases: Property 1–2. C.J.S. Property §§ 2–13, 15–20.]

wasting property. 1. Property that is consumed in its normal use, such as a wasting asset, a leasehold interest, or a patent right. 2. A right to or an interest in such property.

PROPERTY, LAW OF

property, law of. See LAW OF PROPERTY.

PROPERTY CRIMES

property crimes. See CRIMES AGAINST PROPERTY.

PROPERTY-DAMAGE INSURANCE

property-damage insurance. See property insurance under INSURANCE.

PROPERTY DIVIDEND

property dividend. See asset dividend under DIVIDEND.

PROPERTY DIVISION

property division. See PROPERTY SETTLEMENT(1).

PROPERTY INSURANCE

property insurance. See INSURANCE.

PROPERTY OF THE DEBTOR

property of the debtor. Bankruptcy. Property that is owned or (in some instances) possessed by the debtor, including property that is exempted from the bankruptcy estate. 11 USCA § 541(b). — Also termed debtor's property. [Cases: Bankruptcy 2531–2559. C.J.S. Bankruptcy §§ 105–109, 111, 113–120, 122.]

PROPERTY OF THE ESTATE

property of the estate. Bankruptcy. The debtor's tangible and intangible property interests (including both legal and equitable interests) that fall under the bankruptcy court's jurisdiction because they were owned or held by the debtor when the bankruptcy petition was filed. 11 USCA § 541. — Also termed estate's property. [Cases: Bankruptcy 2491–2559. C.J.S. Bankruptcy §§ 105–109, 111, 113–120, 122–124, 126, 128.]

PROPERTYRATIONE PRIVILEGII

property *ratione privilegii* (ray-shee-oh-nee priv-i-lee-jee-I). Hist. A common-law right, granted by a royal franchise, to take wild animals on another's land. • This principle made its way into American law. See, e.g., *Hanson v. Fergus Falls Nat'l Bank*, 65 N.W.2d 857, 862 (Minn. 1954). Cf. PROPERTY RATIONE SOLI .

“Property *Ratione privilegii* is the right which, by a peculiar franchise anciently granted by the Crown in virtue of its prerogative, one man had of killing and taking animals *Ferae naturae* on the land of another; and in like manner the game, when killed or taken by virtue of the privilege, became the absolute property of the owner of the franchise, just as in the other case it becomes the absolute property of the owner of the soil.” *Blades v. Higgs*, 11 Eng. Rep. 1474, 1479 (H.L. 1865).

PROPERTY RATIONE SOLI

property *ratione soli* (ray-shee-oh-nee soh-II). The common-law right to take wild animals found on one's own land. Cf. PROPERTY RATIONE PRIVILEGII.

“The exclusive common law right of a landowner to take game on his land, known as property *ratione soli* ... has been recognized throughout the history of common law, with one exception: Following the Norman Conquest the King contended that he was lord paramount of the field, possessed of the right to the universal soil and of the exclusive right to take the game, but the irate landowners, vehemently objecting, quickly and decisively recaptured their rights and re-established the common law.” *Alford v. Finch*, 155 So. 2d 790, 792 (Fla. 1963).

PROPERTY RIGHT

property right. See RIGHT.

PROPERTY SETTLEMENT

property settlement. 1. A judgment in a divorce case determining the distribution of the marital property between the divorcing parties. • A property settlement includes a division of the marital debts as well as assets. — Also termed property division; division of property. [Cases: Husband and Wife 248.] 2. A contract that divides up the assets of divorcing spouses and is incorporated into a divorce decree. — Also termed integrated property settlement; property settlement agreement. Cf. DIVORCE AGREEMENT . [Cases: Husband and Wife 277.] 3. MARITAL AGREEMENT.

PROPERTY SETTLEMENT AGREEMENT

property settlement agreement. See PROPERTY SETTLEMENT(2).

PROPERTY TAX

property tax. See TAX.

PROPERTY TORT

property tort. See TORT.

PROPHYLACTIC

prophylactic (prɒf-ɪ-lak-tɪk), adj. Formulated to prevent something <a prophylactic rule>. — prophylaxis (prɒf-ɪ-lak-sɪs), prophylactic, n.

PROPHYLACTIC COST

prophylactic cost. See COST(1).

PROPINQUITY

propinquity (prɒ-pɪŋ-kwɪ-tee). The state of being near; specif., kindred or parentage <degrees of propinquity>.

PROPIOR SOBRINA

propior sobrina (prɒ-pi-ɪ-r sɒ-brɪ-nə), n. [Latin] Civil law. The daughter of a great-uncle or great-aunt, paternal or maternal.

PROPIOR SOBRINO

propior sobrino (prɒ-pi-ɪ-r sɒ-brɪ-noh), n. [Latin] Civil law. The son of a great-uncle or great-aunt, paternal or maternal.

PROPONE

propone (prɒ-poh-n), vb. To put forward for consideration or adjudication <propone a will for probate>.

PROPONENT

proponent, n. 1. A person who puts forward a legal instrument for consideration or acceptance; esp., one who offers a will for probate. [Cases: Wills 211, 219. C.J.S. Wills §§ 453–456, 468.] 2. A person who puts forward a proposal; one who argues in favor of something <a proponent of gun control>. 3. Parliamentary law. A member who speaks in favor of a pending motion. Cf. OPPONENT(3).

PROPORTIONALITY

proportionality. Int'l law. The principle that the use of force should be in proportion to the threat or grievance provoking the use of force.

PROPORTIONALITY REVIEW

proportionality review. Criminal law. An appellate court's analysis of whether a death sentence is arbitrary, capricious, or excessive by comparing the case in which it was imposed with similar cases in which the death penalty was approved or disapproved. [Cases: Sentencing and Punishment 1788(6). C.J.S. Criminal Law §§ 1531–1532, 1534–1538, 1541–1543, 1608, 1703–1706, 1709.]

PROPORTIONAL QUORUM

proportional quorum. See QUORUM.

PROPORTIONAL REPRESENTATION

proportional representation. 1. An electoral system that allocates legislative seats to each political group in proportion to its popular voting strength. [Cases: Constitutional Law 225.3(10); Elections 12. C.J.S. Constitutional Law § 823; Elections §§ 8, 40(1).] 2. See proportional voting under VOTING. • The term refers to two related but distinguishable concepts: proportional outcome (having members of a group elected in proportion to their numbers in the electorate) and proportional involvement (more precisely termed proportional voting and denoting the electoral system also known as single transferable voting).

PROPORTIONAL TAX

proportional tax. See flat tax under TAX.

PROPORTIONAL VOTING

proportional voting. See VOTING.

PROPORTIONATE-REDUCTION CLAUSE

proportionate-reduction clause. See LESSER-INTEREST CLAUSE.

PROPOSAL

proposal. Something offered for consideration or acceptance.

PROPOSED AGENDA

proposed agenda. See AGENDA.

PROPOSED REGULATION

proposed regulation. See REGULATION.

PROPOSITION

proposition. See main motion under MOTION(2).

PROPOSITUS

propositus (proh-poz-<<schwa>>-t<<schwa>>s). [Law Latin] Civil law. A person from whom descent is to be traced; the person whose rights or obligations are in issue. — Also termed *persona proposita*. Pl. *propositi*.

PRO POSSESSORE

pro possessore (proh pos-<<schwa>>-sor-ee). [Latin] As a possessor; by title of a possessor; by virtue of possession alone.

PRO POSSE SUO

pro posse suo (proh pos-ee s[y]oo-oh). [Latin] To the extent of one's power or ability.

PROPOUND

propound (pr<<schwa>>-pownd), vb.1. To offer for consideration or discussion. 2. To make a proposal. 3. To put forward (a will) as authentic.

PROPOUNDER

propounder. An executor or administrator who offers a will or other testamentary document for admission to probate; PROPONENT.

PRO QUER

pro quer.abbr.PRO QUERENTE.

PRO QUERENTE

pro querente.For the plaintiff. • In old law reports, the plaintiff's advocate is designated pro querente and the opposing advocate contra. — Abbr. pro quer.

PROP. REG

prop. reg.abbr.See proposed regulation under REGULATION.

PROPRIA PERSONA

propria persona (proh-pree-<<schwa>> p<<schwa>>r-soh-n<<schwa>>), adj. & adv.[Latin] In his own person; PRO SE. — Sometimes shortened to pro per. — Abbr. p.p.[Cases: Attorney and Client 62. C.J.S. Attorney and Client §§ 167–168.]

PROPRIETARY

proprietary (pr<<schwa>>-prI-<<schwa>>-ter-ee), adj.1. Of or relating to a proprietor <the licensee's proprietary rights>.2. Of, relating to, or holding as property <the software designer sought to protect its proprietary data>.

PROPRIETARY ACT

proprietary act.See PROPRIETARY FUNCTION.

PROPRIETARY ARTICLE

proprietary article.See ARTICLE.

PROPRIETARY CAPACITY

proprietary capacity.See CAPACITY(1).

PROPRIETARY CAPITAL

proprietary capital.See CAPITAL.

PROPRIETARY DRUG

proprietary drug.See DRUG.

PROPRIETARY DUTY

proprietary duty. See DUTY(2).

PROPRIETARY FUNCTION

proprietary function. Torts. A municipality's conduct that is performed for the profit or benefit of the municipality, rather than for the benefit of the general public. • Generally, a municipality is not immune from tort liability for proprietary acts. But the distinction between proprietary and governmental functions has been abrogated by statute in many states. — Also termed proprietary act. Cf. GOVERNMENTAL FUNCTION. [Cases: Municipal Corporations 725. C.J.S. Municipal Corporations § 664.]

PROPRIETARY GOVERNMENT

proprietary government. See GOVERNMENT.

PROPRIETARY INFORMATION

proprietary information. Information in which the owner has a protectable interest. See TRADE SECRET. [Cases: Contracts 118. C.J.S. Contracts §§ 267–268.]

PROPRIETARY INTEREST

proprietary interest. See INTEREST(2).

PROPRIETARY LEASE

proprietary lease. See LEASE.

PROPRIETARY LICENSE

proprietary license. See LICENSE.

PROPRIETARY NAME

proprietary name. See NAME.

PROPRIETARY POWER

proprietary power. See power coupled with an interest under POWER(3).

PROPRIETARY RIGHT

proprietary right. See RIGHT.

PROPRIETARY SOFTWARE

proprietary software. Software that cannot be used, redistributed, or modified without permission. • Proprietary software is usu. sold for profit, consists only of machine-readable code, and carries a limited license that restricts copying, modification, and redistribution. A user may usu. make a backup copy for personal use; but if the software is sold or given away, any backup copies must be passed on to the new user or destroyed. Cf. FREeware; SEMI-FREE SOFTWARE E; SHAREWARE.

PROPRIETARY TECHNOLOGY

proprietary technology. Intellectual property. A body of knowledge or know-how that is owned or controlled by a person whose authorization is required before any other party may use that know-how or knowledge for commercial purposes. See TRADE SECRET.

PROPRIETAS

proprietas (pr<<schwa>>-prI-<<schwa>>-tas). [Latin] Hist. Ownership.

proprietas nuda (pr<<schwa>>-prI-<<schwa>>-tas n[y]oo-d<<schwa>>). Naked ownership; the mere title to property, without the usufruct.

proprietas plena (pr<<schwa>>-prI-<<schwa>>-tas plee-n<<schwa>>). Full ownership, including both the title and the usufruct.

PROPRIETATE PROBANDA

proprietate probanda (pr<<schwa>>-prI-<<schwa>>-tay-tee pr<<schwa>>-ban-d<<schwa>>). See DE PROPRIETATE PROBANDA.

PROPRIETOR

proprietor, n. An owner, esp. one who runs a business. See SOLE PROPRIETORSHIP . — proprietorship, n.

PROPRIETY

propriety. Hist. Privately owned possessions; property.

PROPRIIS MANIBUS

propriis manibus (proh-pree-is man-<<schwa>>-b<<schwa>>s). [Latin] Hist. By one's own hands.

PROPRIO JURE

proprio jure (proh-pree-oh joor-ee). [Latin] Hist. By one's own property right.

PROPRIO NOMINE

proprio nomine (proh-pree-oh nahm-<<schwa>>-nee). [Latin] Hist. In one's own name.

PROPRIO VIGORE

proprio vigore (proh-pree-oh vi-gor-ee). [Latin] By its own strength.

PROPRIMUM NEGOTIUM

proprium negotium (proh-pree-<<schwa>>m ni-goh-shee-<<schwa>>m). [Latin] Hist. One's own business.

PRO PRIVATO COMMODO

pro privato commodo (proh prI-vay-toh kom-<<schwa>>-doh). [Law Latin] Hist. For private convenience. • The phrase sometimes appeared in reference to a private road as distinguished from a public highway. Cf. PRO BONO PUBLICO.

PROPTER

propter (prop-t<<schwa>>r). [Latin] For; on account of.

PROPTER AFFECTUM

propter affectum (prop-t<<schwa>>r <<schwa>>-fek-t<<schwa>>m). See challenge propter affectum under CHALLENGE(2).

PROPTER COMMODUM CURIAE

propter commodum curiae (prop-t<<schwa>>r kom-<<schwa>>-d<<schwa>>m kyoor-ee-ee). [Law Latin] Hist. For the advantage of the court.

PROPTER CURAM ET CULTURAM

propter curam et culturam (prop-t<<schwa>>r kyoor-<<schwa>>m et k<<schwa>>l-t [y]oor-<<schwa>>m). [Latin] Hist. For care and cultivation.

PROPTER DEFECTUM

propter defectum (prop-t<<schwa>>r d<<schwa>>-fek-t<<schwa>>m). See challenge propter defectum under CHALLENGE(2).

PROPTER DEFECTUM SANGUINIS

propter defectum sanguinis (prop-t<<schwa>>r d<<schwa>>-fek-t<<schwa>>m sang-gwi-nis). [Latin] On account of failure of blood.

PROPTER DELECTUM PERSONAE

propter delectum personae (prop-t<<schwa>>r d<<schwa>>-lek-t<<schwa>>m p<<schwa>>r-soh-nee). [Law Latin] Hist. On account of the selection of persons. • For example, a person could not delegate the principal duties of an office when that person had been specifically chosen to perform those duties.

PROPTER DELICTUM

propter delictum (prop-t<<schwa>>r d<<schwa>>-lik-t<<schwa>>m). See challenge propter delictum under CHALLENGE.

PROPTER HONORIS RESPECTUM

propter honoris respectum (prop-t<<schwa>>r h<<schwa>>-nor-is ri-spek-t<<schwa>>m). [Latin] On account of respect of honor or rank.

PROPTER IMPOTENTIAM

propter impotentiam (prop-t<<schwa>>r im-p<<schwa>>-ten-shee-<<schwa>>m). [Latin]

On account of helplessness. • This was formerly given as a ground for gaining a property interest in a wild animal, based on the animal's inability to escape (as where, for example, a young bird could not yet fly away).

PROPTER INGRATITUDINEM

propter ingratitudinem (prop-t<<schwa>>r in-grat-<<schwa>>-t[y]oo-d<<schwa>>-n<<schwa>>m). [Latin] Hist. On account of ingratitude. • In some instances, a superior could revoke a gift based on the vassal's ingratitude, and a slave-owner could revoke the manumission of a slave.

PROPTER MAJOREM SECURITATEM

propter majorem securitatem (prop-t<<schwa>>r m<<schwa>>-jor-<<schwa>>m si-kyoor-<<schwa>>-tay-t<<schwa>>m). [Law Latin] Hist. For greater security.

PROPTER NEGLIGENTIAM HAEREDIS JUS SUUM NON PROSEQUENTIS

propter negligentiam haeredis jus suum non prosequentis (prop-t<<schwa>>r neg-li-jen-shee-<<schwa>>m h<<schwa>>-ree-dis j<<schwa>>s s[y]oo-<<schwa>>m non prahs-<<schwa>>-kwen-tis). [Law Latin] Hist. On account of the negligence of the heir in not following up the heir's right. • If a vassal's heir failed, for a year and a day, to enter the estate, then the heir forfeited the right to the land.

PROPTER PRIVILEGIUM

propter privilegium (prop-t<<schwa>>r priv-<<schwa>>-lee-jee-<<schwa>>m). [Latin] On the account of privilege. • This describes a way of acquiring a property interest in a wild animal, based on the claimant's exclusive right to hunt in a particular park or preserve.

PROPTER QUOD FECERUNT PER ALIUM

propter quod fecerunt per alium (prop-t<<schwa>>r kwod fi-see-r<<schwa>>nt p<<schwa>>r ay-lee-<<schwa>>m). [Law Latin] Hist. On account of what they have done by another. • The phrase usu. referred to an agent's actions.

PROPTER REM IPSAM NON HABITAM

propter rem ipsam non habitam (prop-t<<schwa>>r rem ip-s<<schwa>>m non hab-<<schwa>>-t<<schwa>>m). [Law Latin] Hist. On account of not having had possession of the thing itself. • The phrase appeared in reference to damages suffered by a party who failed to receive a thing for which the party had contracted.

PRO QUANTITATE HAEREDITATIS ET TEMPORIS

pro quantitate haereditatis et temporis (proh kwon-ti-tay-tee h<<schwa>>-red-i-tay-tis et tem-p<<schwa>>-ris). [Law Latin] Hist. According to the extent of the succession.

pro querente (proh kw<<schwa>>-ren-tee). [Latin] For the plaintiff. — Abbr. pro quer. Cf. PRO DEFENDENTE.

PRO RATA

pro rata (proh ray-t<<schwa>> orrah-t<<schwa>> orra-t<<schwa>>), adv. Proportionately; according to an exact rate, measure, or interest <the liability will be assessed pro rata between the defendants>. See RATABLE. — pro rata,adj.

PRO RATA CLAUSE

pro rata clause.An insurance-policy provision — usu. contained in the “other insurance” section of the policy — that limits the insurer’s liability to payment of the portion of the loss that the face amount of the policy bears to the total insurance available on the risk. — Also termed pro rata distribution clause. Cf. ESCAPE CLAUSE; EXCESS CLAUSE. [Cases: Insurance 2111(2), 2112.]

PRO RATA ITINERIS

pro rata itineris (proh ray-t<<schwa>> I-tin-<<schwa>>-ris). [Latin] Scots law. For the proportion of the journey.

“Where a ship, chartered to convey a cargo to a certain port ... is prevented from completing the voyage ... the master of the ship may transship the goods, and thus conveying them to their destination, earn his full freight. But if, when the ship has been prevented from proceeding on her voyage, the freighter himself transships the cargo, the master is entitled to freight pro rata itineris, for the proportion of the voyage which he has accomplished.” John Trayner, *Trayner's Latin Maxims* 486 (4th ed. 1894).

PRORATE

prorate (proh-rayt or proh-rayt), vb. To divide, assess, or distribute proportionately <prorate taxes between the buyer and the seller>. — proration,n.

PRO RE NATA

pro re nata (proh ree nay-t<<schwa>>). [Latin “in the light of what has arisen”] Hist. By reason of emergency; arising from exigent circumstances. • The phrase appeared, for example, in reference to a meeting called to address an emergency.

“So far as may be, the state leaves the rule of right to be declared and constituted by the agreement of those concerned with it. So far as possible, it contents itself with executing the rules which its subjects have made for themselves. And in so doing it acts wisely. For, in the first place, the administration of justice is enabled in this manner to escape in a degree not otherwise attainable the disadvantages inherent in the recognition of rigid principles of law. Such principles we must have; but if they are established pro re nata by the parties themselves, they will possess a measure of adaptability to individual cases which is unattainable by the more general legislation of the state itself.” John Salmond, *Jurisprudence* 352 (Glanville L. Williams ed., 10th ed. 1947).

PROROGATED JURISDICTION

prorogated jurisdiction.See JURISDICTION.

PROROGATIO DE LOCO IN LOCUM

prorogatio de loco in locum (proh-roh-gay-shee-oh dee loh-koh in loh-k<<schwa>>m). [Law Latin] Hist. Prorogation (of jurisdiction) from one place to another.

PROROGATIO DE TEMPORE IN TEMPUS

prorogatio de tempore in tempus (proh-roh-gay-shee-oh dee tem-p<<schwa>>-ree in tem-p<<schwa>>s). [Law Latin] Hist. Prorogation (esp. of jurisdiction) from one time to another.

PROROGATION

prorogation (proh-r<<schwa>>-gay-sh<<schwa>>n). 1. The act of putting off to another day; esp., the discontinuance of a legislative session until its next term. [Cases: States 32. C.J.S. States § 48–50.] 2. Civil law. The extension of a court's or judge's jurisdiction by consent of the parties to a case that it would otherwise be incompetent to hear. — prorogative, adj.

tacit prorogation. Civil law. Consent to jurisdiction that arises when a party does not request recusal despite awareness that the judge is not qualified to try the case. Cf. prorogated jurisdiction under JURISDICTION.

PROROGUE

prorogue (proh-rohgor pr<<schwa>>-), vb. 1. To postpone or defer. 2. To discontinue a session of (a legislative assembly, esp. the British Parliament) without dissolution. 3. To suspend or discontinue a legislative session. [Cases: States 32. C.J.S. States §§ 48–50.]

PROSCRIBE

proscribe, vb. 1. To outlaw or prohibit; to forbid. 2. Roman & civil law. To post or publish the name of (a person) as condemned to death and forfeiture of property.

PROSCRIPTION

proscription, n. 1. The act of prohibiting; the state of being prohibited. 2. A prohibition or restriction. Cf. PRESCRIPTION(1). — proscriptive, adj.

PRO SE

pro se (proh sayorse), adv. & adj. [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. — Also termed pro persona; in propria persona; propria persona; pro per. See PROPRIA PERSONA. [Cases: Attorney and Client 62; Criminal Law 641.4(1). C.J.S. Attorney and Client §§ 167–168; Criminal Law § 290.]

pro se, n. One who represents oneself in a court proceeding without the assistance of a lawyer <the third case on the court's docket involving a pro se>. — Also termed pro per. [Cases: Attorney and Client 62; Criminal Law 641.4. C.J.S. Attorney and Client §§ 167–168; Criminal Law § 290.]

PROSECUTABLE

prosecutable,adj. (Of a crime or person) subject to prosecution; capable of being prosecuted.

PROSECUTE

prosecute,vb.1. To commence and carry out a legal action <because the plaintiff failed to prosecute its contractual claims, the court dismissed the suit>.2. To institute and pursue a criminal action against (a person) <the notorious felon has been prosecuted in seven states>.3. To engage in; carry on <the company prosecuted its business for 12 years before going bankrupt>. — prosecutory,adj.

PROSECUTING ATTORNEY

prosecuting attorney.See DISTRICT ATTORNEY.

PROSECUTING WITNESS

prosecuting witness.See WITNESS.

PROSECUTION

prosecution. 1. The commencement and carrying out of any action or scheme <the prosecution of a long, bloody war>.2. A criminal proceeding in which an accused person is tried <the conspiracy trial involved the prosecution of seven defendants>. — Also termed criminal prosecution.

deferred prosecution.See deferred judgment under JUDGMENT.

selective prosecution.See SELECTIVE PROSECUTION.

sham prosecution.A prosecution that seeks to circumvent a defendant's double-jeopardy protection by appearing to be prosecuted by another sovereignty, when it is in fact controlled by the sovereignty that already prosecuted the defendant for the same crime. • A sham prosecution is, in essence, a misuse of the dual-sovereignty doctrine. Under that doctrine, a defendant's protection against double jeopardy does not provide protection against a prosecution by a different sovereignty. For example, if the defendant was first tried in federal court and acquitted, that fact would not forbid the state authorities from prosecuting the defendant in state court. But a sham prosecution — for example, a later state-court prosecution that is completely dominated or manipulated by the federal authorities that already prosecuted the defendant, so that the state-court proceeding is merely a tool of the federal authorities — will not withstand a double-jeopardy challenge. See DUAL-SOVEREIGNTY DOCTRINE. [Cases: Double Jeopardy 53. C.J.S. Criminal Law § 217.]

vindictive prosecution.A prosecution in which a person is singled out under a law or regulation because the person has exercised a constitutionally protected right. Cf. SELECTIVE ENFORCEMENT. [Cases: Criminal Law 37.15. C.J.S. Criminal Law §§ 68–77.]

3. The government attorneys who initiate and maintain a criminal action against an accused defendant <the prosecution rests>.4.Patents. The process of applying for a patent through the U.S. Patent and Trademark Office and negotiating with the patent examiner. — Also termed

patent-prosecution process. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.]

PROSECUTION HISTORY

prosecution history. See FILE WRAPPER.

PROSECUTION-HISTORY ESTOPPEL

prosecution-history estoppel. See ESTOPPEL.

PROSECUTION LACHES

prosecution laches. See LACHES.

PROSECUTION-LACHES DOCTRINE

prosecution-laches doctrine. See CONTINUATION-APPLICATION LACHES DOCTRINE.

PROSECUTOR

prosecutor, n. 1. A legal officer who represents the state or federal government in criminal proceedings. See DISTRICT ATTORNEY; UNITED STATES ATTORNEY ; ATTORNEY GENERAL. — Also termed public prosecutor; state's attorney; public commissioner.

public prosecutor. 1. PROSECUTOR(1). 2. DISTRICT ATTORNEY.

special prosecutor. A lawyer appointed to investigate and, if justified, seek indictments in a particular case. See independent counsel under COUNSEL.

2. A private person who institutes and carries on a legal action, esp. a criminal action. — Also termed (in sense 2) private prosecutor. — prosecutorial, adj.

PROSECUTORIAL DISCRETION

prosecutorial discretion. See DISCRETION(4).

PROSECUTORIAL IMMUNITY

prosecutorial immunity. See IMMUNITY.

PROSECUTORIAL MISCONDUCT

prosecutorial misconduct. Criminal law. A prosecutor's improper or illegal act (or failure to act), esp. involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant or assess an unjustified punishment. • If prosecutorial misconduct results in a mistrial, a later prosecution may be barred under the Double Jeopardy Clause. [Cases: Constitutional Law 257.5, 268(8); Criminal Law 700(1). C.J.S. Constitutional Law §§ 993–995, 1072–1073; Criminal Law §§ 486, 490, 495–496, 1233–1234, 1236, 1252.]

PROSECUTORIAL VINDICTIVENESS

prosecutorial vindictiveness. Criminal law. The act or an instance of intentionally charging a more serious crime or seeking a more severe penalty in retaliation for a defendant's lawful

exercise of a constitutional right.

PROSECUTRIX

prosecutrix (pros-<<schwa>>-kyoo-triks). Archaic. A female prosecutor.

PROSEQUI

prosequi (prahs-<<schwa>>-kwI), vb. [Latin] To follow up or pursue; to sue or prosecute. See NOLLE PROSEQUI.

PROSEQUITUR

prosequitur (pr<<schwa>>-sek-w<<schwa>>-t<<schwa>>r or proh-). [Latin] He follows or pursues; he prosecutes.

PRO SERVITIO BURGALI

pro servitio burgali (proh s<<schwa>>r-vish-ee-oh b<<schwa>>r-gay-II). [Law Latin] Hist. For burghal service. See BURGAGE(2).

PROSOCER

prosocer (proh-s<<schwa>>-s<<schwa>>r). [Latin] Civil law. A father-in-law's father; a spouse's grandfather.

PROSOCERUS

prosocerus (pr<<schwa>>-sos-<<schwa>>-r<<schwa>>s). [Latin] Civil law. A wife's or husband's grandmother.

PRO SOCIO

pro socio (proh soh-shee-oh). [Latin] As a partner. • This was the name of an action on behalf of a partner.

PRO SOLIDO

pro solido (proh sol-<<schwa>>-doh). [Latin] For the whole; without division.

PROSPECTANT EVIDENCE

prospectant evidence. See EVIDENCE.

PROSPECTIVE

prospective, adj. 1. Effective or operative in the future <prospective application of the new statute>. Cf. RETROACTIVE. 2. Anticipated or expected; likely to come about <prospective clients>.

PROSPECTIVE DAMAGES

prospective damages. See DAMAGES.

PROSPECTIVE HEIR

prospective heir. See HEIR.

PROSPECTIVE LAW

prospective law. See prospective statute under STATUTE.

PROSPECTIVE NUISANCE

prospective nuisance. See anticipatory nuisance under NUISANCE.

PROSPECTIVE STATUTE

prospective statute. See STATUTE.

PROSPECTIVE WAIVER

prospective waiver. See WAIVER(1).

PROSPECT THEORY

prospect theory. See INCENTIVE-TO-COMMERCIALIZE THEORY.

PROSPECTUS

prospectus (pr<<schwa>>-spek-t<<schwa>>s). A printed document that describes the main features of an enterprise (esp. a corporation's business) and that is distributed to prospective buyers or investors; esp., a written description of a securities offering. • Under SEC regulations, a publicly traded corporation must provide a prospectus before offering to sell stock in the corporation. Pl. prospectuses. See REGISTRATION STATEMENT. Cf. TOMBSTONE. [Cases: Securities Regulation 25.50–25.75. C.J.S. Securities Regulation §§ 47, 92–100.]

newspaper prospectus. A summary prospectus that the SEC allows to be disseminated through advertisements in newspapers, magazines, or other periodicals sent through the mails as second-class matter (though not distributed by the advertiser), when the securities involved are issued by a foreign national government with which the United States maintains diplomatic relations.

preliminary prospectus. A prospectus for a stock issue that has been filed but not yet approved by the SEC. • The SEC requires such a prospectus to contain a notice — printed in distinctive red lettering — that the document is not complete or final. That notice, which is usu. stamped or printed in red ink, typically reads as follows: “The information here given is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities cannot be sold — and offers to buy cannot be accepted — until the registration statement becomes effective. This prospectus does not constitute an offer to buy. And these securities cannot be sold in any state where the offer, solicitation, or sale would be unlawful before registration or qualification under the securities laws of that state.” — Also termed red-herring prospectus; red herring. [Cases: Securities Regulation 25.51.]

PROSTITUTION

prostitution,n.1. The act or practice of engaging in sexual activity for money or its equivalent; commercialized sex. [Cases: Prostitution 1.C.J.S. Prostitution and Related Offenses §§ 2–4, 8–13, 17, 21–24.]

“Prostitution is not itself a crime in England or Scotland, although certain activities of prostitutes and those who profit from prostitution are prohibited, such as soliciting in a public place, procuring, letting premises for the purpose of prostitution and so forth. On the other hand, prostitution was, at least at one time, prohibited in all American jurisdictions.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 470 (3d ed. 1982).

2. The act of debasing. — prostitute,vb. — prostitute,n.

PRO TANTO

pro tanto (proh tan-toh), adv. & adj.[Latin] To that extent; for so much; as far as it goes <the debt is pro tanto discharged> <a pro tanto payment>.

PROTECTED ACTIVITY

protected activity.Conduct that is permitted or encouraged by a statute or constitutional provision, and for which the actor may not legally be retaliated against. • For example, Title VII of the Civil Rights Act prohibits an employer from retaliating against an employee who opposes a discriminatory employment practice or helps in investigating an allegedly discriminatory employment practice. An employee who is retaliated against for engaging in one of those activities has a claim against the employer. 42 USCA § 2000e–3(a). [Cases: Civil Rights 1244. C.J.S. Civil Rights § 66.]

PROTECTED CLASS

protected class.See CLASS(1).

PROTECTED PERSON

protected person.See PERSON(1).

PROTECTING POWER

protecting power.Int'l law. A country responsible for protecting another country's citizens and interests during a conflict or a suspension of diplomatic ties between the citizens' country and a third party. • After a protecting power is accepted by both belligerents, it works to ensure the proper treatment of nationals who are in a belligerent's territory, esp. prisoners of war. If the parties cannot agree on a protecting power, the International Committee of the Red Cross is often appointed to this position.

PROTECTION

protection,n.1. The act of protecting. 2.PROTECTIONISM. 3.COVERAGE(1).4. A document given by a notary public to sailors and other persons who travel abroad, certifying that

the bearer is a U.S. citizen. — protect,vb.

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ACT

Protection and Advocacy for Individuals with Mental Illness Act.A 1986 federal statute that provides funding for the state-level establishment of independent organizations dedicated to monitoring and protecting the rights of mentally ill citizens. 42 USCA §§ 10801–10851. • Formerly titled the Protection and Advocacy for Mentally Ill Individuals Act, this statute was renamed in the Children's Health Act of 2000 (114 Stat. 1101).

PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS ACT

Protection and Advocacy for Mentally Ill Individuals Act.See PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ACT .

PROTECTION COVENANT

protection covenant.Oil & gas. The implied promise in an oil-and-gas lease that the lessee will protect the property against the loss of oil and gas by drainage from the producing reservoir by drilling one or more offsetting wells. • The covenant applies only if a reasonably prudent operator would drill the additional wells. — Also termed covenant to protect against drainage. See REASONABLY PRUDENT-OPERATOR STANDARD.

PROTECTIONISM

protectionism. The protection of domestic businesses and industries against foreign competition by imposing high tariffs and restricting imports. — protectionist,adj.

PROTECTION MONEY

protection money. 1. A bribe paid to an officer as an inducement not to interfere with the criminal activities of the briber. • Examples include payments to an officer in exchange for the officer's releasing an arrestee, removing records of traffic violations from a court's files, and refraining from making a proper arrest. [Cases: Bribery 1(1). C.J.S. Bribery §§ 2–3, 5–8, 10–11.] 2. Money extorted from a business owner by one who promises to “protect” the business premises, with the implied threat that if the owner does not pay, the person requesting the payment will harm the owner or damage the premises.

PROTECTION ORDER

protection order.See RESTRAINING ORDER(1).

PROTECTIVE APPEAL

protective appeal.See APPEAL.

PROTECTIVE COMMITTEE

protective committee.A group of security holders or preferred stockholders appointed to protect the interests of their group when the corporation is liquidated or reorganized.

PROTECTIVE CUSTODY

protective custody. See CUSTODY(1).

PROTECTIVE ORDER

protective order. 1. A court order prohibiting or restricting a party from engaging in conduct (esp. a legal procedure such as discovery) that unduly annoys or burdens the opposing party or a third-party witness. [Cases: Federal Civil Procedure 1271; Pretrial Procedure 41. C.J.S. Discovery §§ 12, 47.] 2. RESTRAINING ORDER(1).

emergency protective order. A temporary protective order granted on an expedited basis, usu. after an ex parte hearing (without notice to the other side), most commonly to provide injunctive relief from an abuser in a domestic-violence case; esp., a short-term restraining order that is issued at the request of a law-enforcement officer in response to a domestic-violence complaint from a victim who is in immediate danger. • A victim of domestic violence can obtain an EPO only through a law-enforcement officer. There is no notice requirement, but the abuser must be served with the order. The duration of an EPO varies from three to seven days, depending on state law. — Abbr. EPO. Cf. TEMPORARY RESTRAINING ORDER.

permanent protective order. A protective order of indefinite duration granted after a hearing with notice to both sides; esp., a court order that prohibits an abuser from contacting or approaching the protected person for a long period, usu. years. Despite the name, permanent orders often have expiration dates set by state law. An order may also require the abuser to perform certain acts such as attending counseling or providing financial support for the protected person. — Abbr. PPO.

PROTECTIVE PRINCIPLE

protective principle. An international-law doctrine that a sovereign state has the power to assert jurisdiction over a person whose conduct outside its boundaries threatens its security or could interfere with the operation of its government functions.

PROTECTIVE SEARCH

protective search. See SEARCH.

PROTECTIVE SWEEP

protective sweep. A police officer's quick and limited search — conducted after the officer has lawfully entered the premises — based on a reasonable belief that such a search is necessary to protect the officer or others from harm.

PROTECTIVE TARIFF

protective tariff. See TARIFF(2).

PROTECTIVE TRUST

protective trust. See TRUST.

PROTECTOR

protector. 1. An unrelated, disinterested overseer of a trust who possesses broader authority than a trustee. • Protectors are usu. appointed to manage offshore trusts, but the concept is slowly being applied to domestic trusts. Protectors often possess broad powers to act for the benefit of the trust, as by removing trustees and clarifying or modifying trust terms to promote the settlor's objectives. For these reasons, a protector is generally not a trustee or beneficiary of the trust. Cf. TRUSTEE. 2. A person who, having been named in an instrument creating a fee tail, has the responsibility of exercising discretion over whether the tenant in tail may bar the entail. — Also termed protector of the settlement.

“The only additional restriction imposed upon the alienation of an estate tail is that the consent of the person who is called the Protector of the settlement is necessary to its being effectually barred. Alienation by tenant in tail without this consent binds his own issue, but not remaindermen or reversioners, and creates what is called a ‘base fee.’ The Protector of the settlement is usually the tenant for life in possession; but the settlor of the lands may appoint in his place any number of persons not exceeding three to be together Protector during the continuance of the estates preceding the estate tail.” Kenelm E. Digby, *An Introduction to the History of the Law of Real Property* 255 (5th ed. 1897).

PROTECTORATE

protectorate (pr<<schwa>>-tek-t<<schwa>>-r<<schwa>>t). 1. Int'l law. The relationship between a weaker nation and a stronger one when the weaker nation has transferred the management of its more important international affairs to the stronger nation. 2. Int'l law. The weaker or dependent nation within such a relationship. 3. (usu. cap.) The period in British history — from 1653 to 1659 — during which Oliver Cromwell and Richard Cromwell governed. 4. The British government in the period from 1653 to 1659.

PRO TEM

pro tem. abbr. PRO TEMPORE.

PRO TEMPORE

pro tempore (proh tem-p<<schwa>>-ree), adv. & adj. [Latin] For the time being; appointed to occupy a position temporarily <a judge pro tempore>. — Abbr. pro tem. [Cases: Judges 15. C.J.S. Judges §§ 166, 168–173.]

PROTEST

protest, n. 1. A formal statement or action expressing dissent or disapproval. • Under some circumstances, a protest is lodged to preserve a claim or right. 2. A notary public's written statement that, upon presentment, a negotiable instrument was neither paid nor accepted. — Also termed initial protest; noting protest. Cf. NOTICE OF DISHONOR. [Cases: Bills and Notes 408. C.J.S. Bills and Notes; Letters of Credit § 211.]

“Noting or initial protest is a memorandum made on [a dishonored] instrument, with the

notary's initials, date, and the amount of noting charges, together with a statement of the cause of dishonor, such as 'no effects,' 'not advice,' or 'no account.' This is done to charge the memory of the notary, and should be done on the day of dishonor." Frederick M. Hinch, *John's American Notary and Commission of Deeds Manual* § 442, at 281 (3d ed. 1922).

3. A formal statement, usu. in writing, disputing a debt's legality or validity but agreeing to make payment while reserving the right to recover the amount at a later time. • The disputed debt is described as under protest. [Cases: Payment 88. C.J.S. Payment § 111.] 4. Tax. A taxpayer's statement to the collecting officer that payment is being made unwillingly because the taxpayer believes the tax to be invalid. 5. Int'l law. A formal communication from one subject of international law to another objecting to conduct or a claim by the latter as violating international law. 6. Patents. A proceeding in the U.S. Patent and Trademark Office to determine patentability of an invention after a third party has challenged it in a petition. • Unlike in a public use proceeding, the protestant has no right to participate in the proceeding beyond filing the petition and supporting documents. 37 CFR § 1.291. Cf. PUBLIC-USE PROCEEDING. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.] — protest, vb.

PROTESTANDO

protestando (proh-t<<schwa>>-stan-doh). [Law Latin] Protesting. • This emphatic word was used in a protestation to allege or deny something in an oblique manner.

PROTESTANT

protestant. Patents. A person who files a protest petition with the U.S. Patent and Trademark Office challenging the patentability of an invention. See PROTEST.

PROTESTATIO CONTRARIA FACTO

protestatio contraria facto (proh-tes-tay-shee-oh k<<schwa>>n-trair-ee-<< schwa>> fak-toh). [Law Latin] Hist. Protestation inconsistent with one's conduct while protesting.

PROTESTATION

protestation (prot-<<schwa>>-stay-sh<<schwa>>n). 1. Common-law pleading. A declaration by which a party makes an oblique allegation or denial of some fact, claiming that it does or does not exist or is or is not legally sufficient, while not directly affirming or denying the fact. [Cases: Pleading 128.]

“The practice of protestation of facts not denied arose where the pleader, wishing to avail himself of the right to contest in a future action some traversable fact in the pending action, passes it by without traverse, but at the same time makes a declaration collateral or incidental to his main pleading, importing that the fact so passed over is untrue. The necessity for this arose from the rule that pleadings must not be double, and that every pleading is taken to admit such matters as it does not traverse. Such being its only purpose, it is wholly without effect in the action in which it occurs” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 207, at 358 (Henry Winthrop Ballantine ed., 3d ed. 1923).

2.Scots law. A defendant's act in a civil case to compel a pursuer (plaintiff) who has failed to take the necessary procedural steps either to proceed or to allow the action to fall.

PROTEST CERTIFICATE

protest certificate.A notarial certificate declaring (1) that a holder in due course has recruited the notary public to present a previously refused or dishonored negotiable instrument, (2) that the notary has presented the instrument to the person responsible for payment or acceptance (the drawee), (3) that the instrument was presented at a given time and place, and (4) that the drawee refused or dishonored the instrument. • In former practice, the notary would issue a protest certificate, which could then be presented to the drawee and any other liable parties as notice that the holder could seek damages for the dishonored negotiable instrument. — Also termed notarial protest certificate. See NOTICE OF DISHONOR. [Cases: Bills and Notes 408. C.J.S. Bills and Notes; Letters of Credit § 211.]

PROTEST FEE

protest fee.A fee charged by a bank or other financial institution when an item (such as a check) is presented but cannot be collected.

PROTHONOTARY

prothonotary (pr<<schwa>>-thon-<<schwa>>-ter-ee or proh-th<<schwa>>-noh-t<<schwa>>-ree), n. A chief clerk in certain courts of law. — Also termed protonotary. [Cases: Clerks of Courts 1. C.J.S. Courts § 236.] — prothonotarial,adj.

PROTOCOL

protocol. 1. A summary of a document or treaty. 2. A treaty amending and supplementing another treaty. [Cases: Treaties 8. C.J.S. Treaties § 6.] 3. The formal record of the proceedings of a conference or congress. — Also termed procès-verbal. 4. The minutes of a meeting, usu. initialed by all participants after confirming accuracy. 5. The rules of diplomatic etiquette; the practices that nations observe in the course of their contacts with one another.

PROTONOTARY

protonotary. See PROTHONOTARY.

PRO TRIBUNALI

pro tribunali (proh trib-y<<schwa>>-nay-II). [Latin] Hist. Before the court.

PROTUTOR

protutor (proh-t[y]oo-t<<schwa>>r).Civil law. A person who, though not legally appointed as a guardian, administers another's affairs.

PROUT DE LEGE

prout de lege (proh-<<schwa>>t dee [or di] lee-jee). [Law Latin] According to law. • Proof prout de lege is proof by any legal means, as distinct from proof limited to writing. — Also termed

prout de jure (proh-*<<schwa>>*t dee [or di] joor-ee).

“A proof prout de jure is a proof by all the legal means of probation — viz.: writ, witnesses, and oath of party; although, in practice, the phrase is usually applied to a proof of facts and circumstances by parole, in contradistinction to a proof limited to writ or oath of party.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 871 (George Watson ed., 7th ed. 1890).

PROUT PATET PER RECORDUM

prout patet per recordum (proh-*<<schwa>>*t pay-tet p*<<schwa>>*r ri-kor-d*<<schwa>>*m).
[Latin] As appears by the record.

PROVABLE

provable,adj. Capable of being proved.

PROVE

prove,vb. To establish or make certain; to establish the truth of (a fact or hypothesis) by satisfactory evidence.

PROVER

prover,n. Hist. A person charged with a felony who attempts to obtain a pardon by confessing and naming accomplices.

PRO VERITATE ACCIPITUR

pro veritate accipitur (proh ver-i-tay-tee ak-sip-*<<schwa>>*-t*<<schwa>>*r). [Latin] Hist. Is held or received as the truth.

PROVE UP

prove up,vb. To present or complete the proof of (something) <deciding not to put a doctor on the stand, the plaintiff attempted to prove up his damages with medical records only>.

PROVE-UP

prove-up,n. The establishment of a prima facie claim. • A prove-up is necessary when a factual assertion is unopposed because even without opposition, the claim must be supported by evidence.

PROVIDED

provided,conj. 1. On the condition or understanding (that) <we will sign the contract provided that you agree to the following conditions>. • For the Latin antecedent of this term, see DUMMODO. 2. Except (that) <all permittees must be at least 18 years of age, provided that those with a bona fide hardship must be at least 15 years of age>.3. And <a railway car must be operated by a full crew if it extends for more than 15 continuous miles, provided that a full crew must consist of at least six railway workers>.

PROVIDENT PLEA

provident plea. See PLEA(1).

PROVINCE

province, n. 1. An administrative district into which a country has been divided. 2. A sphere of activity of a profession such as medicine or law.

PROVINCIALIS

provincialis (pr<<schwa>>-vin-shee-ay-lis). [Latin] One who has a domicile in a province.

PROVINCIAL SYNOD

provincial synod. See SYNOD.

PROVING THE TENOR

proving the tenor. Scots law. An action to establish the terms of a deed or will that has been lost or destroyed.

PROVISION

provision. 1. A clause in a statute, contract, or other legal instrument. 2. A stipulation made beforehand. See PROVISIO.

PROVISIONAL

provisional, adj. 1. Temporary <a provisional injunction>. 2. Conditional <a provisional government>.

PROVISIONAL ALIMONY

provisional alimony. See temporary alimony under ALIMONY.

PROVISIONAL APPLICATION

provisional application. See PATENT APPLICATION.

PROVISIONAL ATTACHMENT

provisional attachment. See ATTACHMENT(1).

PROVISIONAL COURT

provisional court. See COURT.

PROVISIONAL DIRECTOR

provisional director. See DIRECTOR.

PROVISIONAL EXIT

provisional exit. Criminal procedure. A prisoner's temporary release from prison for a court appearance, hospital treatment, work detail, or other purpose requiring a release with the expectation of return.

PROVISIONAL GOVERNMENT

provisional government. See GOVERNMENT.

PROVISIONAL INJUNCTION

provisional injunction. See preliminary injunction under INJUNCTION.

PROVISIONAL PARTITION

provisional partition. See PARTITION.

PROVISIONAL PATENT APPLICATION

provisional patent application. See provisional application under PATENT APPLICATION .

PROVISIONAL REMEDY

provisional remedy. See REMEDY.

PROVISIONAL RIGHT

provisional right. Patents. The right to obtain a reasonable royalty for use of a patented invention or process by an infringer with actual notice during the period between the publication of a patent application and the time a patent is issued. • The right is available only if the invention as claimed in the issued patent is substantially identical to the invention as claimed in the published application. 35 USCA § 154.

PROVISIONAL SEIZURE

provisional seizure. See ATTACHMENT(1).

PROVISIONE HOMINIS

provisioe hominis (pr<<schwa>>-vizh-ee-oh-nee hom-<<schwa>>-nis). [Law Latin] Hist. By an individual's appointment. • The phrase appeared in reference to heirs that a testator appoints, as distinguished from those who succeed by law.

PROVISIONE LEGIS

provisioe legis (pr<<schwa>>-vizh-ee-oh-nee lee-jis). [Law Latin] Hist. By provision of law.

“Heirs who succeed according to the rules of law regulating succession, without the consent or appointment of their ancestor, are said to succeed provioe legis, and are known as heirs-at-law.” John Trayner, Trayner's Latin Maxims 494 (4th ed. 1894).

PROVISIONE TENUS

provisioe tenus (pr<<schwa>>-vizh-ee-oh-nee ten-<<schwa>>s). [Law Latin] Hist. To the extent of the provision.

PROVISION OF A FINE

provision of a fine.Hist. A proclamation made after the conveying of land by fine, read aloud in court 16 times — four times in the term when the fine was made, and four times in the three succeeding terms.

PROVISIONS OF OXFORD

Provisions of Oxford.Hist. During the reign of Henry III, a constitution created by the Mad Parliament and forming the King's advisory council that met with a group of barons several times a year to handle the country's affairs and resolve grievances, esp. those resulting from the King's avoidance of his obligations under Magna Carta. • The Provisions were effective until the baron uprising in 1263 under Simon de Montfort.

PROVISO

proviso (pr<<schwa>>-vI-zoh).1. A limitation, condition, or stipulation upon whose compliance a legal or formal document's validity or application may depend. 2. In drafting, a provision that begins with the words provided that and supplies a condition, exception, or addition.

PROVISOR

provisor. 1.Hist. A provider of care or sustenance. 2.Eccles. law. A person nominated by the pope to be the next incumbent of a benefice that is vacant or about to become vacant.

PROVOCATION

provocation,n.1. The act of inciting another to do something, esp. to commit a crime. 2. Something (such as words or actions) that affects a person's reason and self-control, esp. causing the person to commit a crime impulsively. [Cases: Sentencing and Punishment 1675.] — provoke,vb. — provocative,adj.

adequate provocation.Something that would cause a reasonable person to act without self-control and lose any premeditated state of mind. • The usual form of adequate provocation is the heat of passion. Adequate provocation can reduce a criminal charge, as from murder to voluntary manslaughter. — Also termed adequate cause; reasonable provocation. See HEAT OF PASSION. Cf. SELF-DEFENSE. [Cases: Homicide 673.]

reasonable provocation.See adequate provocation.

PROVOST MARSHAL

provost marshal.Military law. A staff officer who supervises a command's military police and advises the commander.

PROXENETE

proxenete (prok-s<<schwa>>-neet). [Latin fr. Greek] Roman & civil law. 1. A person who negotiates or arranges the terms of a contract between parties; a broker. 2.[Greek] A person who negotiates marriages; a matchmaker. — Also termed proxeneta.

PROXIMATE

proximate (prok-s<<schwa>>-mit), adj.1. Immediately before or after. 2. Very near or close in time or space. — proximateness,n.

PROXIMATE CAUSE

proximate cause.See CAUSE(1).

PROXIMATE CONSEQUENCE

proximate consequence.A result following an unbroken sequence from some (esp. negligent) event. [Cases: Negligence 370–454. C.J.S. Negligence §§ 66–68, 188–225, 247–248, 298, 302, 315.]

PROXIMATE DAMAGES

proximate damages.See DAMAGES.

PROXIMITY

proximity. The quality or state of being near in time, place, order, or relation.

PROXIMUS PUBERTATI

proximus pubertati (prok-s<<schwa>>-m<<schwa>>s pyoo-b<<schwa>>r-tay-tl). [Latin] Roman law. Near puberty — hence likely to know right from wrong.

PROXY

proxy,n.1. One who is authorized to act as a substitute for another; esp., in corporate law, a person who is authorized to vote another's stock shares. Cf. absentee vote under VOTE(1). [Cases: Corporations 198(1); Securities Regulation 49.10–49.30. C.J.S. Corporations §§ 373, 385, 387–388, 392–393; Securities Regulation §§ 229–241, 273.] 2. The grant of authority by which a person is so authorized. 3. The document granting this authority. — Also termed (for sense 3 in Roman law) procuratorium.

PROXY CONTEST

proxy contest.A struggle between two corporate factions to obtain the votes of uncommitted shareholders. • A proxy contest usu. occurs when a group of dissident shareholders mounts a battle against the corporation's managers. — Also termed proxy fight. [Cases: Corporations 198(3). C.J.S. Corporations § 394.]

PROXY DIRECTIVE

proxy directive.A document that appoints a surrogate decision-maker for the declarant's healthcare decisions. Cf. ADVANCE DIRECTIVE; INSTRUCTION DIRECTIVE ; LIVING WILL.

PROXY MARRIAGE

proxy marriage. See MARRIAGE(3).

PROXY SOLICITATION

proxy solicitation. A request that a corporate shareholder authorize another person to cast the shareholder's vote at a corporate meeting. [Cases: Corporations 198(3); Securities Regulation 49.11. C.J.S. Corporations § 394; Securities Regulation § 230.]

PROXY STATEMENT

proxy statement. An informational document that accompanies a proxy solicitation and explains a proposed action (such as a merger) by the corporation. [Cases: Corporations 198(3); Securities Regulation 49.19. C.J.S. Corporations § 394; Securities Regulation §§ 232, 234.]

PRP

PRP.abbr. Potentially responsible party.

PRUDENT

prudent, adj. Circumspect or judicious in one's dealings; cautious. — prudence, n.

PRUDENT-INVESTOR RULE

prudent-investor rule. Trusts. The principle that a fiduciary must invest in only those securities or portfolios of securities that a reasonable person would buy. • The origin of the prudent-investor rule is *Harvard College v. Amory*, 26 Mass. 446 (1830). This case stressed two points for a trustee to consider when making investments: probable income and probable safety. The trustee must consider both when making investments. Originally termed the prudent-man rule, the Restatement (Third) of Trusts changed the term to prudent-investor rule. — Also termed prudent-person rule. [Cases: Trusts 217.3(5). C.J.S. Trover and Conversion § 496.]

PRUDENT-OPERATOR STANDARD

prudent-operator standard. See REASONABLY-PRUDENT-OPERATOR STANDARD.

PRUDENT PERSON

prudent person. See REASONABLE PERSON.

PRUDENT-PERSON RULE

prudent-person rule. See PRUDENT-INVESTOR RULE.

PRURIENT

prurient (pru-ur-ee- <<schwa>>nt), adj. Characterized by or arousing inordinate or unusual sexual desire <films appealing to prurient interests>. See OBSCENITY. — prurience, n.

PRWORA

PRWORA.abbr. PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT.

P.S.

p.s.abbr.(usu. cap.) 1. Public statute. See PUBLIC LAW(2). 2. Postscript.

PSEUDO-FOREIGN-CORPORATION STATUTE

pseudo-foreign-corporation statute.A state law regulating foreign corporations that either derive a specified high percentage of their income from that state or have a high percentage of their stock owned by people living in that state. [Cases: Corporations 636. C.J.S. Corporations §§ 897, 899, 905.]

PSEUDOGRAPH

pseudograph (soo-d<<schwa>>-graf). A false writing; a forgery.

PSEUDO-GUARANTEE TREATY

pseudo-guarantee treaty.See guarantee treaty under TREATY(1).

PSEUDONYM

pseudonym (sood-<<schwa>>-nim), n. A fictitious name or identity. [Cases: Federal Civil Procedure 101; Parties 67, 73. C.J.S. Parties §§ 170, 172.] — pseudonymous (soo-don-<<schwa>>-m<<schwa>>s), adj. — pseudonymity (sood-<<schwa>>-nim-<<schwa>>-tee), n.

PSEUDONYMOUS WORK

pseudonymous work.See WORK(2).

PSEUDOPRESUMPTION OF LAW

pseudopresumption of law.See presumption of law under PRESUMPTION.

PSEUDO-STEPPARENT ADOPTION

pseudo-stepparent adoption.See second-parent adoption under ADOPTION.

PSI

PSI.abbr.PRESENTENCE-INVESTIGATION REPORT.

PSYCHIATRIC

psychiatric (sI-kee-at-rik), adj. Of or relating to the study or treatment of mental, emotional, and behavioral disorders by medical doctors trained in the field of psychiatry.

PSYCHIATRIC EXAMINATION

psychiatric examination.Criminal law. An analysis performed by a psychiatrist to determine a defendant's mental state. • A defendant in a criminal prosecution may undergo a psychiatric examination to determine competence to stand trial or to establish a defense based on some mental condition, such as insanity. — Also (more broadly) termed mental examination. See INSANITY

DEFENSE ; COMPETENCY(2). Cf. competency proceeding under PROCEEDING; SUBSTANTIAL-CAPACITY TEST; INDEPENDENT MENTAL EVALUATION.

PSYCHOLOGICAL FACT

psychological fact. See FACT.

PSYCHOLOGICAL FATHER

psychological father. See psychological parent under PARENT.

PSYCHOLOGICAL MOTHER

psychological mother. See psychological parent under PARENT.

PSYCHOLOGICAL PARENT

psychological parent. See PARENT.

PSYCHOPATH

psychopath (sI-k<<schwa>>-path), n. 1. A person with a mental disorder characterized by an extremely antisocial personality that often leads to aggressive, perverted, or criminal behavior. • The formal psychiatric term for the mental illness from which a psychopath suffers is antisocial personality disorder. 2. Loosely, a person who is mentally ill or unstable. — Also termed sociopath. [Cases: Mental Health 3. C.J.S. Insane Persons §§ 2, 6.] — psychopathy (sI-kop-<<schwa>>-thee), n. — psychopathic (sI-k<<schwa>>-path-ik), adj.

PSYCHOTHERAPIST–CLIENT PRIVILEGE

psychotherapist–client privilege. See psychotherapist–patient privilege under PRIVILEGE(3).

PSYCHOTHERAPIST–PATIENT PRIVILEGE

psychotherapist–patient privilege. See PRIVILEGE(3).

PTA

PTA. abbr. PATENT-TERM ADJUSTMENT.

PTDL

PTDL. abbr. PATENT AND TRADEMARK DEPOSITORY LIBRARY.

PTI

PTI. See previously taxed income under INCOME.

PTO

PTO. abbr. UNITED STATES PATENT AND TRADEMARK OFFICE.

PTO CODE OF PROFESSIONAL RESPONSIBILITY

PTO Code of Professional Responsibility. Disciplinary rules and canons of ethics for

practicing before the U.S. Patent and Trademark Office. • The Code is found at 37 CFR §§ 10.20–10.112. — Often shortened to PTO Code.

PTP

PTP. See publicly traded partnership under PARTNERSHIP.

PUBERES

puberes (pyoo-b<<schwa>>-reez), n. pl.[Latin] Roman law. Children who have reached puberty, whether or not they have reached the age of majority.

PUBERTY

puberty. 1. The stage of physical development when a person takes on secondary sexual characteristics and it usu. becomes possible to reproduce. • In females, the beginning of this stage is marked by the menarche. 2.Hist. The earliest age at which one could presumptively consent and to legally enter into a binding marriage. • At English common law, children became marriageable at the onset of legal puberty (age 12 for girls and 14 for boys). At French civil law, a marriage was invalid if contracted before the end of legal puberty (age 15 for girls and 18 for boys). An underage spouse had the power to void the marriage. — Also termed (in English common law) age of discretion.

PUB. L

Pub. L.abbr.PUBLIC LAW(2).

PUBLIC

public,adj.1. Relating or belonging to an entire community, state, or nation. [Cases: Municipal Corporations 721. C.J.S. Municipal Corporations §§ 1557–1559.] 2. Open or available for all to use, share, or enjoy. 3. (Of a company) having shares that are available on an open market. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

public,n.1. The people of a nation or community as a whole <a crime against the public>.2. A place open or visible to the public <in public>.

PUBLIC ACCESS TO COURT ELECTRONIC RECORDS

Public Access to Court Electronic Records.A computer system by which subscribers can obtain online information from the federal courts, including information from a court's docket sheet about the parties, filing, and orders in a specific case. — Abbr. PACER.

PUBLIC ACCOMMODATION

public accommodation.See ACCOMMODATION.

PUBLIC ACT

public act.See PUBLIC LAW(2).

PUBLIC ACTION

public action. See civil action under ACTION(4).

PUBLICA DELICTA

publica delicta (p<<schwa>>b-li-k<<schwa>> di-lik-t<<schwa>>). [Latin] Roman law. Public wrongs; crimes. See DELICT. Cf. PRIVATA DELICTA.

PUBLIC ADMINISTRATION

public administration. See ADMINISTRATION.

PUBLIC ADMINISTRATOR

public administrator. See ADMINISTRATOR(2).

PUBLIC ADVOCATE

public advocate. See ADVOCATE.

PUBLIC AGENCY

public agency. See AGENCY(3).

PUBLIC AGENT

public agent. See AGENT(2).

PUBLICAN

publican (p<<schwa>>b-li-k<<schwa>>n). 1. A person authorized by license to keep a public house for consumption of alcoholic beverages on or off the premises. 2. PUBLICANUS.

PUBLICANUS

publicanus (p<<schwa>>b-li-kay-n<<schwa>>s). [Latin] Hist. Roman law. A tax collector. • A publicanus was described as “a farmer of the public revenue,” although the publicanus reaped only the money from that sown by the labor of others. — Often shortened to publican.

PUBLIC APPOINTMENT

public appointment. See APPOINTMENT(1).

PUBLICATION

publication, n. 1. Generally, the act of declaring or announcing to the public. 2. Copyright. The offering or distribution of copies of a work to the public. • At common law, publication marked the dividing line between state and federal protection, but the Copyright Act of 1976 superseded most of common-law copyright and thereby diminished the significance of publication. Under the Act, an original work is considered published only when it is first made publicly available without restriction. [Cases: Copyrights and Intellectual Property 31. C.J.S. Copyrights and Intellectual Property §§ 32, 37.]

“The concept of publication was of immense importance under the 1909 Act. It became a

legal word of art, denoting a process much more esoteric than is suggested by the lay definition of the term. That it thus evolved was due largely to the American dichotomy between common law and statutory copyright, wherein the act of publication constituted the dividing line between the two systems of protection [state and federal].” 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4.01, at 4-3 (Supp. 1997).

divestitive publication. Archaic. The public distribution of an author's work on a scale large enough to divest the author of any claim to state common-law copyright protection. • The Copyright Act of 1976 preempted most common-law copyright. — Sometimes (erroneously) written divestive publication.

general publication. Distribution of an author's work to the public, as opposed to a selected group, whether or not restrictions are placed on the use of the work. • Before the Copyright Act of 1976, a general publication was generally held to divest common-law rights in a work. Rather, the author was deemed to have dedicated the work to the public. Cf. limited publication. [Cases: Copyrights and Intellectual Property 31. C.J.S. Copyrights and Intellectual Property §§ 32, 37.]

investitive publication. Archaic. The public distribution of an author's work on a scale large enough to qualify for federal statutory copyright protection. • Since 1976 copyright has protected works from their creation, rather than their publication.

limited publication. Distribution of copies of an author's work to a selected group for a limited purpose and with no permission to copy the work, at a time when copies are not available to the general public. • Before the Copyright Act of 1976 made publication irrelevant, courts distinguished between limited publication and general publication to decide whether federal copyright laws applied. Under that Act, a work published before January 1, 1978 without proper copyright notice entered the public domain unless the publication was limited. — Also termed private publication. Cf. general publication. [Cases: Copyrights and Intellectual Property 31. C.J.S. Copyrights and Intellectual Property §§ 32, 37.]

private publication. See limited publication.

3. Defamation. The communication of defamatory words to someone other than the person defamed. • The communication may be in any form, verbal or nonverbal. [Cases: Libel and Slander 23. C.J.S. Libel and Slander; Injurious Falsehood §§ 48–52.] “Publication means the act of making the defamatory statement known to any person or persons other than the plaintiff himself. It is not necessary that there should be any publication in the popular sense of making the statement public. A private and confidential communication to a single individual is sufficient. Nor need it be published in the sense of being written or printed; for we have seen that actions as well as words may be defamatory. A communication to the person defamed himself, however, is not a sufficient publication on which to found civil proceedings; though it is otherwise in the case of a criminal prosecution, because such a communication may provoke a breach of the peace. Nor does a communication between husband and wife amount to publication; domestic intercourse of this kind is exempt from the restrictions of the law of libel and slander. But a statement by the defendant to the wife or husband of the plaintiff is a ground of action.” R.F.V. Heuston, *Salmond on the Law of Torts* 154 (17th ed. 1977).

“The publication of a libel might be in the form of a book, pamphlet or newspaper, but nothing of that nature is required. A letter sent to a single individual is sufficient.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 489 (3d ed. 1982).

4.Wills. The formal declaration made by a testator when signing the will that it is the testator's will. • There is no requirement that the provisions of the will or the identities of the beneficiaries be revealed to the witnesses.

PUBLICATION-QUALITY DRAWINGS

publication-quality drawings.Patents. Illustrations or drawings filed with a patent application and capable of being scanned. [Cases: Patents 100.C.J.S. Patents § 143.]

PUBLICATION RIGHT

publication right.Copyright. The right of an author or artist to decide when to reveal or display a creative work. • Publication is one of the moral rights of artists recognized in civil-law countries and much of Europe, but largely unavailable in the United States. — Also termed right of disclosure. [Cases: Copyrights and Intellectual Property 36. C.J.S. Copyrights and Intellectual Property §§ 10, 40–41, 97.]

PUBLIC ATTORNEY

public attorney.See ATTORNEY(2).

PUBLIC AUTHORITY

public authority.See AUTHORITY(3).

PUBLIC-AUTHORITY JUSTIFICATION

public-authority justification.See JUSTIFICATION.

PUBLICA VINDICTA

publica vindicta (p<<schwa>>b-li-k<<schwa>> vin-dik-t<<schwa>>). [Latin] Hist. The protection of the public interest.

PUBLIC-BENEFIT CORPORATION

public-benefit corporation.See public corporation under CORPORATION.

PUBLIC BILL

public bill.See BILL(3).

PUBLIC BLOCKADE

public blockade.See BLOCKADE.

PUBLIC BOUNDARY

public boundary.See BOUNDARY.

PUBLIC BUILDING

public building. A building that is accessible to the public; esp., one owned by the government. [Cases: States 88. C.J.S. States § 147.]

PUBLIC BUILDINGS SERVICE

Public Buildings Service. A unit in the General Services Administration responsible for constructing federal buildings and managing federally owned and leased property through 11 regional offices. — Abbr. PBS.

PUBLIC CARRIER

public carrier. See common carrier under CARRIER.

PUBLIC CHARACTER

public character. See PUBLIC FIGURE.

PUBLIC COMMISSIONER

public commissioner. See PROSECUTOR(1).

PUBLIC CONTRACT

public contract. See CONTRACT.

PUBLIC CONTRACTS ACT

Public Contracts Act. See WALSH-HEALEY ACT.

PUBLIC CONTROVERSY

public controversy. See CONTROVERSY.

PUBLIC-CONVENIENCE-AND-NECESSITY STANDARD

public-convenience-and-necessity standard. A common criterion used by a governmental body to assess whether a particular request or project should be granted or approved.

PUBLIC CORPORATION

public corporation. See CORPORATION.

PUBLIC DEBT

public debt. See DEBT.

PUBLIC DEFENDER

public defender. A lawyer or staff of lawyers, usu. publicly appointed and paid, whose duty is to represent indigent criminal defendants. — Often shortened to defender. — Abbr. P.D. [Cases: Criminal Law 641.11. C.J.S. Criminal Law §§ 300, 317.]

PUBLIC DELICT

public delict.See DELICT.

PUBLIC DIRECTOR

public director.See DIRECTOR.

PUBLIC DISCLOSURE OF PRIVATE FACTS

public disclosure of private facts.See DISCLOSURE(1).

PUBLIC DISTURBANCE

public disturbance.See BREACH OF THE PEACE.

PUBLIC DOCUMENT

public document.See DOCUMENT.

PUBLIC DOMAIN

public domain. 1. Government-owned land. 2.Hist. Government lands that are open to entry and settlement. • Today virtually all federal lands are off-limits to traditional entry and settlement. 3.Intellectual property. The universe of inventions and creative works that are not protected by intellectual-property rights and are therefore available for anyone to use without charge. • When copyright, trademark, patent, or trade-secret rights are lost or expire, the intellectual property they had protected becomes part of the public domain and can be appropriated by anyone without liability for infringement. [Cases: Copyrights and Intellectual Property 40.C.J.S. Copyrights and Intellectual Property § 31.]

“[P]ublic domain is the status of an invention, creative work, commercial symbol, or any other creation that is not protected by any form of intellectual property. Public domain is the rule: intellectual property is the exception.” 1 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition§ 1.01[2], at 1-3 (3d ed. 1996).

PUBLIC-DUTY DOCTRINE

public-duty doctrine.Torts. The rule that a governmental entity (such as a state or municipality) cannot be held liable for an individual plaintiff's injury resulting from a governmental officer's or employee's breach of a duty owed to the general public rather than to the individual plaintiff. — Also termed public-duty rule. See SPECIAL-DUTY DOCTRINE. [Cases: Municipal Corporations 723. C.J.S. Municipal Corporations §§ 661–663.]

PUBLIC EASEMENT

public easement.See EASEMENT.

PUBLIC ENEMY

public enemy.See ENEMY.

PUBLIC ENTITY

public entity. See ENTITY.

PUBLIC-EXCHANGE OFFER

public-exchange offer. See OFFER.

PUBLIC FACT

public fact. See FACT.

PUBLIC FIGURE

public figure. A person who has achieved fame or notoriety or who has voluntarily become involved in a public controversy. • A public figure (or public official) suing for defamation must prove that the defendant acted with actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964). — Also termed public character. [Cases: Libel and Slander 48(1). C.J.S. Libel and Slander; Injurious Falsehood §§ 91–92, 96, 98, 102–104.]

all-purpose public figure. A person who achieves such pervasive fame or notoriety that he or she becomes a public figure for all purposes and in all contexts. • For example, a person who occupies a position with great persuasive power and influence may become an all-purpose public figure whether or not the person actively seeks attention. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S.Ct. 2997, 3009 (1974).

limited-purpose public figure. A person who, having become involved in a particular public issue, has achieved fame or notoriety only in relation to that particular issue. [Cases: Libel and Slander 48(1). C.J.S. Libel and Slander; Injurious Falsehood §§ 91–92, 96, 98, 102–104.]

PUBLIC FORUM

public forum. Constitutional law. A public place where people traditionally gather to express ideas and exchange views. • To be constitutional, the government's regulation of a public forum must be narrowly tailored to serve a significant government interest and must usu. be limited to time-place-or-manner restrictions. — Also termed open forum. Cf. NONPUBLIC FORUM. [Cases: Constitutional Law 90.1(4). C.J.S. Constitutional Law §§ 556–557, 559–561, 568, 570–572, 580, 608.]

“[T]raditional public fora are open for expressive activity regardless of the government's intent. The objective characteristics of these properties require the government to accommodate private speakers. The government is free to open additional properties for expressive use by the general public or by a particular class of speakers, thereby creating designated public fora. Where the property is not a traditional public forum and the government has not chosen to create a designated public forum, the property is either a nonpublic forum or not a forum at all.” *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 678, 118 S.Ct. 1633, 1641 (1998).

designated public forum. Public property that has not traditionally been open for public assembly and debate but that the government has opened for use by the public as a place for expressive activity, such as a public-university facility or a publicly owned theater. • Unlike a traditional public forum, the government does not have to retain the open character of a designated

public forum. Also, the subject matter of the expression permitted in a designated public forum may be limited to accord with the character of the forum; reasonable, content-neutral time, place, and manner restrictions are generally permissible. But any prohibition based on the content of the expression must be narrowly drawn to effectuate a compelling state interest, as with a traditional public forum. — Also termed limited public forum; nontraditional public forum. [Cases: Constitutional Law 90.1(1.4, 4). C.J.S. Constitutional Law §§ 556–557, 559–561, 568, 570–572, 580, 596, 599–600, 608.]

traditional public forum. Public property that has by long tradition — as opposed to governmental designation — been used by the public for assembly and expression, such as a public street, public sidewalk, or public park. • To be constitutional, the government's content-neutral restrictions of the time, place, or manner of expression must be narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. Any government regulation of expression that is based on the content of the expression must meet the much higher test of being necessary to serve a compelling state interest. — Also termed quintessential public forum. [Cases: Constitutional Law 90.1(4). C.J.S. Constitutional Law §§ 556–557, 559–561, 568, 570–572, 580, 608.]

PUBLIC-FUNCTION DOCTRINE

public-function doctrine. See PUBLIC-FUNCTION TEST.

PUBLIC-FUNCTION RATIONALE

public-function rationale. See GOVERNMENTAL-FUNCTION THEORY.

PUBLIC-FUNCTION TEST

public-function test. In a suit under 42 USCA § 1983, the doctrine that a private person's actions constitute state action if the private person performs functions that are traditionally reserved to the state. — Also termed public-function doctrine; public-function theory. [Cases: Civil Rights 1326(4, 7). C.J.S. Civil Rights §§ 92–94.]

PUBLIC FUND

public fund. See FUND(1).

PUBLIC GRANT

public grant. See PATENT(2).

PUBLIC GROUND

public ground. See public land under LAND.

PUBLIC HEALTH

public health. See HEALTH.

PUBLIC HEALTH SERVICE

Public Health Service. The combined offices and units of the U.S. Department of Health and Human Services responsible for promoting the physical and mental health of American citizens.

PUBLIC HEARING

public hearing. See HEARING.

PUBLIC HIGHWAY

public highway. See HIGHWAY.

PUBLIC HOUSE

public house. 1. Archaic. An inn. 2. A tavern where alcoholic beverages may be bought and consumed on the premises. • The British term pub is an abbreviation of public house. — Also termed (in sense 2) tippling house.

PUBLICI JURIS

publici juris (p<<schwa>>b-li-sljoor-is), adj. [Latin] Of public right; of importance to or available to the public <a city holds title to its streets as property publici juris> <words that are in general or common use and that are merely descriptive are publici juris and cannot be appropriated as a trademark>.

PUBLIC IMPROVEMENT

public improvement. See IMPROVEMENT.

PUBLIC INJURY

public injury. See INJURY.

PUBLIC INSTITUTION

public institution. See INSTITUTION(3).

PUBLIC INSTRUMENT

public instrument. See PUBLIC WRITING.

PUBLIC INTEREST

public interest. 1. The general welfare of the public that warrants recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

PUBLIC-INTEREST EXCEPTION

public-interest exception. The principle that an appellate court may consider and decide a moot case — although such decisions are generally prohibited — if (1) the case involves a question of considerable public importance, (2) the question is likely to arise in the future, and (3) the question has evaded appellate review. [Cases: Appeal and Error 781(1); Federal Courts 723. C.J.S. Appeal and Error § 33.]

PUBLIC INTERNATIONAL LAW

public international law. See INTERNATIONAL LAW.

PUBLIC INTOXICATION

public intoxication. See INTOXICATION.

PUBLIC INVITEE

public invitee. See INVITEE.

PUBLICIST

publicist. 1. A public-relations specialist. 2. An international-law scholar. • The term applies to scholars of both public and private international law.

PUBLIC-KEY ENCRYPTION

public-key encryption. See KEY ENCRYPTION.

PUBLIC LAND

public land. See LAND.

PUBLIC LAW

public law. 1. The body of law dealing with the relations between private individuals and the government, and with the structure and operation of the government itself; constitutional law, criminal law, and administrative law taken together. Cf. PRIVATE LAW(1). 2. A statute affecting the general public. • Federal public laws are first published in Statutes at Large and are eventually collected by subject in the U.S. Code. — Abbr. Pub. L.; P.L. — Also termed public statute (abbr. P.S.); general statute. Cf. general law (1) under LAW; general statute under STATUTE. [Cases: Statutes 68. C.J.S. Statutes §§ 154–161.] 3. Constitutional law.

PUBLIC-LENDING RIGHT

public-lending right. Copyright. In the U.K. and some other countries, the right of an author to a royalty for works that are lent out by a public library. — Abbr. PLR.

PUBLIC-LIABILITY INSURANCE

public-liability insurance. See liability insurance under INSURANCE.

PUBLICLY HELD CORPORATION

publicly held corporation. See public corporation (1) under CORPORATION.

PUBLICLY TRADED PARTNERSHIP

publicly traded partnership. See PARTNERSHIP.

PUBLIC MARKET

public market.See MARKET.

PUBLIC-MEETING LAW

public-meeting law.See SUNSHINE LAW.

PUBLIC MINISTER

public minister.See MINISTER.

PUBLIC MORALITY

public morality.See MORALITY.

PUBLIC NECESSITY

public necessity.See NECESSITY.

PUBLIC NOTICE

public notice.See NOTICE.

PUBLIC NUISANCE

public nuisance.See NUISANCE.

PUBLIC OFFENSE

public offense.See OFFENSE(1).

PUBLIC OFFER

public offer.See offer to all the world under OFFER.

PUBLIC OFFERING

public offering.See OFFERING.

PUBLIC OFFICE

public office.A position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period. [Cases: Officers and Public Employees 1. C.J.S. Officers and Public Employees §§ 1-9, 12-17, 21.]

PUBLIC OFFICIAL

public official.See OFFICIAL(1).

PUBLIC PASSAGE

public passage.A right held by the public to pass over a body of water, whether the underlying land is publicly or privately owned. [Cases: Navigable Waters 15. C.J.S. Navigable Waters § 40.]

PUBLIC-PERFORMANCE RIGHT

public-performance right. See PERFORMANCE RIGHT.

PUBLIC PERSON

public person. A sovereign government, or a body or person delegated authority under it.

PUBLIC PLACE

public place. Any location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building.

PUBLIC POLICY

public policy. 1. Broadly, principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society. • Courts sometimes use the term to justify their decisions, as when declaring a contract void because it is “contrary to public policy.” — Also termed policy of the law. [Cases: Contracts 108. C.J.S. Contracts §§ 215–218.]

“The policy of the law, or public policy, is a phrase of common use in estimating the validity of contracts. Its history is obscure; it is most likely that agreements which tended to restrain trade or to promote litigation were the first to elicit the principle that the courts would look to the interests of the public in giving efficacy to contracts. Wagers, while they continued to be legal, were a frequent provocation of judicial ingenuity on this point, as is sufficiently shown by the case of *Gilbert v. Sykes* [16 East 150 (1812)] ... : but it does not seem probable that the doctrine of public policy began in the endeavor to elude their binding force. Whatever may have been its origin, it was applied very frequently, and not always with the happiest results, during the latter part of the eighteenth and the commencement of the nineteenth century. Modern decisions, however, while maintaining the duty of the courts to consider the public advantage, have tended more and more to limit the sphere within which this duty may be exercised.” William R. Anson, *Principles of the Law of Contract* 286 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. More narrowly, the principle that a person should not be allowed to do anything that would tend to injure the public at large.

PUBLIC-POLICY LIMITATION

public-policy limitation. Tax. A judicially developed principle that a person should not be allowed to deduct expenses related to an activity that is contrary to the public welfare. • This principle is reflected in the Internal Revenue Code's specific disallowance provisions (such as for kickbacks and bribes). [Cases: Internal Revenue 3368. C.J.S. Internal Revenue § 188.]

PUBLIC POND

public pond. See GREAT POND.

PUBLIC POWER

public power. See POWER(3).

PUBLIC PROPERTY

public property. See PROPERTY.

PUBLIC PROSECUTOR

public prosecutor. 1. DISTRICT ATTORNEY. 2. PROSECUTOR(1).

PUBLIC PURPOSE

public purpose. An action by or at the direction of a government for the benefit of the community as a whole. [Cases: Municipal Corporations 861. C.J.S. Municipal Corporations §§ 1573–1581.]

PUBLIC RECORD

public record. See RECORD.

PUBLIC-RECORDS DOCTRINE

public-records doctrine. The principle, applicable in many states, that a third person acquiring or interested in real or immovable property may rely on the face of relevant public records and need not investigate further for unrecorded interests.

PUBLIC-RECORDS EXCEPTION

public-records exception. The exception from the hearsay rule for the contents of certain public records or the absence of a record where it would ordinarily be kept in public archives. Fed. R. Evid. 803(8)–(10).

PUBLIC RELATIONS

public relations. 1. The business of creating or maintaining a company's goodwill or good public image. 2. A company's existing goodwill or public image. — Abbr. PR.

PUBLIC REPRIMAND

public reprimand. See REPRIMAND.

PUBLIC REVENUE

public revenue. See REVENUE.

PUBLIC RIGHT

public right. See RIGHT.

PUBLIC RIGHT-OF-WAY

public right-of-way. See RIGHT-OF-WAY.

PUBLIC SAFETY

public safety. The welfare and protection of the general public, usu. expressed as a governmental responsibility <Department of Public Safety>. [Cases: Municipal Corporations 595. C.J.S. Municipal Corporations § 129.]

PUBLIC-SAFETY EXCEPTION

public-safety exception.Evidence. An exception to the Miranda rule, allowing into evidence an otherwise suppressible statement by a defendant concerning information that the police needed at the time it was made in order to protect the public. • If, for example, a victim tells the police that an assailant had a gun, and upon the suspect's arrest the police find a holster but no gun, they would be immediately entitled to ask where the gun is. Under the public-safety exception, the suspect's statement of the gun's location would be admissible.

PUBLIC SALE

public sale.See SALE.

PUBLIC SCHOOL

public school.See SCHOOL.

PUBLIC SEAL

public seal.See SEAL.

PUBLIC SECTOR

public sector.The part of the economy or an industry that is controlled by the government. Cf. PRIVATE SECTOR.

PUBLIC SECURITY

public security.See SECURITY.

PUBLIC SERVICE

public service. 1. A service provided or facilitated by the government for the general public's convenience and benefit. 2. Government employment; work performed for or on behalf of the government. [Cases: Officers and Public Employees 1. C.J.S. Officers and Public Employees §§ 1-9, 12-17, 21.]

PUBLIC-SERVICE COMMISSION

public-service commission.See COMMISSION(3).

PUBLIC-SERVICE CORPORATION

public-service corporation.See CORPORATION.

PUBLIC SERVITUDE

public servitude.See SERVITUDE(2).

PUBLIC SESSION

public session.See open session under SESSION(1).

PUBLIC STATUTE

public statute. 1. See general statute under STATUTE. 2.PUBLIC LAW(2).

PUBLIC STOCK

public stock.See STOCK.

PUBLIC STORE

public store.See STORE.

PUBLIC TORT

public tort.See TORT.

PUBLIC TRIAL

public trial.See TRIAL.

PUBLIC, TRUE, AND NOTORIOUS

public, true, and notorious.Hist. Eccles. law. The concluding words of each allegation in a court petition.

PUBLIC TRUST

public trust.See charitable trust under TRUST.

PUBLIC-TRUST DOCTRINE

public-trust doctrine.The principle that navigable waters are preserved for the public use, and that the state is responsible for protecting the public's right to the use. [Cases: Navigable Waters 2. C.J.S. Navigable Waters §§ 20–21, 23–30, 33.]

PUBLICUM JUS

publicum jus (p<<schwa>>b-li-k<<schwa>>m j<<schwa>>s). [Latin] See JUS PUBLICUM .

PUBLIC USE

public use.See USE(1).

PUBLIC-USE BAR

public-use bar.Patents. A statutory bar that prevents the granting of a patent for an invention that was publicly used or sold in the United States more than one year before the application date. 35 USCA § 102(b). • The doctrine can be invoked for any public use, any commercial use, any sale or offer of sale, or any private transfer made without a pledge of secrecy. — Also termed prior-use bar. Cf. PRIVATE-USE EXCEPTION. [Cases: Patents 75. C.J.S. Patents §§ 107–109.]

PUBLIC-USE PROCEEDING

public-use proceeding.Patents. An investigation into whether a patent is barred because the invention was publicly used or sold more than a year before the application was filed. • Rarely

used, this procedure is instituted upon a petition by someone protesting the application. If the petition and supporting documents make out a prima facie case, the examiner will hold a hearing and issue a final decision, which is not reviewable. 37 CFR § 1.292. — Abbr. PUP. Cf. PROTEST(6). [Cases: Patents 75. C.J.S. Patents §§ 107–109.]

PUBLIC UTILITY

public utility. See UTILITY.

PUBLIC UTILITY DISTRICT

public utility district. See municipal utility district under DISTRICT.

PUBLIC UTILITY HOLDING COMPANY ACT

Public Utility Holding Company Act. A federal law enacted in 1935 to protect investors and consumers from the economic disadvantages produced by the small number of holding companies that owned most of the nation's utilities. • The Act also sought to protect the public from deceptive security advertising. 15 USCA §§ 79 et seq. — Abbr. PUHCA. [Cases: Public Utilities 211–216. C.J.S. Public Utilities §§ 139–160.]

PUBLIC VERDICT

public verdict. See VERDICT.

PUBLIC VESSEL

public vessel. See VESSEL.

PUBLIC VESSELS ACT

Public Vessels Act. A federal law enacted in 1925 to allow claims against the United States for damages caused by one of its vessels. 46 USCA app. §§ 781–790. — Abbr. PVA. [Cases: United States 78(7).]

PUBLIC WAR

public war. See WAR.

PUBLIC WATER

public water. See WATER.

PUBLIC WELFARE

public welfare. See WELFARE(1).

PUBLIC-WELFARE OFFENSE

public-welfare offense. See OFFENSE(1).

PUBLIC WHARF

public wharf. See WHARF.

PUBLIC WORKS

public works. See WORKS.

PUBLIC WORSHIP

public worship. See WORSHIP.

PUBLIC WRITING

public writing. 1. The written acts or records of a government (or its constituent units) that are not constitutionally or statutorily protected from disclosure. • Laws and judicial records, for example, are public writings. A private writing that becomes part of a public record may be a public writing in some circumstances. 2. Rare. A document prepared by a notary public in the presence of the parties who sign it before witnesses. — Also termed (in both senses) public instrument; (in sense 2) *escritura publica*.

PUBLIC WRONG

public wrong. See WRONG.

PUBLISH

publish, vb. 1. To distribute copies (of a work) to the public. 2. To communicate (defamatory words) to someone other than the person defamed. See INTENT TO PUBLISH. [Cases: Libel and Slander 23. C.J.S. Libel and Slander; Injurious Falsehood §§ 48–52.] 3. To declare (a will) to be the true expression of one's testamentary intent. [Cases: Wills 119. C.J.S. Wills §§ 278–284.] 4. To make (evidence) available to a jury during trial. See PUBLICATION.

PUC

PUC. abbr. Public Utilities Commission.

PUD

PUD. abbr. 1. PLANNED-UNIT DEVELOPMENT. 2. See municipal utility district under DISTRICT.

PUDZELD

pudzeld. See WOOD-GELD.

PUEBLO

pueblo (pweb-loh). [Spanish] A town or village, esp. in the southwestern United States.

PUER

puer (pyoo-*<<schwa>>r*), n. [Latin] Roman law. 1. A child, esp. a boy. 2. A male slave. Pl. *pueri* (pyoor-I).

PUERILITY

puerility (pyoo-*<<schwa>>*-ril-*<<schwa>>*-tee or pyuu-ril-*<<schwa>>*-tee). Civil law. A child's status between infancy and puberty.

PUERITIA

pueritia (pyoo-*<<schwa>>*-rish-ee-*<<schwa>>*), n. [Latin] Roman law. Childhood, esp. up to the age of 17, the minimum age for pleading before a magistrate. Cf. AETAS INFANTIAE PROXIMA; AETAS PUBERTATI PROXIMA.

PUFFER

puffer. See BY-BIDDER.

PUFFING

puffing. 1. The expression of an exaggerated opinion — as opposed to a factual misrepresentation — with the intent to sell a good or service. • Puffing involves expressing opinions, not asserting something as a fact. Although there is some leeway in puffing goods, a seller may not misrepresent them or say that they have attributes that they do not possess. — Also termed puffery; sales puffery; dealer's talk. [Cases: Contracts 94(7); Sales 38(3), 261(5). C.J.S. Contracts §§ 156, 162; Sales § 55.]

“ ‘Dealer's puffing,’ so long as it remains in the realm of opinion or belief, will not support a conviction of false pretenses however extravagant the statements.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 369 (3d ed. 1982).

2. Secret bidding at an auction by or on behalf of a seller; BY-BIDDING.

PUGH CLAUSE

Pugh clause. Oil & gas. A provision in an oil-and-gas lease modifying the effect of most lease-pooling clauses by severing pooled portions of the lease from unpooled portions of the lease. • Drilling or production on a pooled portion will not maintain the lease for the unpooled portions. The clause is named for Lawrence G. Pugh, an attorney from Cowley, Louisiana, who drafted the first version in 1947. In Texas it is termed a Freestone rider. See POOLING.

PUHCA

PUHCA.abbr.PUBLIC UTILITY HOLDING COMPANY ACT.

PUIS

puis (pwis or pwee). [French] Afterwards; since.

PUIS DARREIN CONTINUANCE

puis darrein continuance (pwis dar-ayn k*<<schwa>>*n-tin-yoo-*<<schwa>>*nts). [Law French “since the last continuance”] See plea puis darrein continuance under PLEA(3).

PUISNE

puisne (pyoo-nee), adj. [Law French] Junior in rank; subordinate.

PUISNE JUDGE

puisne judge. See JUDGE.

PUISNE MORTGAGE

puisne mortgage. See junior mortgage under MORTGAGE.

PULLMAN ABSTENTION

Pullman abstention. See ABSTENTION.

PULSARE

pulsare (p<<schwa>>l-sair-ee), vb. [Latin] Civil law. To accuse or charge; to proceed against at law.

PULSATOR

pulsator (p<<schwa>>l-say-t<<schwa>>r). Civil law. A plaintiff or actor.

PUMPING UNIT

pumping unit. Oil & gas. Equipment used to pump oil to the surface when the pressure difference between the formation and the borehole is not strong enough to cause oil to rise to the surface. — Also termed pumpjack; horsehead.

PUMPJACK

pumpjack. See PUMPING UNIT.

PUNCTUM TEMPORIS

punctum temporis (p<<schwa>>ngk-t<<schwa>>m tem-p<<schwa>>-ris). [Latin] A point of time; an instant.

PUNIES

punies (pyoo-neeZ). Slang. Punitive damages. See punitive damages under DAMAGES.

PUNISHABLE

punishable, adj. 1. (Of a person) subject to a punishment <there is no dispute that Jackson remains punishable for these offenses>. 2. (Of a crime or tort) giving rise to a specified punishment <a felony punishable by imprisonment for up to 20 years>. — punishability, n.

PUNISHMENT

punishment, n. 1. A sanction — such as a fine, penalty, confinement, or loss of property, right, or privilege — assessed against a person who has violated the law. See SENTENCE.

“Punishment in all its forms is a loss of rights or advantages consequent on a breach of law. When it loses this quality it degenerates into an arbitrary act of violence that can produce nothing but bad social effects.” Glanville Williams, *Criminal Law* 575 (2d ed. 1961).

“In the treatment of offenders there is a clear and unmistakable line of division between the function of the judge and that of the penologist. I should modify that: the law is clear only if it is first made clear in what sense the word ‘treatment’ is being used. For in this context the word can be used in two senses, one wide and the other narrow. Let me take the wide meaning first. The object of a sentence is to impose punishment. For ‘punishment’, a word which to many connotes nothing but retribution, the softer word ‘treatment’ is now frequently substituted; this is the wider meaning. The substitution is made, I suppose, partly as a concession to the school which holds that crime is caused by mental sickness, but more justifiably as a reminder that there are other methods of dealing with criminal tendencies besides making the consequences of crime unpleasant.” Patrick Devlin, *The Judge* 32–33 (1979).

capital punishment. See CAPITAL PUNISHMENT.

collective punishment. See COLLECTIVE PUNISHMENT.

corporal punishment. Physical punishment; punishment that is inflicted upon the body (including imprisonment). [Cases: Sentencing and Punishment 1524–1525. C.J.S. Criminal Law §§ 1593–1595, 1597–1599, 1602.]

“Past forms of corporal punishment included branding, blinding, mutilation, amputation, and the use of the pillory and the stocks. It was also an element in such violent modes of execution as drowning, stoning, burning, hanging, and drawing and quartering In most parts of Europe and in the United States, such savage penalties were replaced by imprisonment during the late eighteenth and early nineteenth centuries, although capital punishment itself remained. Physical chastisement became less frequent until, in the twentieth century, corporal punishment was either eliminated as a legal penalty or restricted to beating with a birch rod, cane, whip, or other scourge. In ordinary usage the term now refers to such penal flagellation.” Gordon Hawkins, “Corporal Punishment,” in 1 *Encyclopedia of Crime and Justice* 251, 251 (Sanford H. Kadish ed., 1983).

cruel and unusual punishment. Punishment that is torturous, degrading, inhuman, grossly disproportionate to the crime in question, or otherwise shocking to the moral sense of the community. • Cruel and unusual punishment is prohibited by the Eighth Amendment. [Cases: Sentencing and Punishment 1430–1439. C.J.S. Criminal Law §§ 1463, 1472, 1593–1594, 1596–1597, 1599, 1602.]

cumulative punishment. Punishment that increases in severity when a person is convicted of the same offense more than once.

deterrent punishment. 1. Criminal law. Punishment intended to deter the offender and others from committing crimes and to make an example of the offender so that like-minded people are warned of the consequences of crime. [Cases: Sentencing and Punishment 41.] 2. Torts. Punishment intended to deter a tortfeasor from repeating a behavior or failing to remove a hazard that led to an injury. • Punitive damages are usu. awarded as a deterrent punishment.

excessive punishment. Punishment that is not justified by the gravity of the offense or the defendant's criminal record. See excessive fine (1) under FINE (5). [Cases: Sentencing and Punishment 32. C.J.S. Criminal Law §§ 1463–1464, 1472, 1521.]

infamous punishment. Punishment by imprisonment, usu. in a penitentiary. See infamous crime under CRIME.

nonjudicial punishment. Military law. A procedure under which a commanding officer levies punishment against a minor offender who is subject to the Uniform Code of Military Justice. • In the Navy and Coast Guard, nonjudicial punishment is termed captain's mast; in the Marine Corps, it is termed office hours; and in the Army and Air Force, it is referred to as Article 15. Nonjudicial punishment is not a court-martial. [Cases: Armed Services 39; Military Justice 525. C.J.S. Armed Services §§ 155, 159; Military Justice § 24–27.]

preventive punishment. Punishment intended to prevent a repetition of wrongdoing by disabling the offender. [Cases: Sentencing and Punishment 42. C.J.S. Criminal Law §§ 1472, 1479, 1492–1495, 1530.]

reformatory punishment. Punishment intended to change the character of the offender. [Cases: Sentencing and Punishment 45. C.J.S. Criminal Law §§ 1458, 1472, 1479, 1492–1495, 1530.]

retributive punishment. Punishment intended to satisfy the community's retaliatory sense of indignation that is provoked by injustice. [Cases: Sentencing and Punishment 44.]

“The fact that it is natural to hate a criminal does not prove that retributive punishment is justified.” Glanville Williams, *The Sanctity of Life and the Criminal Law* 60 (1957).

2. Family law. A negative disciplinary action administered to a minor child by a parent.

PUNITIVE

punitive, adj. Involving or inflicting punishment. — Also termed punitory.

PUNITIVE ARTICLES

punitive articles. Articles 77–134 of the Uniform Code of Military Justice. • These articles list the crimes in the military-justice system. [Cases: Armed Services 35; Military Justice 550–789. C.J.S. Military Justice §§ 2, 31–115, 183–184, 188.]

PUNITIVE DAMAGES

punitive damages. See DAMAGES.

PUNITIVE ISOLATION

punitive isolation. See punitive segregation under SEGREGATION(1).

PUNITIVE SEGREGATION

punitive segregation. See SEGREGATION(1).

PUNITIVE STATUTE

punitive statute. See penal statute under STATUTE.

PUNITORY

punitive. See PUNITIVE.

PUNITORY DAMAGES

punitive damages. See punitive damages under DAMAGES.

PUP

PUP.abbr.PUBLIC-USE PROCEEDING.

PUPIL

pupil.Scots & civil law. A person who has not reached or completed puberty. See MINORITY(1).

PUPILLARITY

pupilarity (pyoo-pi-lair-<<schwa>>-tee).Scots & civil law. The stage of a person's life that spans infancy through puberty.

PUPILLARY SUBSTITUTION

pupillary substitution (pyoo-p<<schwa>>-ler-ee). See SUBSTITUTION(5).

PUPILLUS

pupillus (pyoo-pil-<<schwa>>s), n. [Latin] Roman law. A child under the age of puberty and under the authority of a sui juris tutor. See TUTELA.

PUR

pur (p<<schwa>>r or poor). [Law French] By; for.

PUR AUTRE VIE

pur autre vie (p<<schwa>>r oh-tr<<schwa>> [oroh-t<<schwa>>r] vee). [Law French “for another's life”] For or during a period measured by another's life <a life estate pur autre vie>. — Also spelled per autre vie.

PURCHASE

purchase,n.1. The act or an instance of buying. 2. The acquisition of real property by one's own or another's act (as by will or gift) rather than by descent or inheritance. [Cases: Vendor and Purchaser 3. C.J.S. Vendor and Purchaser § 3.] Cf. DESCENT(1). — purchase,vb.

compulsory purchase.Rare. See EMINENT DOMAIN.

PURCHASE, WORDS OF

purchase, words of. See WORDS OF PURCHASE.

PURCHASE ACCOUNTING METHOD

purchase accounting method. See ACCOUNTING METHOD.

PURCHASE AGREEMENT

purchase agreement. A sales contract. Cf. REPURCHASE AGREEMENT.

PURCHASE MONEY

purchase money. The initial payment made on property secured by a mortgage. [Cases: Mortgages 115. C.J.S. Mortgages § 151.]

PURCHASE-MONEY INTEREST

purchase-money interest. See purchase-money security interest under SECURITY INTEREST .

PURCHASE-MONEY MORTGAGE

purchase-money mortgage. See MORTGAGE.

PURCHASE-MONEY RESULTING TRUST

purchase-money resulting trust. See TRUST.

PURCHASE-MONEY SECURITY INTEREST

purchase-money security interest. See SECURITY INTEREST.

PURCHASE ORDER

purchase order. A document authorizing a seller to deliver goods with payment to be made later. [Cases: Sales 23(1). C.J.S. Sales §§ 29–31.]

PURCHASER

purchaser. 1. One who obtains property for money or other valuable consideration; a buyer.

affiliated purchaser. Securities. Any of the following: (1) a person directly or indirectly acting in concert with a distribution participant in connection with the acquisition or distribution of the securities involved; (2) an affiliate who directly or indirectly controls the purchases of those securities by a distribution participant, or whose purchases are controlled by such a participant, or whose purchases are under common control with those of such a participant; (3) an affiliate, who is a broker or a dealer (except a broker-dealer whose business consists solely of effecting transactions in “exempted securities,” as defined in the Exchange Act); (4) an affiliate (other than a broker-dealer) who regularly purchases securities through a broker-dealer, or otherwise, for its own account or for the account of others, or recommends or exercises investment discretion in the purchase or sale of securities (with certain specified exceptions). SEC Rule 10b-18(a)(2) (17 CFR § 240.10b-18(a)(2)).

bona fide purchaser. One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. • Generally, a bona fide purchaser for value is not

affected by the transferor's fraud against a third party and has a superior right to the transferred property as against the transferor's creditor to the extent of the consideration that the purchaser has paid. — Abbr. BFP. — Also termed bona fide purchaser for value; good-faith purchaser; purchaser in good faith; innocent purchaser; innocent purchaser for value. [Cases: Sales 234(1); Vendor and Purchaser 220. C.J.S. Sales §§ 232–233, 235; Vendor and Purchaser §§ 482–485, 517.]

good-faith purchaser. See bona fide purchaser.

innocent purchaser. See bona fide purchaser.

innocent purchaser for value. See bona fide purchaser.

purchaser for value. A purchaser who pays consideration for the property bought.

purchaser in good faith. See bona fide purchaser.

purchaser pendente lite. One who buys an interest in something that is the subject of a pending lawsuit.

2. One who acquires real property by means other than descent, gift, or inheritance.

first purchaser. An ancestor who first acquired an estate that still belongs to the family.

PURE ACCIDENT

pure accident. See unavoidable accident under ACCIDENT.

PURE ANNUITY

pure annuity. See nonrefund annuity under ANNUITY.

PURE-COMPARATIVE-NEGLIGENCE DOCTRINE

pure-comparative-negligence doctrine. The principle that liability for negligence is apportioned in accordance with the percentage of fault that the fact-finder assigns to each party and that a plaintiff's percentage of fault reduces the amount of recoverable damages but does not bar recovery. See comparative negligence under NEGLIGENCE; APPORTIONMENT OF LIABILITY. Cf. 50-PERCENT RULE. [Cases: Negligence 549(10).]

PURE DEBT

pure debt. See pure obligation under OBLIGATION.

PURE EASEMENT

pure easement. See easement appurtenant under EASEMENT.

PURE MARK

pure mark. See technical trademark under TRADEMARK.

PURE OBLIGATION

pure obligation. See OBLIGATION.

PURE PLEA

pure plea.See PLEA(3).

PURE RACE STATUTE

pure race statute.See RACE STATUTE.

PURE RISK

pure risk.See RISK.

PURE SPEECH

pure speech.See SPEECH.

PURE THEORY

pure theory.The philosophy of Hans Kelsen, in which he contends that a legal system must be “pure” — that is, self-supporting and not dependent on extralegal values. • Kelsen's theory, set out in such works as *General Theory of Law and the State* (1945) and *The Pure Theory of Law* (1934), maintains that laws are norms handed down by the state. Laws are not defined in terms of history, ethics, sociology, or other external factors. Rather, a legal system is an interconnected system of norms, in which coercive techniques are used to secure compliance. The validity of each law, or legal norm, is traced to another legal norm. Ultimately, all laws must find their validity in the society's basic norm (*grundnorm*), which may be as simple as the concept that the constitution was validly enacted. See basic norm under NORM.

PURE TRADEMARK

pure trademark.See technical trademark under TRADEMARK.

PURE VILLEINAGE

pure villeinage.See VILLEINAGE.

PURGATION

purgation (p<<schwa>>r-gay-sh<<schwa>>n).Hist. The act of cleansing or exonerating oneself of a crime or accusation by an oath or ordeal.

canonical purgation.Purgation by oath-helpers in an ecclesiastical court. See COMPURGATION.

vulgar purgation.Purgation by fire, hot irons, battle, or cold water; purgation by means other than by oath-helpers. • Vulgar purgation was so called because it was not sanctioned by the church after 1215.

PURGATORY OATH

purgatory oath.See OATH.

PURGE

purge,vb. To exonerate (oneself or another) of guilt <the judge purged the defendant of contempt>. [Cases: Contempt 81. C.J.S. Contempt §§ 121–122.]

PURPART

purpart (p<<schwa>>r-pahrt). A share of an estate formerly held in common; a part in a division; an allotment from an estate to a coparcener. — Formerly also termed purparty; perparts; pourparty.

PURPARTY

purparty (p<<schwa>>r-pahr-tee). See PURPART.

PURPORT

purport (p<<schwa>>r-port), n. The idea or meaning that is conveyed or expressed, esp. by a formal document.

purport (p<<schwa>>r-port), vb. To profess or claim, esp. falsely; to seem to be <the document purports to be a will, but it is neither signed nor dated>.

PURPORTED

purported,adj. Reputed; rumored.

PURPOSE

purpose. An objective, goal, or end; specif., the business activity that a corporation is chartered to engage in. [Cases: Corporations 14.C.J.S. Corporations §§ 28–29.]

PURPOSE APPROACH

purpose approach.See MISCHIEF RULE.

PURPOSE CLAUSE

purpose clause.An introductory clause to a statute explaining its background and stating the reasons for its enactment. [Cases: Statutes 210.]

PURPOSEFUL

purposeful,adj. Done with a specific purpose in mind; DELIBERATE.

PURPOSIVE CONSTRUCTION

purposive construction.See CONSTRUCTION.

PURPRESTURE

purpresture (p<<schwa>>r-pres-ch<<schwa>>r). An encroachment upon public rights and easements by appropriation to private use of that which belongs to the public. — Also spelled pourpresture.

PURPRISE

purprise (p<<schwa>>r-prIz), vb.[Law French] Hist. To encroach on land illegally; to make a purpresture.

PURSE

purse,n. A sum of money available to the winner of a contest or event; a prize. [Cases: Gaming 7. C.J.S. Trading Stamps and Coupons §§ 4–5.]

PURSER

purser. A person in charge of accounts and documents on a ship. [Cases: Shipping 74. C.J.S. Shipping § 174.]

PURSUANT TO

pursuant to. 1. In compliance with; in accordance with; under <she filed the motion pursuant to the court's order>.2. As authorized by; under <pursuant to Rule 56, the plaintiff moves for summary judgment>.3. In carrying out < pursuant to his responsibilities, he ensured that all lights had been turned out>.

PURSUER

pursuer.Civil & Scots law. A plaintiff.

PURSUIT

pursuit. 1. An occupation or pastime. 2. The act of chasing to overtake or apprehend. See FRESH PURSUIT.

PURSUIT OF HAPPINESS

pursuit of happiness.The principle — announced in the Declaration of Independence — that a person should be allowed to pursue the person's desires (esp. in regard to an occupation) without unjustified interference by the government. [Cases: Constitutional Law 86. C.J.S. Constitutional Law § 505.]

PUR TANT QUE

pur tant que (p<<schwa>>r tant kyooor poor tahn k<<schwa>>). [Law French] Forasmuch as; because; for the purpose of.

PURUS IDIOTA

purus idiota (pyoor-<<schwa>>s id-ee-oh-t<<schwa>>). [Latin] An absolute or congenital idiot. See IDIOT.

PURVIEW

purview (p<<schwa>>r-vyoo).1. Scope; area of application. 2. The body of a statute following the preamble.

“The word ‘purview’ appears sometimes to be confined to so much of the body of the statute

as would be left by omitting the exceptions, provisos, and savings clauses; and as the word is ambiguous, and not very useful at best, a wise course may be not to use it at all.” William M. Lile et al., *Brief Making and the Use of Law Books* 336 (3d ed. 1914).

PUSHER

pusher. A person who sells illicit drugs. [Cases: Controlled Substances 32.]

PUSHMAN DOCTRINE

Pushman doctrine. Archaic. The rule that transfer of an unpublished work transfers the common-law copyright to the work along with the work itself. • The name derives from *Pushman v. New York Graphic Soc'y, Inc.*, 39 N.E.2d 249 (N.Y. 1942). The doctrine was rejected by § 202 of the Copyright Act of 1976, but it remains in effect for transfers completed before the provision's effective date of January 1, 1978.

“[A]n outright sale of a material object, such as a book, canvas, or master tape of a musical work, does not transfer copyright. One possible exception to this rule is the Pushman doctrine under which an author or artist who has sold an unpublished work of art or a manuscript is presumed to have transferred his common law copyright, unless the copyright has been specifically reserved.” Marshall A. Leaffer, *Understanding Copyright Law* 211 (3d ed. 1999).

PUT

put, n. See put option under **OPTION**.

PUTATIVE

putative (pyoo-t<<schwa>>-tiv), adj. Reputed; believed; supposed.

PUTATIVE FATHER

putative father. See **FATHER**.

PUTATIVE-FATHER REGISTRY

putative-father registry. Family law. An official roster in which an unwed father may claim possible paternity of a child for purposes of receiving notice of a prospective adoption of the child.

PUTATIVE FATHERS ACT

Putative Fathers Act. See **UNIFORM PUTATIVE AND UNKNOWN FATHERS ACT**.

PUTATIVE MARRIAGE

putative marriage. See **MARRIAGE(1)**.

PUTATIVE MATRIMONY

putative matrimony. See putative marriage under **MARRIAGE(1)**.

PUTATIVE SPOUSE

putative spouse. See SPOUSE.

PUTATIVE-SPOUSE DOCTRINE

putative-spouse doctrine. See putative marriage under MARRIAGE(1).

PUT BOND

put bond. See BOND(3).

PUT IN

put in, vb. To place in due form before a court; to place among the records of a court.

PUT ON NOTICE

put on notice. See CHARGED WITH NOTICE.

PUT OPTION

put option. See OPTION.

PUT OUT

put out. See EVICT(1).

PUT PRICE

put price. See strike price under PRICE.

PUTTABLE

puttable (puut-*<<schwa>>*-b*<<schwa>>*l), adj. (Of a security) capable of being required by the holder to be redeemed by the issuing company.

PUT THE QUESTION

put the question. (Of the chair) to formally state a question in its final form for the purpose of taking a vote. Cf. STATE THE QUESTION.

PUTTING IN FEAR

putting in fear. The threatening of another person with violence to compel the person to hand over property. • These words are part of the common-law definition of robbery. [Cases: Robbery 7. C.J.S. Robbery §§ 13–23, 90.]

PUTTING TO THE HORN

putting to the horn. Scots law. See HORNING.

PUT TO THE HORN

put to the horn. Scots law. To declare (a person) an outlaw. — Also termed be at the horn.

PVA

PVA.abbr.PUBLIC VESSELS ACT.

PVPA

PVPA.abbr. PLANT VARIETY PROTECTION ACT.

PWBA

PWBA.abbr. PENSION AND WELFARE BENEFITS ADMINISTRATION.

PYRAMID DISTRIBUTION PLAN

pyramid distribution plan.See PYRAMID SCHEME.

PYRAMIDING

pyramiding. A speculative method used to finance a large purchase of stock or a controlling interest by pledging an investment's unrealized profit. See LEVERAGE; MARGIN.

PYRAMIDING INFERENCES, RULE AGAINST

pyramiding inferences, rule against.Evidence. A rule prohibiting a fact-finder from piling one inference on another to arrive at a conclusion. • Today this rule is followed in only a few jurisdictions. Cf. REASONABLE-INFERERENCE RULE. [Cases: Criminal Law 306; Evidence 54. C.J.S. Evidence §§ 130, 132–133, 1341.]

PYRAMID SCHEME

pyramid scheme.A property-distribution scheme in which a participant pays for the chance to receive compensation for introducing new persons to the scheme, as well as for when those new persons themselves introduce participants. • Pyramid schemes are illegal in most states. — Also termed endless-chain scheme; chain-referral scheme; multilevel-distribution program; pyramid distribution plan. Cf. PONZI SCHEME. [Cases: Consumer Protection 12. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 56–58.]