

E

E. As an abbreviation, this letter may stand for "Exchequer," "English," "Edward," "Equity," "East," "Eastern," "Easter," or "Ecclesiastical." A Latin preposition, meaning from, out of, after, or according. It occurs in many Latin phrases; but (in this form) only before a consonant.

E. E. O. C. Equal Employment Opportunity Commission.

E. G. An abbreviation of *exempli gratia*. For the sake of an example.

E. O. E. Errors and omissions excepted. *Vernon Metal & Produce Co. v. Joseph Joseph & Bros. Co.*, 212 App.Div. 358, 209 N.Y.S. 6, 11.

E CONTRA. From the opposite; on the contrary.

E CONVERSO. Conversely. On the other hand; on the contrary. Equivalent to *e contra*.

E MERA GRATIA. Out of mere grace or favor.

E PILIANA. Hawaiian. Adjoining.

E PLURIBUS UNUM. One out of many. The motto of the United States of America.

EA. Sax. The water or river; also the mouth of a river on the shore between high and low water-mark.

EA EST ACCIPIENDA INTERPRETATIO, QUÆ VITIO CARET. That interpretation is to be received [or adopted] which is free from fault [or wrong.] The law will not intend a wrong. *Bac. Max.* 17, (in reg. 3.)

EA INTENTIONE. With that intent. Held not to make a condition, but a confidence and trust. *Dyer*, 138*b*.

EA QUÆ, COMMENDANDI CAUSA, IN VENDITIONIBUS DICUNTUR, SI PALAM APPARENT, VENDITOREM NON OBLIGANT. Those things which are said on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. *Dig.* 18, 1, 43, *pr*.

EA QUÆ DARI IMPOSSIBILIA SUNT, VEL QUÆ IN RERUM NATURA NON SUNT, PRO NON ADJECTIS HABENTUR. Those things which are impossible to be given, or which are not in the nature of things, are regarded as not added, [as no part of an agreement.] *Dig.* 50, 17, 135.

EA QUÆ IN CURIA NOSTRA RITE ACTA SUNT DEBITÆ EXECUTIONI DEMANDARI DEBENT. *Co.Litt.* 289. Those things which are properly transacted in our court ought to be committed to a due execution.

EA QUÆ RARO ACCIDUNT NON TEMERE IN AGENDIS NEGOTIIS COMPUTANTUR. Those things which rarely happen are not to be taken into account in the transaction of business without sufficient reason. *Dig.* 50, 17, 64.

EACH. A distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned; every one of two or more persons or things, composing the whole, separately considered. The effect of this word, used in the covenants of a bond, is to create a several obligation. *Seiler v. State*, 160 Ind. 605, 67 N.E. 448; *Knickerbocker v. People*, 102 Ill. 233; *Costigan v. Lunt*, 104 Mass. 219; *State v. Monfred*, 183 Md. 303, 37 A.2d 912, 914. The word "any" is equivalent to "each." *Conerty v. Richtsteig*, 308 Ill.App. 321, 31 N.E.2d 351.

EADEM CAUSA DIVERSIS RATIONIBUS COMMUNICIBUS ECCLESIASTICIS ET SECULARIBUS VENTILATUR. 2 Inst. 622. The same cause is argued upon different principles before ecclesiastical and secular judges.

EADEM EST RATIO, EADEM EST LEX. The same reason, the same law. *Charles River Bridge v. Warren Bridge*, 7 Pick. (Mass.) 493.

EADEM MENS PRÆSUMITUR REGIS QUÆ EST JURIS ET QUÆ ESSE DEBET, PRÆSERTIM IN DUBIIS. *Hob.* 154. The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.

EAGLE. A gold coin of the United States of the value of ten dollars.

EALDER, or EALDING. In old Saxon law. An elder or chief.

EALDERMAN, or EALDORMAN. The name of a Saxon magistrate; alderman; analogous to *earl* among the Danes, and *senator* among the Romans. See *Alderman*.

The name of *Ealdorman* is one of a large class; among a primitive people age implies command and command implies age; hence, in a somewhat later stage of language, the elders are simply the rulers. 1 *Freeman*, *Norman Conquest*, 51, quoted in *Cent.Dict*.

EALDOR-BISCOP. An archbishop.

EALDORBURG. Sax. The metropolis; the chief city. Obsolete.

EALEHUS. (Fr. *eale*, Sax., *ale*, and *hus*, house.) An ale-house.

EALHORDA. Sax. The privilege of assising and selling beer. Obsolete.

EAR GRASS. In English law. Such grass which is upon the land after the mowing, until the feast of the Annunciation after. 3 *Leon.* 213.

EAR-MARK. A mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear; a mode of marking sheep and other animals.

EAR

Property is said to be *ear-marked* when it can be identified or distinguished from other property of the same nature.

Money has no ear-mark, but it is an ordinary term for a privy mark made by any one on a coin.

EAR-MARK RULE. Rule that through the process of commingling money or deposit with the funds of a bank it loses its identity, with the resultant effect of defeating the right of preference over general creditors. *Hitt Fireworks Co. v. Scandinavian American Bank of Tacoma*, 121 Wash. 261, 209 P. 680, 682.

EAR-WITNESS. In the law of evidence. One who attests or can attest anything as heard by himself.

EARL. A title of nobility, formerly the highest in England, now the third, ranking between a marquis and a viscount, and corresponding with the French "*comte*" and the German "*graf*." The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made this title hereditary, giving it in fee to his nobles; and allotting them for the support of their state the third penny out of the sheriff's court, issuing out of all pleas of the shire, whence they had their ancient title "shiremen." At present the title is accompanied by no territory, private or judicial rights, but merely confers nobility and an hereditary seat in the house of lords. Wharton.

EARL MARSHAL OF ENGLAND. A great officer of state who had anciently several courts under his jurisdiction, as the court of chivalry and the court of honor. Under him is the herald's office, or college of arms. He was also a judge of the Marshalsea court, now abolished. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards. 3 Bl.Comm. 68, 103; 3 Steph.Comm. 335, note.

EARLDOM. The dignity or jurisdiction of an earl. The dignity only remains now, as the jurisdiction has been given over to the sheriff. 1 Bl.Comm. 339.

EARLES-PENNY, or EARL'S PENNY. Money given in part payment. See Earnest; Arles.

EARLIER MATURITY RULE. The rule under which bonds first maturing are entitled to priority when sale of security is not sufficient to satisfy all obligations. *Scherk v. Newton*, C.C.A.Colo., 152 F.2d 747, 749.

EARN. To acquire by labor, service or performance. *Hartford Electric Light Co. v. McLaughlin*, 37 A.2d 361, 363, 131 Conn. 1.

EARNED INCOME. Implies some labor, management or supervision in production thereof, not income derived merely from ownership of property. *Pennsylvania Co. for Insurances on Lives & Granting Annuities v. City of Philadelphia*, 346 Pa. 406, 31 A.2d 137, 141.

EARNER. One whose personal efforts produces income, or who owns property which produces it, or combination of both. *Van Meter v. Commissioner of Internal Revenue*, C.C.A., 61 F.2d 817, 818; *Wells v. Commissioner of Internal Revenue*, C.C.A., 63 F.2d 425, 430.

EARNEST. The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract. *Weidner v. Hyland*, 216 Wis. 12, 255 N.W. 134.

A token or pledge passing between the parties, by way of evidence, or ratification of the sale. 2 Kent, Comm. 495, note.

EARNING CAPACITY. "Earning capacity" does not necessarily mean the actual earnings that one who suffers an injury was making at the time the injuries were sustained, but refers to that which, by virtue of the training, the experience, and the business acumen possessed, an individual is capable of earning. *Texas Electric Ry. v. Worthy*, Tex.Civ.App., 250 S.W. 710, 711. Not saving ability, but capacity to acquire money, less the necessary expense of his own living. *Pitman v. Merriam*, 80 N.H. 295, 117 A. 18, 19, 26 A.L.R. 589. Fitness, readiness and willingness to work, considered in connection with opportunity to work. *Hartford Accident & Indemnity Co. v. Hoage*, 85 F.2d 411, 416, 66 App.D.C. 154.

EARNING POWER. Power of an individual to create property. Reward for labor performed. *Ransom v. Matson Nav. Co.*, D.C.Wash., 1 F.Supp. 244, 246. Not synonymous with wages. *Micek v. Omaha Steel Works*, 136 Neb. 843, 287 N.W. 645, 648.

EARNINGS. That which is earned; money earned; the price of services performed; reward; the reward of labor or the price of personal service performed, the reward for personal services, whether in money or chattels, the fruit or reward of labor; the fruits of the proper skill, experience, and industry; the gains of a person derived from his services or labor without the aid of capital; money or property gained or merited by labor, service, or the performance of something; that which is gained or merited by labor, services, or performances. *Saltzman v. City of Council Bluffs*, 214 Iowa 1033, 243 N.W. 161, 162. "Income" is synonymous with "earnings." *State ex rel. Froedtert Grain and Malting Co. v. Tax Commission of Wisconsin*, 221 Wis. 225, 265 N.W. 672, 673, 104 A.L.R. 1478.

This term is used to denote a larger class of credits than would be included in the term "wages." *Somers v. Keliher*, 115 Mass. 165; *Jenks v. Dyer*, 102 Mass. 235.

The gains of the person derived from his services or labor without the aid of capital. *Brown v. Hebard*, 20 Wis. 330, 91 Am.Dec. 408; *United Benefit Life Ins. Co. of Omaha v. Zwan*, Tex.Civ.App., 143 S.W.2d 977, 980. Either gross or net earnings. *Springfield Coal Mining Co. v. Industrial Commission*, 291 Ill. 408, 126 N.E. 133, 22 A.L.R. 859.

Gross Earnings and Net Earnings

The gross earnings of a business or company are the total receipts before deducting expenditures. Net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, and aside from and exclusive of capital laid out in constructing and equipping the works or plant. *State v. Railroad Co.*, 30 Minn. 311, 15 N.W. 307. "Gross earnings" means all receipts from the employment of capital, without deduction for expenses incurred. *People ex rel. Genesee Light & Power Co. v. Saxe*, 165 N.Y.S. 938, 939, 179 App.Div. 486.

Net Earnings Rule

The net earnings rule for assessing a special franchise for taxation starts with the gross earnings for the year ending with the commencement of the year for which the valuation is made from which is deducted operating expenses and a fair and reasonable return on that portion of the corporation's capital invested in tangible property, the balance being deemed to give the net earnings attributable to the special franchise, the value of which is then found by capitalizing such balance at a rate 1 per cent. higher than that found as a matter of fact to be a fair and reasonable return on the tangible property. *People ex rel. Third Ave. R. Co. v. State Board of Tax Com'rs*, 142 N.Y.S. 986, 997, 157 App.Div. 731.

Surplus Earnings

Amount owned by company over and above its capital and actual liabilities. *People v. Com'rs of Taxes*, 76 N.Y. 74.

EARNINGS OF PROSTITUTE. Income derived from practice of prostitution. *State v. Crane*, 88 Wash. 210, 152 P. 989.

EARTH. Soil of all kinds, including gravel, clay, loam, and the like, in distinction from the firm rock. *Dickinson v. Poughkeepsie*, 75 N.Y. 76; *Davis v. Commissioners of Sewerage of City of Louisville*, D.C.Ky., 13 F.Supp. 672, 680.

EASE. Comfort, consolation, contentment, enjoyment, happiness, pleasure, satisfaction. *National Surety Co. v. Jarrett*, 95 W.Va. 420, 121 S.E. 291, 295.

EASEMENT. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner. *Hollomon v. Board of Education of Stewart County*, 168 Ga. 359, 147 S.E. 882, 884; *Frye v. Sebbitt*, 145 Neb. 600, 17 N.W.2d 617, 621.

A privilege which the owner of one adjacent tenement hath of another, existing in respect of their several tenements, by which that owner against whose tenement the privilege exists is obliged to suffer or not to do something on or in regard to his own land for the advantage of him in whose land the privilege exists. *Termes de la Ley, Easements.*

A privilege, service, or convenience which one neighbor has of another, by prescription, grant, or necessary implication, and without profit; as a way over his land, a gate-way, water-course, and the like. *Kitch. 105*; 3 *Cruise, Dig. 484*. And see *Harrison v. Boring*, 44 Tex. 267.

A liberty, privilege, or advantage without profit, which the owner of one parcel of land may have in the lands of another. *Magnolia Petroleum Co. v. Caswell, Tex.*, 1 S.W.2d 597, 600; *Hasselbring v. Koepke*, 263 Mich. 466, 248 N.W. 869, 873, 93 A.L.R. 1170.

The land against which the easement or privilege exists is called the "servient" tenement, and the estate to which it is annexed the "dominant" tenement; and their owners are called respectively the "servient" and "dominant" owner. These terms are taken from the civil law. *Saratoga State Waters Corporation v. Pratt*, 227 N.Y. 429, 125 N.E. 834, 838; *Joachim v. Belfus*, 108 N.J.Eq. 622, 156 A. 121, 122; *Brasengton v. Williams*, 143 S.C. 223, 141 S.E. 375, 382.

Distinguished from "servitude", *Stephenson v. St. Louis Southwestern Ry. Co. of Texas, Tex.Civ.App.*, 181 S.W. 568, 572; "profit à prendre", *Richfield Oil Co. of California v. Hercules Gasoline Co.*, 112 Cal.App. 437, 297 P. 73, 75; "covenant", *Lingle Water Users' Ass'n v. Occidental Building & Loan Ass'n*, 43 Wyo. 41, 297 P. 385, 387; "franchise", *City of Fort Worth v. Southwestern Bell Telephone Co.*, C.C.A.Tex., 80 F.2d 972, 974; "restriction", *Kutschinski v. Thompson*, 101 N.J.Eq. 649, 138 A. 569, 573; *Stanolind Pipe Line Co. v. Ellis*, 142 Kan. 102, 45 P.2d 846, 848; *Morrison v. Feilman*, 271 N.Y.S. 436, 150 Misc. 772; "prescription", *Black v. Whitacre*, 206 Iowa 1084, 221 N.W. 825.

Affirmative Easement

One where the servient estate must permit something to be done thereon, as to pass over it, or to discharge water on it. *Miller v. Babb, Tex. Com.App.*, 263 S.W. 253, 254.

Apparent Easement

One the existence of which appears from the construction or condition of one of the tenements, so as to be capable of being seen or known on inspection. *Miller v. Skaggs*, 79 W.Va. 645, 91 S.E. 536, 537, Ann.Cas.1918D, 929.

Appurtenant Easement

An "incorporeal right" which is attached to and belongs with some greater and superior right or something annexed to another thing more worthy and which passes as incident to it and is incapable of existence separate and apart from the particular land to which it is annexed. *Union Falls Power Co. v. Marinette County*, 238 Wis. 134, 298 N.W. 598, 600, 601, 134 A.L.R. 958. One which is attached to and passes with the dominant tenement as an appurtenance thereof. *Cadwalader v. Bailey*, 17 R.I. 495, 23 A. 20, 14 L.R.A. 300; *Waller v. Hildebrecht*, 295 Ill. 116, 128 N.E. 807, 809. *Safety Building & Loan v. Lyles*, 131 S.C. 540, 128 S.E. 724, 725.

Continuing Easement

One that is self-perpetuating, independent of human intervention, as, the flow of a stream, or one which may be enjoyed without any act on the part of the person entitled thereto, such as a spout which discharges the water whenever it rains, a

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drain by which surface water is carried off, windows which admit light and air, and the like. *Starrett v. Baudler*, 181 Iowa, 965, 165 N.W. 216, 219, L.R.A.1918B, 528. Also, it is sometimes termed an "apparent" easement, and defined as one depending on some artificial structure upon, or natural conformation of, the servient tenement, obvious and permanent, which constitutes the easement or is the means of enjoying it. *Feters v. Humphreys*, 18 N.J.Eq. 260; *Larsen v. Peterson*, 53 N.J.Eq. 88, 30 A. 1094. See, also, *Apparent Easement*.

Discontinuing Easement

Discontinuous, non-continuous, or non-apparent easements are those the enjoyment of which can be had only by the interference of man, as, a right of way or a right to draw water. *Outerbridge v. Phelps*, 45 N.Y.Super.Ct. 570.

Easement by Prescription

A mode of acquiring title to property by immemorial or long-continued enjoyment, and refers to personal usage restricted to claimant and his ancestors or grantors. *J. C. Vereen & Sons, Inc. v. Houser*, 123 Fla. 641, 167 So. 45.

Easement in Gross

Easement in gross is not appurtenant to any estate in land (or not belonging to any person by virtue of his ownership of an estate in land) but a mere personal interest in, or right to use, the land of another. *Weigold v. Bates*, 258 N.Y.S. 695, 144 Misc. 395; *Joachim v. Belfus*, 108 N.J.Eq. 622, 156 A. 121, 122.

Easement of Access

Right of ingress and egress to and from the premises of a lot owner to a street appurtenant to the land of the lot owner. *Lang v. Smith*, 113 Pa. Super. 559, 173 A. 682, 683.

Easement of Convenience

One which increases the facility, comfort, or convenience of the enjoyment of the dominant estate, or of some right connected with it.

Easement of Necessity

One in which the easement is indispensable to the enjoyment of the dominant estate. *Richards v. Trezvant*, 185 S.C. 489, 194 S.E. 326, 329.

Equitable Easements

The special easements created by derivation of ownership of adjacent proprietors from a common source, with specific intentions as to buildings for certain purposes, or with implied privileges in regard to certain uses, are sometimes so called. A name frequently applied to building restrictions in a deed. *Werner v. Graham*, 181 Cal. 174, 183 P. 945, 947.

Implied Easement

An easement resting upon the principle that, where the owner of two or more adjacent lots sells

a part thereof, he grants by implication to the grantee all those apparent and visible easements which are necessary for the reasonable use of the property granted, which at the time of the grant are used by the owner of the entirety for the benefit of the part granted. *Farley v. Howard*, 68 N. Y.S. 159, 33 Misc. 57.

Intermittent Easement

One which is usable or used only at times, and not continuously. *Eaton v. Railroad Co.*, 51 N.H. 504, 12 Am.Rep. 147.

Negative Easement

Those where the owner of the servient estate is prohibited from doing something otherwise lawful upon his estate, because it will affect the dominant estate, (as interrupting the light and air from the latter by building on the former.) *South Buffalo Stores v. W. T. Grant Co.*, 274 N.Y.S. 549, 153 Misc. 76; *Pierce v. Keator*, 70 N.Y. 447, 26 Am. Rep. 612; *Miller v. Babb*, Tex.Com.App., 263 S.W. 253, 254. As to "reciprocal negative easement," see that title, *infra*.

Private or Public Easements

A private easement is one in which the enjoyment is restricted to one or a few individuals, while a public easement is one the right to the enjoyment of which is vested in the public generally or in an entire community; such as an easement of passage on the public streets and highways or of navigation on a stream. *Kennelly v. Jersey City*, 57 N.J.Law, 293, 30 A. 531, 26 L.R.A. 281.

Quasi Easement

An "easement," in the proper sense of the word, can only exist in respect of two adjoining pieces of land occupied by different persons, and can only impose a negative duty on the owner of the servient tenement. Hence an obligation on the owner of land to repair the fence between his and his neighbor's land is not a true easement, but is sometimes called a "quasi easement." *Gale*, *Easem.* 516; *Sweet*.

Reciprocal Negative Easement

If the owner of two or more lots, so situated as to bear the relation, sells one with restrictions of benefit to the land retained, the servitude becomes mutual, and, during the period of restraint, the owner of the lot or lots retained can do nothing forbidden to the owner of the lot sold; this being known as the doctrine of "reciprocal negative easement." *Sanborn v. McLean*, 233 Mich. 227, 206 N.W. 496, 497.

Secondary Easement

One which is appurtenant to the primary or actual easement; every easement includes such "secondary easements," that is, the right to do such things as are necessary for the full enjoyment of the easement itself. *Toothe v. Bryce*, 50 N.J.Eq. 589, 25 A. 182.

EAST. In the absence of other words qualifying its meaning, the word "east" describing boundaries means due east. *Anaheim Sugar Co. v. Orange County*, 181 Cal. 212, 183 P. 809, 813; *Livingston Oil & Gas Co. v. Shasta Oil Co.*, Tex.Civ.App., 114 S.W.2d 378, 381. See, also, *Easterly*.

In the customs laws of the United States, the words "countries east of the Cape of Good Hope" mean countries with which, formerly, the United States ordinarily carried on commercial intercourse by passing around that cape. *Powers v. Conley*, 101 U.S. 790, 25 L.Ed. 805.

EAST GREENWICH. The name of a royal manor in the county of Kent, England; mentioned in royal grants or patents, as descriptive of the tenure of free socage.

EAST INDIA COMPANY. Originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political affairs had become of more importance than their commerce. In 1858, by 21 & 22 Vict. c. 106, the government of the territories of the company was transferred to the crown. Wharton.

EASTER. A feast of the Christian church held in memory of the Saviour's resurrection. The Greeks and Latins call it "pascha," (passover,) to which Jewish feast our Easter answers. This feast has been annually celebrated since the time of the apostles, and is one of the most important festivals in the Christian calendar, being that which regulates and determines the times of all the other movable feasts. Enc. Lond.

EASTER-OFFERINGS, or EASTER-DUES. In English law. Small sums of money paid to the parochial clergy by the parishioners at Easter as a compensation for personal tithes, or the title for personal labor; recoverable under 7 & 8 Wm. III. c. 6, before justices of the peace.

EASTER TERM. In English law. Formerly one of the four movable terms of the courts, but afterwards a fixed term, beginning on the 15th of April and ending on the 8th of May in every year, though sometimes prolonged so late as the 13th of May, under St. 11 Geo. IV. and 1 Wm. IV. c. 70. From November 2, 1875, the division of the legal year into terms is abolished so far as concerns the administration of justice. 3 Steph.Comm. 482-486; Mozley & Whiteley.

EASTERLING. A coin struck by Richard II. which is supposed by some to have given rise to the name of "sterling," as applied to English money.

EASTERLY. This word, when used alone, will be construed to mean "due east." But that is a rule of necessity growing out of the indefiniteness of the term, and has no application where other words are used for the purpose of qualifying its meaning. Where such is the case, it means precisely what the qualifying word makes it

mean. *Walker v. City of Los Angeles*, 23 Cal.App. 634, 139 P. 89, 90. See *East*.

EASTINUS. An easterly coast or country.

EASTMAN FORMULA. In determining fixed charges under railroad reorganization plan, the "Eastman Formula" is that such charges should not exceed 80 per cent. of the net available for interest in the three worst years of the last ten. In re *Denver & R. G. W. R. Co.*, D.C.Colo., 38 F. Supp. 106, 110.

EAT INDE SINE DIE. In criminal practice. Words used on the acquittal of a defendant, or when a prisoner is to be discharged, *that he may go thence without a day, i. e.*, be dismissed without any further continuance or adjournment. Dane, Abr. Index.

EATING-HOUSE. Any place where food or refreshments of any kind, not including spirits, wines, ale, beer, or other malt liquors, are provided for casual visitors, and sold for consumption therein. Act Cong. July 13, 1866, § 9 (14 St. at Large, 118). And see *Carpenter v. Taylor*, 1 Hilt. (N.Y.) 195; *State v. Hall*, 73 N.C. 253. A place where the public may go and be served with meals. *Babb v. Elsinger*, Sup., 147 N.Y.S. 98, 99.

EAVES. The edge of a roof, built so as to project over the walls of a house, in order that the rain may drop therefrom to the ground instead of running down the wall. *Center St. Church v. Machias Hotel Co.*, 51 Me. 413.

EAVES-DRIP. The drip or dropping of water from the eaves of a house on the land of an adjacent owner; the easement of having the water so drip, or the servitude of submitting to such drip; the same as the *stillicidium* of the Roman law. See *Stillicidium*.

EAVESDROPPING. In English criminal law. The offense of listening under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. 4 Bl.Comm. 168. It is a misdemeanor at common law, indictable at sessions, and punishable by fine and finding sureties for good behavior. Id.; Steph.Crim.Law, 109. *Selden v. State*, 74 Wis. 271, 42 N.W. 218, 17 Am.St. Rep. 144.

EBB AND FLOW. An expression used formerly in this country to denote the limits of admiralty jurisdiction. See *United States v. Aborn*, 3 Mason, 127, Fed.Cas.No.14,418.

EBBA. In old English law. Ebb. *Ebba et fluctus*; ebb and flow of tide; ebb and flood. Bract. fols. 255, 338. The time occupied by one ebb and flood was anciently granted to persons essoined as being beyond sea, in addition to the period of forty days. See *Fleta*, lib. 6, c. 8, § 2.

EBDOMADARIUS. In ecclesiastical law. An officer in cathedral churches who supervised the

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regular performance of divine service, and prescribed the particular duties of each person in the choir.

EBEREMORTH, EBEREMORS, EBEREMURDER. See Aberemurder.

EBRIETY. In criminal law and medical jurisprudence. Drunkenness; alcoholic intoxication. *Com. v. Whitney*, 11 Cush. (Mass.) 479.

ECCE MODO MIRUM, QUOD FÆMINA FERT BREVE REGIS, NON NOMINANDO VIRUM, CONJUNCTUM ROBORE LEGIS. *Co.Litt.* 132b. Behold, indeed, a wonder! that a woman has the king's writ without naming her husband, who by law is united to her.

ECCENTRICITY. In criminal law and medical jurisprudence. Personal or individual peculiarities of mind and disposition which markedly distinguish the subject from the ordinary, normal, or average types of men, but do not amount to mental unsoundness or insanity. *Ekin v. McCracken*, 11 Phila. (Pa.) 535.

ECCHYMOSES. In medical jurisprudence. Localized discoloration in and under the skin; a livid or black and blue spot; blackness. An extravasation of blood by rupture of capillary vessels, and hence it follows contusion; but it may exist, as in cases of scurvy, asphyxiation, and other morbid conditions, without the latter. *Ryan Med.Jur.* 172. Ecchymoses produced by blows upon a body but a few hours dead cannot be distinguished from those produced during life. 1 *Witth. & Beck.Med.Jur.* 485; 2 *Beck, Med.Jur.* 22. It is generally attended by swelling. *People v. Mummert*, 50 N.Y.S.2d 699, 703, 183 Misc. 243.

ECCLESIA. Lat. An assembly. A Christian assembly; a church. A place of religious worship. In the law, generally, the word is used to denote a place of religious worship, and sometimes a parsonage. *Spelman*.

ECCLESIA ECCLESIAE DECIMAS SOLVERE NON DEBET. *Cro.Eliz.* 479. A church ought not to pay tithes to a church.

ECCLESIA EST DOMUS MANSIONALIS OMNIPOTENTIS DEI. 2 *Inst.* 164. The church is the mansionhouse of the Omnipotent God.

ECCLESIA EST INFRA ÆTATEM ET IN CUSTODIA DOMINI REGIS, QUI TENETUR JURA ET HÆREDITATES EJUSDEM MANU TENERE ET DEFENDERE. 11 *Coke*, 49. The church is under age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.

ECCLESIA FUNGITUR VICE MINORIS; MELIOREM CONDITIONEM SUAM FACERE POTEST, DETERIOREM NEQUAQUM. *Co.Litt.* 341. The church enjoys the privilege of a minor; it can make its own condition better, but not worse.

ECCLESIA NON MORITUR. 2 *Inst.* 3. The church does not die.

ECCLESIAE MAGIS FAVENDUM EST QUAM PERSONÆ. *Godol. Ecc. Law*, 172. The church is to be more favored than the parson (or an individual).

ECCLESIAE SCULPTURA. The image or sculpture of a church in ancient times was often cut out or cast in plate or other metal, and preserved as a religious treasure or relic, and to perpetuate the memory of some famous churches. *Jacob*.

ECCLESIARCH. The ruler of a church.

ECCLESIASTIC. A clergyman; a priest; a man consecrated to the service of the church; as, a bishop, a priest, a deacon.

ECCLESIASTICAL. Pertaining to anything belonging to or set apart for the church, as distinguished from "civil" or "secular," with regard to the world. *Wharton*.

ECCLESIASTICAL AUTHORITIES. In England, the clergy, under the sovereign, as temporal head of the church, set apart from the rest of the people or laity, in order to superintend the public worship of God and the other ceremonies of religion, and to administer spiritual counsel and instruction. The several orders of the clergy are: (1) Archbishops and bishops; (2) deans and chapters; (3) archdeacons; (4) rural deans; (5) parsons (under whom are included appropriators) and vicars; (6) curates. Church-wardens or sidesmen, and parish clerks and sextons, inasmuch as their duties are connected with the church, may be considered to be a species of ecclesiastical authorities. *Wharton*.

ECCLESIASTICAL COMMISSIONERS. In English law. A body corporate, erected by St. 6 & 7 Wm. IV, c. 77, empowered to suggest measures conducive to the efficiency of the established church, to be ratified by orders in council. *Wharton*. See 3 *Steph.Comm.* 156, 157.

ECCLESIASTICAL CORPORATION. See Corporation.

ECCLESIASTICAL COUNCIL. In New England. A church court or tribunal, having functions partly judicial and partly advisory, appointed to determine questions relating to church discipline, orthodoxy, standing of ministers, controversies between ministers and their churches, differences and divisions in churches, and the like. *Stearns v. First Parish*, 21 Pick., Mass., 124; *Sheldon v. Congregational Parish*, 24 Pick., Mass., 281.

ECCLESIASTICAL COURTS (called, also, "Courts Christian"). A generic name for certain courts having cognizance mainly of spiritual matters. *D. v. D.*, *Del.Super.*, 20 A.2d 139, 140. A system of courts in England, held by authority of the sovereign, and having jurisdiction over matters pertaining to the religion and ritual of the established church, and the rights, duties, and discipline of ecclesiastical persons as such. They are as follows: The archdeacon's court, arches court, consistory court, court of archdeacon, court of pe-

culiars, prerogative court, court of delegates, court of convocation, court of audience, and court of faculties. 3 Bl.Comm. 64-68. *Equitable Life Assur. Soc. v. Paterson*, 41 Ga. 364, 5 Am.Rep. 535.

ECCLESIASTICAL DIVISION OF ENGLAND. This is a division into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

ECCLESIASTICAL JURISDICTION. Jurisdiction over ecclesiastical cases and controversies; such as appertains to the ecclesiastical courts. *Short v. Stotts*, 58 Ind. 35.

ECCLESIASTICAL LAW. The body of jurisprudence administered by the ecclesiastical courts of England; derived, in large measure, from the canon and civil law. As now restricted, it applies mainly to the affairs, and the doctrine, discipline, and worship, of the established church. *De Witt v. De Witt*, 67 Ohio St. 340, 66 N.E. 136.

ECCLESIASTICAL MATTER. One that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership. *Olear v. Haniak*, 235 Mo. App. 249, 131 S.W.2d 375, 380.

ECCLESIASTICAL THINGS. This term, as used in the canon law, includes church buildings, church property, cemeteries, and property given to the church for the support of the poor or for any other pious use. *Smith v. Bonhoof*, 2 Mich. 115.

ECDICUS. The attorney, proctor, or advocate of a corporation. 1 Reeve, Eng.Law, 65.

ECHANTILLON. In French law. One of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the "tally," the other "*échantillon*." *Poth.Obl.* pt. 4, c. 1, art. 2, § 8.

ECHEVIN. In French law. A municipal officer corresponding with alderman or burgess, and having in some instances a civil jurisdiction in certain causes of trifling importance.

ECHOLALIA. In medical jurisprudence. The constant and senseless repetition of particular words or phrases, recognized as a sign or symptom of insanity or of aphasia.

ECHOUEMENT. In French marine law. Stranding. *Emerig.Tr. des Ass. c. 12, s. 13, no. 1.*

ECLAMPسيا PARTURIENTIIUM. In medical jurisprudence. Puerperal convulsions; a convulsive seizure which sometimes suddenly attacks a woman in labor or directly after, generally attended by unconsciousness and occasionally by mental aberration, which may be permanent. The attack closely resembles the convulsions of epilepsy, and is often fatal.

ECCLECTIC PRACTICE. In medicine. That system followed by physicians who select their modes of practice and medicines from various schools. *Webster*.

"Without professing to understand much of medical phraseology, we suppose that the terms 'allopathic practice' and 'legitimate business' mean the ordinary method commonly adopted by the great body of learned and eminent physicians, which is taught in their institutions, established by their highest authorities, and accepted by the larger and more respectable portion of the community. By 'ecclectic practice,' without imputing to it, as the counsel for the plaintiff seem inclined to, an odor of illegality, we presume is intended another and different system, unusual and eccentric, not countenanced by the classes before referred to, but characterized by them as spurious and denounced as dangerous. It is sufficient to say that the two modes of treating human maladies are essentially distinct, and based upon different views of the nature and causes of diseases, their appropriate remedies, and the modes of applying them." *Bradbury v. Bardin*, 34 Conn. 453.

ECONOMIZER. As applied to boiler construction, a contrivance or device in which water is heated preliminary to entering the boiler proper. *Ithaca Traction Corporation v. Travelers' Indemnity Co.*, Sup., 177 N.Y.S. 753, 754.

ECONOMY. Frugality; prudent economy. Not synonymous with "parsimony." Includes that which pertains to the satisfaction of man's needs. *D'Arcy v. Snell*, 162 Or. 351, 91 P.2d 537, 540, 122 A.L.R. 928.

ÉCRIVAIN. In French marine law. The clerk of a ship. *Emerig.Tr. des Ass. c. 11, s. 3, no. 2.*

ECUMENICAL. General; universal; as an ecumenical council. *Groesbeeck v. Dunscomb*, 41 How.Prac. (N.Y.) 344.

EDDERBRECHE. In Saxon law. The offense of hedge-breaking. Obsolete.

EDESTIA. In old records. Buildings.

EDGE. A line where two surfaces meet. *I. T. S. Rubber Co. v. Essex Rubber Co.*, D.C., 270 F. 593, 605.

EDGE LEASE. One located on the edge of an oil bearing structure. *Carter Oil Co. v. Mitchell*, C. C.A.Okl., 100 F.2d 945, 947.

EDICT. A positive law promulgated by the sovereign of a country, and having reference either to the whole land or some of its divisions, but usually relating to affairs of state. It differs from a "public proclamation," in that it enacts a new statute, and carries with it the authority of law, whereas the latter is, at most, a declaration of a law before enacted. In Roman law. Sometimes, a citation to appear before a judge. A "special edict" was a judgment in a case; a "general edict" was in effect a statute. See *Edictum*.

EDICTAL CITATION. In Scotch law. A citation published at the market-cross of Edinburgh, and pier and shore of Leith. Used against foreigners not within the kingdom, but having a landed estate there, and against natives out of the kingdom. *Bell*.

EDICTS

EDICTS OF JUSTINIAN. Thirteen constitutions or laws of this prince, found in most editions of the *Corpus Juris Civilis*, after the Novels. Being confined to matters of police in the provinces of the empire, they are of little use.

EDICTUM. In the Roman law. An edict; a mandate, or ordinance. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of *constitutiones principis*. Inst. 1, 2, 6. An edict was a mere voluntary constitution of the emperor; differing from a rescript, in not being returned in the way of answer; and from a decree, in not being given in judgment; and from both, in not being founded upon solicitation. Tayl. Civil Law, 233.

A general order published by the prætor, on entering upon his office, containing the system of rules by which he would administer justice during the year of his office. Dig. 1, 2, 2, 10; Mackeld. Rom.Law, § 35; Tayl.Civil Law, 214. See Calvin.

EDICTUM ANNUM. The annual edict or system of rules promulgated by a Roman prætor immediately upon assuming his office, setting forth the principles by which he would be guided in determining causes during his term of office. Mackeld. Rom.Law, § 36.

EDICTUM PERPETUUM. The perpetual edict. A compilation or system of law in fifty books, digested by Julian, from the prætor's edicts and other parts of the *Jus Honorarium*. All the remains of it which have come down to us are the extracts of it in the Digests. Butl.Hor.Jur. 52.

EDICTUM PROVINCIALE. An edict or system of rules for the administration of justice, similar to the edict of the prætor, put forth by the proconsuls and proprætors in the provinces of the Roman Empire. Mackeld.Rom.Law, § 36.

EDICTUM THEODORICI. This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, king of the Ostrogoths, at Rome in A.D. 500. It consists of 154 chapters, in which we recognize parts taken from the Code and Novellæ of Theodosius, from the Codices Gregorianus and Hermogenianus, and the Sententiæ of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but, when it made no alteration in the Gothic law, that law was still to be in force. Savigny, Geschichte des R. R.

EDICTUM TRALATITIVUM. Where a Roman prætor, upon assuming office, did not publish a wholly new edict, but retained the whole or a principal part of the edict of his predecessor (as was usually the case) only adding to it such rules as appeared to be necessary to adapt it to changing social conditions or juristic ideas, it was called "edictum tralatitium." Mackeld.Rom.Law, § 36.

EDITION. Any quantity of books put forth to the bookselling trade at one time by the publisher. 4 K. & J. 656. A new edition is published whenever, having in his warehouse a certain number of copies, the publisher issues a fresh batch of them to the public.

EDITOR. One who directs or supervises the policies and contributions of a newspaper, magazine, work of reference, or the like. Brokaw v. Cottrell, 211 N.W. 184, 187, 114 Neb. 858. The term is held to include not only the person who writes or selects the articles for publication, but he who publishes a paper and puts it in circulation. Pennoyer v. Neff, 95 U.S. 721, 24 L.Ed. 565.

EDITUS. In old English law. Put forth or promulgated, when speaking of the passage of a statute; and brought forth, or born, when speaking of the birth of a child.

EDMUNDS ACT. An act of congress of March 22, 1882, punishing polygamy. See 22 Stat. 31.

EDUCATE. To give proper moral, as well as intellectual and physical, instruction. See Williams v. MacDougall, 39 Cal. 80; Peck v. Claffin, 105 Mass. 420. To prepare and fit oneself for any calling or business, or for activity and usefulness in life. In re Wolfe's Estate, 299 N.Y.S. 99, 102, 164 Misc. 504.

EDUCATION. Comprehends not merely the instruction received at school or college, but the whole course of training, moral, intellectual, and physical. Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all. Barbers' Commission of Mobile County v. Hardeman, 21 So.2d 118, 120, 31 Ala.App. 626. Acquisition of all knowledge tending to train and develop the individual. Mitchell v. Reeves, 123 Conn. 549, 196 A. 785, 788, 15 A.L.R. 1114.

"Education" is not confined to the improvement and cultivation of the mind, but may consist of the cultivation of one's religious or moral sentiments, and likewise may consist in the development of one's physical faculties. Commissioners of District of Columbia v. Shannon & Luchs Const. Co., 57 App.D.C. 67, 17 F.2d 219, 220; Jones v. Better Business Bureau of Oklahoma City, C.C.A.Okla., 123 F.2d 767, 769.

EDUCATIONAL INSTITUTION. A school, seminary, college, or educational establishment, not necessarily a chartered institution. Ward Seminary for Young Ladies v. City of Nashville, 129 Tenn. 412, 167 S.W. 113. As used in a zoning ordinance, the term may include not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral, and physical development. Commissioners of District of Columbia v. Shannon & Luchs Const. Co., 57 App.D.C. 67, 17 F.2d 219, 220.

EDUCATIONAL PURPOSES. Synonymous with an educational undertaking, and whatever educates is within the meaning of an "educational undertaking." Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com'rs, 122 Neb. 586, 241 N.W. 93, 95.

EDUCATIONAL TRAINING. Acquisition of information or inspirational suggestions which cause the individual to think and act along proper lines. *Jones v. Better Business Bureau of Oklahoma City, C.C.A.Okl., 123 F.2d 767, 769.*

EFFECT, v. To do; to produce; to make; to bring to pass; to execute; to enforce; to accomplish. *Vailsburg Motor Corporation v. Fidelity & Casualty Co., 110 N.J.L. 209, 164 A. 408, 409.* A belief that a mortgage would "effect" a preference under the bankruptcy act is equivalent to a belief that it would "operate as" a preference. *Ogden v. Reddish, D.C.Ky., 200 F. 977, 979.*

EFFECT, n. Result. *Western Indemnity Co. v. MacKechnie, Tex.Civ.App., 214 S.W. 456, 460; Beeler v. People, 58 Colo. 451, 146 P. 762, 764.* The result which an instrument between parties will produce in their relative rights, or which a statute will produce upon the existing law, as discovered from the language used, the forms employed, or other materials for construing it. The operation of a law, of an agreement, or an act. *Maize v. State, 4 Ind. 342.*

The phrases "take effect," "be in force," "go into operation," etc., are used interchangeably. *Maize v. State, 4 Ind. 342.*

With Effect

With success; as, to prosecute an action with effect. *Schutze v. Dabney, Tex.Civ.App., 204 S.W. 342, 347.*

EFFECTING LOAN. Renewal of original note without lending of new money held not "effecting of loan," within statute prohibiting officers or employees of banking department from effecting loans from state bank. To effect a loan within such statute means to bring about a loan, to accomplish, fulfill, or produce or make a loan. It means the result or consequence, the bringing into operation of a loan; while "renewal" is not a loan, but an extension of the time of payment. *State v. Love, 150 So. 196, 199, 170 Miss. 666, 90 A.L.R. 506.*

EFFECTIVE PROCURING CAUSE. The "effective procuring cause," of sale of realty is ordinarily the broker who first secures the serious attention of the customer and is instrumental in bringing the parties together. *In re Cowan's Estate, 13 N.Y.S.2d 374, 377.*

EFFECTS. Personal estate or property. See *Johnson v. Olson, 92 Kan. 819, 142 P. 256, 258, L.R.A.1915E, 327.* Movable or chattel property of any kind. *Ettlinger v. Importers' & Exporters' Ins. Co. of New York, 247 N.Y.S. 260, 262, 138 Misc. 743.*

In this sense, the term is more comprehensive than the word "goods," as including fixtures and choses in action, which "goods" will not include. *Bank v. Byram, 131 Ill. 92, 22 N.E. 842.*

Also, every kind of property, real and personal. *Child v. Orton, 119 N.J.Eq. 438, 183 A. 709, 710; Adams v. Akerlund, 48 N.E. 454, 168 Ill. 632; Castle v. Castle, C.C.A.Hawaii, 267 F. 521, 523; Erickson v. Carlson, 145 N.W. 352, 95 Neb. 182; Peterson's Estate, 151 N.W. 66, 68, 168 Iowa 511, L.R.A. 1916A, 469.*

In Wills

Personal property; goods; worldly substance. If the term is used *simpliciter*, as in a gift of "all my effects," it will carry the whole personal estate, unless an intention appears to the contrary. *Schouler, Wills, § 509. In re Mitchell's Will, 38 N.Y.S.2d 673, 674, 675.* The meaning of the term is determined by the context and surrounding circumstances; *Coffman's Adm'r v. Coffman, 131 Va. 456, 109 S.E. 454, 459;* and is broad enough to include property of any kind. *In re Lafferty's Estate, 311 Pa. 469, 167 A. 49, 50.*

The words "real and personal effects" will embrace the whole estate. *Hogan v. Jackson, Cowp. 304; The Alpena, D.C., 7 F. 361; 15 M. & W. 450; Foxall v. McKenney, 3 Cranch C.C. 206, Fed.Cas. No.5,016.*

EFFECTUS SEQUITUR CAUSAM. *Wing. 226.* The effect follows the cause.

EFFENDI. Turkish. Master; a title of respect.

EFFET. In France an "effet" is a bill of exchange; "effets" means goods, movables, chattels. *In re Steimes' Estate, 270 N.Y.S. 339, 150 Misc. 279.*

EFFETS MOBILIERS. Funds or stocks. *In re Steimes' Estate, 270 N.Y.S. 339, 150 Misc. 279.*

EFFICIENT. Causing an effect;—particularly the result or results contemplated. *Tate-Jones & Co. v. Union Electric Steel Co., 281 Pa. 448, 126 A. 813, 816.* The term is not an antonym of "defective." Adequate in performance or producing properly a desired effect. *Spotts v. Baltimore & O. R. Co., C.C.A.Ind., 102 F.2d 160, 162.*

EFFICIENT CAUSE. The working cause; that cause which produces effects or results; an intervening cause, which produces results which would not have come to pass except for its interposition, and for which, therefore, the person who set in motion the original chain of causes is not responsible. *Southland-Greyhound Lines v. Cotten, Tex. Civ.App., 55 S.W.2d 1066, 1069;* The cause which originates and sets in motion the dominating agency that necessarily proceeds through other causes as mere instruments or vehicles in a natural line of causation to the result. That cause of an injury to which legal liability attaches. *Bole v. Pittsburgh Athletic Club, C.C.A., 205 F. 468, 471, 46 L.R.A., N.S., 602.* The "proximate cause." *Munger v. Hancock, Tex.Civ.App., 271 S.W. 228, 231. Hilles v. Home Owners' Loan Corporation, 348 Mo. 601, 154 S.W.2d 761, 764.* The phrase is practically synonymous with "procuring cause." *Buhrmester v. Independent Plumbing & Heating Supply Co., Mo.App., 151 S.W.2d 509, 513.*

EFFICIENT INTERVENING CAUSE. One not produced by a wrongful act or omission but independent of it, and adequate to bring the injurious results. *State v. Des Champs, 126 S.C. 416, 120 S. E. 491, 493.* A new and independent force which breaks casual connection between original wrong

EFFIGY

and injury. *Anderson v. Byrd*, 133 Neb. 483, 275 N.W. 825, 826; *Bennett v. Robertson*, 107 Vt. 202, 177 A. 625, 628, 98 A.L.R. 152.

EFFIGY. The figure or corporeal representation of a person.

EFFLUX. The running, as of a prescribed period of time to its end; expiration by lapse of time. Particularly applied to the termination of a lease by the expiration of the term for which it was made.

EFFLUXION OF TIME. When this phrase is used in leases, conveyances, and other like deeds, or in agreements expressed in simple writing, it indicates the conclusion or expiration of an agreed term of years specified in the deed or writing, such conclusion or expiration arising in the natural course of events, in contradistinction to the determination of the term by the acts of the parties or by some unexpected or unusual incident or other sudden event. *Brown*.

EFFORCIALITER. Forcibly; applied to military force.

EFFORT. An attempt; an endeavor; a struggle directed to the accomplishment of an object. *Dulaney v. Burns*, 218 Ala. 493, 11^o So. 21, 24.

EFFRACTION. A breach made by the use of force.

EFFRACTOR. One who breaks through; one who commits a burglary.

EFFUSIO SANGUINIS. In old English law. The shedding of blood; the mulct, fine, *wite*, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. *Cowell*; *Tomlins*. See *Bloodwit*.

EFTERS. In Saxon law. Ways, walks, or hedges. *Blount*.

EGALITY. *Owely*, (*q. v.*) *Co. Litt.* 169a.

EGG ALBUMEN. The white of egg. For commercial purposes, dried, uncoagulated egg. *International Cork Co. v. New Process Cork Co.*, *C.C.A.N.Y.*, 6 F.2d 420, 421.

EGLISE. A church.

EGO. I; myself. This term is used in forming genealogical tables, to represent the person who is the object of inquiry.

EGO, TALIS. I, such a one. Words used in describing the forms of old deeds. *Fleta*, lib. 3, c. 14, § 5.

EGREDIENS ET EXEUNS. In old pleading. Going forth and issuing out of (land.) *Townsh. Pl.* 17.

EGRESS. Often used interchangeably with the word "access." *C. Hacker Co. v. City of Joliet*, 196 Ill.App. 415, 423.

EGYPTIANS, commonly called "Gypsies" (in old English statutes,) are counterfeit rogues, Welsh or English, that disguise themselves in speech and apparel, and wander up and down the country, pretending to have skill in telling fortunes, and to deceive the common people, but live chiefly by filching or stealing, and, therefore, the statutes of 1 & 2 Mar. c. 4, and 5 Eliz. c. 20, were made to punish such as felons if they departed not the realm or continued to a month. *Termes de la Ley*.

EI INCUMBIT PROBATIO, QUI DICIT, NON QUI NEGAT; CUM PER RERUM NATURAM FACTUM NEGANTIS PROBATIO NULLA SIT. The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof. *Dig.* 22, 3, 2; 1 *Phill. Ev.* 194; 1 *Greenl. Ev.* § 74; *Dranguet v. Prudhomme*, 3 La. 83; 2 *Dan.Ch.Pr.* 408.

EI NIHIL TURPE, CUI NIHIL SATIS. To him to whom nothing is enough, nothing is base. 4 *Inst.* 53.

EIA, or EY. An island. *Cowell*.

EIGNE. L. Fr. Eldest; eldest-born. The term is of common occurrence in the old books. Thus, *bastard eigne* means an illegitimate son whose parents afterwards marry and have a second son for lawful issue, the latter being called *mulier puisne*, (after-born.) *Eigne* is probably a corrupt form of the French "*ainé*." 2 *Bl.Comm.* 248; *Litt.* § 399.

EIGNESSE. See *Esneey*.

EIK. In Scotch law. An addition; as, *eik* to a reversion, *eik* to a confirmation. *Bell*.

EINECIA. Eldership. See *Esneey*.

EINETIUS. In English law. The oldest; the first-born. *Spelman*.

EIRE, or EYRE. In old English law. A journey, route, or circuit. Justices *in eire* were judges who were sent by commission, every seven years, into various counties to hold the assizes and hear pleas of the crown. 3 *Bl.Comm.* 58.

EIRENARCHA. A name formerly given to a justice of the peace. In the *Digests*, the word is written "*irenarcha*."

EISDEM MODIS DISSOLVITUR OBLIGATIO QUÆ NASCITUR EX CONTRACTU, VEL QUASI, QUIBUS CONTRAHITUR. An obligation which arises from contract, or *quasi* contract, is dissolved in the same ways in which it is contracted. *Fleta*, lib. 2, c. 60, § 19.

EISNE. The senior; the oldest son. Spelled, also, "*eigne*," "*einsne*," "*aisne*," "*eign*." *Termes de la Ley*; *Kelham*.

EISNETIA, EINETIA. The share of the oldest son. The portion acquired by primogeniture. *Termes de la Ley*; *Co.Litt.* 166b; *Cowell*.

EITHER. Each of two; the one and the other; one or the other of two alternatives; one of two. *Dallas Ry. & Terminal Co. v. Allen, Tex.*, 43 S.W. 2d 165, 170; *Alswager v. Dwelle*, 70 N.D. 118, 292 N.W. 223, 224, 128 A.L.R. 1150. Often used, however, with reference to more than two, in which case it may mean "each" or "any." In *re Broun's Estate*, 343 Pa. 19, 21 A.2d 898, 901. *Carr-Lowry Lumber Co. v. Martin*, 144 Miss. 106, 109 So. 849, 850; *Southern Ry. Co. v. Gaston County*, 200 N. C. 780, 158 S.E. 481, 483. *Watson v. Watson*, 223 Mass. 425, 111 N.E. 904, 906.

EJECT. To cast, or throw out; to oust, or dispossess; to put or turn out of possession. 3 Bl. Comm. 198, 199, 200. See *Bohannon v. Southern Ry. Co.*, 112 Ky. 106, 65 S.W. 169. To expel or thrust forcibly, as passengers from a train. *Louisville & N. R. Co. v. Ogles*, 142 Ga. 720, 83 S.E. 681, 683.

EJECTA. In old English law. A woman ravished or deflowered, or cast forth from the virtuous. Blount.

EJECTION. A turning out of possession. 3 Bl. Comm. 199.

EJECTIONE CUSTODIÆ. In old English law. Ejection of ward. This phrase, which is the Latin equivalent for the French "*ejection de garde*," was the title of a writ which lay for a guardian when turned out of any land of his ward during the minority of the latter. Brown. It lay to recover the land or person of his ward, or both. *Fitzh. N.B.* 139, L.; *Co.Litt.* 199.

EJECTIONE FIRMÆ. Ejection, or ejectment of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger *ejected* or ousted the lessee of his term, *ferme*, or *farm*, (*ipsum a firma ejecit*.) In this case the latter might have his writ of *ejection*, by which he recovered at first damages for the trespass only, but it was afterwards made a remedy to recover back the term itself, or the remainder of it, with damages. *Reg.Orig.* 227b; *Fitzh. Nat. Brev.* 220, F, G; 3 Bl.Comm. 199; *Litt.* § 322; *Crabb, Eng.Law*, 290, 448. It is the foundation of the modern action of ejectment.

EJECTMENT. At common law, this was the name of a mixed action (springing from the earlier personal action of *ejectione firmæ*) which lay for the recovery of the possession of land, and for damages for the unlawful detention of its possession. The action was highly fictitious, being in theory only for the recovery of a term for years, and brought by a purely fictitious person, as lessee in a supposed lease from the real party in interest. The latter's title, however, must be established in order to warrant a recovery, and the establishment of such title, though nominally a mere incident, is in reality the object of the action. Hence this convenient form of suit came to be adopted as the usual method of trying titles

to land. See 3 Bl.Comm. 199. *French v. Robb*, 67 N.J.Law, 260, 51 A. 509, 57 L.R.A. 956, 91 Am.St. Rep. 433. In England, since the Judicature Act, ejectment has given place to a new action for the recovery of land. Ejectment has been materially modified in many of the states, though still retaining the name. For the history of ejectment, see 3 *Sel.Essays in Anglo-Amer. L. Hist.* 611.

It was the only mixed action at common law, the whole method of proceeding in which was anomalous, and depended on fictions invented and upheld by the court for the convenience of justice, in order to escape from the inconveniences which were found to attend the ancient forms of real and mixed actions.

It is also a form of action by which possessory titles to corporeal hereditaments may be tried and possession obtained.

Ejectment Bill

A bill in equity brought merely for the recovery of real property, together with an account of the rents and profits, without setting out any distinct ground of equity jurisdiction; hence demurrable. *Crane v. Conklin*, 1 N.J.Eq. 353, 22 Am.Dec. 519.

Equitable Ejectment

A proceeding in use in Pennsylvania, brought to enforce specific performance of a contract for the sale of land, and for some other purposes, which is in form an action of ejectment, but is in reality a substitute for a bill in equity. *Riel v. Gannon*, 161 Pa. 289, 29 A. 55.

Justice Ejectment

A statutory proceeding in Vermont, for the eviction of a tenant holding over after termination of the lease or breach of its conditions. *Foss v. Stanton*, 76 Vt. 365, 57 A. 942.

EJECTOR. One who ejects, puts out, or dispossesses another.

Casual Ejector

The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come casually or by accident upon the premises and to eject the lawful possessor. 3 Bl.Comm. 203.

EJECTUM. That which is thrown up by the sea. Also jetsam, wreck, etc. *Warder v. La Belle Creole*, 1 Pet.Adm.Dec. 43, *Fed.Cas.No.*17,165.

EJECTUS. In old English law. A whore-monger. Blount.

EJERCITORIA. In Spanish law. The name of an action lying against a ship's owner, upon the contracts or obligations made by the master for repairs or supplies. It corresponds to the *actio exercitoria* of the Roman law. *Mackeld. Rom. Law*, § 512.

EJIDOS. In Spanish law. Commons; lands used in common by the inhabitants of a city, pueblo, or town, for pasture, wood, threshing-ground, etc. *Hart v. Burnett*, 15 Cal. 554.

EJURATION

EJURATION. Renouncing or resigning one's place.

EJUS EST INTERPRETARI CUJUS EST CONDERE. It is his to interpret whose it is to enact. Tayl. Civil Law, 96.

EJUS EST NOLLE, QUI POTEST VELLE. He who can will, [exercise volition,] has a right to refuse to will, [to withhold consent.] Dig. 50, 7, 3. This maxim is sometimes written, *Ejus est non nolle qui potest velle*, and is translated, "He may consent tacitly who may consent expressly."

EJUS EST PERICULUM CUJUS EST DOMINIUM AUT COMMODUM. He who has the dominion or advantage has the risk. Bart.Max. 33.

EJUS NULLA CULPA EST, CUI PARERE NECESSE SIT. No guilt attaches to him who is compelled to obey. Dig. 50, 17, 169, pr. Obedience to existing laws is a sufficient extenuation of guilt before a civil tribunal. Broom, Max. 12, note.

EJUSDEM GENERIS. Of the same kind, class, or nature.

In the construction of laws, wills, and other instruments, the "ejusdem generis rule" is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. Black, Interp. of Laws, 141; Goldsmith v. U. S., C.C.A.N.Y., 42 F.2d 133, 137; Aleksich v. Industrial Accident Fund, 116 Mont. 69, 151 P.2d 1016, 1021. The rule, however, does not necessarily require that the general provision be limited in its scope to the identical things specifically named. Nor does it apply when the context manifests a contrary intention.

The maxim "ejusdem generis," is only an illustration of the broader maxim, "noscitur a sociis." State v. Western Union Telegraph Co., 196 Ala. 570, 72 So. 99, 100.

ELABORARE. In old European law. To gain, acquire, or purchase, as by labor and industry.

ELABORATUS. Property which is the acquisition of labor. Spelman.

ELASTIC. Pertaining to a substance having the property of returning or springing back to its original form after being disarranged by pressure or applied force;—to be distinguished from "plastic," which applies to a substance capable of being molded and pressed into form. Diamond Patent Co. v. Webster Bros., C.C.A.Cal., 249 F. 155, 157; Kitson Co. v. Lattimer-Stevens Co., C.C.A.Pa., 37 F.2d 562, 563.

ELDER BRETHERN. A distinguished body of men, elected as masters of Trinity House, an institution incorporated in the reign of Henry VIII., charged with numerous important duties relating to the marine, such as the superintendence of light-houses. Mozley & Whitley; 2 Steph.Comm. 502. The full title of the corporation is Elder Brethren of the Holy and Undivided Trinity.

ELDER TITLE. A title of earlier date, but coming simultaneously into operation with a title of younger origin, is called the "elder title," and prevails.

ELDEST. He or she who has the greatest age. The eldest son is the first-born, the *primo-genitus*; L.R. 2 App.Cas. 698; L.R. 12 Ch.Div. 171; Anderson v. Anderson, C.C.A.S.C., 221 F. 871, 874. If there is only one son, he may still be described as the "eldest." L.R. 7 H.L. 644.

ELECTA UNA VIA, NON DATUR RECURSUS AD ALTERAM. He who has chosen one way cannot have recourse to another. 10 Toull. no. 170.

ELECTED. The word "elected," in its ordinary signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position. Kimberlin v. State, 130 Ind. 120, 29 N.E. 773, 14 L.R.A. 858, 30 Am.St.Rep. 208.

ELECTIO EST INTERNA LIBERA ET SPONTANEA SEPARATIO UNIUS REI AB ALIA, SINE COMPULSIONE, CONSISTENS IN ANIMO ET VOLUNTATE. Dyer, 281. Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.

ELECTIO SEMEL FACTA, ET PLACITUM TESTATUM NON PATITUR REGRESSUM. Co.Litt. 146. Election once made, and plea witnessed (or intent shown), suffers not a recall.

ELECTION. The act of choosing or selecting one or more from a greater number of persons, things, courses, or rights. The choice of an alternative. State v. Tucker, 54 Ala. 210.

The internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will. Dyer, 281.

The selection of one person from a specified class to discharge certain duties in a state, corporation, or society. Smith v. McQueen, 232 Ala. 90, 166 So. 788, 791.

With respect to the choice of persons to fill public office or the decision of a particular public question or public policy the term means in ordinary usage the expression by vote of the will of the people or of a somewhat numerous body of electors. State v. State Board of Canvassers, 78 S.C. 461, 59 S.E. 145. But this is not necessarily so, for the term may apply to the selection by a city council of one of their number as mayor.

"Election" ordinarily has reference to a choice or selection by electors, while "appointment" refers to a choice or selection by an individual, as the Governor, or an official body. Board of Education of Boyle County v. McChesney, 235 Ky. 692, 32 S.W.2d 26, 27. But the terms are sometimes used interchangeably. Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467, 469.

A primary election is an "election" within the constitutional provision. United States v. Classic, 61 S.Ct. 1031, 1039, 313 U.S. 299, 85 L.Ed. 1368; Ex parte Hawthorne, 116 Fla. 608, 156 So. 619, 622, 96 A.L.R. 572. But the contrary view has been expressed, Mathes v. State, 173 Tenn. 511, 121 S.W.2d 548, 549; People ex rel. Lindstrand v. Emmer-son, 333 Ill. 606, 165 N.E. 217, 223, 62 A.L.R. 912. Referendum elections are "elections". Masters v. Duval County, 114 Fla. 205, 154 So. 172, 176. To the contrary, Vulcan Last Co. v. State, 194 Wis. 636, 217 N.W. 412, 414.

The choice which is open to a debtor who is bound in an alternative obligation to select either one of the alternatives.

Equitable Election

See Equitable Election.

General Election

One at which the officers to be elected are such as belong to the *general* government,—that is, the general and central political organization of the whole state; as distinguished from an election of officers for a particular locality only. Also, one held for the selection of an officer after the expiration of the full term of the former officer; thus distinguished from a *special* election, which is one held to supply a vacancy in office occurring before the expiration of the full term for which the incumbent was elected. *Downs v. State*, 78 Md. 128, 26 A. 1005. One that regularly recurs in each election precinct of the state on a day designated by law for the selection of officers, or is held in such entire territory pursuant to an enactment specifying a single day for the ratification or rejection of one or more measures submitted to the people by the Legislative Assembly, and not for the election of any officer. *Bethune v. Funk*, 166 P. 931, 932, 85 Or. 246. One that is held throughout the entire state or territory. *Territory v. Ricordati*, 18 N.M. 10, 132 P. 1139, 1140. An election for the choice of a national, state, judicial, district, municipal, county, or township official, required by law to be held regularly at a designated time, to fill a new office or a vacancy in an office at the expiration of the full term thereof. *Eakle v. Board of Education of Independent School Dist. of Henry*, 97 W.Va. 434, 125 S.E. 165, 168. In statutes, the term may include a primary election. *Kelso v. Cook*, 184 Ind. 173, 110 N.E. 987, 993, Ann.Cas.1918E, 68. *Contra*, under a municipal charter, *City Council of San Jose v. Goodwin*, 196 Cal. 274, 237 P. 548, 549. In Vermont, the term is used throughout the Public Statutes to designate what before had commonly been known as “freeman's meeting.” *Martin v. Fullam*, 97 A. 442, 445, 90 Vt. 163.

In Criminal Law

The choice, by the prosecution, upon which of several counts in an indictment (charging distinct offenses of the same degree, but not parts of a continuous series of acts) it will proceed. *Jackson v. State*, 95 Ala. 17, 10 So. 657.

In Practice

The liberty of choosing (or the act of choosing) one out of several means afforded by law for the redress of an injury, or one out of several available forms of action.

An “election of remedies” arises when one having two coexistent but inconsistent remedies chooses to exercise one, in which event he loses the right to thereafter exercise the other. *Mosher Mfg. Co. v. Eastland W. F. & G. R. Co.*, Tex.Civ.App., 259 S.W. 253, 255.

An “election of remedies” is choosing between two or more different and coexisting modes of procedure and relief allowed by law on the same state of facts. *Pacific Mut. Life Ins. Co. of California v. Rhame*, D.C.S.C., 32 F.Supp. 59, 63; *Doggett Lumber Co. v. Perry*, 212 N.C. 713, 194 S.E. 475, 478.

“Election of remedies” is a species of estoppel in *pais*. *Mansfield v. Pickwick Stages*, Northern Division, 191 Cal. 129, 215 P. 389, 390.

In the Law of Wills

A widow's election is her choice whether she will take under the will or under the statute; that is, whether she will accept the provision made for her in the will, and acquiesce in her husband's disposition of his property, or disregard it and claim what the law allows her. *Logan v. Logan*, Tex.Civ.App., 112 S.W.2d 515, 518; *Schlimme v. Schlimme*, 364 Ill. 303, 4 N.E.2d 369, 370.

An “election under the will” means that a legatee or devisee under a will is put to the choice of accepting the beneficial interest offered by the donor in lieu of some estate which he is entitled to, but which is taken from him by the terms of the will. *McDermid v. Bourhill*, 101 Or. 305, 199 P. 610, 612, 22 A.L.R. 428.

Primary Election

An election by the voters of a ward, precinct, or other small district, belonging to a particular party, of representatives or delegates to a convention which is to meet and nominate the candidates of their party to stand at an approaching municipal or general election. *State v. Woodruff*, 68 N.J.Law, 89, 52 A. 294. Also, an election to select candidates for office by a political organization, the voters being restricted to the members or supporters of such organization. *Kelso v. Cook*, 184 Ind. 173, 110 N.E. 987, Ann.Cas.1918E, 68. They are not in reality elections but are merely nominating devices. *Van Dyke v. Thompson*, 136 Tenn. 136, 189 S.W. 62, 66.

Regular Election

One recurring at stated times fixed by law. *State v. Andresen*, 110 Or. 1, 222 P. 585, 587. A general, usual, or stated election. When applied to elections, the terms “regular” and “general” are used interchangeably and synonymously. The word “regular” is used in reference to a general election occurring throughout the state. *State v. Conrades*, 45 Mo. 47; *Ward v. Clark*, 35 Kan. 315, 10 P. 827.

Result of Election

Usually, the expression of the will of the voters as determined by a count of the ballots. *Cipowski v. Calumet City*, 322 Ill. 575, 153 N.E. 613, 614.

Special Election

An election for a particular emergency; out of the regular course; as one held to fill a vacancy arising by death of the incumbent of the office. *State v. Andresen*, 110 Or. 1, 222 P. 585, 587. In a statute, any election at which officers are not chosen. *Hutchins v. City of Des Moines*, 176 Iowa 189, 157 N.W. 881, 883. In determining whether an election is special or general, regard must be had to the subject-matter as well as date of the election, and, if an election occurs throughout state uniformly by direct operation of law, it is a “general election,” but, if it depends on employment of special preliminary proceeding peculiar to process which may or may not occur, and the

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election is applicable only to a restricted area less than whole state, it is a "special election." *Hill v. Hartzell*, 121 Or. 4, 252 P. 552, 555.

ELECTION AUDITORS. In English law. Officers annually appointed, to whom was committed the duty of taking and publishing the account of all expenses incurred at parliamentary elections. See 17 & 18 Vict. c. 102, §§ 18, 26-28. But these sections have been repealed by 26 Vict. c. 29, which throws the duty of preparing the accounts on the declared agent of the candidate, and the duty of publishing an abstract of it on the returning officer. *Wharton*.

ELECTION CONTEST. A contest in behalf of one who has failed of success in election against right of one who has been declared or determined by proper authority to have been successful. *State ex rel. Ingles v. Circuit Court of Spink County*, 63 S.D. 313, 258 N.W. 278.

ELECTION DISTRICT. A subdivision of territory, whether of state, county, or city, the boundaries of which are fixed by law, for convenience in local or general elections. *Lane v. Otis*, 68 N.J. Law, 656, 54 A. 442.

The term has been held not to refer to senatorial district. *Appeal of Phillips*, 262 Pa. 396, 105 A. 547, 548.

ELECTION DOWER. A name sometimes given to the provision which a law or statute makes for a widow in case she "elects" to reject the provision made for her in the will and take what the statute accords. *Stanton v. Leonard*, 344 Mo. 998, 130 S.W.2d 487, 489.

ELECTION, ESTOPPEL BY. An estoppel which arises by a choice between inconsistent remedies. *Aladdin Temple Ben. Ass'n, D. O. K. K. v. American Standard Life Ins. Co.*, 235 Ala. 431, 179 So. 243, 245.

An estoppel predicated on a voluntary and intelligent action or choice of one of several things which is inconsistent with another, the effect of the estoppel being to prevent the party so choosing from afterwards reversing his election or disputing the state of affairs or rights of others resulting from his original choice. *Yates v. Hurd*, 8 Colo. 343, 8 Pac. 575.

The doctrine of "estoppel by election" against beneficiary who has elected to take favorable provisions of will from objecting to other provisions of will applies only where will undertakes to bestow a gift and also deprive donee of a prior existing right, thus confronting devisee with alternative of accepting devise and renouncing prior right or of retaining latter and renouncing devise. *Mason & Mason v. Brown*, Tex.Civ.App., 182 S.W.2d 729, 733.

ELECTION JUDGES. In English law. Judges of the high court selected in pursuance of 31 & 32 Vict. c. 125, § 11, and Jud. Act 1873, § 38, for the trial of election petitions.

ELECTION PETITIONS. Petitions for inquiry into the validity of elections of members of parliament when it is alleged that the return of a member is invalid for bribery or any other reason.

ELECTION RETURNS. The report made to the board of canvassers of the number of votes cast

for each candidate, or proposition voted upon by those charged by law with the duty of counting or tallying the votes for or against the respective candidates or propositions. *Spear v. Marshall*, 95 Utah 62, 79 P.2d 15, 16.

ELECTIONES FIANT RITE ET LIBERE SINE INTERRUPTIONE ALIQUA. Elections should be made in due form, and freely, without any interruption. 2 Inst. 169.

ELECTIVE. Dependent upon choice; bestowed or passing by election. Also pertaining or relating to elections; conferring the right or power to vote at elections.

ELECTIVE FRANCHISE. The right of voting at public elections; the privilege of qualified voters to cast their ballots for the candidates they favor at elections authorized by law. *People v. Barber*, 48 Hun, N.Y. 198; *State v. Staten*, 6 Cold. Tenn. 255; *Xippas v. Commonwealth*, 141 Va. 497, 126 S.E. 207, 209.

ELECTIVE OFFICE. One which is to be filled by popular election. One filled by the direct exercise of the voters' franchise. In re *Opinion of the Justices*, 83 N.H. 589, 139 A. 180, 183.

ELECTOR. A duly qualified voter; one who has a vote in the choice of any officer; a constituent. *DeBauche v. City of Green Bay*, 227 Wis. 148, 277 N.W. 147, 148. One who elects or has the right of choice, or who has the right to vote for any functionary, or for the adoption of any measure. *Aczel v. United States*, C.C.A.Ind., 232 F. 652, 657. In a narrower sense, one who has the general right to vote, and the right to vote for public officers. One authorized to exercise the elective franchise. *McEvoy v. Christensen*, 178 Iowa, 1180, 159 N.W. 179, 181. But a woman citizen, though having such general right and authority to vote, may nevertheless not be an "elector" entitled to have her name put on a jury list, in view of a state constitution and statute. *People v. Barnett*, 319 Ill. 403, 150 N.E. 290, 291.

While the terms "electors" and "voters" are sometimes used interchangeably, their meaning is not precisely the same, "electors" being properly applied to all those entitled to vote, whereas "voters" appropriately designates only those actually voting. *State ex rel. Chaney v. Grinstead*, 314 Mo. 55, 282 S.W. 715, 719. A fortiori, "electors" is a broader term than "registered voters." *City of Dayton, Ohio, v. City Ry. Co.*, C.C.A.Ohio, 16 F.2d 401, 405.

One of the persons chosen to comprise the "electoral college" (q. v.).

Also, the title of certain German princes who had a voice in the election of the Holy Roman Emperors. The office of elector in some instances became hereditary and was connected with territorial possessions.

Sometimes, one who exercises the right of election in equity. *Brett, L. Cas. Mod. Eq.* 257.

Registered Qualified Elector

One possessing the constitutional qualifications, and registered under the registration statute. *Minges v. Board of Trustees of City of Merced*, 27 Cal.App. 15, 148 P. 816, 817.

ELECTORAL. Pertaining to electors or elections; composed or consisting of electors.

ELECTORAL COLLEGE. A name sometimes given, in the United States, to the college or body of electors of a state chosen to elect the president and vice-president; also, the whole body of such electors, composed of the electoral colleges of the several states. Webster; Cent. Dict.; 2 Sto. Const. § 1463; 1 Hare, Am.Const.L. 219; Stevens, Sources of the Constitution of the U. S. 153, note; Black, Const.L. 86; 1 Calhoun's Works, 175.

ELECTORAL COMMISSION. A commission created by an act of congress of January 29, 1877, to decide certain questions arising out of the presidential election of November, 1876, in which Hayes and Wheeler had been candidates of the Republican party and Tilden and Hendricks of the Democratic party.

ELECTRIC CONDENSER. A device by which excesses of current are stored and released, acting as a sort of elastic cushion for its variations. It is made up of two electrodes, anode and cathode, separated by a nonconductor, the dielectric. The capacity of the condenser depends upon the dielectric, and varies inversely with its thickness. Aerovox Corporation v. Concourse Electric Co., C.C.A.N.Y., 65 F.2d 386, 387. A reservoir of electrical energy. Aurynger v. R C A Mfg. Co., D.C. Md., 35 F.Supp. 69.

ELECTRICITY. A highly subtle imponderable fluid, whose presence or influence is only known by its effect. Myers v. Portland Ry., Light & Power Co., 68 Or. 599, 138 P. 213. An imponderable and invisible agent producing light, heat, chemical decomposition, and other physical phenomena. United States v. City and County of San Francisco, D.C.Cal., 23 F.Supp. 40, 52.

ELECTROCARDIOGRAPHY. The recording in the form of a graph of certain minute electric currents produced by the human heart in the course of its action. Nichols v. Sanborn Co., D.C. Mass., 35 F.Supp. 707, 708.

ELECTROCUTE. To put (a criminal) to death by passing through the body a current of electricity of high power; also, by extension, to kill by an electric current. Ferguson v. State, 90 Fla. 105, 105 So. 840.

The word is a hybrid, and has met with the disapproval of some for that reason. "This barbarism jars the unhappy latinist's nerves much more cruelly than the operation denoted jars those of its victim." Fowler, Dict. of Mod. English Usage (1926), p. 130. "To one having even an elementary knowledge of Latin grammar this word is no less than disgusting, and the thing meant by it is felt to be altogether too good for the word's inventor." Bierce, Write it Right (1909), p. 24. It is not included in the New English Dict. (Oxford, 1897), but is listed without comment in the New Cent. Dict. (1927) and also in Funk & Wagnalls' New Standard Dict. (1925), which spells it "electricute." "It is considered by many to be inelegant, but is widely used and has no accepted equivalent." Webster, New Internatl. Dict. (1927). The word is "now in established use, though formerly much criticized from the learned point of view because of the manner of its formation." Krapp, Comprehensive Guide to Good English (1927), p. 218.

ELECTROCUTION. A method of punishment of death inflicted by causing to pass through the body of the convicted person a current of electricity. See 1 Witth. & Beck. Med. Jur. 663; People v. Durston, 119 N.Y. 569. See Electrocute.

ELECTROLYSIS. The decomposition of a metal solution in water, liquid ammonia, etc., accompanied by decomposition of the water into oxygen and hydrogen or of a mass of molten metal by having an electric current passed through it, Peoria Waterworks Co. v. Peoria Ry. Co., C.C.Ill., 181 F. 990.

As applied to water pipes electrolysis is the stripping off of small particles of the iron when a suitable electrolytic solution is present leaving the carbon of which the pipe is partly composed intact. Peoria Waterworks Co. v. Peoria R. Co., C.C.Ill., 181 F. 990.

The term covers a wide variety of acts, ranging from the removal of superfluous hair by electricity to the electrocution of a human being. People v. Lehrman, 296 N.Y.S. 580, 581, 251 App.Div. 451.

ELECTROLYTE. A substance which when dissolved in liquid is capable of conducting an electric current. Lee v. Congress Beauty Equipment Co., D.C.Mass., 48 F.Supp. 827, 829; Ruben v. Ariston Laboratories, D.C.Ill., 40 F.Supp. 551, 563.

**ELEEMOSYNA REGIS, and ELEEMOSYNA AR-
ATRI, or CARUCARUM.** A penny which King Ethelred ordered to be paid for every plow in England towards the support of the poor. Leg. Ethel. c. 1.

ELEEMOSYNÆ. Possessions belonging to the church. Blount.

ELEEMOSYNARIA. The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor. In old English law, the *aumerie*, *aumbry*, or *ambry*; words still used in common speech in the north of England, to denote a pantry or cupboard. Cowell. The office of almoner. 'Cowell.

ELEEMOSYNARIUS. In old English law. An almoner, or chief officer, who received the eleemosynary rents and gifts, and in due method distributed them to pious and charitable uses. Cowell; Wharton.

The name of an officer (lord almoner) of the English kings, in former times, who distributed the royal alms or bounty. Fleta, lib. 2, c. 23.

ELEEMOSYNARY. Relating to the distribution of alms, bounty, or charity; charitable. In re Bailey's Estate, 19 Cal.App.2d 135, 65 P.2d 102, 103.

ELEEMOSYNARY CORPORATION. A private corporation created for charitable and benevolent purposes. Society for Propagation of Gospel v. New Haven, 8 Wheat. 464, 5 L.Ed. 662; 1 Bl. Comm. 471. See Corporations.

ELEGANTER. In the civil law. 'Accurately; with discrimination. Veazie v. Williams, 3 Story, 611, 636, Fed.Cas.No.16,907.

ELEGIT. (Lat. He has chosen.) This is the name, in English practice, of a writ of execution

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first given by the statute of Westm. 2 (13 Edw. I. c. 18) either upon a judgment for a debt or damages or upon the forfeiture of a recognizance taken in the king's court. It is so called because it is in the choice or election of the plaintiff whether he will sue out this writ or a *fi. fa.* By it the defendant's goods and chattels are appraised and all of them (except oxen and beasts of the plow) are delivered to the plaintiff, at such reasonable appraisement and price, in part satisfaction of his debt. If the goods are not sufficient, then the moiety of his freehold lands, which he had at the time of the judgment given, are also to be delivered to the plaintiff, to hold till out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired. During this period the plaintiff is called "tenant by *elegit*," and his estate, an "estate by *elegit*." This writ, or its analogue, is in use in some of the United States, as Virginia and Kentucky. See 3 Bl. Comm. 418; North American F. Ins. Co. v. Graham, 5 Sandf. (N.Y.) 197.

ELEMENT. Material; substance. Hoskins Mfg. Co. v. General Electric Co., D.C.Ill., 212 F. 422, 427.

Also, one of the simple substances or principles of which, according to early natural philosophers, the physical universe is composed, the four elements pointed out by Empedocles being air, water, earth, and fire. Webster. See Elements.

ELEMENTS. The forces of nature. The ultimate undecomposable parts which unite to form anything. Leahy v. Wenonah Theater Co., 251 Mich. 594, 232 N.W. 184, 185. Popularly, fire, air, earth, and water, anciently supposed to be the four simple bodies of which the world was composed. Encyc. Dict. Often applied in a particular sense to wind and water, as "the fury of the elements." Cent. Dict. Fire is one of the elements included in the expression "damages by the elements" as used in a lease of a building. O'Neal v. Bainbridge, 94 Kan. 518, 146 P. 1165, 1167, Ann. Cas.1917B, 293. The same is true of water. Mills v. United States, 52 Ct.Cl. 452, 458. It has also been said that "damages by the elements" means the same thing as "damages by the act of God." Van Wormer v. Crane, 51 Mich. 363, 16 N.W. 686, 47 Am.Rep. 582.

ELEVATOR. A building containing one or more mechanical elevators, especially a warehouse for the storage of grain; a hoisting apparatus; a lift; a car or cage for lifting and lowering passengers or freight in a hoistway. Cent. Dict.

In Insurance Law

The term has been held not to be limited to the car, or platform, but to include the elevator shaft. London Guarantee & Accident Co. v. Ladd, C.C.A.Mich., 299 F. 562, 565; Boles v. Royal Union Life Ins. Co., 219 Iowa 178, 257 N.W. 386, 96 A.L.R. 1400. It has also been held to include the machinery to which the car is attached, and by which it is operated; and the fixed equipment necessary to operate the elevator. The term has been inter-

preted as meaning only a passenger elevator. Jahns & Knuth Co. v. American Indemnity Co., 182 Wis. 556, 196 N.W. 569, 571.

Passenger Elevator

Any elevator ordinarily or customarily used for conveying passengers, though also used for conveying freight, and though not of any particular form laid in any particular way or with any particular kind of gates or safety contrivances. Wilmarth v. Pacific Mut. Life Ins. Co. of California, 168 Cal. 536, 143 P. 780, 782, Ann.Cas.1915B, 1120.

ELIGIBILITY. Proper to be chosen; qualified to be elected; legally qualified. Rainey v. Taylor, 166 Ga. 476, 143 S.E. 383; State ex rel. Evans v. Wheatley, 197 Ark. 997, 125 S.W.2d 101, 103. A word which, when used in connection with an office, where there are no explanatory words indicating that it is used with reference to the time of election, may be deemed to refer to the qualification to hold the office rather than to be elected. Bradfield v. Avery, 16 Idaho, 769, 102 P. 687, 23 L.R.A.,N.S., 1228. See Eligible.

ELIGIBLE. Fit to be chosen. State ex rel. Sundfor v. Thorson, 72 N.D. 246, 6 N.W.2d 89, 92, 143 A.L.R. 599. Capable of serving, legally qualified to serve. State v. Johnson, 123 S.C. 50, 115 S.E. 748, 749. Capable of being chosen, as a candidate for office. Board of Com'rs of Guadalupe County v. District Court of Fourth Judicial Dist., 29 N.M. 244, 223 P. 516, 522. Also, capable of holding office. State v. Wait, 95 Neb. 806, 146 N.W. 1048, 1049.

ELIMINATION. In old English law. The act of banishing or turning out of doors; rejection.

ELINGUATION. The punishment of cutting out the tongue.

ELISORS. In practice. Electors or choosers. Persons appointed by the court to execute writs of *venire*, in cases where both the sheriff and coroner are disqualified from acting, and whose duty is to *choose*—that is, name and return—the jury. 3 Bl.Comm. 355; Doherty v. Kalmbach, 87 F.2d 539, 541, 66 App.D.C. 322.

Persons appointed to execute *any* writ, in default of the sheriff and coroner, are also called "elisors." See Bruner v. Superior Court, 92 Cal. 239, 28 Pac. 341. An elisor may be appointed to take charge of a jury retiring to deliberate upon a verdict, when both sheriff and coroner are disqualified or unable to act. People v. Fellows, 122 Cal. 233, 54 Pac. 830.

ELL. A measure of length, answering to the modern yard. 1 Bl.Comm. 275.

ELLENBOROUGH'S ACT. An English statute (43 Geo. III. c. 58) punishing offenses against the person.

ELLIPSIS. Omission of words or clauses necessary to complete the construction, but not necessary to convey the meaning. *State v. Staub*, 182 La. 1040, 162 So. 766.

ELOGIUM. In the civil law. A will or testament.

ELOIGNE. (Fr. *éloigner*, to remove to a distance; to remove afar off.) In practice. A return to a writ of replevin, when the chattels have been removed out of the way of the sheriff.

ELOIGNMENT. The getting a thing or person out of the way; or removing it to a distance, so as to be out of reach. *Garneau v. Mill Co.*, 8 Wash. 467, 36 P. 463.

ELONGATA. In practice. Eloigned; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been *eloigned*; that is, carried to a distance, to places to him unknown. 3 Bl.Comm. 148; 3 Steph.Comm. 522; Fitzh. Nat. Brev. 73, 74; Archb. N. Pract. 552. The word *eloigne* is sometimes used as synonymous with *elongata*.

ELONGATUS. Eloigned. A return made by a sheriff to a writ *de homine replegiando*, stating that the party to be replevied has been eloigned, or conveyed out of his jurisdiction. 3 Bl.Comm. 129.

ELONGAVIT. In England, where in a proceeding by foreign attachment the plaintiff has obtained judgment of appraisal, but by reason of some act of the garnishee the goods cannot be appraised, (as where he has removed them from the city, or has sold them, etc.) the serjeant-at-mace returns that the garnishee has eloigned them, *i. e.*, removed them out of the jurisdiction, and on this return (called an "elongavit") judgment is given for the plaintiff that an inquiry be made of the goods eloigned. This inquiry is set down for trial, and the assessment is made by a jury after the manner of ordinary issues. Sweet.

ELOPEMENT. The act of a wife who voluntarily deserts her husband to go away with and cohabit with another man. 2 Bl.Comm. 130; *State v. O'Higgins*, 178 N.C. 708, 100 S.E. 438. The departure of a married woman from her husband and dwelling with an adulterer. Cowell; Tomlin. Also, the act of a man in going away with a woman who has voluntarily left her husband, to indulge in sexual intercourse with her. *State v. Hopp*, 186 N.C. 405, 119 S.E. 769, 773.

To constitute an elopement, the wife must not only leave the husband, but go beyond his actual control; for if she abandons the husband, and goes and lives in adultery in a house belonging to him, it is said not to be an elopement. *Cogswell v. Tibbetts*, 3 N.H. 42.

In a popular sense, also, the act of an unmarried woman in secretly leaving her home with a man, especially with a view to marriage without her parents' consent.

ELSEWHERE. In another place; in any other place. See 1 Vern. 4, and note; 3 P.Wms. 56; *Azbill v. State*, 19 Ariz. 499, 172 P. 658, 659; Su-

preme Ruling of Fraternal Mystic Circle v. Hoskins, Tex.Civ.App., 171 S.W. 812, 815. The term does not always mean literally any other place whatever, but may be more or less limited by the context. See *Commonwealth v. Bowser*, 61 Pa. Super.Ct. 107, 108, 114, 214; *State v. Sanders*, 136 La. 1059, 68 So. 125, Ann.Cas.1916E, 105.

In shipping articles, this term, following the designation of the port of destination, must be construed either as void for uncertainty or as subordinate to the principal voyage stated in the preceding words. *Brown v. Jones*, 2 Gall. 477, Fed. Cas. No. 2,017.

ELUVIONES. In old pleading. Spring tides. Townsh. Pl. 197.

EMANCIPATION. The act by which one who was unfree, or under the power and control of another, is rendered free, or set at liberty and made his own master. *Town of Plainville v. Town of Milford*, 119 Conn. 380, 177 A. 138, 140.

The term is principally used with reference to the emancipation of a minor child by its parents, which involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties. *Delaware L. & W. R. Co. v. Petrowsky*, C.C.A., 250 F. 554, 559; *Public Service Co. of Indiana v. Tackett*, 113 Ind.App. 307, 47 N.E.2d 851, 853. The emancipation may be express, as by voluntary agreement of parent and child, or implied from such acts and conduct as import consent, and it may be conditional or absolute, complete or partial. *Wallace v. Cox*, 136 Tenn. 69, 188 S.W. 611, 612, L.R.A.1917B, 690.

Complete emancipation is entire surrender of care, custody, and earnings of child, as well as renunciation of parental duties. *Beebe v. Kansas City*, 223 Mo.App. 642, 17 S.W.2d 608, 612. And a "partial emancipation" frees a child for only a part of the period of minority, or from only a part of the parent's rights, or for some purposes, and not for others. *Memphis Steel Const. Co. v. Lister*, 138 Tenn. 307, 197 S.W. 902, 903, L.R.A.1918B, 406.

Express Emancipation

That which results when parent and child voluntarily agree that the child, able to take care of himself, may go out from his home and make his own living, receive his own wages, and spend them as he pleases. *Nichols v. Harvey & Hancock*, 206 Ky. 112, 266 S.W. 870, 871.

In England

The term "emancipation" has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 Adol. & E., N.S., 574, note.

In Roman Law

The enfranchisement of a son by his father, which was anciently done by the formality of an imaginary sale. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate. Inst. 1, 12, 6.

EMANCIPATION PROCLAMATION. An executive proclamation, issued January 1, 1863, by Abra-

EMBARGO

ham Lincoln, declaring that all persons held in slavery in certain designated states and districts were and should remain free.

EMBARGO. A proclamation or order of state, usually issued in time of war or threatened hostilities, prohibiting the departure of ships or goods from some or all the ports of such state until further order. The *William King*, 2 Wheat. 148, 4 L.Ed. 206. For the use of the term as applied in a loose sense to the government's control of coal exports during a strike, see *Ernesto Foglino & Co. v. Webster*, 216 N.Y.S. 225, 237, 217 App.Div. 282.

Embargo is the hindering or detention by any government of ships of commerce in its ports. If the embargo is laid upon ships belonging to citizens of the state imposing it, it is called a "civil embargo;" if, as more commonly happens, it is laid upon ships belonging to the enemy, it is called a "hostile embargo." The effect of this latter embargo is that the vessels detained are restored to the rightful owners if no war follows, but are forfeited to the embargoing government if war does follow, the declaration of war being held to relate back to the original seizure and detention. *Brown*.

The temporary or permanent sequestration of the property of individuals for the purposes of a government, *e. g.*, to obtain vessels for the transport of troops, the owners being reimbursed for this forced service. *Man. Int. Law*, 143.

EMBASSADOR. See *Ambassador*.

EMBASSAGE, or EMBASSY. The message or commission given by a sovereign or state to a minister, called an "ambassador," empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

EMBER DAYS. In ecclesiastical law. Those days which the ancient fathers called "*quatuor tempora jejunii*" are of great antiquity in the church. They are observed on Wednesday, Friday, and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsunday, Holyrood Day, in September, and St. Lucy's Day, about the middle of December. *Brit. c. 53*. Our almanacs call the weeks in which they fall the "Ember Weeks," and they are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints the Sundays next after the Ember weeks for the solemn times of ordination, though the bishops, if they please, may ordain on any Sunday or holiday. *Enc. Lond.*

EMBEZZLEMENT. The fraudulent appropriation to his own use or benefit of property or money intrusted to him by another, by a clerk, agent, trustee, public officer, or other person acting in a fiduciary character. See 4 *Bl.Comm.* 230, 231.

The fraudulent appropriation of property by a person to whom it has been intrusted, or to whose hands it has lawfully come. *American Life Ins. Co. v. U. S. Fidelity & Guaranty Co.*, 261 Mich. 221, 246 N.W. 71.

Embezzlement is not an offense at common law, but was created by statute. "Embezzle" includes in its meaning appropriation to one's own use, and therefore the use of the single word "embezzle," in the indictment or information, contains within itself the charge that the defendant appropriated the money or property to his own use. *State*

v. Wolff, 34 La. Ann. 1153; *State v. Hudson*, 93 W. Va. 435, 117 S. E. 122, 125.

Embezzlement is common-law larceny extended by statute to cover cases where the stolen property comes originally into the possession of the defendant without a trespass. *Moody v. People*, 65 Colo. 339, 176 P. 476.

Embezzlement is a species of larceny, and the term is applicable to cases of furtive and fraudulent appropriation by clerks, servants, or carriers of property coming into their possession by virtue of their employment. It is distinguished from "larceny," properly so called, as being committed in respect of property which is not at the time in the actual or legal possession of the owner. That is to say, that in embezzlement the original taking of the property was lawful or with the consent of the owner, while in larceny the felonious intent must have existed at the time of the taking. *Tredwell v. U. S.*, C.C.A. Va., 266 F. 350, 352. Both words, however, may be used, as in a bond, as generic terms to indicate the dishonest and fraudulent breach of any duty or obligation upon the part of an employee to pay over to his employer, or account to him for any money, securities, or other personal property, title to which is in the employer, but which may come into the possession of the employee. *National Surety Co. v. Williams*, 74 Fla. 446, 77 So. 212, 222. Under statute declaring guilty of a felony an officer or clerk of a state bank who "embezzles, abstracts, or willfully misapplies" its funds, "embezzle" refers to acts done for the benefit of the actor as against the bank, "misapply" covers acts having no relation to pecuniary profit or advantage to the doer, while "abstract" means only to take and withdraw from the possession and control of the bank; and while "embezzlement" may include the offenses of abstraction and willful misapplication, either of those offenses may be committed without embezzlement. *Ferguson v. State*, 80 Tex. Cr. R. 383, 189 S.W. 271, 273. See, however, *Winkelmann v. State*, 114 Neb. 1, 205 N.W. 565, 566.

EMBLEMATA TRIBONIANI. In the Roman law. Alterations, modifications, and additions to the writings of the older jurists, selected to make up the body of the Pandects, introduced by Tribonian and his associates who constituted the commission appointed for that purpose, with a view to harmonize contradictions, excise obsolete matter, and make the whole conform to the law as understood in Justinian's time, were called by this name. *Mackeld. Rom. Law*, § 71.

EMBLEMENTS. The vegetable chattels called "emblems" are the corn and other growth of the earth which are produced annually, not spontaneously, but by labor and industry, and thence are called "*fructus industriales*." *Reiff v. Reiff*, 64 Pa. 137. See *Crop*.

The growing crops of those vegetable productions of the soil which are annually produced by the labor of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped, or gathered the same; and this, although, being affixed to the soil, they might for some purposes be considered, while growing, as part of the realty. *Wharton*.

The term also denotes the right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his own care and labor.

Emblements are the away-going crop; in other words, the crop which is upon the ground and unreaped when the tenant goes away, his lease having determined; and the right to emblements is the right in the tenant to take away the away-going crop, and for that purpose to come upon the land, and do all other necessary things thereon. *Miller v. Gray*, *Tex. Civ. App.*, 108 S.W.2d 265, 267, 268.

Where a life tenant, having leased the premises, died, and the remainderman did not recognize the lease, the lessee of the life tenant was entitled to the emblements,

which are the crops of grain growing yearly, but requiring an outlay of labor or industry, without payment of any compensation for use of the land in harvesting the emblements. *Turner v. Turner*, 132 Tenn. 592, 179 S.W. 132, 133.

EMBLERS DE GENTZ. L. Fr. A stealing from the people. The phrase occurs in the old rolls of parliament: "Whereas divers murders, *emblers de gentz*, and robberies are committed," etc.

EMBOLISM. In medical jurisprudence. The mechanical obstruction of an artery or capillary by some body traveling in the blood current, as, a blood-clot (embolus), a globule of fat or an air-bubble.

Embolism is to be distinguished from "thrombosis," a thrombus being a clot of blood formed in the heart or a blood vessel in consequence of some impediment of the circulation from pathological causes, as distinguished from mechanical causes, for example, an alteration of the blood or walls of the blood vessels. When embolism occurs in the brain (called "cerebral embolism") there is more or less coagulation of the blood in the surrounding parts, and there may be apoplectic shock or paralysis of the brain, and its functional activity may be so far disturbed as to cause entire or partial insanity. See *Cundall v. Haswell*, 23 R.I. 508, 51 A. 426.

EMBOLUS. In case of wounds is a product of coagulation of the blood or blood clot. *Berryhill v. Nichols*, 171 Miss. 769, 158 So. 470. A plug which floats along until it becomes lodged so as to obstruct the passage of the blood. It consists usually of a clot or fibrin, a shred from a morbid growth, a globule of fat, air bubbles, or a micro-organism. An embolus or floating particle by attaching itself or becoming wedged may form a thrombosis or occlusion. *Norris v. Industrial Commission*, 90 Utah 256, 61 P.2d 413, 414.

EMBRACEOR. A person guilty of the offense of embracery (*q. v.*). See *Co. Litt.* 369.

EMBRACERY. In criminal law. This offense consists in the attempt to influence a jury corruptly to one side or the other, by promises, persuasions, entreaties, entertainments, *douceurs*, and the like. The person guilty of it is called an "embraceor." *Moss v. Arnold*, 63 Okla.Cr. 343, 75 P.2d 491, 503; *Commonwealth v. Fahey*, 113 Pa.Super. 598, 173 A. 854, 856.

Embracery being but an attempt corruptly to influence juror, there is no such crime as attempt to commit embracery. *Wiseman v. Commonwealth*, 143 Va. 631, 130 S.E. 249, 251.

EMENDA. Amends; something given in reparation for a trespass; or, in old Saxon times, in compensation for an injury or crime. *Spelman*.

EMENDALS. An old word still made use of in the accounts of the society of the Inner Temple, where so much in *emendals* at the foot of an account on the balance thereof signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions. *Spelman*.

EMENDARE. In Saxon law. To make amends or satisfaction for any crime or trespass committed; to pay a fine; to be fined. *Spelman*. *Emendare se*, to redeem, or ransom one's life, by payment of a weregild.

EMENDATIO. In old English law. Amendment, or correction. The power of amending and correcting abuses, according to certain rules and measures. *Cowell*.

In Saxon law. A pecuniary satisfaction for an injury; the same as *emenda* (*q. v.*). *Spelman*.

EMENDATIO PANIS ET CEREVISIÆ. In old English law. The power of supervising and correcting the weights and measures of bread and ale, (assising bread and beer.) *Cowell*.

EMERGE. To arise; to come to light. "Unless a matter happen to *emerge* after issue joined." *Hale, Anal.* § 1.

EMERGENCY. A sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity.

A relatively permanent condition of insufficiency of service or of facilities resulting in social disturbance or distress. *Kardasinski v. Koford*, 88 N.H. 444, 190 A. 702, 703, 111 A.L.R. 1017; *Contract Cartage Co. v. Morris*, D.C.Ill., 59 F.2d 437, 446; *Los Angeles Dredging Co. v. City of Long Beach*, 210 Cal. 348, 291 P. 839, 843, 71 A.L.R. 161.

"Emergency" in sense of constitutional provision respecting referendum does not mean expediency, convenience, or best interest. *State v. Hinkle*, 161 Wash. 652, 297 P. 1071, 1072.

EMERGENCY EMPLOYMENT DOCTRINE. A regularly employed servant possesses implied authority to engage an assistant to aid in performing a task, within scope of servant's duties in case of emergency rendering it absolutely necessary to obtain such assistance, and without which emergency conditions could not be overcome by servant or any of his coemployees in regular service of their common master. *Hall v. O. C. Whitaker Co.*, 143 Tex. 397, 185 S.W.2d 720, 722, 723.

EMERGENCY LANDING AREA. Any area that a plane could possibly be landed into with or without motor. It should be from five hundred to a thousand feet in length, depending on obstructions around it, and width is not so important, although it should be at least two or three times that of plane. *Shaw v. Carson*, 218 Iowa 1251, 257 N.W. 194.

EMERGENT YEAR. The epoch or date whence any people begin to compute their time.

EMIGRANT. One who quits his country for any lawful reason, with a design to settle elsewhere, and takes his family and property, if he has any, with him. *Vattel*, b. 1, c. 19, § 224. *Benson v. State*, 36 Ga.App. 87, 135 S.E. 514.

EMIGRANT AGENT. One engaged in the business of hiring laborers for work outside the state. *Gleaton v. State*, 55 Ga.App. 875, 191 S.E. 926.

EMIGRATION. The act of removing from one country or state to another.

It is to be distinguished from "expatriation." The latter means the abandonment of one's coun-

EMINENCE

try and renunciation of one's citizenship in it, while emigration denotes merely the removal of person and property to another country. The former is usually the consequence of the latter. Emigration is also used of the removal from one section to another of the same country.

EMINENCE. An honorary title given to cardinals. They were called "*illustrissimi*" and "*reverendissimi*" until the pontificate of Urban VIII.

EMINENT DOMAIN. The power to take private property for public use. *MacVeagh v. Multnomah County*, 126 Or. 417, 270 P. 502, 507.

The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel.

The right of society, or of the sovereign, to dispose, in case of necessity, and for the public safety, of all the wealth contained in the state, is called "eminent domain." *Jones v. Walker*, 2 Paine, 688, Fed.Cas.No.7,507.

Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it. *Beekman v. Saratoga & S. R. Co.*, 3 Paige, N.Y., 45, 73, 22 Am.Dec. 679.

"The exaction of money from individuals under the right of taxation, and the appropriation of private property for public use by virtue of the power of eminent domain, must not be confused. In paying taxes the citizen contributes his just and ascertained share to the expenses of the government under which he lives. But when his property is taken under the power of eminent domain, he is compelled to surrender to the public something above and beyond his due proportion for the public benefit. The matter is special. It is in the nature of a compulsory sale to the state." *Black, Tax-Titles*, § 3; *Beeland Wholesale Co. v. Kaufman*, 234 Ala. 249, 174 So. 516, 520.

The term "eminent domain" is sometimes (but inaccurately) applied to the land, buildings, etc., owned directly by the government, and which have not yet passed into any private ownership. This species of property is much better designated as the "public domain," or "national domain."

EMISSARY. A person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favorable to his employer.

EMISSION. In medical jurisprudence. The ejection or throwing out of any secretion or other matter from the body; the expulsion of urine, semen, etc.

EMIT. To put forth or send out; to issue. "No state shall *emit* bills of credit." Const. U. S. art. 1, § 10.

To issue; to give forth with authority; to put into circulation. See Bill of Credit.

The word "emit" is never employed in describing those contracts by which a state binds itself to pay money at a future day for services actually received, or for money borrowed for present use. Nor are instruments executed for such purposes, in common language, denominated "bills of credit." "To emit bills of credit" conveys to the mind the idea of issuing paper intended to circulate through the community, for its ordinary purposes, as money, which paper is redeemable at a future day. *Briscoe v. Bank of Kentucky*, 11 Pet. 316, 9 L.Ed. 709.

To throw off; give out; discharge. *Alabama Great Southern R. Co. v. Stewart*, 15 Ala.App. 466, 73 So. 827, 828.

In Scotch practice. To speak out; to state in words. A prisoner is said to *emit* a declaration. 2 *Alis.Crim.Pr.* 560.

EMMENAGOGUES. In medical jurisprudence. The name of a class of medicines supposed to have the property of promoting the menstrual discharge, and sometimes used for the purpose of procuring abortion.

EMOLUMENT. The profit arising from office or employment; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage; gain, public or private. Webster. Any perquisite, advantage, profit, or gain arising from the possession of an office. *Apple v. Crawford County*, 105 Pa. 303, 51 Am.Rep. 205; *United States v. MacMillan*, D.C.Ill., 209 F. 266, 272; *McLean v. United States*, 38 S.Ct. 122, 124, 226 U.S. 374, 57 L.Ed. 260; *State ex rel. Todd v. Reeves*, 196 Wash. 145, 82 P.2d 173, 175, 118 A.L.R. 177.

EMOTIONAL INSANITY. The species of mental aberration produced by a violent excitement of the emotions or passions, though the reasoning faculties may remain unimpaired. A passion, effecting for a space of time complete derangement of accused's intellect, or an impulse, which his mind is not able to resist, to do the act. *Fannon v. Commonwealth*, 295 Ky. 817, 175 S.W.2d 531, 533. See *Insanity*.

EMPALEMENT. In ancient law. A mode of inflicting punishment, by thrusting a sharp pole up the fundament. Enc. Lond.

EMPANNEL. See *Impanel*.

EMPARLANCE. See *Imparlance*.

EMPARNOURS. L. Fr. Undertakers of suits. *Kelham*.

EMPEROR. The title of the sovereign ruler of an empire. This designation was adopted by the rulers of the Roman world after the decay of the republic, and was assumed by those who claimed to be their successors in the "Holy Roman Empire," as also by Napoleon. "The sovereigns of Japan and Morocco are often, though with little propriety, called emperors." 10 *Encyc. Amer.* (1929), p. 300. In western speech the former sovereigns of Turkey and China were called emperors. *Cent.Dict.*

The title "emperor" seems to denote a power and dignity superior to that of a "king." It ap-

pears to be the appropriate style of the executive head of a federal government, constructed on the monarchical principle, and comprising in its organization several distinct kingdoms or other *quasi* sovereign states; as was the case with the German empire from 1871 to 1918. "The proper meaning of *emperor* is the chief of a confederation of states of which kings are members." Cent. Dict., quoting Encyc. Brit. "In general, an *emperor* is the holder of a sovereignty extending over conquered or confederated peoples, a *king* is ruler of a single people. Thus * * * the 'King of England' is 'Emperor of India.'" Webster's New Int. Dict. Before the dissolution of the Austro-Hungarian empire in November, 1918, its monarch was known as the Emperor of Austria and King of Hungary.

EMPHASIZING FACTS. An instruction is said to emphasize facts which may contain sufficient facts to authorize a verdict, but nevertheless some fact or facts are selected from the evidence and mentioned in such a way as to indicate to the jury that they have especial potency when that is not justified. *Robinson v. Ross, Mo.*, 47 S.W.2d 122, 125.

EMPHYTEUSIS. In the Roman and civil law. A contract by which a landed estate was leased to a tenant, either in perpetuity or for a long term of years, upon the reservation of an annual rent or *canon*, and upon the condition that the lessee should improve the property, by building, cultivating, or otherwise, and with a right in the lessee to alien the estate at pleasure or pass it to his heirs by descent, and free from any revocation, re-entry, or claim of forfeiture on the part of the grantor, except for non-payment of the rent. *Inst.* 3, 25, 3; 3 Bl.Comm. 232; *Maine, Anc. Law*, 289.

The right granted by such a contract, (*jus emphyteuticum*, or *emphyteuticarium*.) The real right by which a person is entitled to enjoy another's estate as if it were his own, and to dispose of its substance, as far as can be done without deteriorating it. *Mackeld. Rom. Law*, § 326.

EMPHYTEUTA. In the civil law. The person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis*.

EMPHYTEUTICUS. In the civil law. Founded on, growing out of, or having the character of, an *emphyteusis*; held under an *emphyteusis*. 3 Bl. Comm. 232.

EMPIRE. The dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command.

EMPIRIC. A practitioner in medicine or surgery, who proceeds on experience only, without science or legal qualification; a quack. *Parks v. State*, 159 Ind. 211, 64 N.E. 862, 59 L.R.A. 190.

EMPLAZAMIENTO. In Spanish law. A summons or citation, issued by authority of a judge,

requiring the person to whom it is addressed to appear before the tribunal at a designated day and hour.

EMPLEAD. To indict; to prefer a charge against; to accuse.

EMPLOI. In French law. Equitable conversion. When property covered by the *régime dotal* is sold, the proceeds of the sale must be reinvested for the benefit of the wife. It is the duty of the purchaser to see that the price is so reinvested. *Arg. Fr. Merc. Law*, 557.

EMPLOY. To engage in one's service; to use as an agent or substitute in transacting business; to commission and intrust with the management of one's affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and a contract for a compensation, and has but this one meaning when used in the ordinary affairs and business of life. *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123, Ala.*, 64 S.Ct. 698, 703, 321 U.S. 590, 88 L.Ed. 949; *Slocum Straw Works v. Industrial Commission*, 232 Wis. 71, 286 N.W. 593, 598; It is a synonym of "appoint". *Morris v. Parks*, 145 Or. 481, 28 P.2d 215, 216; *Board of Com'rs of Colfax County v. Department of Public Health*, 44 N.M. 189, 100 P.2d 222, 223, It is also synonymous with "hire." *Nat. Wooden Box Ass'n v. U. S.*, Ct.Cl., 103 Ct.Cl. 595, 59 F.Supp. 118, 119.

EMPLOYED. This signifies both the act of doing a thing and the being under contract or orders to do it. To give employment to; to have employment. *State v. Birmingham Beauty Shop, Ala.*, 198 So. 435, 436.

EMPLOYEE. This word "is from the French, but has become somewhat naturalized in our language. Strictly and etymologically, it means 'a person employed,' but, in practice in the French language, it ordinarily is used to signify a person in some official employment, and as generally used with us, though perhaps not confined to any official employment, it is understood to mean some permanent employment or position." The word may be more extensive than "clerk" or "officer," and may signify any one in place, or having charge or using a function, as well as one in office. *Hopkins v. Cromwell*, 89 App.Div. 481, 85 N.Y.S. 839.

One who works for an employer; a person working for salary or wages; applied to anyone so working, but usually only to clerks, workmen, laborers, etc., and but rarely to the higher officers of a corporation or government or to domestic servants. *Keefe v. City of Monroe*, 120 So. 106, 9 La.App. 545; *State ex rel. Gorczyca v. City of Minneapolis*, 174 Minn. 594, 219 N.W. 924.

Generally, when person for whom services are performed has right to control and direct individual who performs services not only as to result to be accomplished by work but also as to details and means by which result is accom-

EMPLOYEE

plished, individual subject to direction is an "employee". *Young v. Demos*, 70 Ga.App. 577, 28 S.E. 2d 891, 893.

"Servant" is synonymous with "employee". *Gooden v. Mitchell*, Del.Super., 21 A.2d 197, 200, 201, 203, 2 Terry 301; *Gibson v. Gillette Motor Transport*, Tex.Civ.App., 138 S.W.2d 293, 294. *Tennessee Valley Appliances v. Rowden*, 24 Tenn. App. 487 146 S.W.2d 845, 848.

"Employee" must be distinguished from "independent contractor," "officer," "vice-principal," "agent," etc. The term is often specially defined by statutes; and whether one is an employee or not within a particular statute will depend upon facts and circumstances. For examples: *Fair Labor Standards Act*, *Fleming v. Demeritt Co.*, D.C.Vt., 56 F.Supp. 376, 378, 390; *Schroepfer v. A. S. Abell Co.*, D.C.Md., 48 F.Supp. 88, 94, 95, 98. *Motor Carriers' Act*, *United States v. American Trucking Ass'n*, App.D.C., 60 S.Ct. 1059, 1065, 310 U.S. 534, 84 L.Ed. 1345; *West v. Smoky Mountain Stages*, D.C.Ga., 40 F.Supp. 296, 298, 299. *National Labor Relations Act*. *Standard Lime & Stone Co. v. National Labor Relations Board*, C.C.A.4, 97 F.2d 531, 534, 535, 537; *Eagle-Picher Mining Co. v. National Labor Relations Board*, C.C.A.8, 119 F.2d 903, 911. *Social Security Act*, *Kentucky Cottage Industries v. Glenn*, D.C.Ky., 39 F.Supp. 642, 644, 645; *Yearwood v. United States*, D.C.La., 55 F.Supp. 295, 299, 300. *State Labor Relations Law*, In re *New York State Labor Relations Board*, 37 N.Y.S.2d 304, 308, 309; *New York State Labor Relations Board v. Union Club of City of N. Y.*, 52 N.Y.S.2d 74, 83, 268 App.Div. 516. *Unemployment Compensation Act*. In re *General Electric Co.*, 66 Idaho 91, 156 P.2d 190, 191. In re *Keith*, 30 N.Y.S.2d 206, 262 App.Div. 984. *Workmen's Compensation Act*, *Stiles v. Des Moines Council of Boy Scouts of America*, 209 Iowa 1235, 229 N.W. 841, 844; *Essex County Country Club v. Chapman*, 113 N.J.L. 182, 173 A. 591, 592.

For "Executive Employee", see that title.

EMPLOYER. One who employs the services of others; one for whom employees work and who pays their wages or salaries. The correlative of "employee." *Angell v. White Eagle Oil & Refining Co.*, 169 Minn. 183, 210 N.W. 1004, 1005. "Master" is a synonymous term. *Tennessee Valley Appliances v. Rowden*, 24 Tenn.App. 487, 146 S.W. 2d 845, 846; *Gooden v. Mitchell*, 2 Terry 301, 21 A. 2d 197, 200.

The following are examples of persons who have been or have not been classified as "employers" within various statutes. *Carriers' Taxing Act*. *Interstate Transit Lines v. U. S.*, D.C.Neb., 56 F.Supp. 332; *Walling v. Baltimore Steam Packet Co.*, C.C.A.Md., 144 F.2d 130, 132. *Fair Labor Standards Act*. *Bowe v. Judson C. Burns, Inc.*, D.C.Pa., 46 F.Supp. 745, 748; *Barrow v. Adams & Co. Real Estate*, 46 N.Y.S.2d 357, 359, 182 Misc. 641. *National Labor Relations Act*. *National Labor Relations Board v. Condenser Corporation of America*, C.C.A.3, 128 F.2d 67, 71; *N. L. R. B. v. Hofmann*, C.C.A.3, 147 F.2d 679, 681, 157 A.L.R. 1149. *Social Security Act*. *Matcovich v. Anglem*, C.C.A.Cal., 134 F.2d 834, 837; *Florida Industrial Commission v. Peninsular Life Ins. Co.*, 152 Fla. 55, 10 So.2d 793, 794. *Unemployment Compensation Act*, *Smith v. Brooklyn Bar Ass'n*, 44 N.Y.S.2d 620, 621, 266 App.Div. 1038; *State ex rel. Merion v. Unemployment Compensation Board of Review*, 142 Ohio St. 628, 53 N.E.2d 818, 820.

EMPLOYERS' LIABILITY ACTS. Statutes defining or limiting the occasions and the extent to which employers shall be liable in damages for injuries to their employees occurring in the course of the employment, and particularly (in recent times) abolishing the common-law rule that the employer is not liable if the injury is caused by the fault or negligence of a fellow servant.

EMPLOYMENT. The act of hiring (*People v. Hyde*, 89 N.Y. 11, 16), implying a request and a

contract for compensation. *State v. Deck*, 108 Mo. App. 292, 83 S.W. 314, 315, (quoting and adopting definition in *State v. Foster*, 37 Iowa, 404; *McCluskey v. Cromwell*, 11 N.Y. 593).

It does not necessarily import an engagement or rendering services for another. A person may as well be "employed" about his own business as in the transaction of the same for a principal. *State v. Canton*, 43 Mo. 51.

Act of employing or state of being employed; that which engages or occupies; that which consumes time or attention; also an occupation, profession, trade, post or business. *Hinton v. Columbia River Packers' Ass'n*, C.C.A.Or., 117 F.2d 310; *Davis v. Lincoln County*, 117 Neb. 148, 219 N.W. 899, 900.

Includes the doing of the work and a reasonable margin of time and space required in passing to and from the place where the work is to be done. *California Casualty Indemnity Exchange v. Industrial Accident Commission*, 21 Cal. 2d 751, 135 P.2d 158, 161; *Park Utah Consol. Mines Co. v. Industrial Commission*, 103 Utah 64, 133 P.2d 314, 317.

The term "office" implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an "employment" does not comprehend a delegation of any part of the sovereign authority. *Dade County v. State*, 95 Fla. 465, 116 So. 72, 76.

EMPLOYMENT AGENCY. Business operated by a person, firm or corporation engaged in procuring, for a fee, employment for others and employees for employers. *McMillan v. City of Knoxville*, 139 Tenn. 319, 202 S.W. 65, 66.

EMPORIUM. A place for wholesale trade in commodities carried by sea. The name is sometimes applied to a seaport town, but it properly signifies only a particular place in such a town. *Smith*, Dict. Antiq.

EMPOWER. A grant of authority rather than a command of its exercise. In re *Whiteman's Will*, 52 N.Y.S.2d 723, 725, 268 App.Div. 591.

EMPRESARIOS. In Mexican law. Undertakers or promoters of extensive enterprises, aided by concessions or monopolistic grants from government; particularly, persons receiving extensive land grants in consideration of their bringing emigrants into the country and settling them on the lands, with a view of increasing the population and developing the resources of the country. *U. S. v. Maxwell Land-Grant Co.*, 7 S.Ct. 1015, 121 U.S. 325, 30 L.Ed. 949.

EMPRESTIDO. In Spanish law. A loan. Something lent to the borrower at his request. *Las Partidas*, pt. 3, tit. 18, l. 70.

EMPTIO. In the Roman and civil law. The act of buying; a purchase.

EMPTIO BONORUM. A species of forced assignment for the benefit of creditors; being a public sale of an insolvent debtor's estate whereby the purchaser succeeded to all his property, rights, and claims, and became responsible for his debts

and liabilities to the extent of a quota fixed before the transfer. See Mackeld. Rom. Law, § 521.

EMPTIO ET VENDITIO. Purchase and sale; sometimes translated "emption and vendition." The name of the contract of sale in the Roman law. Inst. 3, 23; Bract. fol. 61b. Sometimes made a compound word, *emptio-venditio*.

EMPTIO REI SPERATÆ. A purchase in the hope of an uncertain future profit; the purchase of a thing not yet in existence or not yet in the possession of the seller, as, the cast of a net or a crop to be grown, and the price of which is to depend on the actual gain. On the other hand, if the price is fixed and not subject to fluctuation, but is to be paid whether the gain be greater or less, it is called *emptio spei*. Mackeld. Rom. Law, § 400.

EMPTOR. Lat. A buyer or purchaser. Used in the maxim "*caveat emptor*," let the buyer beware; *i. e.*, the buyer of an article must be on his guard and take the risks of his purchase.

EMPTOR EMIT QUAM MINIMO POTEST, VENDITOR VENDIT QUAM MAXIMO POTEST. The buyer purchases for the lowest price he can; the seller sells for the highest price he can. 2 Kent, Comm. 486.

EMTIO. In the civil law. Purchase. This form of the word is used in the Digests and Code. Dig. 18, 1; Cod. 4, 49. See Emptio.

EMTOR. In the civil law. A buyer or purchaser; the buyer. Dig. 18, 1; Cod. 4, 49.

EMTRIX. In the civil law. A female purchaser; the purchaser. Cod. 4, 54, 1.

EN ARERE. L. Fr. In time past. 2 Inst. 506.

EN AUTRE DROIT. In the right of another. See Autre Droit.

EN BANC. L. Fr. In the bench. 1 Anders. 51.

EN BREVET. In French law. An *acte* is said to be *en brevet* when a copy of it has not been recorded by the notary who drew it.

EN DÉCLARATION DE SIMULATION. A form of action used in Louisiana. Its object is to have a contract declared judicially a simulation and a nullity, to remove a cloud from the title, and to bring back, for any legal purpose, the thing sold to the estate of the true owner. Edwards v. Ballard, 20 La. Ann. 169.

EN DEMEURE. In default. Used in Louisiana of a debtor who fails to pay on demand according to the terms of his obligation. See Bryan v. Cox, 3 Mart. (La. N. S.) 574.

EN ESCHANGE IL COVIENT QUE LES ESTATES SOIENT EGALES. Co. Litt. 50. In an exchange it is desirable that the estates be equal.

EN FAIT. Fr. In fact; in deed; actually.

EN GROS. Fr. In gross. Total; by wholesale.

EN JUICIO. Span. Judicially; in a court of law; in a suit at law. White, New Recop. b. 2, tit. 8, c. 1.

EN MASSE. Fr. In a mass; in a lump; at wholesale.

EN MORT MAYNE. L. Fr. In a dead hand; in mortmain. Britt. c. 43.

EN OWEL MAIN. L. Fr. In equal hand. The word "*owel*" occurs also in the phrase "*owelty* of partition."

EN RECOUVREMENT. Fr. In French law. An expression employed to denote that an indorsement made in favor of a person does not transfer to him the property in the bill of exchange, but merely constitutes an authority to such person to recover the amount of the bill. Arg. Fr. Merc. Law, 558.

EN ROUTE. Fr. On the way; in the course of a voyage or journey; in course of transportation. McLean v. U. S., 17 Ct. Cl. 90.

EN VENTRE SA MERE. L. Fr. In its mother's womb. A term descriptive of an unborn child. For some purposes the law regards an infant *en ventre* as in being. It may take a legacy; have a guardian; an estate may be limited to its use, etc. 1 Bl. Comm. 130.

EN VIE. L. Fr. In life; alive. Britt. c. 50.

ENABLE. To give power to do something. In the case of a person under disability as to dealing with another, "enable" has the primary meaning of removing that disability; not of conferring a compulsory power as against that other; 66 L. J. Ch. 208; [1897] A. C. 647. To make able. Summers v. Chicago Title & Trust Co., 335 Ill. 564, 167 N.E. 777, 779.

ENABLING POWER. When the donor of a power, who is the owner of the estate, confers upon persons not seised of the fee the right of creating interests to take effect out of it, which could not be done by the donee of the power unless by such authority, this is called an "enabling power." 2 Bouv. Inst. no. 1928.

ENABLING STATUTE. The act of 32 Henry VIII. c. 28, by which tenants in tail, husbands seised in right of their wives, and others were empowered to make leases for their lives or for twenty-one years, which they could not do before. 2 Bl. Comm. 319; Co. Litt. 44a. The phrase is also applied to any statute enabling persons or corporations to do what before they could not. It is applied to statutes which confer new powers.

ENACH. In Saxon law. The satisfaction for a crime; the recompense for a fault. Skene.

ENACT. To establish by law; to perform or effect; to decree. The usual introductory formula in making laws is, "*Be it enacted*." In re Senate File, 25 Neb. 864, 41 N.W. 981.

ENACTING

ENACTING CLAUSE. That part of a statute which declares its enactment and serves to identify it as an act of legislation proceeding from the proper legislative authority. Various formulas are used for this clause, such as "Be it enacted by the people of the state of Illinois represented in general assembly," "Be it enacted by the senate and house of representatives of the United States of America in congress assembled," "The general assembly do enact," etc. A section of a statute denouncing an offense is sometimes spoken of as the "enacting clause." *City of Astoria v. Malone*, 169 P. 749, 750, 87 Or. 88. See *United States v. Mendelsohn*, D.C.N.J., 32 F.Supp. 622, 623, questioning this definition.

ENAJENACION. In Spanish and Mexican law. Alienation; transfer of property. The act by which the property in a thing, by lucrative title, is transferred, as a donation; or by onerous title, as by sale or barter. In a more extended sense, the term comprises also the contracts of emphyteusis, pledge, and mortgage, and even the creation of a servitude upon an estate. *Escriche; Mulford v. Le Franc*, 26 Cal. 88.

ENBREVER. L. Fr. To write down in short; to abbreviate, or, in old language, *imbreviate*; to put into a schedule. *Britt. c. 1*.

ENCAUSTUM. In the civil law. A kind of ink or writing fluid appropriate to the use of the emperor. *Cod. 1, 23, 6*.

ENCEINTE. Pregnant. See *Pregnancy*.

ENCHESON. The occasion, cause, or reason for which anything is done. *Termes de la Ley*.

ENCLOSE. See *Inclose*.

ENCLOSURE. See *Inclosure*.

ENCOMIENDA. In Spanish law. A grant from the crown to a private person of a certain portion of territory in the Spanish colonies, together with the concession of a certain number of the native inhabitants, on the feudal principle of commendation. 2 *Wools. Pol. Science*, 161, 162. Also a royal grant of privileges to the military orders of Spain.

ENCOURAGE. In criminal law. To instigate; to incite to action; to give courage to; to inspire; to embolden; to raise confidence; to make confident; to help; to forward; to advise. *Comitez v. Parkerson*, C.C.La., 50 F. 170.

ENCROACH. To enter by gradual steps or stealth into the possessions or rights of another; to trespass; intrude. *Miami Corporation v. State*, 186 La. 784, 173 So. 315, 318. To gain unlawfully upon the lands, property, or authority of another; as if one man presses upon the grounds of another too far, or if a tenant owe two shillings rent-service, and the lord exact three. So, too, the Spencers were said to encroach the king's authority. *Blount; Plowd. 94a*.

ENCROACHMENT. An encroachment upon a street or highway is a fixture, such as a wall

or fence, which illegally intrudes into or invades the highway or incloses a portion of it, diminishing its width or area, but without closing it to public travel. *State v. Scott*, 82 N.H. 278, 132 A. 685, 686.

In the law of easements. Where the owner of an easement alters the dominant tenement, so as to impose an additional restriction or burden on the servient tenement, he is said to commit an encroachment. *Sweet*.

ENCUMBER. See *Incumber*.

ENCUMBRANCE. See *Incumbrance*.

END. Object; intent. Things are construed according to the end. *Finch, Law, b. 1, c. 3, no. 10*.

END LINES. In mining law, the end lines of a claim, as platted or laid down on the ground, are those which mark its boundaries on the shorter dimension, where it crosses the vein, while the "side lines" are those which mark its longer dimension, where it follows the course of the vein. But with reference to extra-lateral rights, if the claim as a whole crosses the vein, instead of following its course, the end lines will become side lines and vice versa. *Consolidated Wyoming Gold Min. Co. v. Champion Min. Co.*, C.C.Cal., 63 F. 549.

END OF WILL. Point in will at which dispositive provisions terminate. In *re Levanti's Will*, 252 N.Y.S. 497, 498, 141 Misc. 248. In *re Coyne's Estate*, 349 Pa. 331, 37 A.2d 509, 510.

END ON OR NEARLY SO. Approaching vessels whose courses diverge not more than one or two points are meeting "end on or nearly so," within article 18 of the *Inland Rules* (33 *USCA* § 203), and are required to pass port to port. *The Amolco*, C.C.A.Mass., 283 F. 890, 893.

END SILLS. The sill of a car is one of the main longitudinal timbers which are connected transversely by the end sills, bolsters, and cross-ties. Sills are divided into side sills, intermediate sills, and center sills. The end sill is the transverse member of the under frame of a car framed across the ends of all the longitudinal sills. In passenger cars the end sill comes directly under the end door; the platform with its various parts usually being a separate construction. The platform end sill is the transverse end piece of the platform frame, and is also called the "end timber" and buffer beam on passenger equipment cars. *Hill v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 160 Minn. 484, 200 N.W. 485, 486.

END TO END. The expression "end to end," used in a patent claim in describing the relative position of rollers, does not necessarily require that there shall be no longitudinal space between the ends of the rollers, nor impose a limitation which will enable another to avoid infringement by leaving a space between them, where it does not change their function or mode of operation. *Stebler v. Riverside Heights Orange Growers' Ass'n*, C.C.A.Cal., 205 F. 735, 740.

ENDEAVOR. To exert physical and intellectual strength toward the attainment of an object; a systematic or continuous effort. *Thompson v. Corbin*, Tex.Civ.App., 137 S.W.2d 157, 159.

ENDENZIE, or ENDENIZEN. To make free; to enfranchise.

ENDOCARDITIS. In medical jurisprudence. An inflammation of the living membrane of the heart.

ENDORSE. See *Indorse*.

ENDOW. To give a dower; to bestow upon; to make pecuniary provision for. *Fish v. Fish*, 184 Ky. 700, 212 S.W. 586, 587.

ENDOWED SCHOOLS. In England, certain schools having endowments are distinctively known as "endowed schools;" and a series of acts of parliament regulating them are known as the "endowed schools acts." *Mozley & Whitley*.

ENDOWMENT. The assignment of dower; the setting off a woman's dower. 2 Bl. Comm. 135.

In appropriations of churches (in English law,) the setting off a sufficient maintenance for the vicar in perpetuity. 1 Bl. Comm. 387.

The act of settling a fund, or permanent pecuniary provision, for the maintenance of a public institution, charity, college, etc.

A fund settled upon a public institution, etc., for its maintenance or use.

The words "endowment" and "fund," in a statute exempting from taxation the real estate, the furniture and personal property, and the "endowment or fund" of religious and educational corporations, are *ejusdem generis*, and intended to comprehend a class of property different from the other two, not real estate or chattels. The difference between the words is that "fund" is a general term, including the endowment, while "endowment" means that particular fund, or part of the fund, of the institution, bestowed for its more permanent uses, and usually kept sacred for the purposes intended. The word "endowment" does not, in such an enactment, include real estate. See *First Reformed Dutch Church v. Lyon*, 32 N.J.Law, 360; *Appeal of Wagner Institute*, 116 Pa. 555, 11 A. 402.

ENDOWMENT POLICY. In life insurance. A policy which is payable when the insured reaches a given age, or upon his decease, if that occurs earlier. *Central States Life Ins. Co. v. Morris*, 202 Ark. 969, 155 S.W.2d 333, 336, 202 Ark. 969.

ENDURANCE. State or capability of lasting; continuance; or act or instance of bearing or suffering; a continuing or the power of continuing under pain, hardship, or distress without being overcome; sufferance; as beyond endurance. *State ex rel. Adams v. Crowder*, 46 N.M. 20, 120 P.2d 428, 431.

ENEMY, in public law, signifies either the state which is at war with another, or a citizen or subject of such state, or a person, partnership, or corporation doing business within the territory of an enemy state or an ally thereof. *United States v. Fricke*, D.C.N.Y., 259 F. 673, 675; *Rossie v. Garvan*, D.C.Conn., 274 F. 447, 453.

Alien Enemy

An alien, that is, a citizen or subject of a foreign state or power, residing within a given country, is called an "alien ami" if the country where he lives is at peace with the country of which he is a citizen or subject; but if a state of war exists between the two countries, he is called an "alien enemy," and in that character is denied access to the courts or aid from any of the departments of government.

Enemy Belligerent

Citizens who associate themselves with the military arm of an enemy government and enter the United States bent on hostile acts. *Ex parte Quirin*, App.D.C., 63 S.Ct. 2, 15, 317 U.S. 1, 87 L.Ed. 3.

Enemy's Property

In international law, and particularly in the usage of prize courts, this term designates any property which is engaged or used in illegal intercourse with the public enemy, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences. *Prize Cases*, 2 Black, 674, 17 L.Ed. 459.

Public Enemy

A nation at war with the United States; also every citizen or subject of such nation. Not including robbers, thieves, private depredators, or riotous mobs. *State v. Moore*, 74 Mo. 417, 41 Am. Rep. 322.

The term has latterly acquired, in the vocabulary of journalism and civic indignation, a more extended meaning, denoting a particularly notorious offender against the criminal laws, especially one who seems more or less immune from successful prosecution.

ENFEOFF. To invest with an estate by feoffment. To make a gift of any corporeal hereditaments to another. See *Feoffment*.

ENFEOFFMENT. The act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.

ENFITEUSIS. In Spanish law. *Emphyteusis*, (*q. v.*). See *Mulford v. Le Franc*, 26 Cal. 103.

ENFORCE. To put into execution; to cause to take effect; to make effective; as, to enforce a writ, a judgment, or the collection of a debt or fine; to compel obedience to. *Dozier v. City of Gatesville*, Tex.Civ.App., 51 S.W.2d 1091.

ENFORCEABLE. Word "enforceable," standing alone, does not mean "perform" or "performable," but, when employed in contract for performance of obligation relating to venue, it is synonymous with word "execute," and must be given meaning of "perform," "performable," and "to perform." It does not necessarily imply actual force or coercion, but may mean to be executed; to put

ENFRANCHISE

into execution; to cause to take effect. *Glover v. American Mortgage Corporation*, Tex.Civ.App., 94 S.W.2d 1235, 1236.

ENFRANCHISE. To make free; to incorporate a man in a society or body politic.

ENFRANCHISEMENT. The act of making free; giving a franchise or freedom to; investiture with privileges or capacities of freedom, or municipal or political liberty. Admission to the freedom of a city; admission to political rights, and particularly the right of suffrage. Anciently, the acquisition of freedom by a vassal from his lord.

The word is now used principally either of the manumission of slaves, (*q. v.*) of giving to a borough or other constituency a right to return a member or members to parliament, or of the conversion of copyhold into freehold. *Mozley & Whiteley*.

ENFRANCHISEMENT OF COPYHOLDS. In English law. The conversion of copyhold into freehold tenure, by a conveyance of the fee-simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, etc., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate. 1 *Watk. Copyh.* 362; 2 *Steph. Comm.* 51.

ENGAGE. To employ or involve one's self; to take part in; to embark on. *State ex rel. Kusie v. Weber*, 72 N.D. 705, 10 N.W.2d 741, 745. It imports more than a single act or transaction or an occasional participation. *Head v. New York Life Ins. Co.*, C.C.A.Okl., 43 F.2d 517, 519; *Lee v. Guardian Life Ins. of America*, 46 N.Y.S.2d 241, 246, 187 Misc. 221.

"Engage" means to take part in or be employed in and denotes more than a single act or single transaction while "participate" means simply to take or have a part or share in, and may apply equally to a single act or many acts. *Lawyers Lloyds of Texas v. Webb*, Tex.Civ.App., 150 S.W.2d 181, 184.

ENGAGED IN AVIATION. See *Aviation*.

ENGAGED IN COMMERCE. To be "engaged in commerce" an employee must be actually engaged in the movement of commerce or the services he performs must be so closely related thereto as to be for all practical purposes an essential part thereof; *McLeod v. Threlkeld*, Tex., 63 S.Ct. 1248, 1251, 1252, 319 U.S. 491, 87 L.Ed. 1538; *Boutell v. Walling*, C.C.A.Mich., 148 F.2d 329, 331.

ENGAGED IN EMPLOYMENT. To be rendering service for employer under terms of employment, and is more than being merely hired to commence work. *Walling v. Consumers Co.*, C.C.A.Ill., 149 F.2d 626, 629.

ENGAGEMENT. In French law. A contract. The obligation arising from a *quasi* contract. The terms "obligation" and "engagement" are said to be synonymous, (17 *Toullier*, no. 1;) but the Code seems specially to apply the term "engagement" to those obligations which the law imposes on a man without the intervention of any

contract, either on the part of the obligor or the obligee, (article 1370.) An engagement to do or omit to do something amounts to a promise. *Rue v. Rue*, 21 N.J.Law, 369.

In English practice. The term has been appropriated to denote a contract entered into by a married woman with the intention of binding or charging her separate estate, or, with stricter accuracy, a promise which in the case of a person *sui juris* would be a contract, but in the case of a married woman is not a contract, because she cannot bind herself personally, even in equity. Her engagements, therefore, merely operate as dispositions or appointments *pro tanto* of her separate estate. *Sweet*.

Under statute rendering national bank stockholders liable to assessment in order to discharge an "engagement" of the bank, the quoted word includes all pecuniary liabilities and obligations of the bank. *Oppenheimer v. Harriman Nat. Bank & Trust Co. of City of New York*, N.Y., 57 S.Ct. 719, 723, 301 U.S. 206, 81 L.Ed. 1042.

ENGENDER. To cause, to bring about, to excite, to occasion, to call forth. *Lacy v. State*, 30 Okl. Cr. 273, 236 P. 53, 54.

ENGINE. This is said to be a word of very general signification; and, when used in an act, its meaning must be sought out from the act itself, and the language which surrounds it, and also from other acts *in pari materia*, in which it occurs. *Abbott, J.*, 6 *Maule & S.* 192. In a large sense, it applies to all utensils and tools which afford the means of carrying on a trade. But in a more limited sense it means a thing of considerable dimensions, of a fixed or permanent nature, analogous to an erection or building. *Id.* 182. And see *Lefler v. Forsberg*, 1 App.D.C. 41; *Brown v. Benson*, 101 Ga. 753, 29 S.E. 215.

Within Employers' Liability Law, § 1, par. 2, subd. (a), an "engine" is an ingenious or skillful contrivance used to effect a purpose, and is often synonymous with the word "machine"; machinery being any combination of mechanical means designed to work together so as to effect a given end. *Haddad v. Commercial Motor Truck Co.*, 146 La. 897, 84 So. 197, 198, 9 A.L.R. 1380.

Machine by which power is applied to the doing of work, particularly one that converts some motive energy, especially heat, into mechanical power. *Chrysler Corporation v. Trott*, Cust. & Pat.App., 83 F.2d 302, 310.

Compound Compressed Air Engine

An engine in which the compressed air is first used in a high pressure cylinder, that is, in a cylinder of relatively small diameter, and after driving the piston connected therewith, instead of being permitted to escape, is conveyed to a low pressure cylinder, that is, to a cylinder of larger diameter, where it still has sufficient expansive force to drive another piston. This operation may again be repeated in a third cylinder or the air

be permitted to escape to the atmosphere. *H. K. Porter Co. v. Baldwin Locomotive Works, D.C.Pa., 219 F. 226, 229.*

ENGINEER. One who is versed in or follows as a calling or profession any branch of engineering. *Employers' Liability Assur. Corporation v. Accident & Casualty Ins. Co. of Winterthur, Switzerland, C.C.A.Ohio, 134 F.2d 566, 569.* One who manages or runs any stationary or locomotive engine; an engine driver. *Baggaley v. Aetna Ins. Co., C.C.A.Ill., 111 F.2d 134, 135.*

ENGINEERING. The art and science by which mechanical properties of matter are made useful to man in structures and machines. *Employers' Liability Assur. Corporation v. Accident & Casualty Ins. Co. of Winterthur, Switzerland, C.C.A.Ohio, 134 F.2d 566, 569, 146 A.L.R. 1186.*

ENGLISHIRE. A law was made by Canute, for the preservation of his Danes, that, when a man was killed, the hundred or town should be liable to be amerced, unless it could be proved that the person killed was an Englishman. This proof was called "*Engleshire.*" 1 Hale, P. C. 447; 4 Bl. Comm. 195; Spelman.

ENGLETERRE. L. Fr. England.

ENGLISH INFORMATION. In English law. A proceeding in the court of exchequer in matters of revenue.

ENGLISH MARRIAGE. This phrase may refer to the place where the marriage is solemnized, or it may refer to the nationality and domicile of the parties between whom it is solemnized, the place where the union so created is to be enjoyed. 6 Prob. Div. 51.

ENGRAVING. The art of producing on hard material incised or raised patterns, lines, and the like, from which an impression or print is taken. The term may apply to a text or script, but is generally restricted to pictorial illustrations or works connected with the fine arts, not including the reproduction of pictures by means of photography. *American Historical Co. v. Clark, 316 Ill.App. 309, 44 N.E.2d 761.*

ENGROSS. To copy the rude draft of an instrument in a fair, large hand. To write out, in a large, fair hand, on parchment.

In old criminal law. To buy up so much of a commodity on the market as to obtain a monopoly and sell again at a forced price.

ENGROSSER. One who engrosses or writes on parchment in a large, fair hand.

One who purchases large quantities of any commodity in order to acquire a monopoly, and to sell them again at high prices.

ENGROSSING. In English law. The getting into one's possession, or buying up, large quantities of corn, or other dead victuals, with intent to sell them again. The total engrossing of any other commodity, with intent to sell it at an unreason-

able price. 4 Bl.Comm. 158, 159. This was a misdemeanor, punishable by fine and imprisonment. *Steph.Crim.Law, 95.* Now repealed by 7 & 8 Vict. c. 24. 4 Steph.Comm. 291, note.

ENHANCED. This word, taken in an unqualified sense, is synonymous with "increased," and comprehends any increase of value, however caused or arising. *Thornburn v. Doscher, C.C.Or., 32 Fed. 812.*

ENHERITANCE. L. Fr. Inheritance.

ENTIA PARS. The share of the eldest. A term of the English law descriptive of the lot or share chosen by the eldest of coparceners when they make a voluntary partition. The first choice (*primer election*) belongs to the eldest. *Co.Litt. 166.*

ENTIA PARS SEMPER PRÆFERENDA EST PROPTER PRIVILEGIUM ÆTATIS. *Co.Litt. 166.* The part of the elder sister is always to be preferred on account of the privilege of age.

ENJOIN. To require; command; positively direct. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act. *Clifford v. Stewart, 95 Me. 38, 49 A. 52; Lawrence v. Cooke, 32 Hun, 126; Brimberg v. Hartenfeld Bag Co., 89 N.J.Eq. 425, 105 A. 68, 69.*

ENJOY. To have, possess, and use with satisfaction; to occupy or have benefit of. *Salway v. Multnomah Lumber & Box Co., 134 Or. 428, 293 P. 420, 422.*

ENJOYMENT. The exercise of a right; the possession and fruition of a right, privilege or incorporeal hereditament.

Comfort, consolation, contentment, ease, happiness, pleasure and satisfaction. *National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291, 295.*

Adverse Enjoyment

The possession or exercise of an easement, under a claim of right against the owner of the land out of which such easement is derived. 2 Washb. Real Prop. 42; *Cox v. Forrest, 60 Md. 79.*

Quiet Enjoyment

Covenant for. See Covenant.

ENLARGE. To make larger; to increase; to extend a time limit; to grant further time. Also to set at liberty one who has been imprisoned or in custody.

ENLARGER L'ESTATE. A species of release which inures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 1 Steph.Comm. 518.

ENLARGING

ENLARGING. Extending, or making more comprehensive; as an enlarging statute, which is a remedial statute enlarging or extending the common law. 1 Bl.Comm. 86, 87.

ENLISTMENT. The act of one who voluntarily enters the military or naval service of the government, contracting to serve in a subordinate capacity. *Morrissey v. Perry*, 137 U.S. 157, 11 Sup. Ct. 57, 34 L.Ed. 644; *Babbitt v. U. S.*, 16 Ct.Cl. 213.

The words "enlist" and "enlistment," in law, as in common usage, may signify either the complete fact of entering into the military service, or the first step taken by the recruit towards that end. When used in the former sense, as in statutes conferring a right to compel the military service of enlisted men, the enlistment is not deemed completed until the man has been mustered into the service. *Tyler v. Pomeroy*, 8 Allen, Mass., 480.

Enlistment does not include the entry of a person into the military service under a commission as an officer. *Hilliard v. Stewartstown*, 48 N.H. 280.

Enlisted applies to a drafted man as well as a volunteer, whose name is duly entered on the military rolls. *Sheffield v. Otis*, 107 Mass. 282.

ENORMIA. In old practice and pleading. Unlawful or wrongful acts; wrongs. *Et alia enormia*, and other wrongs. This phrase constantly occurs in the old writs and declarations of trespass.

ENORMOUS. Aggravated. "So enormous a trespass." *Vaughan*, 115. Written "enormious," in some of the old books. *Enormious* is where a thing is made without a rule or against law. *Brownl. pt. 2, p. 19.*

ENPLEET. Anciently used for implead. *Cowell.*

ENQUÊTE, or ENQUEST. In canon law. An examination of witnesses, taken down in writing, by or before an authorized judge, for the purpose of gathering testimony to be used on a trial.

ENRÉGISTREMENT. In French law. Registration. A formality which consists in inscribing on a register, specially kept for the purpose by the government, a summary analysis of certain deeds and documents. At the same time that such analysis is inscribed upon the register, the clerk places upon the deed a memorandum indicating the date upon which it was registered, and at the side of such memorandum an impression is made with a stamp. *Arg.Fr.Merc.Law*, 558.

ENROLL. To register; to make a record; to enter on the rolls of a court; to transcribe. *Ream v. Com.*, 3 Serg. & R. (Pa.) 209; *Anderson v. Commonwealth*, 275 Ky. 232, 121 S.W.2d 46, 47.

ENROLLED BILL. In legislative practice, a bill which has been duly introduced, finally passed by both houses, signed by the proper officers of each, approved by the governor (or president) and filed by the secretary of state. *Sedgwick County Com'rs v. Bailey*, 13 Kan. 608.

ENROLLMENT. The act of putting upon a roll. A record made. *Anderson v. Commonwealth*, 275 Ky. 232, 121 S.W.2d 46, 47.

In English law. The registering or entering on the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as a recognizance, a deed of bargain and sale, and the like. *Jacob.*

ENROLLMENT OF VESSELS. In the laws of the United States on the subject of merchant shipping, the recording and certification of vessels employed in coastwise or inland navigation; as distinguished from the "registration" of vessels employed in foreign commerce. *U. S. v. Leetzel*, 3 Wall. 566, 18 L.Ed. 67.

ENROLLMENT RECORDS. All the testimony and exhibits tending to establish age that were in evidence before the Commission to the Five Civilized Tribes and the conclusions of the Commission based thereon from the date of the application for enrollment of any particular individual up to the date of the ascertainment by the Commission as to whether the name of such person was intended to be included upon the final roll of the nation in which he claimed citizenship. *Duncan v. Byars*, 44 Okl. 538, 144 P. 1053, 1054.

ENS LEGIS. L. Lat. A creature of the law; an artificial being, as contrasted with a natural person. Applied to corporations, considered as deriving their existence entirely from the law.

ENSCHEDULE. To insert in a list, account, or writing.

ENSEAL. To seal. *Ensealing* is still used as a formal word in conveyancing.

ENSERVER. L. Fr. To make subject to a service or servitude. *Britt. c. 54.*

ENSUE. To follow after; to follow in order or train of events. *Agricultural Publishers' Ass'n v. Homestead Co.*, 197 Iowa, 380, 197 N.W. 314.

ENTAIL, v. To settle or limit the succession to real property; to create an estate tail.

ENTAIL, n. A fee abridged or limited to the issue, or certain classes of issue, instead of descending to all the heirs. 1 Washb. Real Prop. 66; *Cowell*; 2 Bl.Comm. 112, note.

Entail, in legal treatises, is used to signify an estate tail, especially with reference to the restraint which such an estate imposes upon its owner, or, in other words, the points wherein such an estate differs from an estate in fee-simple. And this is often its popular sense; but sometimes it is, in popular language, used differently, so as to signify a succession of life-estates, as when it is said that "an entail ends with A.," meaning that A. is the first person who is entitled to bar or cut off the entail, being in law the first tenant in tail. *Mozley & Whiteley.*

Break or Bar an Entail

To free an estate from the limitations imposed by an entail and permit its free disposition, anciently by means of a fine or common recovery, but now by deed in which the tenant and next heir join.

Quasi Entail

An estate *pur autre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a "quasi entail;" the interest so granted not being properly an estate-tail, (for the statute *De Donis* applies only where the subject of the entail is an estate of inheritance,) but yet so far in the nature of an estate-tail that it will go to the heir of the body as special occupant during the life of the *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. Wharton.

ENTAILED. Settled or limited to specified heirs, or in tail.

ENTAILED MONEY. Money directed to be invested in realty to be entailed. 3 & 4 Wm. IV, c. 74, §§ 70, 71, 72.

ENTAILMENT. An interference with and curtailment of the ordinary rules pertaining to devolution by inheritance; a limitation and direction by which property is to descend different from the course which it would take if the creator of the entailment, grantor or testator, had been content that the estate should devolve in regular and general succession to heirs at law in the statutory order of precedence and sequence. Gardner v. Anderson, 114 Kan. 778, 227 P. 743, 748.

ENTENCION. In old English law. The plaintiff's count or declaration.

ENTENDMENT. The old form of *intendment* (*q. v.*) derived directly from the French, and used to denote the true meaning or signification of a word or sentence; that is, the understanding or construction of law. Cowell.

ENTER. To form a constituent part, to become a part or partaker; to impenetrate; share; with into; as, tin enters into the composition of pewter. *Bedford v. Colorado Fuel & Iron Corporation*, 102 Colo. 538, 81 P.2d 752, 755.

In the law of real property. To go upon land for the purpose of taking possession of it. In strict usage, the entering is preliminary to the taking possession but in common parlance the entry is now merged in the taking possession. See *Entry*.

In practice. To place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing; as to "enter an appearance," to "enter a judgment." In this sense the word is nearly equivalent to setting down formally in writing, in either a full or abridged form.

ENTERCEUR. L. Fr. A party challenging (claiming) goods; he who has placed them in the hands of a third person. Kelham.

ENTERING. Generally synonymous with "recording". In *re Labb*, D.C.N.Y., 42 F.Supp. 542, 544.

ENTERING JUDGMENTS. The formal entry of the judgment on the rolls of the court, which is necessary before bringing an appeal or an action on the judgment. *Blatchford v. Newberry*, 100 Ill. 491. The entering of judgment is a ministerial act performed by the clerk of court by means of which permanent evidence of judicial act in rendering judgment is made a record of the court. *Jones v. Sun Oil Co.*, Tex.Civ.App., 145 S.W.2d 615, 619. Under some statutes, the entering consists merely in the filing of a judgment with the clerk; *Mathison v. Anderson*, 107 Wash. 617, 182 P. 622. But under other acts, the entry of a judgment consists in the recording of it in the judgment book. *Wilson v. Durkee*, 20 Cal.App. 492, 129 P. 617, 618.

Entry of judgment differs from rendition of judgment. "Rendition" of a judgment is the judicial act of the court in pronouncing the sentence of the law upon the facts in controversy. The "entry" is a ministerial act, which consists in spreading upon the record a statement of the final conclusion reached by the court in the matter, thus furnishing external and incontestable evidence of the sentence given, and designed to stand as a perpetual memorial of its action. *Jaqua v. Harkens*, 40 Ind.App. 639, 82 N.E. 920, 922; *Beetchenow v. Bartholet*, 162 Wash. 119, 298 P. 335, 336.

ENTERING SHORT. When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to "enter them short," as it is called, *i. e.*, to note down the receipt of the bills, their amounts, and the times when they become due in a previous column of the page, and the amounts when received are carried forward into the usual cash column. Sometimes, instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account, and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short does not pass to his assignees, but the customer is entitled to them if they remain in his hands, or to their proceeds, if received, subject to any lien the banker may have upon them. Wharton.

ENTERPRISE. A project or undertaking. *Size-more v. Hall*, 148 Kan. 233, 80 P.2d 1092, 1095. In Workmen's Compensation Law. A hazardous undertaking or project. *Hahnemann Hospital v. Industrial Board of Illinois*, 282 Ill. 316, 118 N.E. 767, 770.

ENTERTAINMENT. This word is synonymous with "board," and includes the ordinary necessities of life. See *Lasar v. Johnson*, 125 Cal. 549, 58 P. 161. Hospitable provision for the wants of a guest, especially a provision for the table. That which serves as amusement. *Young v. Board of Trustees of Broadwater County High School*, 90 Mont. 576, 4 P.2d 725, 726.

ENTHUSIASTS

ENTHUSIASTS. Those who believe far more than they can prove and can prove far more than any one else can believe. *Peskind v. State*, 115 Ohio St. 279, 152 N.E. 670.

ENTICE. To wrongfully solicit, persuade, procure, allure, attract, draw by blandishment, coax or seduce. *Nash v. Douglass*, 12 Abb.Prac.N.S., N.Y., 190. To lure, induce, tempt, incite, or persuade a person to do a thing. *Berger v. Levy*, 5 Cal.App.2d 544, 43 P.2d 610, 611.

ENTIRE. Whole; without division, separation, or diminution; unmingled; complete in all its parts; not participated in by others. 15 Cyc. 1054; 11 Amer. & Eng. Enc. Law, 48; *People v. Tahaures Purchase*, 26 N.Y.S.2d 795, 813.

ENTIRE ACT. The words "entire Act" as used in the rule of statutory construction that it is the duty of the court to examine the entire act means the caption, the body of the act, and the emergency clause. *Anderson v. Penix*, 138 Tex. 596, 161 S.W.2d 455, 459.

ENTIRE BALANCE OF MY ESTATE. The residue. In *re Taylor's Estate*, 86 A. 708, 711, 239 Pa. 153; In *re Brothers' Estate*, 156 Pa.Super. 292, 40 A.2d 156, 157.

ENTIRE BLOOD. Relations of the "entire blood" are those derived not only from the same ancestor, but from the same couple of ancestors. In *re Skidmore's Estate*, 266 N.Y.S. 312, 148 Misc. 569.

ENTIRE CONTRACT. See Contract.

ENTIRE DAY. This phrase signifies an undivided day, not parts of two days. An entire day must have a legal, fixed, precise time to begin, and a fixed, precise time to end. A day, in contemplation of law, comprises all the twenty-four hours, beginning and ending at twelve o'clock at night. *Robertson v. State*, 43 Ala. 325. In a statute requiring the closing of all liquor saloons during "the entire day of any election," etc., this phrase means the natural day of twenty-four hours, commencing and terminating at midnight. *Haines v. State*, 7 Tex.App. 30.

ENTIRE INTEREST. The whole interest or right, without diminution. Where a person in selling his tract of land sells also his entire interest in all improvements upon public land adjacent thereto, this vests in the purchaser only a quitclaim of his interest in the improvements. *McLeroy v. Duckworth*, 13 La. Ann. 410.

ENTIRE LOSS OF SIGHT. In respect of one eye, or both. Substantial blindness, not necessarily absolute. *International Travelers' Ass'n v. Rogers*, Tex.Civ.App., 163 S.W. 421, 422. There was "entire loss of sight" of eye within accident policy, where insured could not distinguish one object from another in the strongest light, though he could distinguish between light and darkness. *Tracey v. Standard Acc. Ins. Co.*, 119 Me. 131, 109 A. 490, 494, 9 A.L.R. 521. *Locomotive Engineers' Mut. Life Accident Ins. Co. v. Meeks*, 157 Miss. 57,

127 So. 699, 702. See *Blind; Complete and Permanent Loss of Sight of Both Eyes*.

ENTIRE STRUCTURE. Under lien statute. Not a completed, as distinguished from an uncompleted, building, but a new structure, not before existing, as distinguished from betterments and repairs on previously constructed improvements. *Atkinson v. Colorado Title & Trust Co.*, 59 Colo. 528, 151 P. 457, 461.

ENTIRE TENANCY. A sole possession by one person, called "severalty," which is contrary to several tenancy, where a joint or common possession is in one or more.

ENTIRE USE, BENEFIT, etc. These words in the *habendum* of a trust-deed for the benefit of a married woman are equivalent to the words "sole use," or "sole and separate use," and consequently her husband takes nothing under such deed. *Heathman v. Hall*, 38 N.C. 414.

ENTIRELY WITHOUT UNDERSTANDING. Inability to comprehend nature and effect of transaction involved, not necessarily absolute imbecility, idiocy or mental incapacity. *Barlow v. Strange*, 120 Ga. 1015, 1018, 48 S.E. 344.

ENTIRETY. The whole, in contradistinction to a moiety or part only. When land is conveyed to husband and wife, they do not take by moieties, but both are seized of the *entirety*. 2 Kent, Comm. 132; 4 Kent, Comm. 362. Parceners, on the other hand, have not an *entirety* of interest, but each is properly entitled to the whole of a distinct moiety. 2 Bl.Comm. 188. See *Estate by the Entirety*.

The word is also used to designate that which the law considers as one whole, and not capable of being divided into parts. Thus, a judgment, it is held, is an *entirety*, and, if void as to one of the two defendants, cannot be valid as to the other. So, if a contract is an *entirety*, no part of the consideration is due until the whole has been performed.

ENTITLE. In its usual sense, to entitle is to give a right or title. *Felter v. McClure*, 135 Wash. 410, 237 P. 1010, 1011. To qualify for; to furnish with proper grounds for seeking or claiming. *Fitts v. Terminal Warehousing Corporation*, 170 Tenn. 198, 93 S.W.2d 1265, 1267. In *re Graves*, 325 Mo. 888, 30 S.W.2d 149, 151. In ecclesiastical law. To entitle is to give a title or ordination as a minister.

ENTITY. A real being; existence. *Department of Banking v. Hedges*, 136 Neb. 382, 286 N.W. 277, 281.

ENTRAILS. Intestines. "Entrails" of a calf do not include pluck and sweetbread. *Commonwealth v. Cohen*, 250 Mass. 570, 146 N.E. 228, 230.

ENTRANCE. A door or gate for entering; a gate; an opening, and perhaps a passage. *Weatherby v. Travelers Indemnity Co.*, Tex.Civ.App., 171 S.W.2d 540, 541.

ENTRAP. To catch, to entrap, to ensnare; hence, to catch by artifice; to involve in difficulties or distresses; to catch or involve in contradictions. *Roane v. State*, 55 Okl.Cr. 332, 29 P.2d 990, 992.

ENTRAPMENT. The act of officers or agents of the government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him. *Falden v. Commonwealth*, 167 Va. 549, 189 S.E. 329, 332. *Lee v. State*, 66 Okl.Cr. 399, 92 P.2d 621, 623. But the mere act of an officer in furnishing the accused an opportunity to commit the crime, where the criminal intent was already present in the accused's mind, is not ordinarily entrapment. *State v. Cowling*, 161 Wash. 519, 297 P. 172, 174.

ENTREATY. Beseeching, or suppliant, or prayerful in nature. In *re Sloan's Estate*, 7 Cal.App.2d 319, 46 P.2d 1007, 1018.

ENTREBAT. L. Fr. An intruder or interloper. *Britt. c.* 114.

ENTREGA. Span. Delivery. *Las Partidas*, pt. 6, tit. 14, l. 1.

ENTREPÔT. A warehouse or magazine for the deposit of goods. In France, a building or place where goods from abroad may be deposited, and from whence they may be withdrawn for exportation to another country, without paying a duty. *Brande; Webster.*

ENTRY. The act of making or entering a record; a setting down in writing of particulars; or that which is entered; an item. *United States v. Darby*, D.C.Md., 2 F.Supp. 378, 379. Generally synonymous with "recording." In *re Labb*, D.C.N.Y., 42 F.Supp. 542, 544.

Passage leading into a house or other building or to a room; a vestibule. *Weatherby v. Travelers Indemnity Co.*, Tex.Civ.App., 171 S.W.2d 540, 541.

In commercial law. Entry denotes the act of a merchant, trader, or other business man in recording in his account-books the facts and circumstances of a sale, loan, or other transaction. Also the note or record so made. *Bissell v. Beckwith*, 32 Conn. 517; *U. S. v. Crecelius*, D.C.Mo., 34 F. 30. The books in which such memoranda are first (or originally) inscribed are called "books of original entry," and are *prima facie* evidence for certain purposes.

In copyright law. Depositing with the register of copyrights the printed title of a book, pamphlet, etc., for the purpose of securing copyright on the same. The old formula for giving notice of copyright was, "Entered according to act of congress," etc.

In criminal law. Entry is the unlawful making one's way into a dwelling or other house, for the purpose of committing a crime therein.

In cases of burglary, the least entry with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offense. 3 Inst. 64. And see *Walker v. State*, 63 Ala. 49, 35 Am.Rep. 1. *State v. Chappell*, 185 S.C. 111, 193 S.E. 924, 925.

In customs law. The entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon. *U. S. v. Legg*, 105 F. 930, 45 C.C.A. 134.

In mining law. A place in coal mines used by the miners and other workmen generally in going to and from their work, through which coal is hauled from the necks of the rooms to the foot of the shaft; a "room" being the place in which a miner works and from which he mines coal. *Ricardo v. Central Coal & Coke Co.*, 100 Kan. 95, 163 P. 641, 643.

In parliamentary law. The "entry" of a proposed constitutional amendment or of any other document or transaction in the journal of a house of the legislature consists in recording it in writing in such journal, and (according to most of the authorities) at length. See *Koehler v. Hill*, 60 Iowa, 543, 15 N.W. 609.

In practice. Entry denotes the formal inscription upon the rolls or records of a court of a note or minute of any of the proceedings in an action; and it is frequently applied to the filing of a proceeding in writing, such as a notice of appearance by a defendant, and, very generally, to the filing of the judgment roll as a record in the office of the court. *Thomason v. Ruggles*, 69 Cal. 465, 11 P. 20.

In public land laws. Under the provisions of the land laws of the United States, the term "entry" denotes the filing at the land-office, or inscription upon its records, of the documents required to found a claim for a homestead or pre-emption right, and as preliminary to the issuing of a patent for the land. *Chotard v. Pope*, 12 Wheat. 588, 6 L.Ed. 737; *Stephens v. Terry*, 178 Ky. 129, 198 S.W. 768, 771.

The word "entry," as used in the public land laws, covers all methods by which a right to acquire title to public lands may be initiated. *United States v. Northern Pac. Ry. Co.*, C.C.Mont., 204 F. 485, 487.

Homestead Entry

An entry under the United States land laws for the purpose of acquiring title to a portion of the public domain under the homestead laws, consisting of an affidavit of the claimant's right to enter, a formal application for the land, and payment of the money required. *Whitmire v. Spears*, 212 Ala. 583, 103 So. 668, 669.

Mineral Land Entry

Filing a claim to hold or purchase lands belonging to the public domain and valuable for the minerals they contain, implying a prior discovery of ore and the opening of a mine. *U. S. v. Four Bottles Sour Mash Whisky*, D.C.Wash., 90 F. 720.

Pre-emption Entry

An entry of public lands for purchase under the pre-emption laws, giving the entryman a pre-

ENTRY

ferred right to acquire the land by virtue of his occupation and improvement of it. *Hartman v. Warren*, 76 F. 161, 22 C.C.A. 30.

Timber Culture Entry

An entry of public lands under the various acts of congress opening portions of the public domain to settlement and to the acquisition of title by the settlers on condition of the planting and cultivation of timber trees. *Hartman v. Warren*, 76 F. 160, 22 C.C.A. 30.

In real property law. Entry is the act of going peaceably upon a piece of land which is claimed as one's own, but is held by another person, with the intention and for the purpose of taking possession of it.

Entry is a remedy which the law affords to an injured party ousted of his lands by another person who has taken possession thereof without right. This remedy (which must in all cases be pursued peaceably) takes place in three only out of the five species of ouster, viz., abatement, intrusion, and disseisin; for, as in these three cases the original entry of the wrong-doer is unlawful, so the wrong may be remedied by the mere entry of the former possessor. But it is otherwise upon a discontinuance or forfeiture, for in these latter two cases the former possessor cannot remedy the wrong by entry, but must do so by action, inasmuch as the original entry being in these cases lawful, and therefore conferring an apparent right of possession, the law will not suffer such apparent right to be overthrown by the mere act or entry of the claimant. *Brown. Johnson v. Cobb*, 29 S.C. 372, 7 S.E. 601.

Forcible Entry

See that title.

Open Entry

An entry upon real estate, for the purpose of taking possession, which is not clandestine nor effected by secret artifice or stratagem, and (in some states by statute) one which is accomplished in the presence of two witnesses. *Thompson v. Kenyon*, 100 Mass. 108.

Re-Entry

The resumption of the possession of leased premises by the landlord on the tenant's failure to pay the stipulated rent or otherwise to keep the conditions of the lease.

In Scotch law. The term refers to the acknowledgment of the title of the heir, etc., to be admitted by the superior.

ENTRY AD COMMUNEM LEGEM. Entry at common law. The name of a writ of entry which lay for a reversioner after the alienation and death of the particular tenant for life, against him who was in possession of the land. *Brown*.

ENTRY AD TERMINUM QUI PRÆTERIIT. The writ of entry *ad terminum qui præterit* lies where a man leases land to another for a term of years, and the tenant holds over his term. And if lands be leased to a man for the term of another's life, and he for whose life the lands are leased dies, and the lessee holds over, then the lessor shall have this writ. *Termes de la Ley*.

ENTRY BY COURT. Acts 1923, c. 6, amending Acts 1921, c. 112, § 138, provides that county court may enter upon lands and build roads and within 60 days after such entry shall petition for assessment of compensation. An "entry" within statute means the establishing of the road on, and appropriation of, the land, by a proper order of the county court. To effect an entry under the statute it is not necessary that the county court go upon the lands and begin the work of construction. *McGibson v. Roane County Court*, 95 W.Va. 338, 121 S.E. 99, 104.

ENTRY FOR MARRIAGE IN SPEECH. A writ of entry *causa matrimonii præloquuti* lies where lands or tenements are given to a man upon condition that he shall take the donor to be his wife within a certain time, and he does not espouse her within the said term, or espouses another woman, or makes himself priest. *Termes de la Ley*.

ENTRY IN CASU CONSIMILI. A writ of entry *in casu consimili* lies where a tenant for life or by the curtesy aliens in fee. *Termes de la Ley*.

ENTRY IN REGULAR COURSE OF BUSINESS. A record setting forth a fact or transaction made by one in the ordinary and usual course of one's business, employment, office or profession, which it was the duty of the enterer in such manner to make, or which was commonly and regularly made, or which it was convenient to make, in the conduct of the business to which such entry pertains. *Leonard v. State*, 100 Ohio St. 456, 127 N.E. 464, 468.

ENTRY IN THE CASE PROVIDED. A writ of entry *in casu proviso* lies if a tenant in dower alien in fee, or for life, or for another's life, living the tenant in dower. *Termes de la Ley*.

ENTRY OF CAUSE FOR TRIAL. In English practice. The proceeding by a plaintiff in an action who had given notice of trial, depositing with the proper officer of the court the *nisi prius* record, with the panel of jurors annexed, and thus bringing the issue before the court for trial.

ENTRY OF JUDGMENT. See Entering Judgment.

ENTRY ON THE ROLL. In former times, the parties to an action, personally or by their counsel, used to appear in open court and make their mutual statements *vivâ voce*, instead of as at the present day delivering their mutual pleadings, until they arrived at the issue or precise point in dispute between them. During the progress of this oral statement, a minute of the various proceedings was made on parchment by an officer of the court appointed for that purpose. The parchment then became the record; in other words, the official history of the suit. Long after the practice of oral pleading had fallen into disuse, it continued necessary to enter the proceedings in like manner upon the parchment roll, and this was called "entry on the roll," or making up the "issue roll." But by a rule of H. T. 4 Wm. IV. the prac-

tice of making up the issue roll was abolished; and it was only necessary to make up the issue in the form prescribed for the purpose by a rule of H. T. 1853, and to deliver the same to the court and to the opposite party. The issue which was delivered to the court was called the "*nisi prius record*;" and that was regarded as the official history of the suit, in like manner as the issue roll formerly was. Under the present practice, the issue roll or *nisi prius record* consists of the papers delivered to the court, to facilitate the trial of the action, these papers consisting of the pleadings simply, with the notice of trial. Brown.

ENTRY WITHOUT ASSENT OF THE CHAPTER.

A writ of entry *sine assensu capituli* lies where an abbot, prior, or such as hath covent or common seal, aliens lands or tenements of the right of his church, without the assent of the covent or chapter, and dies. Termes de la Ley.

ENTRY, WRIT OF. In old English practice. This was a writ made use of in a form of real action brought to recover the possession of lands from one who wrongfully withheld the same from the demandant.

Its object was to regain the *possession* of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged to the *possessory* division of real actions. It decided nothing with respect to the *right of property*, but only restored the demandant to that situation in which he was (or by law ought to have been) before the dispossession committed. 3 Bl.Comm. 180.

It was usual to specify in such writs the degree or degrees within which the writ was brought, and it was said to be "in the *per*" or "in the *per and cui*," according as there had been one or two descents or alienations from the original wrongdoer. If more than two such transfers had intervened, the writ was said to be "in the *post*." See 3 Bl.Comm. 181. See, further, Writ of Entry.

ENTRYMAN. One who makes an entry of land under the public land laws of the United States. Indian Cove Irr. Dist. v. Prideaux, 25 Idaho 112, 136 P. 618, 620, Ann.Cas.1916A, 1218.

ENUMERATED. This term is often used in law as equivalent to "mentioned specifically," "designated," or "expressly named or granted"; as in speaking of "enumerated" governmental powers, items of property, or articles in a tariff schedule. See Bloomer v. Todd, 3 Wash.T. 599, 19 P. 135, 1 L.R.A. 111.

ENUMERATIO INFIRMAT REGULAM IN CASIBUS NON ENUMERATIS. Enumeration disaffirms the rule in cases not enumerated. Bac.Aph. 17.

ENUMERATIO UNIUS EST EXCLUSIO ALTERIUS. The specification of one thing is the exclusion of a different thing. A maxim more generally expressed in the form "*expressio unius est exclusio alterius*," (q. v.).

ENUMERATORS. Persons appointed to collect census papers or schedules. 33 & 34 Vict. c. 108, § 4.

ENURE. To operate or take effect. To serve to the use, benefit, or advantage of a person. A re-

lease to the tenant for life *enures* to him in reversion; that is, it has the same effect for him as for the tenant for life. Often written "inure."

ENVELOPE. That which envelops; a wrapper; an inclosing cover; especially, the cover or wrapper of a document, as of a letter. In re Eastman Kodak Co., Cust. & Pat.App., 80 F.2d 270, 271, 272.

ENVOY. In international law. A public minister of the second class, ranking next after an ambassador.

Envoys are either ordinary or extraordinary; by custom the latter is held in greater consideration.

ENZYME. Any one of a series of catalytic agents, animal or vegetable, produced by living cells, effecting chemical change in absorbed or surrounding substances so as to render them fit for the requirements of the cells. In re Reese, Cust. & Pat.App., 143 F.2d 1021.

EO DIE. Lat. On that day; on the same day.

EO INSTANTI. Lat. At that instant; at the very or same instant; immediately. 1 Bl.Comm. 196, 249; 2 Bl.Comm. 168; Co.Litt. 298a; 1 Coke 138. Also written *eo instante*.

EO INTUITU. Lat. With or in that view; with that intent or object. Hale, Anal. § 2.

EO LOCI. Lat. In the civil law. In that state or condition; in that place, (*eo loco*.) Calvin.

EO NOMINE. Lat. Under that name; by that appellation. *Perinde ac si eo nomine tibi tradita fuisset*, just as if it had been delivered to you by that name. Inst. 2, 1, 43. A common phrase in the books.

EODEM LIGAMINE QUO LIGATUM EST DIS-SOLVITUR. A bond is released by the same formalities with which it is contracted. Co.Litt. 212b; Broom, Max. 891.

EODEM MODO QUO QUID CONSTITUITUR, DIS-SOLVITUR. In the manner in which [by the same means by which] a thing is constituted, is it dissolved. 6 Coke, 53b.

EOBLE. In Saxon law. An earl.

EOTH. In Saxon law. An oath.

EPICYCLOIDAL CURVE. A curve generated by the motion of a point on the circumference of a circle which rolls upon the convex side of a fixed circle. Hill v. Hill, Cust. & Pat.App., 54 F.2d 950, 952.

EPIDEMIC. This term, in its ordinary and popular meaning, applies to *any* disease which is widely spread or generally prevailing at a given place and time. Bethlehem Steel Co. v. Industrial Accident Commission, 21 Cal.2d 742, 135 P.2d 153, 157; Martin v. Springfield City Water Co., Mo.App., 128 S.W.2d 674, 679.

EPILEPSY. In medical jurisprudence. A disease of the brain, which occurs in paroxysms with un-

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certain intervals between them. Vulgarly called "fits." *Westphall v. Metropolitan Life Ins. Co.*, 27 Cal.App. 734, 151 P. 159, 162; *Morse v. Caldwell*, 55 Ga.App. 804, 191 S.E. 479, 485.

The disease is generally organic, though it may be functional and symptomatic of irritation in other parts of the body. The attack is characterized by loss of consciousness, sudden falling down, distortion of the eyes and face, grinding or gnashing of the teeth, stertorous respiration, and more or less severe muscular spasms or convulsions. Epilepsy, though a disease of the brain, is not to be regarded as a form of insanity, in the sense that a person thus afflicted can be said to be permanently insane, for there may be little or no mental aberration in the intervals between the attacks. But the paroxysm is frequently followed by a temporary insanity, varying in particular instances from slight alienation to the most violent mania. In the latter form the affection is known as "epileptic fury." But this generally passes off within a few days. But the course of the principal disease is generally one of deterioration, the brain being gradually more and more deranged in its functions in the intervals of attack, and the memory and intellectual powers in general becoming enfeebled, leading to a greatly impaired state of mental efficiency, or to dementia, or a condition bordering on imbecility. See *Aurentz v. Anderson*, 3 Pittsb.R., Pa., 310; *Lawton v. Sun Mutual Ins. Co.*, 2 Cush., Mass., 517.

Hystero-epilepsy. A condition initiated by an apparently mild attack of convulsive hysteria, followed by an epileptiform convulsion, and succeeded by a period of "clownism" (Osler) in which the patient assumes a remarkable series of droll contortions or cataleptic poses, sometimes simulating attitudes expressive of various passions, as, fear, joy, erotism, etc. The final stage is one of delirium with unusual hallucinations. The attack differs from true epilepsy in that the convulsions may continue without serious result for several successive days, while true epilepsy, if persistent, is always serious, associated with fever, and frequently fatal.

EPIMENIA. Expenses or gifts. *Blount*.

EPIPHANY. A Christian festival, otherwise called the "Manifestation of Christ to the Gentiles," observed on the 6th of January, in honor of the appearance of the star to the three *magi*, or wise men, who came to adore the Messiah, and bring him presents. It is commonly called "Twelfth Day." *Enc.Lond.*

EPIPHYSITIS. Inflammation of an epiphysis—a process of bone attached for a time to another bone by cartilage. *Eckenrood v. Rochester & Pittsburgh Coal Co.*, 149 Pa.Super. 257, 27 A.2d 759, 761.

EPIPHYSAL SEPARATION. Not a bone fracture in true sense, but a separation of the fibers and cartilaginous tissues which attach the epiphysis to the femur. *Elsen v. State Farmers Mut. Ins. Co.*, 219 Minn. 315, 17 N.W.2d 652, 655.

EPIPHYSIS. Part or process of a bone which ossifies separately and subsequently becomes ankylosed (to grow together into one) into the main part of the bone. *Elsen v. State Farmers Mut. Ins. Co.*, 219 Minn. 315, 17 N.W.2d 652, 655.

EPIQUEYA. In Spanish law. A term synonymous with "equity" in one of its senses, and defined as "the benignant and prudent interpretation

of the law according to the circumstances of the time, place, and person."

EPISCOPACY. The office of overlooking or overseeing; the office of a bishop, who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops. *Trustees of Diocese of Central New York v. Colgrove*, 4 Hun (N.Y.) 366.

EPISCOPALIA. In ecclesiastical law. Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, formerly collected by the rural deans. *Cowell*.

EPISCOPALIAN. Of or pertaining to episcopacy, or to the Episcopal Church.

EPISCOPATE. A bishopric. The dignity or office of a bishop.

EPISCOPORUM ECDICUS. Bishop's proctors; church lawyers. 1 *Reeve, Eng.Law*, 65.

EPISCOPUS. In the civil law. An overseer; an inspector. A municipal officer who had the charge and oversight of the bread and other provisions which served the citizens for their daily food. *Vicat*. In medieval history. A bishop; a bishop of the Christian church.

EPISCOPUS ALTERIUS MANDATO QUAM REGIS NON TENETUR OBTEMPERARE. *Co.Litt.* 134. A bishop needs not obey any mandate save the king's.

EPISCOPUS PUERORUM. It was an old custom that upon certain feasts some lay person should plait his hair, and put on the garments of a bishop, and in them pretend to exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called "bishop of the boys;" and this custom obtained in England long after several constitutions were made to abolish it. *Blount*.

EPISCOPUS TENEAT PLACITUM, IN CURIA CHRISTIANITATIS, DE HIS QUÆ MERE SUNT SPIRITUALIA. 12 *Coke*, 44. A bishop may hold plea in a Court Christian of things merely spiritual.

EPISTOLA. A letter; a charter; an instrument in writing for conveyance of lands or assurance of contracts. *Calvin*; *Spelman*.

EPISTOLÆ. In the civil law. Rescripts; opinions given by the emperors in cases submitted to them for decision.

Answers of the emperors to petitions.

The answers of counsellors, (*juris-consulti*), as Ulpian and others, to questions of law proposed to them, were also called "*epistolæ*."

Opinions written out. The term originally signified the same as *literæ*. *Vicat*.

EPOCH. The time at which a new computation is begun; the time whence dates are numbered. *Enc. Lond.*

EQUAL. Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights. *People v. Hoffman*, 116 Ill. 587, 5 N.E. 600, 56 Am.Rep. 793.

EQUAL AND UNIFORM TAXATION. Taxes are said to be "equal and uniform" when no person or class of persons in the taxing district, whether it be a state, county, or city, is taxed at a different rate than are other persons in the same district upon the same value or the same thing, and where the objects of taxation are the same, by whomsoever owned or whatsoever they may be. *Weatherly Independent School Dist. v. Hughes, Tex.Civ. App.*, 41 S.W.2d 445, 447.

EQUAL DEGREE. Persons are said to be related to a decedent "in equal degree" when they are all removed by an equal number of steps or degrees from the common ancestor. *Fidler v. Higgins*, 21 N.J.Eq. 162; *Helmes v. Elliott*, 14 S.W. 930, 89 Tenn. 446, 10 L.R.A. 535.

EQUAL ELECTION. Elections are "equal," when vote of each voter is equal in its influence upon result to vote of every other elector. *Blue v. State ex rel. Brown*, 206 Ind. 98, 188 N.E. 583, 589, 91 A.L.R. 334.

EQUAL PROTECTION OF THE LAWS. The equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the constitutional requirement, when its courts are open to them on the same conditions as to others, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; when they are liable to no other or greater burdens and charges than such as are laid upon others; and when no different or greater punishment is enforced against them for a violation of the laws. *State v. Montgomery*, 94 Me. 192, 47 A. 165.

"Equal protection of the law" means that equal protection and security shall be given to all under like circumstances in his life, his liberty, and his property, and in the pursuit of happiness, and in the exemption from any greater burdens and charges than are equally imposed upon all others under like circumstances. *Sovereign Camp, W. O. W., v. Casodós, D.C.N.M.*, 21 F.Supp. 989, 994.

EQUAL WATCHES. Under statute requiring division of sailors at sea into equal watches, "equal watches" means successive and continuous watches to be constituted in numbers as nearly equal as the sum of the whole number will permit. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York, C.C.A.N.Y.*, 117 F.2d 404, 409.

EQUALITY. The condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties. *Louisville & N. R. Co. v. Commonwealth*, 160 Ky. 769, 170 S.W. 162, Ann.Cas.1916A, 405.

EQUALIZATION. The act or process of making equal or bringing about conformity to a common

standard. The process of equalizing assessments or taxes, as performed by "boards of equalization" in various states, consists in comparing the assessments made by the local officers of the various counties or other taxing districts within the jurisdiction of the board and reducing them to a common and uniform basis, increasing or diminishing by such percentage as may be necessary, so as to bring about, within the entire territory affected, a uniform and equal ratio between the assessed value and the actual cash value of property. The term is also applied to a similar process of leveling or adjusting the assessments of individual taxpayers, so that the property of one shall not be assessed at a higher (or lower) percentage of its market value than the property of another. See *Harney v. Mitchell County*, 44 Iowa 203.

EQUALIZE. To make equal, to cause to correspond, or be like in amount or degree, as compared with something. *Los Angeles County v. Ransohoff*, 24 Cal.App.2d 238, 74 P.2d 828, 830; *De Mille v. Los Angeles County, Cal.App.*, 77 P.2d 905, 906.

EQUALLY DIVIDED. Provision in will that property shall be "equally divided," or divided "share and share alike" means that the property shall be divided per capita and not per stirpes. However, these phrases may be so modified by other parts of the will as to require distribution per stirpes. In *re Mays' Estate*, 197 Mo.App. 555, 196 S.W. 1039, 1040.

EQUERRY. An officer of state under the master of the horse.

EQUES. Lat. In Roman and old English law. A knight.

EQUILIBRIUM. As applied in chemistry, the balanced state reached when the action apparently stops in a chemical reaction, that is, the concentration between reaction products and the original reacting substances has become such that decomposition and recombination proceeds with equal speed. In *re Sussman*, 141 F.2d 267, 271, 31 C.C.P.A. (Patents) 921.

EQUILOCUS. An equal. It is mentioned in *Simon Dunelm, A.D. 882*. Jacob.

EQUINOXES. The two periods of the year (vernal equinox about March 21st, and autumnal equinox about September 22d) when the time from the rising of the sun to its setting is equal to the time from its setting to its rising. See *Dig. 43, 13, 1, 8*.

EQUIP. To furnish for service or against a need or exigency; to fit out; to supply with whatever is necessary to efficient action in any way. Synonymous with furnish. *State ex rel. Davis v. Barber*, 139 Fla. 706, 190 So. 809.

EQUIPMENT. Furnishings, or outfit for the required purposes. An exceedingly elastic term, the meaning of which depends on context. *Elliott v. Payne*, 293 Mo. 581, 239 S.W. 851, 852, 23 A.L.R. 706; *Midland Special School Dist. of Sebastian*

EQUIPMENT

County, Ark., v. Central Trust Co. of Illinois, C.C. A.Ark., 1 F.2d 124, 126.

Whatever is needed in equipping; the articles comprised in an outfit; equipage. Department of Treasury, Gross Income Tax Division, v. Ranger-Cook, Inc., Ind.App., 49 N.E.2d 548, 550. Farm & Home Saving & Loan Ass'n of Missouri v. Empire Furniture Co., Tex.Civ.App., 87 S.W.2d 1111, 1112. Nearly synonymous with "instrumentality." Nekoosa-Edwards Paper Co. v. Minneapolis St. P. & S. S. M. Ry. Co., 217 Wis. 426, 259 N.W. 618, but not synonymous with "maintenance". Neal v. City of Morrilton, 192 Ark. 450, 92 S.W.2d 208, 209.

EQUITABLE. Just; conformable to the principles of justice and right.

Just, fair, and right, in consideration of the facts and circumstances of the individual case.

Existing in equity; available or sustainable only in equity, or only upon the rules and principles of equity.

As to "Fair and Equitable Value," see that title. As to equitable "Assets," "Construction," "Conversion," "Easement," "Ejectment," "Estate," "Garnishment," "Levy," "Mortgage," "Title," and "Waste." see those titles.

EQUITABLE ACTION. One founded on an equity or cognizable in a court of equity; or, more specifically, an action arising, not immediately from the contract in suit, but from an equity in favor of a third person, not a party to it, but for whose benefit certain stipulations or promises were made. Wenzel & Hensch Const. Co. v. Metropolitan Water Dist. of Southern California, D.C.Cal., 18 F.Supp. 616, 620.

EQUITABLE ASSIGNMENT. An assignment which, though invalid at law, will be recognized and enforced in equity; *e. g.*, an assignment of a chose in action, or of future acquisitions of the assignor. Lewis v. Braun, 356 Ill. 467, 191 N.E. 56, 60; Stewart v. Kane, Mo.App., 111 S.W.2d 971, 974.

In order to work an "equitable assignment", there must be an absolute appropriation by the assignor of the debt or fund sought to be assigned. Blount v. Metropolitan Life Ins. Co., 192 Ga. 325, 15 S.E.2d 413, 415; Sneesby v. Livingston, 182 Wash. 229, 46 P.2d 733, 735.

EQUITABLE CONVERSION. A fiction which results in treating land as personalty and personalty as land under certain circumstances. It takes place when a contract for sale of realty becomes binding on parties. Shay v. Penrose, 185 N.E.2d 218, 219, 25 Ill.2d 447; Panushka v. Panushka, 349 P.2d 450, 452, 221 Or. 145; Parr-Richmond Indus. Corp. v. Boyd, 272 P.2d 16, 22, 43 C.2d 157.

EQUITABLE DEFENSE. A defense to an action on grounds which, prior to the passing of the Common Law Procedure Act (17 and 18 Vict. c. 125), would have been cognizable only in a court of equity.

Moz. & W. In American practice, a defense which is cognizable in a court of equity, but which is available there only, and not in an action at law, except under the reformed codes of practice. Kelly v. Hurt, 74 Mo. 561-570; City of New York v. Holzderber, 90 N.Y.S. 63, 44 Misc. 509. The codes of procedure and the practice in some of the states likewise permit both a legal and equitable defense to the same action. Susquehanna S. S. Co. v. A. O. Andersen & Co., 239 N.Y. 285, 146 N.E. 381, 383. It has also been construed to mean a defense which a court of equity would recognize, or one founded on some distinct ground of equitable jurisdiction. City of New York v. Holzderber, 44 Misc. 509, 90 N.Y.S. 63, '64.

EQUITABLE DOCTRINE OF APPROXIMATION.

This doctrine differs from "Cy pres doctrine" in purpose and application. The last mentioned doctrine applies where an apparent charitable intention has failed, whether by an incomplete disposition at the outset or by subsequent inadequacy of the original object, and its purpose is to give a cy pres or proximate application to testator's intention, whereas the "equitable doctrine of approximation" merely authorizes a court of chancery to vary the details of administration, in order to preserve the trust, and carry out the general purpose of the donor. National Bank of Greece v. Savarika, 167 Miss. 571, 148 So. 649, 654.

EQUITABLE ELECTION. The choice to be made by a person who may, under a will or other instrument, have either one of two alternative rights or benefits, but not both. Peters v. Bain, 133 U.S. 670, 10 S.Ct. 354, 33 L.Ed. 696.

The obligation imposed upon a party to choose between two inconsistent or alternative rights or claims, in cases where there is clear intention of the person from whom he derives one that he should not enjoy both. 2 Story, Eq.Jur. § 1075; Dakan v. Dakan, 83 S.W.2d 620, 624, 125 Tex. 305.

A choice shown by an overt act between two inconsistent rights, either of which may be asserted at the will of the chooser alone. Bierce v. Hutchins, 205 U.S. 346, 27 S.Ct. 524, 51 L.Ed. 828; Macbeth-Evans Glass Co. v. General Electric Co., C.C.A.Ohio, 246 F. 695, 701; Jenkins v. U. S., D.C. R.I., 22 F.2d 568, 571.

EQUITABLE ESTOPPEL is that condition in which justice forbids one to gainsay his own acts or assertions. Goodwin Tile & Brick Co. v. DeVries, Iowa, 13 N.W.2d 310, 312, 155 A.L.R. 346. The preclusion of person by his act or conduct or silence from asserting rights which might otherwise have existed. Marshall v. Wilson, Or., 154 P.2d 547, 551. The species of estoppel which equity puts upon a person who has made a false representation or a concealment of material facts, with knowledge of the facts, to a party ignorant of the truth of the matter, with the intention that the other party should act upon it, and with the result that such party is actually induced to act upon it, to his damage. Bigelow, Estop. 484.

See, also, In Pais, Estoppel In.

Elements or essentials of such estoppel include change of position for the worse by party asserting estoppel, *Malone v. Republic Nat. Bank & Trust Co.*, Tex.Civ.App., 70 S.W.2d 809, 812; *Clover v. Peterson*, 203 Minn. 337, 281 N.W. 275, 278; conduct by party estopped such that it would be contrary to equity and good conscience for him to allege and prove the truth, *Rody v. Doyle*, 181 Md. 195, 29 A.2d 290, 293; false representation or concealment of facts, *Clark v. National Aid Life Ass'n*, 177 Okl. 137, 57 P.2d 832, 833; *Antrim Lumber Co. v. Wagner*, 175 Okl. 564, 54 P.2d 173, 176; ignorance of party asserting estoppel of facts and absence of opportunity to ascertain them, *Trenton Banking Co. v. Howard*, N.J.Ch., 187 A. 569, 574; *Fipps v. Stidham*, 174 Okl. 473, 50 P.2d 680, 684; injury from declarations, acts, or omissions of party were he permitted to gainsay their truth, *Fleishbein v. Western Auto Supply Agency*, 19 Cal.App.2d 424, 65 P.2d 928; *Roberts v. Friedell*, 218 Minn. 88, 15 N.W.2d 496, 500; intention that representation should be acted on, *Stokesberry v. Burgher*, 220 Iowa 916, 262 N.W. 820; *Consolidated Cut Stone Co. v. Seidenbach*, 181 Okl. 578, 75 P.2d 442, 452; knowledge, actual or constructive, of facts by party estopped, *Antrim Lumber Co. v. Wagner*, 175 Okl. 564, 54 P.2d 173, 176; *Lillywhite v. Coleman*, 46 Ariz. 523, 52 P.2d 1157, 1160; misleading person to his prejudice, *United States, for Use and Benefit of Noland Co., v. Wood*, C.C.A.Va., 99 F.2d 80, 82; omission, misconduct or misrepresentation misleading another, *Security Savings & Trust Co. v. Portland Flour Mills Co.*, 124 Or. 276, 261 P. 432, 437; reliance upon representation or conduct of person sought to be estopped, *Wilkinson v. Lieberman*, 327 Mo. 420, 37 S.W.2d 533, 536, *George W. Armbruster, Jr., Inc., v. City of Wildwood*, D.C.N.J., 41 F.2d 823, 829.

Estoppel in pais and equitable estoppel are convertible terms, *Brown v. Corn Exchange Nat. Bank & Trust Co.*, 42 A.2d 474, 480, 136 N.J.Eq. 430; *State ex rel. Squire v. Murfee, Blossom & Co.*, 131 Ohio St. 289, 2 N.E.2d 866, 870.

"Legal estoppel" excludes evidence of the truth and the equity of the particular case to support a strict rule of law on grounds of public policy whereas "equitable estoppel" is admitted on exactly the opposite ground of promoting the equity and justice of the individual case by preventing a party from asserting his rights under a general technical rule of law, when he has so conducted himself that it would be contrary to equity and good conscience for him to allege and prove the truth. *First Nat. Bank v. Boles*, 231 Ala. 473, 165 So. 586, 592.

Such estoppel may be based on acts, omission to act, representations, admissions, concealment or silence, *Carter v. Curlew Creamery Co.*, 16 Wash.2d 476, 134 P.2d 66; *West v. Cleveland Ry. Co.*, Ohio App., 58 N.E.2d 799, 801; *Mahoney v. Mahoney*, Tex.Civ.App., 103 S.W.2d 459, 462.

EQUITABLE EXECUTION. This term is sometimes applied to the appointment of a receiver with power of sale. *Hatch v. Van Dervoort*, 54 N.J. Eq. 511, 34 A. 938.

Though a garnishment is not an "execution," garnishment after execution is practically an equitable "execution" brought for purpose of reaching nonleviable assets, issuing on judgment in somewhat same manner as an "execution" and in immediate aid or in lieu thereof. *First Nat. Bank v. City Guaranty Bank of Hobart*, 174 Okl. 545, 51 P.2d 573, 576.

EQUITABLE LIENS are such as exist in equity.

An equitable lien arises either from a written contract which shows an intention to charge some particular property with a debt or obligation or is implied and declared by a court of equity out of general considerations of right and justice as applied to relations of the parties and circumstances of their dealings, *Owensboro Banking Co. v. Lewis*, 269 Ky. 277, 106 S.W.2d 1000, 1004; *Clark v. Armstrong & Murphy*, 180 Okl. 514, 72 P.2d 362, 365, 366; It is a mere floating and ineffective equity until such time as judgment or decree is rendered actually subjecting property to the payment of the debt or claim, *Langford v. Fanning*, Mo., 7 S.W.2d 726, 728; *Nelson v. Nelson Neal Lumber Co.*, 171 Wash. 55, 17 P.2d 626, 628, 92 A.L.R. 554. It is founded upon an agreement indicating intention that some specific property is to be held, given, or transferred as security, *In re Friedlander's Estate*, 32 N.Y.S.2d 991, 994, 995, 178 Misc. 65. It is neither a *ius in re* nor *ius ad*

rem, *Folsom v. Farmers' Bank of Vero Beach*, 136 So. 524, 527, 102 Fla. 899; *Clements v. Holmes*, 22 Tenn.App. 230, 120 S.W.2d 988, 993; It is not an estate or property in the thing itself or a right to recover the same. *Foster v. Thornton*, 179 So. 882, 892; *Jamison Coal & Coke Co. v. Goltra*, C.C.A.Mo., 143 F.2d 889, 893, 154 A.L.R. 1191; it more properly constitutes a charge upon the thing. Equitable liens most commonly grow out of constructive trusts. *Story*, Eq.Jur. § 1215; *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127, 129, 43 A.L.R. 1409; *Aldrich v. R. J. Ederer Co.*, 302 Ill. 391, 134 N.E. 726, 728.

It is right by which a creditor is entitled to obtain satisfaction of his debt by resort to specified property belonging to debtor, *Pincus v. Collins*, 198 Miss. 283, 22 So.2d 361, 362; right of a special nature over property constituting a charge or incumbrance thereon. *Miller v. Heisler*, Mo.App., 187 S.W.2d 485, 491; *Gables Racing Assoc. v. Persky*, 148 Fla. 627, 6 So.2d 257, 262, 263; right, not recognized at law, to have a fund or specific property, or the proceeds, applied in whole or in part to payment of a particular debt or class of debts or obligation, *Bank of Aurora v. Aurora Co-Op. Fruit Growing & Marketing Ass'n*, Mo.App., 91 S.W.2d 177; *Jamison Coal & Coke Co. v. Goltra*, C.C.A.Mo., 143 F.2d 889, 893, 154 A.L.R. 1191; *Shipley v. Metropolitan Life Ins. Co.*, 25 Tenn.App. 452, 158 S.W.2d 739, 741; right over subject-matter of contract, whereby obligee is enabled to follow identical thing to which lien attaches and enforce obligation by remedy operating directly thereon, *Bassett v. City Bank & Trust Co.*, 116 Conn. 617, 165 A. 557; right to have property subjected in court of equity to payment of a claim, *Theatre Realty Co. v. Aronberg-Fried Co.*, C.C.A.Mo., 85 F.2d 383, 388; right to proceed in an equitable action against the subject-matter of the lien and have it sold or sequestered and its proceeds or rents and profits applied to the demand of the owner of the lien, *Oppenheimer v. Szulerecki*, 297 Ill. 81, 130 N.E. 325, 328, 28 A.L.R. 1439.

The equitable lien differs essentially from a common-law lien, in that in the equitable lien, possession remains with the debtor or person who holds the proprietary interest. *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127, 129, 43 A.L.R. 1409.

Every express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund therein identified, a security for a debt or other obligation, or whereby the party promises to convey, assign, or transfer the property as security, creates an equitable lien upon the property so indicated, which is enforceable against the property. *Knott v. Mfg. Co.*, 30 W.Va. 790, 5 S.E. 266; *Geddes v. Reeves Coal & Dock Co.*, C.C.A.Minn., 20 F.2d 48, 50, 54 A.L.R. 282; *Root Mfg. Co. v. Johnson*, C.C.A.Ind., 219 F. 397, 406.

EQUITABLE RATE OF INTEREST. In England, the interest, generally at a lower rate than legal, charged against a trustee or executor improperly or unnecessarily keeping balances or portion of trust moneys in his hands. *In re Ricker's Estate*, 14 Mont. 153, 35 P. 960, 968, 29 L.R.A. 622.

EQUITABLE RECOUPMENT. Rule of the law which diminishes the right of a party invoking legal process to recover a debt, to the extent that he holds money or property of his debtor, to which he has no moral right, and it is ordinarily a defensive remedy going only to mitigation of damages. *Electric Storage Battery Co. v. Rothensies*, D.C.Pa., 57 F.Supp. 731, 735.

EQUITABLE RESCISSION. Rescission decreed by court of equity, as distinguished from "legal rescission" which is effected by restoration or offer to restore. *Mueller v. Michels*, 184 Wis. 324, 199 N.W. 380, 382.

EQUITABLE RULE. In broad sense in which term is sometimes used, signifies natural justice. *In re New Jersey State Bar Ass'n*, 111 N.J. Eq. 234, 162 A. 99, 101.

EQUITAS

EQUITAS SEQUITUR LEGEM. Equity follows the law. *Tallman v. Varick*, 5 Barb. (N.Y.) 277, 282. *Cas temp.* Talb. 52; 1 Sto.Eq.Jur. § 64.

In respect of this maxim it has been said: "Operative only within a very narrow range." 1 Pom.Eq.Jur. § 427. The reverse is quite as sound a maxim; 9 Harv.L.Rev. 18. "The main business of equity is avowedly to correct and supplement the law." Phelps, *Jurid.Eq.* § 237. The English Judicature Act, 1873, provides that when law and equity conflict equity shall prevail. See *Equity Follows the Law*.

EQUITATURA. In old English law. Traveling furniture, or riding equipments, including horses, horse harness, etc. *Reg.Orig.* 100*b*; *St.Westm.* 2, c. 39.

EQUITY. In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men,—the rule of doing to all others as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render to every man his due." *Inst.* 1, 1, 3. It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rather than juristic, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.

In a restricted sense, the word denotes equal and impartial justice as between two persons whose rights or claims are in conflict; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law. This is not a technical meaning of the term, except in so far as courts which administer equity seek to discover it by the agencies above mentioned, or apply it beyond the strict lines of positive law. See *Miller v. Kenniston*, 86 Me. 550, 30 A. 114.

In a still more restricted sense, it is a system of jurisprudence, or branch of remedial justice, administered by certain tribunals, distinct from the common-law courts and empowered to decree "equity" in the sense last above given. Here it becomes a complex of well-settled and well-understood rules, principles, and precedents. *Isabelle Properties v. Edelman*, 297 N.Y.S. 572, 574, 164 Misc. 192.

"The meaning of the word 'equity,' as used in its technical sense in English jurisprudence, comes back to this: that it is simply a term descriptive of a certain field of jurisdiction exercised, in the English system, by certain courts, and of which the extent and boundaries are not marked by lines founded upon principle so much as by the features of the original constitution of the English scheme of remedial law, and the accidents of its development." *Bisp.Eq.* § 11.

A system of jurisprudence collateral to, and in some respects independent of, "law," properly so called: the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect, or by exercising certain branches of jurisdiction independently of them. This is equity in its proper modern sense: an elaborate system of rules and process, administered in many cases by distinct tribunals, (termed "courts of chancery,") and with exclusive jurisdiction over certain subjects. It

is "still distinguished by its original and animating principle that no right should be without an adequate remedy;" and its doctrines are founded upon the same basis of natural justice; but its action has become systematized, deprived of any loose and arbitrary character which might once have belonged to it, and as carefully regulated by fixed rules and precedents as the law itself. *Burrill*.

Equity, in its technical and scientific legal use, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has a precise, limited, and definite signification, and is used to denote a system of justice which was administered in a particular court,—the English high court of chancery,—which system can only be understood and explained by studying the history of that court, and how it came to exercise what is known as its extraordinary jurisdiction. *Bisp.Eq.* § 1.

That part of the law which, having power to enforce discovery, (1) administers trusts, mortgages, and other fiduciary obligations; (2) administers and adjusts common-law rights where the courts of common law have no machinery; (3) supplies a specific and preventive remedy for common-law wrongs where courts of common law only give subsequent damages. *Chute, Eq.* 4.

Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law. *Laird v. Union Traction Co.*, 208 Pa. 574, 57 A. 987.

It is a body of rules existing by the side of the original civil law, founded on distinct principles, and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles. *Maine, Anc. Law*, 27.

"As old rules become too narrow, or are felt to be out of harmony with advancing civilization, a machinery is needed for their gradual enlargement and adaption to new views of society. One mode of accomplishing this object on a large scale, without appearing to disregard existing law, is the introduction, by the prerogative of some high functionary, of a more perfect body of rules, discoverable in his judicial conscience, which is to stand side by side with the law of the land, overriding it in case of conflict, as on some title of inherent superiority, but not purporting to repeal it. Such a body of rules has been called 'Equity.'" *Holl.Jur.* 59.

"Equity," in its technical sense, contradistinguished from natural and universal equity or justice, may well be described as a "portion of justice" or natural equity, not embodied in legislative enactments, or in the rules of common law, yet modified by a due regard thereto and to the complex relations and conveniences of an artificial state of society, and administered in regard to cases where the particular rights, in respect of which relief is sought come within some general class of rights enforced at law, or may be enforced without detriment or inconvenience to the community: but where, as to such particular rights, the ordinary courts of law cannot, or originally did not, clearly afford relief. *Rob.Eq.*

The remaining interest belonging to one who has pledged or mortgaged his property, or the surplus of value which may remain after the property has been disposed of for the satisfaction of liens. The amount or value of a property above the total liens or charges. *Des Moines Joint Stock Land Bank of Des Moines v. Allen*, 220 Iowa 448, 261 N.W. 912.

"Chancery" is synonymous and interchangeable with "equity." *Const. art.* 4, § 6. *Ireland v. Cheney*, 129 Ohio St. 527, 196 N.E. 267, 270.

Equitable Right

Equity also signifies an equitable right, *i. e.*, a right enforceable in a court of equity; hence, a bill of complaint which did not show that the plaintiff had a right entitling him to relief was said to be demurrable for want of equity; and

certain rights now recognized in all the courts are still known as "equities," from having been originally recognized only in the court of chancery. Sweet.

Better Equity

The right which, in a court of equity, a second incumbrancer has who has taken securities against subsequent dealings to his prejudice, which a prior incumbrancer neglected to take although he had an opportunity. 1 Ch.Prec. 470, note. See 3 Bouv.Inst. note 2462.

Countervailing Equity

A contrary and balancing equity; an equity or right opposed to that which is sought to be enforced or recognized, and which ought not to be sacrificed or subordinated to the latter, because it is of equal strength and justice, and equally deserving of consideration.

Existing Equity

See Existing Equity.

Latent or Secret Equity

An equitable claim or right, the knowledge of which has been confined to the parties for and against whom it exists, or which has been concealed from one or several persons interested in the subject-matter.

Natural Equity

A term sometimes employed in works on jurisprudence, possessing no very precise meaning, but used as equivalent to justice, honesty, or morality in business relations, or man's innate sense of right dealing and fair play. Inasmuch as equity, as now administered, is a complex system of rules, doctrines, and precedents, and possesses, within the range of its own fixed principles, but little more elasticity than the law, the term "natural equity" may be understood to denote, in a general way, that which strikes the ordinary conscience and sense of justice as being fair, right, and equitable, in advance of the question whether the technical jurisprudence of the chancery courts would so regard it.

Perfect Equity

An equitable title or right which lacks nothing to its completeness as a legal title or right except the formal conveyance or other investiture which would make it cognizable at law; particularly, the equity or interest of a purchaser of real estate who has paid the purchase price in full and fulfilled all conditions resting on him, but has not yet received a deed or patent. See Shaw v. Lindsey, 60 Ala. 344; Smith v. Cockrell, 66 Ala. 75.

EQUITY, COURTS OF. Courts which administer justice according to the system of equity, and according to a peculiar course of procedure or practice. Frequently termed "courts of chancery."

See 1 Bl.Comm. 92; Dowell v. Goodwin, 22 R.I. 287, 27 A. 693, 695, 51 L.R.A. 873, 84 Am.St.Rep. 842.

EQUITY DELIGHTS TO DO JUSTICE, AND THAT NOT BY HALVES. Tallman v. Varick, 5 Barb. (N.Y.) 277, 280; Story, Eq.Pl. § 72.

EQUITY FOLLOWS THE LAW. Talb. 52. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. A leading maxim of equity jurisprudence, which, however, is not of universal application, but liable to many exceptions. Frink v. Commercial Bank of Emmettsburg, 195 Iowa, 1011, 191 N.W. 513.

EQUITY JURISDICTION. In a general sense, the jurisdiction belonging to a court of equity, but more particularly the aggregate of those cases, controversies, and occasions which form proper subjects for the exercise of the powers of a chancery court. See Wadham Oil Co. v. Tracy, 141 Wis. 150, 123 N.W. 785, 787, 18 Ann.Cas. 779; Venner v. Great Northern R. Co., C.C.N.Y., 153 F. 408, 413, 414.

"Equity jurisdiction," in its ordinary acceptance, as distinguished on the one side from the general power to decide matters at all, and on the other from the jurisdiction "at law" or "common-law jurisdiction," is the power to hear certain kinds and classes of civil causes according to the principles of the method and procedure adopted by the court of chancery, and to decide them in accordance with the doctrines and rules of equity jurisprudence, which decision may involve either the determination of the equitable rights, estates, and interests of the parties to such causes, or the granting of equitable remedies. In order that a cause may come within the scope of the equity jurisdiction, one of two alternatives is essential; either the primary right, estate, or interest to be maintained, or the violation of which furnishes the cause of action, must be equitable rather than legal; or the remedy granted must be in its nature purely equitable, or if it be a remedy which may also be given by a court of law, it must be one which, under the facts and circumstances of the case, can only be made complete and adequate through the equitable modes of procedure. Norback v. Board of Directors of Church Extension Soc., 84 Utah 506, 37 P.2d 339.

EQUITY JURISPRUDENCE. That portion of remedial justice which is exclusively administered by courts of equity as distinguished from courts of common law. Jackson v. Nimmo, 3 Lea (Tenn.) 609. More generally speaking, the science which treats of the rules, principles, and maxims which govern the decisions of a court of equity, the cases and controversies which are considered proper subjects for its cognizance, and the nature and form of the remedies which it grants.

EQUITY LOOKS UPON THAT AS DONE WHICH OUGHT TO HAVE BEEN DONE. 1 Story, Eq.Jur. § 64g. Equity will treat the subject-matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them. Rankin v. Rankin, 36 Ill. 293, 87 Am.Dec. 205.

EQUITY OF A STATUTE. By this phrase is intended the rule of statutory construction which

EQUITY OF PARTNERS

admits within the operation of a statute a class of cases which are neither expressly named nor excluded, but which, from their analogy to the cases that are named, are clearly and justly within the spirit and general meaning of the law; such cases are said to be "within the equity of the statute."

EQUITY OF PARTNERS. A term used to designate the right of each of them to have the firm's property applied to the payment of the firm's debts. *Colwell v. Bank*, 16 R.I. 288, 17 A. 913.

EQUITY OF REDEMPTION. The right of the mortgagor of an estate to redeem the same after it has been forfeited, at law, by a breach of the condition of the mortgage, upon paying the amount of debt, interest and costs. *Riddick v. Davis*, 220 N.C. 120, 16 S.E.2d 662, 666; *Broun v. United States*, C.C.A.Pa., 95 F.2d 487, 489.

The right of redemption after sale is distinct from the equity of redemption after breach of condition and before the sale. The former commences only when the latter ends. One rests on the principles of equity, the other on the terms of the statute. *Hummel v. Citizens' Building & Loan Ass'n, Ariz.*, 296 P. 1014, 1015.

EQUITY SUFFERS NOT A RIGHT WITHOUT A REMEDY. 4 Bouv.Inst. No. 3726. *Graselli Chemical Company v. Ætna Explosives Co.*, 252 F. 456, 164 C.C.A. 380.

EQUITY TERM. An equity term of court is one devoted exclusively to equity business, that is, in which no criminal cases are tried nor any cases requiring the impaneling of a jury. *Hesselgrave v. State*, 63 Neb. 807, 89 N.W. 295.

EQUITY TO A SETTLEMENT. The equitable right of a wife, when her husband sues in equity for the reduction of her equitable estate to his own possession, to have the whole or a portion of such estate settled upon herself and her children. Also a similar right now recognized by the equity courts as directly to be asserted against the husband. Also called the "wife's equity." *Poindexter v. Jeffries*, *Clarke v. McCleary*, 12 *Smedes & M. (Miss.)* 354.

EQUIVALENT, *adj.* Equal in value, force, measure, volume, power, and effect or having equal or corresponding import, meaning or significance; alike, identical. *Salt Lake County v. Utah Copper Co.*, C.C.A.Utah, 93 F.2d 127, 132; *Nahas v. Nahas*, 59 Nev. 220, 90 P.2d 223, 224; *Kelley v. Clark*, 23 Idaho, 1, 129 P. 921, 925, Ann.Cas.1914C, 665.

EQUIVALENT, *n.* In patent law. Any act or substance which is known in the arts as a proper substitute for some other act or substance employed as an element in the invention, whose substitution for that other act or substance does not in any manner vary the idea of means. It possesses three characteristics: It must be capable of performing the same office in the invention as the act or substance whose place it supplies; it must relate to the form or embodiment alone and not affect in any degree the idea of means; and it must have been known to the arts at the date

of the patent as endowed with this capability. *Duff Mfg. Co. v. Forgie*, 59 F. 772, 8 C.C.A. 261; For "Fair Equivalent," see that title.

For one device to be the equivalent of another, it must perform the same function in substantially the same way. *Chicago Forging & Mfg. Co. v. Bade-Cummins Mfg. Co.*, C.C.A.Ky., 63 F.2d 928, 931; *Donner v. Sheer Pharmacal Corporation*, C.C.A.Mo., 64 F.2d 217, 223; *Corcoran v. Riness*, D.C.Cal., 19 F.Supp. 344, 347.

"Equivalents" in an art or process are such acts as, in accordance with preceding rules, are interchangeable with those which the inventor has himself employed. *Superior Skylight Co. v. August Kuhnla*, D.C.N.Y., 265 F. 282, 284.

An "equivalent," in patent law, is not the same as a "substitute." *McCaskey Register Co. v. Mantz*, D.C.N.Y., 217 F. 415, 419.

EQUIVOCAL. Having a double or several meanings or senses. Synonymous with "ambiguous". *Fleck v. Baldwin*, 141 Tex. 340, 172 S.W.2d 975, 979. See Ambiguity.

EQUULEUS. A kind of rack for extorting confessions.

EQUUS COOPERTUS. A horse equipped with saddle and furniture.

ERABILIS. A maple tree. Not to be confounded with *arabilis*, (arable land.)

ERASTIANS. The followers of Erastus. The sect obtained much influence in England, particularly among common lawyers in the time of Selden. They held that offenses against religion and morality should be punished by the civil power, and not by the censures of the church or by excommunication. Wharton.

ERASURE. The obliteration of words or marks from a written instrument by rubbing, scraping, or scratching them out. Also the place in a document where a word or words have been so removed. The term is sometimes used for the removal of parts of a writing by any means whatever, as by cancellation; but this is not an accurate use. *Cloud v. Hewitt*, 5 Fed.Cas. 1,085; *In re Fergeson*, 126 Misc. 286, 213 N.Y.S. 656, 658; *Murray v. Floyd*, 216 Minn. 69, 11 N.W.2d 780, 783.

ERCISCUNDUS. In the civil law. To be divided. *Judicium familie eriscundæ*, a suit for the partition of an inheritance. Inst. 4, 17, 4. An ancient phrase derived from the Twelve Tables. Calvin.

ERECT. One of the formal words of incorporation in royal charters. "We do, incorporate, erect, ordain, name, constitute, and establish." "Construct" is synonymous with "erect". State ex rel. *Davis v. Barber*, 139 Fla. 706, 190 So. 809.

ERECTION. Raising up; building; a completed building; to build; construct; set up. In a statute on the "erection" of wooden buildings, this term does not include repairing, alteration, enlarging, or removal. See *Shaw v. Hitchcock*, 119 Mass. 256; *Escambia County v. Blount Const. Co.*, 66 Fla. 129, 62 So. 650, 651; *Flynn v. New York, W. & B. Ry. Co.*, 218 N.Y. 140, 112 N.E. 913, 914, Ann. Cas.1918B, 588; *Watson v. Greely*, 69 Cal.App.

643, 232 P. 475, 479. There is a distinction between "erection" and maintenance. *Turturro v. Calder*, 307 Mass. 159, 29 N.E.2d 744, 746.

ERECTOR SPINÆ MUSCLES. A group of muscles on each side of the spine running all the way up from the sacrum to the skull. *Biener v. St. Louis Public Service Co.*, Mo.App., 160 S.W.2d 780, 788.

ERGO. Lat. Therefore; hence; because.

ERGOLABI. In the civil law. Undertakers of work; contractors. Cod. 4, 59.

ERGOT. A medicinal used as a uterine contractor to contract the muscles so as to expel certain material from the uterus. *People v. Chester*, 179 Misc. 864, 42 N.Y.S.2d 293, 295.

ERIACH. A term of the Irish Brehon law, denoting a pecuniary mulct or recompense which a murderer was judicially condemned to pay to the family or relatives of his victim. It corresponded to the Saxon "weregild." See 4 Bl.Comm. 313.

ERIGIMUS. We erect. One of the words by which a corporation may be created in England by the king's charter. 1 Bl.Comm. 473.

ERMINE. By metonymy, this term is used to describe the office or functions of a judge, whose state robe, lined with ermine, is emblematical of purity and honor without stain. Webster.

ERNES. In old English law. The loose scattered ears of corn that are left on the ground after the binding.

EROSION. The gradual eating away of the soil by the operation of currents or tides. Distinguished from *submergence*, which is the disappearance of the soil under the water and the formation of a navigable body over it. *Mulry v. Norton*, 100 N.Y. 433, 3 N.E. 584, 53 Am.Rep. 206; *State of Arkansas v. State of Tennessee*, 246 U.S. 158, 38 S. Ct. 301, 304, 62 L.Ed. 638, L.R.A.1918D, 258.

EROTOMANIA. See *Insanity*.

ERRANT. Wandering; itinerant; applied to justices on circuit, and bailiffs at large, etc.

ERRANT WATER. Stream water, which does not have channel of navigable river or which returns to stream after overflowing its banks, is not "errant water" in which riparian owner can acquire no vested rights. *Tallassee Power Co. v. Clark*, C.C.A.Tenn., 77 F.2d 601, 603.

ERRATICUM. In old law. A waif or stray; a wandering beast. Cowell.

ERRATUM. Lat. Error. Used in the Latin formula for assigning errors, and in the reply thereto, "in nullo est erratum," *i. e.*, there was no error, no error was committed.

ERRONEOUS. Involving error; deviating from the law. This term is never used by courts or law-writers as designating a corrupt or evil act.

Thompson v. Doty, 72 Ind. 338; *U. S. v. Sakharam Ganesh Pandit*, C.C.A.Cal., 15 F.2d 285, 286. "False" as a constituent of a fraud action may at times be said to be synonymous with "erroneous." *Abel v. Paterno*, 153 Misc. 248, 274 N.Y.S. 749.

ERRONEOUS ASSESSMENT. Refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officer in fixing the amount of valuation of the property. In re *Blatt*, 41 N.M. 269, 67 P.2d 293, 301, 110 A.L.R. 656; *Ritchie Grocer Co. v. City of Texarkana*, 182 Ark. 137, 30 S.W.2d 213, 214; *Flourney v. First Nat. Bank of Shreveport*, 197 La. 1067, 3 So.2d 244, 252.

ERRONEOUS JUDGMENT. One rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles. *Herbert B. Newton & Co. v. Wilson Furniture Mfg. Co.*, 206 N.C. 533, 174 S.E. 449, 450.

ERRONEOUS OR ILLEGAL TAX. One levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal. *Jewett Realty Co. v. Board of Sup'rs of Polk County*, 239 Iowa 988, 33 N.W.2d 377.

ERRONICE. Lat. Erroneously; through error or mistake.

ERROR. A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law.

Such a mistaken or false conception or application of the law to the facts of a cause as will furnish ground for a review of the proceedings upon a writ of error; a mistake of law, or false or irregular application of it, such as vitiates the proceedings and warrants the reversal of the judgment.

Error is also used as an elliptical expression for "writ of error;" as in saying that *error* lies; that a judgment may be reversed *on error*.

An act involving a departure from truth or accuracy. *Gronseth v. Mohn*, 57 S.D. 604, 234 N.W. 603, 604.

Assignment of Errors

In practice. The statement of the plaintiff's case on a writ of error, setting forth the errors complained of; corresponding with the declaration in an ordinary action. 2 Tidd, Pr. 1168; 3 Steph.Comm. 644. *Armour v. Pennsylvania R. Co.*, 353 Ill. 575, 187 N.E. 532, 534; *Fahrenörink v. Moore*, 51 Ariz. 176, 75 P.2d 360, 361. A specification of the errors upon which the appellant will rely, with such fullness as to give aid to the court in the examination of the transcript. *Squires v. Foorman*, 10 Cal. 298; *Streeter v. State*, 89 Fla. 400, 104 So. 858, 859; *Largent v. Etheridge*, Tex. Civ.App., 13 S.W.2d 974, 976; *Helms v. Cook*, 62

ERROR

Ind.App. 629, 111 N.E. 632, 633; *Wine v. Jones*, 183 Iowa, 1166, 168 N.W. 318, 320.

The office of an assignment of error, which is in the nature of a pleading by the plaintiff in error or appellant, is not only to inform the appellate court of the exact complaint against rulings, whereby, if the complaint be sustained, a judgment or decree may be changed or reversed, but is to inform the defendant in error or appellee of the precise errors relied upon, in order that such defendant in error or appellee may take proper steps, or give proper directions in his own behalf, for making up a sufficient transcript of the record to exhibit to the court what might otherwise be insufficiently shown. *Davidson v. Bezant*, 101 Fla. 1296, 132 So. 488, 489.

"Assignment of error" is formal complaint of some action of trial court, as distinguished from "proposition," which merely sets forth reasons why such action is erroneous. *Standard v. Texas Pacific Coal & Oil Co.*, Tex.Civ.App., 47 S.W.2d 443, 449.

Clerical Error

See Clerical.

Common Error

(Lat. *communis error, q. v.*) An error for which there are many precedents. "Common error goeth for a law." *Finch, Law, b. 1, c. 3, no. 54.* "Common errors" are that the declaration is insufficient in law to maintain the action, and that judgment was given for plaintiff instead of defendant, or vice versa. *Margolis v. Goldberg*, 101 N.J.L. 75, 127 A. 271, 272.

Cross-Errors

Errors assigned by the respondent in a writ of error, or appellee.

Error Apparent of Record

Plain, fundamental error that goes to the foundation of the action irrespective of the evidence; an obvious misapprehension of the applicable law. *Kenedy Mercantile Co. v. Ainsworth*, Tex.Civ.App., 281 S.W. 637; *Provident Life & Accident Ins. Co. v. Johnson*, Tex.Civ.App., 235 S.W. 650, 652; *Parks v. Parks*, 68 App.D.C. 363, 98 F.2d 235, 236.

Fundamental Error

In appellate practice. Error which goes to the merits of the plaintiff's cause of action, and which will be considered on review, whether assigned as error or not, where the justice of the case seems to require it. *Hollywood v. Wellhausen*, 28 Tex.Civ.App. 541, 68 S.W. 329; *Goodhue v. Fuller*, Tex.Civ.App., 193 S.W. 170, 172. Error in law apparent on the face of the record. *St. Louis Southwestern Ry. Co. of Texas v. Anderson*, Tex.Civ.App., 206 S.W. 696, 698.

Harmful Error

Error which more probably than improbably affected the verdict or judgment prejudicially to the party complaining. *Ashby v. Virginia Ry. & Power Co.*, 138 Va. 310, 122 S.E. 104, 110.

Harmless Error

In appellate practice. An error committed in the progress of the trial below, but which was not prejudicial to the rights of the party assigning it, and for which, therefore, the court will not reverse

the judgment, as, where the error was neutralized or corrected by subsequent proceedings in the case, or where, notwithstanding the error, the particular issue was found in that party's favor, or where, even if the error had not been committed, he could not have been legally entitled to prevail.

Invited Error

In appellate practice. The principle of "invited error" is that if, during the progress of a cause, a party requests or moves the court to make a ruling which is actually erroneous, and the court does so, that party cannot take advantage of the error on appeal or review. *Gresham v. Harcourt*, 93 Tex. 149, 53 S.W. 1019.

Judicial Errors

Errors into which the court itself falls. *State v. District Court of Second Judicial District in and for Silver Bow County*, 55 Mont. 324, 176 P. 608, 609.

Reversible Error

In appellate practice. Such an error as warrants the appellate court in reversing the judgment before it; substantial error, that which reasonably might have prejudiced the party complaining. *Shinn v. United Rys. Co. of St. Louis*, 248 Mo. 173, 154 S.W. 103, 105; *New Mexican R. Co. v. Hendricks*, 6 N.M. 611, 30 Pac. 901.

Technical Error

In appellate practice. A merely abstract or theoretical error, which is practically not injurious to the party assigning it. *Epps v. State*, 102 Ind. 539, 1 N.E. 491.

ERROR CASE. An appeal on questions of law. In re *Green's Estate*, Ohio App., 41 N.E.2d 586.

ERROR CORAM NOBIS. Error committed in the proceedings "before us;" i. e., error assigned as a ground for reviewing, modifying, or vacating a judgment in the same court in which it was rendered. A writ to bring before the court that pronounced judgment errors in matters of fact which had not been put in issue or passed on and were material to validity and regularity of legal proceeding itself. *Hiawassee Lumber Co. v. United States*, C.C.A.N.C., 64 F.2d 417, 418.

ERROR CORAM VOBIS. Error in the proceedings "before you;" words used in a writ of error directed by a court of review to the court which tried the cause.

ERROR FUCATUS NUDA VERITATE IN MULTIS EST PROBABILIOR; ET SÆPENUMERO RATIONIBUS VINCIT VERITATEM ERROR. Error artfully disguised [or colored] is, in many instances, more probable than naked truth; and frequently error overwhelms truth by [its show of] reasons. 2 Coke, 73.

ERROR IN EXERCISE OF JURISDICTION. Error in determination of questions of law or fact

on which the court's jurisdiction in particular case depends. *Burgess v. Nail*, C.C.A.Okl., 103 F.2d 37, 43.

ERROR IN FACT. In judicial proceedings, error in fact occurs when, by reason of some fact which is unknown to the court and not apparent on the record (e. g., the coverture, infancy, or death of one of the parties), it renders a judgment which is void or voidable. *Cruger v. McCracken*, 87 Tex. 584, 30 S.W. 537; *Kihlholz v. Wolff*, 8 Ill. App. 371.

ERROR IN LAW. An error of the court in applying the law to the case on trial, e. g., in ruling on the admission of evidence, or in charging the jury. *McKenzie v. Bismarck Water Co.*, 6 N.D. 361, 71 N.W. 608; *Scherrer v. Hale*, 9 Mont. 63, 22 Pac. 151.

ERROR IN VACUO. Error in adverse ruling without adverse effect is "error in vacuo" which may subject the erring judge to criticism but not the case to re-trial. *United States v. A Certain Tract or Parcel of Land in Chatham County, Ga.*, D.C.Ga., 47 F.Supp. 30, 36.

ERROR JURIS NOCET. Error of law injures. A mistake of the law has an injurious effect; that is, the party committing it must suffer the consequences. *Mackeld.Rom.Law*, § 178; 1 Story, Eq. Jur. § 139, note.

ERROR NOMINIS. Error of name. A mistake of detail in the name of a person; used in contradiction to error *de personâ*, a mistake as to identity.

ERROR NOMINIS NUNQUAM NOCET, SI DE IDENTITATE REI CONSTAT. A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself, [where the thing intended is certainly known.] 1 Duer, Ins. 171. This maxim is applicable only where the means of correcting the mistake are apparent on the face of the instrument to be construed. Id.

ERROR OF FACT. That is called "error of fact" which proceeds either from ignorance of that which really exists or from a mistaken belief in the existence of that which has none. See *Norton v. Marden*, 15 Me. 45, 32 Am.Dec. 132. Finding of fact contrary to the weight of the evidence is an error of fact. *Wear v. Imperial Window Glass Co.*, C.C.A.Mo., 224 F. 60, 62. Cf. *Error in Fact*, *supra*.

ERROR OF LAW. He is under an error of law who is truly informed of the existence of facts, but who draws from them erroneous conclusions of law. *Civ.Code La. art. 1822*. *Mowatt v. Wright*, 1 Wend., N.Y., 360, 19 Am.Dec. 508.

ERROR QUI NON RESISTITUR APPROBATUR. An error which is not resisted or opposed is approved. *Doct. & Stud. c. 40*.

ERROR, WRIT OF. See *Writ of Error*.

ERRORES AD SUA PRINCIPIA REFERRE, EST REFELLERE. To refer errors to their sources is to refute them. 3 Inst. 15. To bring errors to their beginning is to see their last.

ERRORES SCRIBENTIS NOCERE NON DEBENT. The mistakes of the writer ought not to harm. *Jenk.Cent. 324*.

ERRORS EXCEPTED. A phrase appended to an account stated, in order to excuse slight mistakes or oversights.

ERTHMOTUM. In old English law. A meeting of the neighborhood to compromise differences among themselves; a court held on the boundary of two lands.

ERUBESCIT LEX FILIOS CASTIGARE PAR- ENTES. 8 Coke, 116. The law blushes when children correct their parents.

ESBRANCATURA. In old law. A cutting off the branches or boughs of trees. *Cowell; Spelman*.

ESCALATOR CLAUSE. A clause usually found in leases or contracts executed subject to price control regulations. Under this clause, in the case of a lease, the landlord is authorized to collect the maximum rent permissible under rent regulations in force at time of execution of the lease. The escalator part of the clause of the lease consists in the provision that in the event that the rent regulations are modified during the term of the lease, the tenant will pay the increased rental following the allowance thereof. *Wasservogel v. Meyero-witz*, 191 Misc. 594, 79 N.Y.S.2d 256; and 89 N.Y.S. 2d 290, 275 App.Div. 387. In the case of a sales contract, the escalator clause usually provides in effect that should the maximum prices promul-gated be increased or decreased during the life of the contract, payment will be made by the pur-chaser at a rate of increase or decrease not to ex-ceed the same ratio that the prices quoted bear to the maximum prices authorized. *Simpson Bros. v. District of Columbia*, D.C.D.C., 73 F.Supp. 858, and 179 F.2d 430. *Pfotzer et al. v. United States*, 176 F.2d 675; *Record & Tribune Co. v. Brandtjen & Kluge, Inc.*, Iowa, 39 N.W.2d 288. Escalator clauses authorizing the contractor to increase the contract price should the prices of labor or material advance also appear in other contracts, such as a contract to furnish steam. *Lincoln Rug Co. v. East Newark Realty Corp.*, 142 N.J.Eq. 743, 61 A.2d 448.

ESCALDARE. To scald. It is said that to *scald hogs* was one of the ancient tenures in serjeanty. *Wharton*.

ESCAMBIO. In old English law. A writ of ex-change. A license in the shape of a writ, formerly granted to an English merchant to draw a bill of exchange on another in foreign parts. *Reg. Orig. 194*.

ESCAMBIUM. An old English law term, signify-ing exchange.

ESCAPE. The departure or deliverance out of custody of a person who was lawfully imprison-

ESCAPE

ed, before he is entitled to his liberty by the process of law.

The voluntarily or negligently allowing any person lawfully in confinement to leave the place. 2 Bish.Crim.Law, § 917.

Escapes are either *voluntary* or *negligent*. The former is the case when the keeper voluntarily concedes to the prisoner any liberty not authorized by law. The latter is the case when the prisoner contrives to leave his prison by forcing his way out, or any other means, without the knowledge or against the will of the keeper, but through the latter's carelessness or the insecurity of the building. *Cortis v. Dailey*, 21 App.Div. 1, 47 N.Y. S. 454; *U. S. v. Hoffman*, D.C.Ill., 13 F.2d 269, 270; *Whitaker v. Commonwealth*, 188 Ky. 95, 221 S.W. 215, 216, 10 A.L.R. 145; *State v. Pace*, 192 N.C. 780, 136 S.E. 11, 12.

To flee from; to a void; to get out of the way, as to flee to avoid arrest. *Life & Casualty Ins. Co. v. Hargraves*, 169 Tenn. 388, 88 S.W.2d 451, 452; *State v. Dreiling*, 136 Kan. 78, 12 P.2d 735, 736.

—**Constructive escape.** This takes place when a prisoner obtains more liberty than the law allows, although he still remains in custody. 21 C.J. p. 827. An example is the unauthorized production of a prisoner in court by his custodian. In re *Rigg*, 123 A. 243, 95 N.J.Eq. 341.

ESCAPE FROM PRISON. A prisoner serving a sentence of imprisonment in a state prison is, in contemplation of law, a prisoner therein, as well when at work outside under the surveillance of prison guards as when confined within its walls, so that if he escapes when outside he escapes from a prison within Pen.Code, §§ 106, 787. *People v. Vanderburg*, 67 Cal.App. 217, 227 P. 621.

ESCAPE WARRANT. In English practice. This was a warrant granted to retake a prisoner committed to the custody of the king's prison who had escaped therefrom. It was obtained on affidavit from the judge of the court in which the action had been brought, and was directed to all the sheriffs throughout England, commanding them to retake the prisoner and commit him to gaol when and where taken, there to remain until the debt was satisfied. *Jacob; Brown*.

ESCAPE WAY. Passageway leading from the inside to the outside of the mine. *Roberts v. Tennessee Coal, Iron & R. Co.*, C.C.A.Ala., 255 F. 469, 471; *Robinson v. Maryland Coal & Coke Co.*, 196 Ala. 604, 72 So. 161, 162.

ESCAPIO QUIETUS. In old English law. Delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land. *Jacob*.

ESCAPIUM. That which comes by chance or accident. *Cowell*.

ESCEPPA. A measure of corn. *Cowell*.

ESCHÆTA DERIVATUR A VERBO GALLICO ESCHOIR, QUOD EST ACCIDERE, QUIA ACCIDIT DOMINO EX EVENTU ET EX INSPERATO. Co.Litt. 93. Escheat is derived from the French word "*eschoir*," which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.

ESCHÆTÆ VULGO DICUNTUR QUÆ DECIDENTIBUS IIS QUÆ DE REGE TENENT, CUM NON EXISTIT RATIONE SANGUINIS HÆRES, AD FISCUM RELABUNTUR. Those things are commonly called "escheats" which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.

ESCHEAT. In feudal law. Escheat is an obstruction of the course of descent, and consequent determination of the tenure, by some unforeseen contingency, in which case the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee. 2 Bl.Comm. 15; *Wallace v. Harmstad*, 44 Pa. 501; *Marshall v. Lovelass*, 1 N.C. 445; *Kavanaugh v. Cohoes Power & Light Corporation*, 114 Misc. 590, 187 N.Y.S. 216, 231; *State v. Phoenix Sav. Bank & Trust Co.*, 60 Ariz. 138, 132 P.2d 637, 638.

It is the casual descent, in the nature of forfeiture, of lands and tenements within his manor, to a lord, either on failure of issue of the tenant dying seised or on account of the felony of such tenant. *Jacob*.

Also the land or fee itself, which thus fell back to the lord. Such lands were called "*excadentia*," or "*terræ excadentiales*." *Fleta*, lib. 6, c. 1; *Co. Litt. 13a*.

In American law. Escheat signifies a reversion of property to the state in consequence of a want of any individual competent to inherit. The state is deemed to occupy the place and hold the rights of the feudal lord. See 4 Kent, Comm. 423, 424. *Center v. Kramer*, 112 Ohio St. 269, 147 N.E. 602, 604; *In re O'Connor's Estate*, 126 Neb. 182, 252 N.W. 826; *Braun v. McPherson*, 277 Mich. 396, 269 N.W. 211, 212.

"Escheat at feudal law was the right of the lord of a fee to re-enter upon the same when it became vacant by the extinction of the blood of the tenant. This extinction might either be *per defectum sanguinis* or else *per delictum tenentis*, where the course of descent was broken by the corruption of the blood of the tenant. As a fee might be holden either of the crown or from some inferior lord, the escheat was not always to the crown. The word 'escheat,' in this country, at the present time, merely indicates the preferable right of the state to an estate left vacant, and without there being any one in existence able to make claim thereto." 29 Am.Dec. 232, note.

Single Escheat

When all a person's movables fall to the crown, as a casualty, because of his being declared rebel. *Wharton*.

ESCHEAT, WRIT OF. A writ which anciently lay for a lord, to recover possession of lands that had escheated to him. *Reg.Orig. 164b; Fitzh. Nat.Brev. 143*.

ESCHEATOR. In English law. The name of an officer who was appointed in every county to look after the escheats which fell due to the king in that particular county, and to certify the same into the exchequer. An escheator could continue in office for one year only, and was not re-eligible until three years. There does not appear to exist any such officer at the present day. Brown. See 10 Vin.Abr. 158; Co.Litt. 13b.

ESCHECCUM. In old English law. A jury or inquisition.

ESCHIPARE. To build or equip. Du Cange.

ESCOBEDO RULE. Where police investigation begins to focus on a particular suspect, the suspect is in custody, the suspect requests and is denied counsel, and the police have not warned him of his right to remain silent, the accused has been denied assistance of counsel and no statement elicited during such interrogation may be used in a criminal trial. *Escobedo v. State of Illinois*, 378 U.S. 478, 490, 491, 84 S.Ct. 1758, 12 L.Ed.2d 977.

ESCOT. A tax formerly paid in boroughs and corporations towards the support of the community, which is called "scot and lot."

ESCRIBANO. In Spanish law. An officer, resembling a notary in French law, who has authority to set down in writing, and verify by his attestation, transactions and contracts between private persons, and also judicial acts and proceedings.

ESCRITURA. In Spanish law. A written instrument. Every deed that is made by the hand of a public *escribano*, or notary of a corporation or council (*concejo*), or sealed with the seal of the king or other authorized persons. White, New Recop. b. 3, tit. 7, c. 5.

ESCROQUERIE. Fr. Fraud, swindling, cheating.

ESCROW. A scroll, writing, or deed, delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee. *Minnesota & Oregon Land & Timber Co. v. Hewitt Inv. Co.*, D.C.Or., 201 F. 752, 759.

The state or condition of a deed which is conditionally held by a third person, or the possession and retention of a deed by a third person pending a condition; as when an instrument is said to be delivered "in escrow." This use of the term, however, is a perversion of its meaning.

ESCROWL. In old English law. An escrow; a scroll. "And deliver the deed to a stranger, as an escrowl." Perk. c. 1, § 9; Id. c. 2, §§ 137, 138.

ESCUAGE. Service of the shield. One of the varieties of tenure in knight's service, the duty imposed being that of accompanying the king to the wars for forty days, at the tenant's own

charge, or sending a substitute. In later times, this service was commuted for a certain payment in money, which was then called "escuage certain." See 2 Bl.Comm. 74, 75.

ESCURARE. To scour or cleanse. Cowell.

ESGLISE, or EGLISE. A church. Jacob.

ESKETORES. Robbers, or destroyers of other men's lands and fortunes. Cowell.

ESKIPPAMENTUM. Tackle or furniture; outfit. Certain towns in England were bound to furnish certain ships at their own expense and with double *skippage* or tackle. Cowell.

ESKIPPER, ESKIPPARE. To ship.

ESKIPPESON. Shippage, or passage by sea. Spelled, also, "*skippeson*." Cowell.

ESLISORS. See *Elisors*.

ESNE. In old law. A hireling of servile condition.

ESNECY. Seniority; the condition or right of the eldest; the privilege of the eldest-born. Particularly used of the privilege of the eldest among coparceners to make a first choice of purparts upon a voluntary partition.

ESPEDIENT. In Spanish law. A junction of all the separate papers made in the course of any one proceeding and which remains in the office at the close of it. *Castillero v. U. S.*, 2 Black 109, 17 L. Ed. 360.

ESPERA. A period of time fixed by law or by a court within which certain acts are to be performed, *e. g.*, the production of papers, payment of debts, etc.

ESPERONS. L.Fr. Spurs.

ESPLEES. An old term for the products which the ground or land yields; as the hay of the meadows, the herbage of the pasture, corn of arable fields, rent and services, etc. The word has been anciently applied to the land itself. Jacob; *Fosgate v. Hydraulic Co.*, 9 Barb., N.Y., 293.

ESPOUSALS. A mutual promise between a man and a woman to marry each other at some other time. It differs from a marriage, because then the contract is completed. Wood, Inst. 57.

ESPURIO. Span. In Spanish law. A spurious child; one begotten on a woman who has promiscuous intercourse with many men. White, New Recop. b. 1, tit. 5, c. 2, § 1.

ESQUIRE. In English law. A title of dignity next above gentleman, and below knight. Also a title of office given to sheriffs, serjeants, and barristers at law, justices of the peace, and others. 1 Bl.Comm. 406; 3 Steph.Comm. 15, note; Tomlins. On the use of this term in American law, particularly as applied to justices of the peace and other inferior judicial officers, see *Christian v. Ashley County*, 24 Ark. 151; *Com. v. Vance*, 15 Serg. & R., Pa., 37.

ESSARTER

ESSARTER. L. Fr. To cut down woods; to clear land of trees and underwood; properly to thin woods, by cutting trees, etc., at intervals. Spelman. See Assart.

ESSARTUM. Woodlands turned into tillage by uprooting the trees and removing the underwood.

ESSENCE. That which is indispensable. Pittsburgh Iron & Steel Foundries Co. v. Seaman-Sleeth Co., D.C.Pa., 236 F. 756, 757. The gist or substance of any act; the vital constituent of a thing; that without which a thing cannot be itself. Norman v. Department of Labor and Industries, 10 Wash.2d 180, 116 P.2d 360, 362.

ESSENCE OF THE CONTRACT. Any condition or stipulation in a contract which is mutually understood and agreed by the parties to be of such vital importance that a sufficient performance of the contract cannot be had without exact compliance with it is said to be "of the essence of the contract." Flatow, Riley & Co. v. Roy Campbell Co., Tex.Com.App., 280 S.W. 517, 520; Dayvault & Newsome v. Townsend, Tex.Civ.App., 244 S.W. 1108, 1110.

ESSENDI QUIETUM DE TOLONIO. A writ to be quit of toll; it lies for citizens and burgesses of any city or town who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them. Reg.Orig. 258.

ESSENTIAL. Indispensably necessary; important in the highest degree; requisite. Solter v. Macmillan, 147 Md. 580, 128 A. 356, 358; City of Kalamazoo v. Balkema, 252 Mich. 308, 233 N.W. 325, 326.

ESSENTIAL GOVERNMENTAL DUTIES. Those duties which framers of Constitution intended each member of union would assume in functioning under form of government guaranteed by Constitution. Commissioner of Internal Revenue v. Stillwell, C.C.A.7, 101 F.2d 588, 591.

ESSENTIAL OIL. A group of volatile oils having marked characteristic odors, occurring in fruits, flowers, leaves, stems, etc. In re Johnston, Cust. & Pat.App., 132 F.2d 136, 139.

ESSENTIALLY. "Substantially" is not necessarily synonymous. Robins v. Wettlaufer, Cust. & Pat.App., 81 F.2d 882, 893.

ESSOIN, v. In old English practice. To present or offer an excuse for not appearing in court on an appointed day in obedience to a summons; to cast an essoin. Spelman. This was anciently done by a person whom the party sent for that purpose, called an "essoiner."

ESSOIN, n. In old English law. An excuse for not appearing in court at the return of the process. Presentation of such excuse. Spelman; 1 Sel.Pr. 4; Com.Dig. "Exoine," B 1. Essoin is not now allowed at all in personal actions. 2 Term, 16; 16 East, 7a; 3 Bl.Comm. 278, note.

ESSOIN DAY. Formerly the first general return-day of the term, on which the courts sat to receive

essoins, *i. e.*, excuses for parties who did not appear in court, according to the summons of writs. 3 Bl.Comm. 278; Boote, Suit at Law, 130; Gilb. Com.Pl. 13; 1 Tidd, Pr. 107. But, by St. 11 Geo. IV. and 1 Wm. IV. c. 70, § 6, these days were done away with, as a part of the term.

ESSOIN DE MALO VILLÆ. When the defendant is in court the first day; but gone without pleading, and being afterwards surprised by sickness, etc., cannot attend, but sends two essoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come *pro lucrari* and *pro perdere*; and this will be admitted, for it lieth on the plaintiff to prove whether the essoin is true or not. Jacob.

ESSOIN ROLL. A roll upon which essoins were formerly entered, together with the day to which they were adjourned. Boote, Suit at Law, 130; Rosc.Real Act. 162, 163; Gilb.Com.Pl. 13.

ESSOINIATOR. A person who made an essoin.

EST ALIQUID QUOD NON OPORTET ETIAM SI LICET; QUICQUID VERO NON LICET CERTE NON OPORTET. Hob. 159. There is that which is not proper, even though permitted; but whatever is not permitted is certainly not proper.

EST ASCAVOIR. It is to be understood or known; "it is to-wit." Litt. §§ 9, 45, 46, 57, 59. A very common expression in Littleton, especially at the commencement of a section; and, according to Lord Coke, "it ever teacheth us some rule of law, or general or sure leading point." Co.Litt. 16.

EST AUTEM JUS PUBLICUM ET PRIVATUM, QUOD EX NATURALIBUS PRÆCEPTIS AUT GENTIUM, AUT CIVILIBUS EST COLLECTUM; ET QUOD IN JURE SCRIPTO JUS APPELLATUR, ID IN LEGE ANGLIÆ RECTUM ESSE DICITUR. Public and private law is that which is collected from natural precepts, on the one hand of nations, on the other of citizens; and that which in the civil law is called "*jus*," that, in the law of England, is said to be right. Co.Litt. 558.

EST AUTEM VIS LEGEM SIMULANS. Violence may also put on the mask of law.

EST IPSORUM LEGISLATORUM TANQUAM VIVA VOX. The voice of the legislators themselves is like the living voice; that is, the language of a statute is to be understood and interpreted like ordinary spoken language. 10 Coke, 101b.

EST QUIDDAM PERFECTIUS IN REBUS LICITIS. There is something more perfect in things allowed.

ESTABLISH. This word occurs frequently in the constitution of the United States, and it is there used in different meanings: (1) To settle firmly, to fix unalterably; as to establish justice, which is the avowed object of the constitution. (2) To make or form; as to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, which evidently does not mean that these laws shall be unalterably established as jus-

tice. (3) To found, to create, to regulate; as: "Congress shall have power to establish post-roads and post-offices." (4) To found, recognize, confirm, or admit; as: "Congress shall make no law respecting an establishment of religion." (5) To create, to ratify, or confirm; as: "We, the people," etc., "do ordain and establish this constitution." 1 Story, Const. § 454. And see *Ware v. U. S.*, 4 Wall. 632, 18 L.Ed. 389; *U. S. v. Smith*, 4 N.J. L. 33.

To settle or fix firmly; place on a permanent footing; found; create; put beyond doubt or dispute; prove; convince. *Smith v. Forrest*, 49 N.H. 230; *Rowley v. Braly*, Tex.Civ.App., 286 S.W. 241, 245; *Village of Villa Park v. Wanderer's Rest Cemetery Co.*, 316 Ill. 226, 147 N.E. 104, 106; *Thompson v. U. S.*, C.C.A.N.J., 283 F. 895, 899; *Wells Lamont Corp. v. Bowles*, Emp.App, 149 F.2d 364, 366.

To bring into being; to build; to constitute; to create; to erect; to form, to found; to found and regulate, to institute, to locate; to make; to model; to organize; to originate; to prepare; to set up. *Georgia Public Service Commission v. Georgia Power Co.*, 182 Ga. 706, 186 S.E. 839, 844; *Muscatine Lighting Co. v. City of Muscatine*, 205 Iowa 82, 217 N.W. 468, 470; *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133, 140.

ESTABLISHMENT, ETABLISSEMENT. An ordinance or statute. Especially used of those ordinances or statutes passed in the reign of Edw. I. 2 Inst. 156; *Britt. c. 21*.

Etiblisement is also used to denote the settlement of dower by the husband upon his wife. *Britt. c. 102*.

Institution, place where conducted and equipment; industrial plant and appurtenances; place of business and fixtures; residence with grounds, furniture, equipage, etc. *State v. Scullin-Gallagher Iron & Steel Co.*, 263 Mo. 178, 186 S.W. 1007, 1008, Ann.Cas.1918E, 620; *Benjamin Rose Institute v. Myers*, 92 Ohio St. 252, 110 N.E. 924, 927, L.R.A. 1916D, 1170; *Walling v. American Stores Co.*, C.C.A.Pa., 133 F.2d 840, 844; *Continental Baking Co. v. Campbell*, 176 Okl. 218, 55 P.2d 114, 116. In a narrow sense, "to bring into being, create, build, set up, etc." *Gunnar v. Town of Montezuma*, 229 Iowa 734, 294 N.W. 895, 897.

ESTABLISHMENT OF DOWER. The assurance of dower made by the husband, or his friends, before or at the time of the marriage. *Britt. cc. 102, 103*.

ESTACHE. A bridge or stank of stone or timber. *Cowell*.

ESTADAL. In Spanish law. In Spanish America, a measure of land of sixteen square varas, or yards. 2 White, *Recop.* 139.

ESTADIA (or Sobrestadia). In Spanish law. Delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee, for which demurrage is payable. The time for which the party who has chartered a vessel, or is bound to receive the cargo, has to pay demurrage on account of his delay in the execution of the contract.

ESTANDARD. L. Fr. A standard (of weights and measures.) So called because it stands constant and immovable, and hath all other measures coming towards it for their conformity. *Termes de la Ley*.

ESTANQUES. Wears (weirs) or kiddles in rivers.

ESTATE. The interest which any one has in lands, or in any other subject of property. 1 *Prest.Est.* 20. And see *Mulford v. Le Franc*, 26 Cal. 103; *Robertson v. VanCleave*, 129 Ind. 217, 29 N.E. 781, 15 L.R.A. 68; *Ball v. Chadwick*, 46 Ill. 31. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 *Bl.Comm.* 103. The condition or circumstance in which the owner *stands* with regard to his property. 2 *Crabb, Real Prop.* p. 2, § 942; *Boyd v. Sibold*, 7 Wash.2d 279, 109 P.2d 535, 539. In this sense, "estate" is constantly used in conveyances in connection with the words "right," "title," and "interest," and is, in a great degree, synonymous with all of them. See *Co.Litt.* 345.

The degree, quantity, nature, and extent of interest which a person has in real property is usually referred to as an estate, and it varies from absolute ownership down to naked possession. *Nicholson Corporation v. Ferguson*, 114 Okl. 10, 243 P. 195, 200; *Washington Ins. Co. v. Pass*, for Use of Nalley, 64 Ga.App. 221, 12 S.E.2d 460, 461; *Gibbs v. Lester*, Tex.Com.App., 41 S.W.2d 28, 29, 80 A.L.R. 431.

In another sense, "estate" designates the property (real or personal) in which one has a right or interest; the subject-matter of ownership; the *corpus* of property. Thus, we speak of a "valuable estate," "all my estate," "separate estate," "trust estate," etc. This, also, is its meaning in the classification of property into "real estate" and "personal estate." *Coniervin v. Concannon*, 122 Or. 387, 259 P. 290, 292; *Bates v. Sparrell*, 10 Mass. 323; *Archer v. Deneale*, 1 Pet. 585, 7 L.Ed. 272; *Den v. Snitcher*, 14 N.J.L. 53.

There is no such legal entity as an "estate." *Hansen v. Stanton*, 177 Wash. 257, 31 P.2d 903, 904, 92 A.L.R. 1037. It is a convenient phrase, to identify the subject of litigation in the orphans' court, and in proceedings in rem it may be treated as harmless superfluity, but as a designation of a party to be served with a writ it is unknown to the law. It cannot be made the plaintiff in an action, as it is not a person and cannot sue or be sued. *In re Harrisburg Trust Co.*, 80 Pa.Super.Ct. 585.

The word "estate" is a word of the greatest extension, and comprehends every species of property, real and personal. It describes both the *corpus* and the extent of interest. *Deering v. Tucker*, 55 Me. 284; *Frazer v. First Nat. Bank of Mobile*, 235 Ala. 252, 178 So. 441, 444. When used in some connections, it signifies everything of which riches or fortune may consist. *Williams v. Chicago, B. & Q. R. Co.*, 155 S.W. 64, 66, 169 Mo.App. 468.

"Estate" comprehends everything a man owns, real and personal, and ought not to be limited in its construction, unless connected with some other word which must necessarily have that effect. *Weber v. Bardon*, 92 N.J.Eq. 190, 111 A. 649, 650; *Black v. Sylvania Producing Co.*, 105 Ohio St. 346, 137 N.E. 904, 905.

It means, ordinarily, the whole of the property owned by anyone, the realty as well as the personality. *Hunter v. Husted*, 45 N.C. 141; *Wingard v. Harrison*, 337 Ill. 387, 169 N.E. 232, 233; *Miller v. Miller*, 200 Iowa, 1070, 205 N.W. 870, 874, 43 A.L.R. 567; *In re Quackenbush's Will*, 127 Misc. 731, 217 N.Y.S. 493, 496; *Jennings v. Jennings*, 299 Ky. 779, 187 S.W.2d 459, 463.

ESTATE

A man's "estate" is that which he can sell or dispose of at his pleasure or what he can pass on to another. Howard v. Mitchell, 268 Ky. 429, 105 S.W.2d 128, 133.

Estates may be either *absolute* or *conditional*. An absolute estate is a full and complete estate, Cooper v. Cooper, 56 N.J.Eq. 48, 38 A. 198, or an estate in lands not subject to be defeated upon any condition. In this phrase the word "absolute" is not used legally to distinguish a fee from a life-estate, but a qualified or conditional fee from a fee simple. Greenawalt v. Greenawalt, 71 Pa. 483. A conditional estate is one, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 Bl.Comm. 151. Estates are also classed as *executed* or *executory*. The former is an estate whereby a present interest passes to and resides in the tenant, not dependent upon any subsequent circumstance or contingency. They are more commonly called "estates in possession." 2 Bl.Comm. 162. An estate where there is vested in the grantee a present and immediate right of present or future enjoyment. An executory estate is an estate or interest in lands, the vesting or enjoyment of which depends upon some future contingency. Such estate may be an *executory devise*, or an *executory remainder*, which is the same as a contingent remainder, because no present interest passes. Further, estates may be *legal* or *equitable*. The former is that kind of estate which is properly cognizable in the courts of common law, though noticed, also, in the courts of equity. 1 Steph.Comm. 217. And see Sayre v. Mohny, 30 Or. 238, 47 P. 197; In re Qualifications of Electors, 19 R.I. 387, 35 A. 213. An equitable estate is an estate an interest in which can only be enforced in a court of chancery. Avery v. Dufrees, 9 Ohio 145. That is properly an equitable estate or interest for which a court of equity affords the only remedy; and of this nature, especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the statute of uses. The rest are equities of redemption, constructive trusts, and all equitable charges. Burt. Comp. c. 8. Brown v. Freed, 43 Ind. 253; In re Qualifications of Electors, 19 R.I. 387, 35 A. 213. "Equitable estates" are in equity what legal estates are in law; the ownership of the equitable estate is regarded by equity as the real ownership, and the legal estate is, as has been said, no more than the shadow always following the "equitable estate," which is the substance. Town of Cascade v. Cascade County, 75 Mont. 304, 243 P. 806, 808.

A *contingent* estate is one which depends for its effect upon an event which may or may not happen, as, where an estate is limited to a person not yet born. *Conventional* estates are those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation of law. A *dominant* estate, in the law of easements, is the estate for the benefit of which the easement exists, or the tenement whose owner, as such, enjoys an easement over an adjoining estate. An *expectant* estate is one which is not yet in possession, but the

enjoyment of which is to begin at a future time; a present or vested contingent right of future enjoyment. Examples are remainders and reversions. A *future* estate is an estate which is not now vested in the grantee, but is to commence in possession at some future time. It includes remainders, reversions, and estates limited to commence *in futuro* without a particular estate to support them, which last are not good at common law, except in the case of chattel interests. See 2 Bl. Comm. 165. An estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time. Griffin v. Shepard, 124 N.Y. 70, 26 N.E. 339; Sabledowsky v. Arbuckle, 50 Minn. 475, 52 N.W. 920; A *particular* estate is a limited estate which is taken out of the fee, and which precedes a remainder; as an estate for years to A., remainder to B. for life; or an estate for life to A., remainder to B. in tail. This precedent estate is called the "particular estate," and the tenant of such estate is called the "particular tenant." 2 Bl.Comm. 165; Bunting v. Speck, 41 Kan. 424, 21 P. 288, 3 L.R.A. 690. A *servient* estate, in the law of easements, is the estate upon which the easement is imposed or against which it is enjoyed; an estate subjected to a burden or servitude for the benefit of another estate. Walker v. Clifford, 128 Ala. 67, 29 So. 588, 86 Am.St.Rep. 74; Dillman v. Hoffman, 38 Wis. 572. A *settled* estate, in English law, is one created or limited under a settlement; that is, one in which the powers of alienation, devising, and transmission according to the ordinary rules of descent are restrained by the limitations of the settlement. Micklethwait v. Micklethwait, 4 C.B., N.S., 858. A *vested* estate is one in which there is an immediate right of present enjoyment or a present fixed right of future enjoyment; an estate as to which there is a person in being who would have an immediate right to the possession upon the ceasing of some intermediate or precedent estate. Flanner v. Fellows, 206 Ill. 136, 68 N.E. 1057.

Original and *derivative* estates. An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent. Prest.Est. 125.

For the names and definitions of the various kinds of estates in land, see the different titles below.

"Estate" and "heirs" are not equivalent terms, Martin v. Hale, 167 Tenn. 438, 71 S.W.2d 211, 214; Abraham v. Abraham, 245 App.Div. 302, 280 N.Y.S. 825.

"Estate" and "property" may be used synonymously, McVicar v. McVicar, 128 Kan. 394, 278 P. 36, 38; Ponsonby v. Sacramento Suburban Fruit Lands Co., 210 Cal. 229, 291 P. 167, 168.

Fast Estate

Real property. A term sometimes used in wills. *Lewis v. Smith*, 9 N.Y. 502, 61 Am.Dec. 706.

Landed Estate or Property

See Landed Estate or Property.

Qualified Estate

Interests in real property which are not absolute and unconditional including fee tail, estates on condition, estates on limitation, and estates on conditional limitation. *Carpender v. City of New Brunswick*, 135 N.J.Eq. 397, 39 A.2d 40, 43.

Real Estate

Landed property, including all estates and interests in lands which are held for life or for some greater estate, and whether such lands be of freehold or copyhold tenure. *Wharton*.

As to "Homestead," "Movable," "Residuary," "Separate," and "Trust" estate, see those titles.

Financial or Personal Status

In a wider sense, a man's whole financial *status* or condition,—the aggregate of his interests and concerns, so far as regards his situation with reference to wealth or its objects, including debts and obligations, as well as possessions and rights. Thus, we speak of "debts due the estate," or say that "A.'s estate is a stockholder in the bank." In this sense it is a fictitious or juridical person, the idea being that a man's business *status* continues his existence, for its special purposes, until its final settlement and dissolution. See *Morgannelli's Estate v. City of Derby*, 105 Conn. 545, 135 A. 911; *In re Watson*, 86 Misc. 588, 148 N.Y.S. 902, 908.

In its broadest sense, the social, civic, or political condition or standing of a person; or a class of persons considered as grouped for social, civic, or political purposes; as in the phrases, "the third estate," "the estates of the realm." See 1 Bl.Comm. 153.

"Estate" and "degree," when used in the sense of an individual's personal *status*, are synonymous, and indicate the individual's rank in life. *State v. Bishop*, 15 Me. 122.

ESTATE AD REMANENTIAM. An estate in fee-simple. *Glan.* l. 7, c. 1.

ESTATE AT SUFFERANCE. The interest of a tenant who has come rightfully into possession of lands by permission of the owner, and continues to occupy the same after the period for which he is entitled to hold by such permission. 1 Wash. Real Prop. 392; 2 Bl.Comm. 150; *Co.Litt.* 57b. The estate arises where one comes into possession of land by lawful title, but keeps it afterwards without any title at all, and the original entry need not have been under lease or as a tenant of the dispossessing landlord. *Malone v. Floyd*, 50 Ga.App. 701, 179 S.E. 176.

ESTATE AT WILL. A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant by force of this lease obtains possession. 2 Bl.Comm. 145; 4 Kent, Comm. 110; *Litt.* § 68; *Co.Litt.* 55a; *Tud.L.Cas.R.* P. 10, 14. Or it is where lands are let without limiting any certain and determinate estate. 2 Crabb, Real Prop. p. 403, § 1543.

The estate arises where lands or tenements are expressly demised by one person to another to be held during the joint wills of both parties, or it may arise by implication of law wherever one person is put in possession of another's land with the owner's consent, but under an agreement which does not suffice to create in the tenant an estate of freehold or for years. *Eason v. Rose*, 183 Va. 359, 32 S. E.2d 66, 68.

ESTATE BY ELEGIT. See *Elegit*.

ESTATE BY ENTIRETY. A form of co-ownership of realty or personalty held by husband and wife in which there is unity of estate, unity of possession and unity of control of entire property, and on death of one, survivor takes estate under original conveyance. *In re Cochran's Real Estate*, Sel. Orph., 66 A.2d 497, 499; *In re Gallagher's Estate*, 352 Pa. 476, 43 A.2d 132, 133.

ESTATE BY PURCHASE. One acquired in any other method than descent. *In re Field*, 182 App. Div. 226, 169 N.Y.S. 677, 679. See, also, *Purchase*.

ESTATE BY STATUTE MERCHANT. An estate whereby the creditor, under the custom of London, retained the possession of all his debtor's lands until his debts were paid. 1 Greenl. Cruise, Dig. 515. See *Statute Merchant*.

ESTATE BY STATUTE STAPLE. See *Staple*.

ESTATE BY THE CURTESY. See *Curtesy*.

ESTATE BY THE ENTIRETY. Called also estate in entirety, or estate by the entireties. An estate in joint tenancy, plus the unity of the marital relation. *Hoyt v. Winstanley*, 221 Mich. 515, 191 N.W. 213, 214. A common-law estate, based on the doctrine that husband and wife are one, and that a conveyance of real property to husband and wife creates but one estate. *Klorfine v. Cole*, 121 Or. 76, 252 P. 708, 709. An estate held by husband and wife together so long as both live, and, after the death of either, by the survivor. It is an estate held by husband and wife by virtue of a title acquired by them jointly after marriage. *Bailey v. Smith*, 89 Fla. 303, 103 So. 833, 834. A creature of the common law created by legal fiction based wholly on the common-law doctrine that husband and wife are one, and hence a conveyance to husband and wife created only one estate, and each was owner of the whole estate, and neither could dispose of it without the consent of the other, and on the death of one survivor was the owner in fee simple. *Wimbush v. Danford*, 292 Mo. 588, 238 S.W. 460, 466; *In re Flynn*, D.C.Pa., 1 F.2d 566, 567; *Alexander v. Alexander*, 154 Or. 317, 58 P.2d 1265, 1270, 1271.

An "estate by entireties" resembles a "joint tenancy" in that there is a right of survivorship in both, but such an estate is distinguishable from a joint tenancy in that the

ESTATE DUTY

latter may be invested in any number of natural persons each of whom is seized of an undivided moiety of the whole, whereas a "tenancy by entirety" is vested in two persons only, who in law are regarded as only one, and each of whom becomes seized of the estate as a whole. *Heffner v. White*, 113 Ind.App. 296, 45 N.E.2d 342, 346; *Carlisle v. Parker*, 8 W.W.Harr. 83, 188 A. 67.

ESTATE DUTY. A duty imposed in England (act of 1894) superseding probate duty, taxing not the interest to which some person succeeds on a death, but the interest which ceased by reason of the death. *Hansen*, *Death Duties* 63. It is leviable on property which was left untouched by probate duty, such as real estate, yet it is in substance of the same nature as the old probate duty.

ESTATE FOR LIFE. See Life Estate.

ESTATE FOR YEARS. A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certain number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 *Steph.Comm.* 263, 264. Blackstone calls this estate a "contract" for the possession of lands or tenements for some determinate period. 2 *Bl.Comm.* 140. See *Hutcheson v. Hodnett*, 115 Ga. 990, 42 S.E. 422; *Harbottle v. Central Coal & Coke Co.*, 134 Ark. 254, 203 S.W. 1044, 1046; 2 *Crabb*, R.P. § 1267; *Bac.Abr. Leases*; *Wms.R.P.* 195. Such estates are frequently called terms.

"Estates for years" embrace all terms limited to endure for a definite and ascertained period, however short or long the period may be; they embrace terms for a fixed number of weeks or months or for a single year, as well as for any definite number of years, however great. *Guy v. Brennan*, 60 Cal.App. 452, 213 P. 265, 267. Compare *Metcalf Auto Co. v. Norton*, 119 Me. 103, 109 A. 384.

ESTATE FROM PERIOD TO PERIOD. An estate continuing for successive periods of a year, or successive periods of a fraction of a year, unless it is terminated. *Pitney-Bowes Postage Meter Co. v. United States*, D.C.Conn., 57 F.Supp. 365, 366.

ESTATE FROM YEAR TO YEAR. An example of an estate for years. It is of later origin and is not found in Littleton (see § 381). It exists in cases where the parties stipulate for it, and also where the parties by their conduct have placed themselves in the relation of landlord and tenant without adopting any other term. If a tenant has been allowed to hold over after the expiration of his term in such a way as to preclude the possibility of his becoming a tenant on sufferance, it is a tenancy from year to year. *Jenks*, *Mod.Land Law* 88. See, also, *Odger*, C.L. 869; 7 *Q.B.* 958. It was originally a development of a tenancy at will, by which the tenancy was terminable only at the time of the year at which it began, and on notice.

ESTATE IN COMMON. An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 *Steph.Comm.* 323.

See *Tenancy in Common*. An estate held in joint possession by two or more persons at the same time by several and distinct titles. 1 *Washb.R.P.* 415; 2 *Bla.Comm.* 191; 1 *Pres.Est.* 139.

ESTATE IN COPARCENARY. See Coparcenary.

ESTATE IN DOWER. See Dower.

ESTATE IN EXPECTANCY. One which is not yet in possession, but the enjoyment of which is to begin at a future time; an estate giving a present or vested contingent right of future enjoyment. One in which the right to pernanity of the profits is postponed to some future period. Such are estates in remainder and reversion. *Underhill v. R. Co.*, 20 Barb. 455; *Fenton v. Miller*, 108 Mich. 246, 65 N.W. 966; *Ayers v. Trust Co.*, 187 Ill. 42, 58 N.E. 318.

ESTATE IN FEE SIMPLE. See Fee Simple.

ESTATE IN FEE-TAIL. See Tail, Estate in.

ESTATE IN JOINT TENANCY. See Tenancy.

ESTATE IN LANDS. Property one has in lands, tenements or hereditaments, or conditions or circumstances in which tenant stands as to his property. *Tallman v. Eastern Illinois & Peoria R. Co.*, 379 Ill. 441, 41 N.E.2d 537, 540.

ESTATE IN REMAINDER. See Remainder.

ESTATE IN REVERSION. See Reversion.

ESTATE IN SEVERALTY. An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 *Bl.Comm.* 179; *Cruise*, Dig. tit. 18, c. 1, § 1.

ESTATE IN VADIO. An estate in gage or pledge. 2 *Bl.Comm.* 157; 1 *Steph.Comm.* 282. See Mortgage.

ESTATE LESS THAN FREEHOLD. An estate for years, estate at will, or estate at sufferance. *Fowler v. Marion & Pittsburg Coal Co.*, 315 Ill. 312, 146 N.E. 318, 319. See Estate of Freehold.

ESTATE OF FREEHOLD. See Freehold.

ESTATE OF INHERITANCE. An estate which may descend to heirs. 1 *Washb.R.P.* 51; *Administration & Trust Co. v. Catron*, 171 Tenn. 268, 102 S.W.2d 59, 60. A species of freehold estate in lands, otherwise called a "fee," where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him in *perpetuum*, in right of blood, according to a certain established order of descent. 1 *Steph.Comm.* 218; *Litt.* § 1; *Nellis v. Munson*, 108 N.Y. 453, 15 N.E. 739; *Roulston v. Hall*, 66 Ark. 305, 50 S.W. 690, 74 Am.St.Rep. 97; *George v. George*, 51 Ohio App. 169, 200 N.E. 142, 143.

Estates of freehold are divided into those of inheritance and those not of inheritance. All estates of inheritance in tenements are freehold; but, since freeholds embrace estates for life and those of indefinite duration which may

endure for life, all freeholds are not "estates of inheritance." *Beirl v. Columbia County*, 73 Or. 107, 144 P. 457, 460; *Crabb, R.P.* § 945.

ESTATE ON CONDITIONAL LIMITATION.

An estate conveyed to one person so that, upon occurrence or failure of occurrence of some contingent event, whether conditional or limitative, the estate shall depart from original grantee and pass to another. *Carpender v. City of New Brunswick*, 135 N.J.Eq. 397, 39 A.2d 40, 43.

ESTATE ON LIMITATION. An estate originated by the use of words denoting duration of time, such as while, during, so long as, and the like and when designated limitative event happens, such estate ends naturally without any re-entry and property reverts to grantor. *Carpender v. City of New Brunswick*, 135 N.J.Eq. 397, 39 A.2d 40, 43. Sometimes referred to as "base fee", "qualified fee", "determinable fee", or "fee simple defeasible". *Lehigh Valley R. Co. v. Chapman*, 171 A.2d 653, 657, 35 N.J. 177.

ESTATE PUR AUTRE VIE. See *Pur Autre Vie*.

ESTATE SUBJECT TO A CONDITIONAL LIMITATION.

The distinction between an estate upon condition subsequent and an "estate subject to a conditional limitation" is that in former words creating condition do not originally limit term, but merely permit its termination upon happening of contingency, while in latter words creating it limit continuation of estate to time preceding happening of contingency. *Johnson v. Lane*, 199 Ark. 740, 135 S.W.2d 853, 866.

ESTATE TAIL. See *Tail, Estate in*.

ESTATE TAIL, QUASI. When a tenant for life grants his estate to a man and his heirs, as these words, though apt and proper to create an estate tail, cannot do so, because the grantor, being only tenant for life, cannot grant *in perpetuum*, therefore they are said to create an estate tail *quasi*, or improper. *Brown*.

ESTATE TAX. An excise tax upon privilege of transferring or transmitting property by reason of death and is not tax on property itself. *Friend v. Commissioner of Internal Revenue*, C.C.A.7, 119 F.2d 959, 960; *In re Vanderbilt's Estate*, 281 N.Y. 297, 22 N.E.2d 379, 390. An "estate tax" taxes, not the interest to which some person succeeds on a death, but the interest which ceases by reason of the death; while the "inheritance tax" is based on the interest to which the living person succeeds. *In re Ogden's Estate*, 209 Wis. 162, 244 N.W. 571, 573.

It is an "estate tax" when the tax is required to be paid on the entire net estate before it is divided into its several parts to be distributed. *State Tax Commission v. Backman*, 88 Utah 424, 55 P.2d 171, 174.

ESTATE UPON CONDITION. An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 Bl.Comm. 151; 1 Steph.Comm. 276; *Co. Litt.* 201a. An es-

tate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged, or destroyed. 4 Kent, Comm. 121. *United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del., D.C.Del.*, 56 F.Supp. 120, 127.

ESTATE UPON CONDITION EXPRESSED. An estate granted, either in fee-simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated upon performance or breach of such qualification or condition. 2 Bl.Comm. 154. An estate which is so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 Steph.Comm. 278.

ESTATE UPON CONDITION IMPLIED. An estate having a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. 2 Bl.Comm. 152; 4 Kent, Comm. 121.

ESTATES OF THE REALM. The lords spiritual, the lords temporal, and the commons of Great Britain. 1 Bl.Comm. 153. Sometimes called the "three estates." Inasmuch as the lords spiritual have no separate assembly or negative in their political capacity, some authorities reduce the estates in Great Britain to two, the lords and commons. *Webster, Dict.*

Generally in feudal Europe there were three estates, the clergy, nobles, and commons. In England (until about the 14th century) the three estates of the realm were the clergy, barons, and knights. In legal practice the lords spiritual and lords temporal are usually collectively designated under the one name *lords*. *Webster, Dict.*

ESTENDARD, ESTENDART, or STANDARD. An ensign for horsemen in war.

ESTER. A compound ether derived from oxygenated acid. *E. I. Du Pont De Nemours & Co. v. Byrnes*, D.C.N.Y., 1 F.R.D. 34, 36.

ESTER IN JUDGMENT. L. Fr. To appear before a tribunal either as plaintiff or defendant. *Kelham*.

ESTIMATE. A valuing or rating by the mind, without actually measuring, weighing, or the like. *City of Tulsa v. Weston*, 102 Okl. 222, 229 P. 108, 122. A rough or approximate calculation only. *Bair v. Montrose*, 58 Utah 398, 199 P. 667, 669; *United States v. Foster*, C.C.A.Iowa, 131 F.2d 3, 7; *P. M. Hennessy Const. Co. v. Hart*, 141 Minn. 449, 170 N.W. 579, 598. Thus, a census is a finding of the population, not an "estimate." *State ex rel. Reynolds v. Jost*, 265 Mo. 51, 175 S.W. 591, 597, *Ann.Cas.*1917D, 1102.

This word is used to express the mind or judgment of the speaker or writer on the particular subject under consideration. It implies a calculation or computation, as to estimate the gain or loss of an enterprise. *People v. Clark*, 37 Hun, N.Y., 203; *New Orleans Terminal Co. v. Dixie Rendering, La.App.*, 179 So. 98, 100.

As used in a contract for the sale of an estimated quantity of goods, "estimated" may mean practically the same as "more or less." *Robbins v. Hill*, *Tex.Civ.App.*, 259 S.W.

ESTIMATED

1112, 1115. Generally, the word "estimated" indicates that a statement of quantity is a matter of description, and not of the essence of the contract. *Biglone v. Bronge*, 192 Cal. 167, 219 P. 69, 70.

ESTIMATED COST. The "estimated cost" of a building means the reasonable cost of a building erected in accordance with the plans and specifications referred to, and not necessarily the amount of some actual estimate made by a builder, nor an estimate agreed upon by the parties, nor yet an estimate or bid accepted by the defendant. *New Orleans Terminal Co. v. Dixie Rendering, La. App.*, 179 So. 98, 100.

ESTOP. To stop, bar, or impede; to prevent; to preclude. *Co.Litt 352a*; *Olsgard v. Lemke*, 32 N. D. 551, 156 N.W. 102, 103. See *Estoppel*.

ESTOPPEL. A man's own act or acceptance stops or closes his mouth to allege or plead the truth. *Caulfield v. Noonan*, 229 Iowa 955, 295 N. W. 466, 471; *Williams v. Edwards*, 163 Okl. 246, 22 P.2d 1026.

An estoppel arises when one is concluded and forbidden by law to speak against his own act or deed. *Gural v. Engle*, 128 N.J.L. 252, 25 A.2d 257, 261; an inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another. *Brand v. Farmers Mut. Protective Ass'n of Texas, Tex.Civ.App.*, 95 S.W.2d 994, 997.

Estoppel is a bar or impediment which precludes allegation or denial of a certain fact or state of facts, in consequence of previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. *Lewis v. King*, 157 La. 718, 103 So. 19, 22; *Agoodash Achim of Ithaca v. Temple Beth-el*, 147 Misc. 405, 263 N.Y.S. 81; *Chernick v. National Surety Co.*, 50 R.I. 419, 148 A. 418, 419; an equitable doctrine to accomplish justice, *Sisson v. Swift*, 243 Ala. 289, 9 So.2d 891, 903; *Elowe v. Superior Fire Ins. Co.*, 307 Ill. App. 569, 30 N.E.2d 953, 958; preclusion by act or conduct from asserting right which might otherwise have existed. *Reynolds v. Travelers' Ins. Co.*, 176 Wash. 36, 28 P.2d 310, 314; *Tucker v. Brown*, 20 Wash.2d 740, 150 P.2d 604, 652; Preclusion from alleging or denying fact because of previous action, inaction, allegation, or denial. *Steph.Pl. 239*; *Spear v. Farwell*, 5 Cal.App.2d 111, 42 P.2d 391, 392; *Scholl v. Scholl*, 123 Ohio St. 1, 173 N.E. 305, 306; preclusion from denying truth of fact which has in contemplation of law become settled by acts and proceedings of judicial or legislative officers, or by act of party himself, either by conventional writing or by representations, express or implied in pais. *May v. City of Kearney*, 145 Neb. 475, 17 N.W.2d 448, 458; shield for defense but not a weapon of attack, *United States, to Use of Noland Co. v. Maryland Casualty Co.*, D.C.Md., 38 F.Supp. 479, 484. It is available only for protection, and cannot be used as a weapon of assault. *Stanlio v. Berner Lohne Co.*, 127 Conn. 431, 17 A.2d 502, 504; It operates to put party entitled to its benefits in same position as if thing represented were true. *May v. City of Kearney*, 145 Neb. 475, 17 N.W.2d 448, 458.

Under law of "estoppel" where one of two innocent persons must suffer, he whose act occasioned loss must bear it. *Buxbaum v. Assicurazioni Generali*, 175 Misc. 785, 25 N.Y.S.2d 357, 360; *Sackenreuther v. Winston, Tex.Civ. App.*, 137 S.W.2d 93, 96.

Elements or essentials of estoppel include change of position of parties so that party against whom estoppel is invoked has received a profit or benefit or party invoking estoppel has changed his position to his detriment. *Wertz v. Shane*, 216 Iowa 768, 249 N.W. 661; *Lebold v. Inland Steel Co.*, C.C.A.Ill., 125 F.2d 369, 375; *Garmon v. Fitzgerald*, 168 Miss. 532, 151 So. 726, 728; circumstances such that a knowledge of truth is necessarily imputed to party estopped. *Froslee v. Sonju*, 209 Minn. 522, 297 N.W. 1, 3, 4; conduct intended to deceive or of such nature that reasonably prudent person would have been deceived, *Cellized Floors v. Glens Falls Indemnity Co. of New York*, 9 N.J. Misc. 1111, 156 A. 845, 846; *Agnew v. Mullenix, La.App.*,

11 So.2d 106, 107; direct or immediate influence on party claiming benefit of estoppel, *Stanolind Oil & Gas Co. v. Midas Oil Co.*, *Tex.Civ.App.*, 173 S.W.2d 342, 345; false representation or wrongful silence or concealment, *Noxon v. Cockburn, Tex.Civ.App.*, 147 S.W.2d 872, 875; *Weber v. Fohl*, 111 Ind.App. 388, 41 N.E.2d 648, 650, 651; *Van Antwerp v. United States, C.C.A.Cal.*, 92 F.2d 871, 875; inducing another to alter his position or to do that which he would not otherwise have done, *Babcock v. McKee, S.D.*, 18 N.W.2d 750, 754; *Wellsville East Field Irr. Co. v. Lindsay Land & Livestock Co.*, 104 Utah 448, 137 P.2d 634, 647; *Albermarle County v. Massey*, 183 Va. 310, 32 S.E.2d 228, 230; intent or reasonable expectation of party estopped that other would act, *Bank of Sutton v. Skidmore*, 113 W.Va. 25, 167 S.E. 144, 146; *Mercer Casualty Co. v. Lewis*, 41 Cal.App.2d 918, 108 P.2d 65, 67; knowledge of facts by party to be estopped, *Caveney v. Caveney*, 234 Wis. 637, 291 N.W. 818, 824; In re *Dimon's Estate, Sur.*, 32 N.Y.S.2d 239, 243; lack of knowledge and means of knowledge by party claiming estoppel, *Ainscow v. Alexander, Del.Super.*, 39 A.2d 54, 60; *Froslee v. Sonju*, 209 Minn. 522, 297 N.W. 1, 3, 4; misleading of one party by another party, *Williams v. Middle-West Roads Co.*, 295 Ky. 648, 175 S.W.2d 136, 138; *United States, to Use of Noland Co. v. Marfand Casualty Co.*, D.C.Md., 38 F.Supp. 479, 484; prejudice or loss or injury to party invoking estoppel, *Vinton v. Atlas Assur. Co.*, 107 Vt. 272, 178 A. 909, 912; *Commission v. Shell Oil Co.*, *Tex.Civ.App.*, 170 S.W.2d 568, 570; *Hooper v. Ball*, 133 Me. 412, 179 A. 404, 406; reliance by one party on act, word or conduct of other party, *Gosney v. Metropolitan Life Ins. Co.*, C.C.A.Mo., 114 F.2d 649, 652; In re *Sarvey's Estate*, 206 Iowa 527, 219 N.W. 318, 321; right of party asserting estoppel to believe party estopped intended that his conduct should be acted upon, *Lusitanian-American Development Co. v. Seaboard Dairy Credit Corporation*, 1 Cal.2d 121, 34 P.2d 139, 142; wrongdoing on part of person sought to be estopped, *Sovereign Camp, W. O. W.*, v. *Johnson, Tex.Civ.App.*, 64 S.W.2d 1084, 1087. Nor on mere delay in asserting a claim, *Peyrefitte v. Union Homestead Ass'n, La. App.*, 185 So. 693, 695.

Nor on errors of judgment, *Northwestern Nat. Bank v. Commonwealth*, 345 Pa. 192, 27 A.2d 20, 23; nor on error of law, *United States v. Du Pont*, D.C.Del., 47 F.Supp. 894, 897.

Estoppel is or may be based on acceptance of benefits, *Rhodus v. Geatley*, 347 Mo. 397, 147 S.W.2d 631, 637, 638, 639; *Harjo v. Johnston*, 187 Okl. 561, 104 P.2d 985, 992, 998; acknowledgments of matters of fact but not acknowledgments or statements of propositions of law, *McDonald v. Richard*, 203 La. 155, 13 So.2d 712, 718; acquiescence, In re *Kennedy's Estate*, 321 Pa. 225, 183 A. 798, 801; acts done under or in performance of contract, *Jackson v. United Gas Public Service Co.*, 196 La. 1, 198 So. 633, 640; *Finch v. Smith*, 177 Okl. 307, 58 P.2d 850, 851; actual or constructive fraudulent conduct, *Peterson v. Hudson Ins. Co.*, 41 Ariz. 31, 15 P.2d 249, 252; adjudication, *Kunkel v. Eastern Iowa Light & Power Co-op.*, 232 Iowa 649, 5 N.W.2d 899, 903; *Citizens' Loan & Trust Co. of Washington, Ind. v. Sanders*, 99 Ind.App. 77, 187 N.E. 396, 398; admissions or denials by which another is induced to act to his injury, *New York Life Ins. Co. v. Oates*, 122 Fla. 540, 166 So. 269, 276; *Wabash Drilling Co. v. Ellis*, 230 Ky. 769, 20 S.W.2d 1002, 1004; agreement on and settlement of facts by force of entering into contract, *Masterson v. Bouldin, Tex.Civ. App.*, 151 S.W.2d 301, 307; In re *Schofield's Estate*, 101 Colo. 443, 73 P.2d 1381; assertion of facts on which another relies, *Fedas v. Insurance Co. of State of Pennsylvania*, 300 Pa. 555, 151 A. 285, 287; assumption of position which, if not maintained, would result in injustice to another, *Harvey v. J. P. Morgan & Co.*, 166 Misc. 455, 2 N.Y. S.2d 520; concealment of facts, *Greer v. Franklin Life Ins. Co.*, *Tex.Civ.App.*, 109 S.W.2d 305, 315; *Rosser v. Texas Co.*, 173 Okl. 309, 48 P.2d 327, 330; conduct or acts amounting to a representation or a concealment, *Spradling v. Spradling*, 118 W.Va. 308, 190 S.E. 537, 540; consent to copyright infringement, whether express or implied from long acquiescence with knowledge of the infringement, *Edwin L. Wiegand Co. v. Harold E. Trent Co.*, C.C.A.Pa., 122 F.2d 920, 925; election between rights or remedies, *Hartley v. Hartley*, 173 Ga. 710, 161 S.E. 358, 360; *Mason & Mason v. Brown, Tex.Civ.App.*, 182 S.W.2d 720, 733; fault of party estopped, *Conner v. Caldwell*, 208 Minn. 502, 294 N.W. 650, 653; inaction, *Utah State Building Commission, for Use and Benefit of Mountain States Supply Co.*, v. *Great American Indemnity Co.*, 105 Utah 11, 140 P.2d 763,

771, 772; *Hankins v. Waddell*, 26 Tenn.App. 71, 167 S.W. 2d 694, 696; injury resulting from parties' conduct. In re Bastanchury Corporation, C.C.A.Cal., 66 F.2d 653, 657; innocent misrepresentation, *Countyway v. Commissioner of Internal Revenue*, C.C.A.1, 127 F.2d 69, 76; laches, *Oak Lawn Cemetery of Baltimore County v. Baltimore County Com'rs*, 174 Md. 356, 198 A. 600, 605, 115 A.L.R. 1478; language or conduct which has induced another to act, *French Market Ice Mfg. Co. of New Orleans v. Dalton*, 15 La.App. 115, 130 So. 122, 123; *Brown v. Federal Land Bank of Houston*, Tex.Civ.App., 180 S.W.2d 647, 652; matter of record, *Coral Realty Co. v. Peacock Holding Co.*, 103 Fla. 916, 138 So. 622, 624; misrepresentation, *Cushing v. United States*, D.C.Mass., 18 F.Supp. 83, 85; *Rhoads v. Rhoads*, 342 Mo. 934, 119 S.W.2d 247, 252; negligence, *Postal v. Home State Bank for Savings*, 284 Mich. 220, 279 N.W. 488, 491; *Fisher v. Beckwith*, 30 Wis. 55, 11 Am. Rep. 546; omission to act, *West v. Cleveland Ry. Co.*, Ohio App., 58 N.E.2d 799, 801; prejudice, *Alderman v. Town of West Haven*, 124 Conn. 391, 200 A. 330, 333; prior judgment, *Morrell v. Towle*, 141 Neb. 370, 3 N.W.2d 655, 664; *Kellher v. Stone & Webster*, C.C.A.Fla., 75 F.2d 331, 332; Promise of future performance, *Albachten v. Bradley*, 212 Minn. 359, 3 N.W.2d 783, 785; provisions of a deed, *Carson v. Cochran*, 52 Minn. 67, 53 N.W. 1130; *Robert v. O'Connell*, 269 Mass. 532, 169 N.E. 487, 488; public policy, *Ervin v. City of Pittsburgh*, 339 Pa. 241, 14 A.2d 297, 300; *Bloomfield Village Drain Dist. v. Keefe*, C.C.A.Mich., 119 F.2d 157, 163, 165; representation or concealment of facts, *Kerestury v. Elkhart Packing Co.*, 108 Ind.App. 148, 27 N.E.2d 383, 385; *Albermarle County v. Massey*, 183 Va. 310, 32 S.E.2d 228, 230; silence, *Rone v. Sawzey*, 197 Ark. 472, 123 S.W.2d 524, 526, 527; *Brown v. Brown*, 347 Mo. 45, 146 S.W.2d 553, 555.

Estoppels are sometimes said to be of three kinds: (1) by deed; (2) by matter of record; (3) by matter *in pais*. The first two are also called legal estoppels, as distinguished from the last kind, known as equitable estoppels.

Acts and Declarations

An "estoppel by acts and declarations" is such as arises from the acts and declarations of a person by which he designedly induces another to alter his position injuriously to himself. *Brauch v. Freking*, 219 Iowa 556, 258 N.W. 892.

Adjudication Distinguished

"Adjudication" and an "estoppel" from relitigating things are different in that there is an adjudication when a suit is repeated, but that there may be an estoppel because some fact which is controlling in both actions was litigated and set at rest in first action. *Kunkel v. Eastern Iowa Light & Power Co-Op.*, 232 Iowa 649, 5 N.W.2d 899, 903.

Common Law

"Estoppel at common law" includes estoppel by record, estoppel by deed, and certain cases of estoppel in *pais* which are recognized in courts of law. *Thomas v. Conyers*, 198 N.C. 229, 151 S.E. 270, 273.

Election Distinguished

"Election" differs from an "estoppel in *pais*" in that in order to be effective it need not be acted upon by the other party by way of a detrimental change of his position, provided the election is a decisive one. *Phillips v. Rooker*, 134 Tenn. 457, 184 S.W. 12, 14.

Estoppel Against Estoppel

Doctrine that two estoppels may destroy each other, or that one estoppel may set another at large. *Shean v. United States Fidelity & Guaranty Co.*, 263 Mich. 535, 248 N.W. 892, 893.

In wife's divorce suit, evidence showed that wife in procuring void Nevada divorce decree was under husband's duress, domination, and compulsion, and hence there arose an "estoppel against estoppel" destroying each other, and wife was not barred from setting up invalidity of Nevada

decree. *Lippincott v. Lippincott*, 141 Neb. 186, 3 N.W.2d 207, 215, 140 A.L.R. 901.

Fraud

Estoppel is a penalty paid by perpetrator of wrong by affirmative act which, though without fraudulent intent, may result in legal fraud on another. *Harris v. Prince*, Tex.Civ.App., 98 S.W. 2d 1022, 1026.

A judgment procured by fraud may not be used as the basis of an "estoppel". *Seubert v. Seubert*, 68 S.D. 195, 299 N.W. 873, 875; Actual or intended fraud is not an essential element of estoppel, but estoppel arises when omission to speak is an actual or constructive fraud. *Kelley-Springfield Tire Co. v. Stein*, 163 Misc. 393, 297 N.Y.S. 22, 26. An act done which cannot be contravened without fraud may be basis of estoppel, *Trademens Nat. Bank of New Haven v. Minor*, 122 Conn. 419, 190 A. 270, 272. An essential element of "equitable estoppel" is fraudulent intent. *Fleishbein v. Western Auto Supply Agency*, 19 Cal. App.2d 424, 65 P.2d 928; An estoppel does not require a showing of fraudulent intent. *New Jersey Suburban Water Co. v. Town of Harrison*, 122 N.J.L. 189, 3 A.2d 623, 625, 626, 627; An estoppel may arise although there is no designed fraud. *Laraway v. First Nat. Bank of La Verne*, 39 Cal.App.2d 718, 104 P.2d 95, 101; Estoppel is an equitable principle dependent on fraud. *Volk v. City of New York*, 259 App.Div. 247, 19 N.Y.S.2d 53, 60.

Intent

"Estoppel" in its broadest sense is penalty paid by one perpetrating wrong by known fraud or by affirmative act which, though without fraudulent intent, may result in legal fraud on another. *Harris v. Prince*, Tex.Civ.App., 98 S.W.2d 1022, 1026.

Actual or intended fraud is not an essential element of estoppel but estoppel arises when omission to speak is an actual or constructive fraud. *Kelley-Springfield Tire Co. v. Stein*, 163 Misc. 393, 297 N.Y.S. 22, 26. Elements of equitable estoppel are representations intentionally made under such circumstances as show that party making them intended, or might reasonably have anticipated, that party to whom they are made, or to whom they are communicated, will rely and act on them as true, *Crane Co. of Minnesota v. Advance Plumbing & Heating Co.*, 177 Minn. 132, 224 N.W. 847, 848. An essential element of equitable estoppel is fraudulent intent but careless and culpable conduct is equivalent to intent to deceive. *Fleishbein v. Western Auto Supply Agency*, 19 Cal.App.2d 424, 65 P.2d 928. An estoppel arises when one by acts, representations, admissions or silence intentionally induces another to change his position for the worse. *Smith v. Vara*, 136 Misc. 500, 241 N.Y.S. 202, 209; *American Exchange Nat. Bank v. Winder*, 198 N.C. 18, 150 S.E. 499, 491. An estoppel does not require a showing of fraudulent intent. *New Jersey Suburban Water Co. v. Town of Harrison*, 122 N.J.L. 189, 3 A.2d 623, 625, 626, 627. An estoppel may arise where there is no intent to mislead. *Mancini v. Thomas*, 113 Vt. 322, 34 A.2d 105, 109.

Legal Title to Land

Estoppel affecting legal title to land requires conduct amounting to knowing representation or concealment relied on by other party changing his position for the worse. *Crane v. Esmond*, 214 Wis. 571, 253 N.W. 780.

It requires conduct amounting to representation or concealment of material facts known to party estopped at time of conduct, or at least under circumstances necessarily imputing knowledge thereof, and truth concerning such facts must be unknown to other party claiming benefit of estoppel, with further requirement that conduct was done with intention or expectation that it would be acted on, and other party led to act thereon in reliance on conduct so as to change his position for the worse. *Jacksonville Public Service Corporation v. Calhoun Water Co.*, 219 Ala. 616, 123 So. 79, 81, 64 A.L.R. 1550.

ESTOPPEL

Misrepresentation

See Representation, Estoppel By.

Pleading

Pleader must allege and prove not only that person sought to be estopped made misleading statements and representations but that pleader actually believed and relied on them and was misled to his injury thereby. *Stanolind Oil & Gas Co. v. Midas Oil Co.*, Tex.Civ.App., 173 S.W.2d 342, 345.

A plea, replication, or other pleading, which, without confessing or denying the matter of fact adversely alleged, relies merely on some matter of estoppel as a ground for excluding the opposite party from the allegation of the fact. *Steph.Pl.* 219; 3 Bl.Comm. 308.

A plea which neither admits nor denies the facts alleged by the plaintiff, but denies his right to allege them. *Gould*, Pl. c. 2, § 39.

A special plea in bar, which happens where a man has done some act or executed some deed which precludes him from averring anything to the contrary. 3 Bl.Comm. 308.

A pleader is not "estopped" by judicial allegations which have neither deceived nor damaged anyone. *Thomas v. Leonard Truck Lines*, La.App., 7 So.2d 753, 756; *Hearon v. Davis*, La.App., 8 So.2d 787, 791.

Person pleading estoppel must have been misled to his injury by acts of omission or commission of him who is sought to be estopped. *Selber Bros. v. Newstadt's Shoe Stores*, 203 La. 316, 14 So.2d 10, 13.

Plea of estoppel lacks merit unless it appears that opposing litigant has been misled, deceived or has suffered damage from the allegations of pleader. *Mounger v. Ferrell*, La.App., 11 So.2d 56, 60.

Plea of "estoppel" was fatally defective where there was no statement that defendant relied on course alleged to have been taken by plaintiff. *Sertic v. Roberts*, 171 Or. 121, 136 P.2d 248, 251.

Statements in pleading in former action which are merely assertions of conclusion of law do not constitute "estoppel by pleading." *Smith v. Saulsberry*, 157 Wash. 270, 288 P. 927, 930.

Ratification Distinguished

The substance of "estoppel" is the inducement of another to act to his prejudice. The substance of "ratification" is confirmation after conduct. *Citizens State Bank of Theford v. United States Fidelity & Guaranty Co. of Baltimore, Md.*, 130 Neb. 603, 266 N.W. 81, 84, 103 A.L.R. 1401; *Cudahy Bros. Co. v. West Michigan Dock & Market Corporation*, 285 Mich. 18, 280 N.W. 93, 95; *Gillihan v. Morguelan*, 299 Ky. 671, 186 S.W.2d 807, 809.

By ratification party is bound because he intended to be, while under "estoppel" he is bound because other party will be prejudiced unless the law treats him as legally bound. *Carille v. Harris*, Tex.Civ.App., 38 S.W.2d 622, 624; doctrine of ratification is based on fact of intention to carry out terms of certain agreement, while doctrine of estoppel is based on right of party to deny existence of agreement by reason of misleading acts. *B. F. C. Morris Co. v. Mason*, 171 Okl. 589, 39 P.2d 1, 3; Ratification requires no change of position or prejudice. *Texas & Pacific Coal & Oil Co. v. Kirtley*, Tex.Civ.App., 288 S.W. 619, 622. Ratification is retroactive and validates all of the act involved, while estoppel extends only to so much of the act as is affected by the conduct working the estoppel. *Woodworth v. School Dist. No. 2, Stevens County*, 92 Wash. 456, 159 P. 757, 760. Generally speaking, "ratification" applies to a formal declaration of the approval of another's act, whereas "estoppel" is where the party is bound by his own act, but the legal effect is the same. *Zenos v. Britten-Cook Land & Live Stock Co.*, 75 Cal.App. 299, 242 P. 914, 917; *Marion Sav. Bank v. Leahy*, 200 Iowa 220, 204 N.W. 456, 458.

Recital

The theory of "estoppel by recital" is that holder of instrument is entitled to rely upon facts recited therein. *Bloomfield Village Drain Dist. v. Keefe*, C.C.A.Mich., 119 F.2d 157, 163, 165.

Res Judicata Distinguished

A prior judgment between same parties, which is not strictly res judicata because based upon different cause of action, operates as an "estoppel" only as to matters actually in issue or points controverted. *Aetna Life Ins. Co. of Hartford, Conn., v. Martin*, C.C.A.Ark., 108 F.2d 824, 827; *Cunningham v. Oklahoma City*, 188 Okl. 466, 110 P.2d 1102, 1104.

Doctrine that issues decided may not be drawn in question in any future action between same parties or their privies, whether cause of action in the two actions be identical or different, is based on "estoppel" rather than upon "res judicata". *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67, 71, 74; In a later action upon a different cause of action a judgment operates as an "estoppel" only as to such issues in second action were actually determined in the first action. *Lorber v. Vista Irr. Dist., C. C.A.Cal.*, 127 F.2d 628, 634. The doctrine of "res judicata" is a branch of law of "estoppel". *Krisher v. McAllister*, 71 Ohio App. 58, 47 N.E.2d 817, 819; The plea of "res judicata" is in its nature an "estoppel" against the losing party from again litigating matters involved in previous action, but the plea does not have that effect as to matters transpiring subsequently. *Fort Worth Stockyards Co. v. Brown*, Tex.Civ.App., 161 S.W.2d 549, 555. Where a second action between same parties involves different cause of action, under doctrine of "res judicata", judgment in first action operates as an "estoppel" only as to those matters which were in issue and actually litigated. *International Brotherhood of Electrical Workers v. Bridgeman*, 179 Va. 533, 19 S.E.2d 667, 670.

Stare Decisis

The doctrine of "stare decisis" is but an application of the doctrine of "estoppel." *Brown v. Rosenbaum*, 175 Misc. 295, 23 N.Y.S.2d 161, 171; The doctrine of "stare decisis" involves no element of "estoppel". *Joslin v. State*, Tex.Civ.App., 146 S.W.2d 208, 212.

Suppression

The doctrine of "estoppel by concealment and suppression" applies only where there has been reduction to practice of invention. *Bogoslowsky v. Huse*, 142 F.2d 75, 76, 31 C.C.P.A. (Patents) 1034.

Waiver Distinguished

Waiver is intentional relinquishment of a known right. *Globe Indemnity Co. v. Cohen*, C.C.A.Pa., 106 F.2d 687, 691; *Beatty v. Employers' Liability Assur. Corporation*, 106 Vt. 25, 168 A. 919, 922; but may be more narrowly and accurately defined as intended giving up of known privilege or power. *John Alt Furniture Co. v. Maryland Casualty Co.*, C.C.A.Mo., 88 F.2d 36, 41. Waiver is voluntary and intentional. *Insurance Co. of North America v. Williams*, 42 Ariz. 331, 26 P.2d 117, 119; *Sentinel Fire Ins. Co. v. McRoberts*, 50 Ga.App. 732, 179 S.E. 256. Waiver is voluntary surrender or relinquishment of some known right, benefit or advantage; estoppel is the inhibition to assert it. *Benson v. Borden*, 174 Md. 202, 198 A. 419, 427, 428; *Johnston v. Columbian Nat. Life Ins. Co.*, 130 Me. 143, 154 A. 79, 80.

Acts, conduct or declarations insufficient to create a technical estoppel may create a waiver. *Benson v. Borden*, 174 Md. 202, 198 A. 419, 427, 428. Acts or conduct of only one of the parties is involved in waiver while an estoppel may arise where there is no intent to mislead. *Beatty v. Employers' Liability Assur. Corporation*, 106 Vt. 25, 168 A. 919, 922; *Benson v. Borden*, 174 Md. 202, 198 A. 419, 427, 428. Actual intent to abandon or surrender right is essential in waiver and immaterial in estoppel. *Equitable Life Assur. Soc. of U. S. v. Pettit*, 40 Ariz. 239, 11 P.2d 833, 838; *Boyce v. Toke Point Oyster Co., Consol.*, 145 Or. 114, 25 P.2d 930; Actual or constructive fraudulent conduct is essential to estoppel but not to waiver. *Insurance Co. of North America v. Williams*, 42 Ariz. 331, 26 P.2d 117, 119; An act which operates to injury of other party is essential to estoppel whereas there may be a waiver, although the opposite party is beneficially affected. *Sentinel Fire Ins. Co. v. McRoberts*, 50 Ga.App. 732, 179 S.E. 256; Conduct or dealings with another by which other is induced to act or to forbear to act is basis of estoppel whereas waiver is intentional relinquishment of a known right. *De Pasquale v. Union Indemnity Co.*, 50 R.I. 509, 149 A. 795; *Reynolds v. Travelers' Ins. Co.*, 176 Wash. 36, 28 P.2d 310, 314. Estoppel results from an act which operates to the injury of the other party, while waiver may even affect him beneficially. *City of Glendale v. Coquat*, 46 Ariz. 478, 52 P.2d 1178, 1180, 102 A.L.R. 837. Fraud may be implied in estoppel but never in waiver. *City of Glendale v. Coquat*, 46 Ariz. 478, 52 P.2d 1178, 1180, 102 A.L.R. 837; *Benson v. Borden*, 174 Md. 202, 198 A. 419, 427, 428. Ignorance of party who invokes estoppel, representations or conduct of party estopped which misled, and an innocent and deleterious change of position in reliance upon such representations or conduct are essential to estoppel whereas waiver is an intentional relinquishment. *Ellis v. Metropolitan Casualty Ins. Co. of New York*, 187 S.C. 162, 197 S.E. 510; Knowledge and intention are both involved in waiver while an estoppel may arise where there is no intent to mislead. *Benson v. Borden*, 174 Md. 202, 198 A. 419, 427, 428; *Beatty v. Employers' Liability Assur. Corporation*, 106 Vt. 25, 168 A. 919, 922. Misleading of party to his injury or prejudice or into altered position is essential to estoppel but not to waiver. *A-1 Cleaners & Dyers v. American Mut. Liability Ins. Co. of Boston*, 307 Ill.App. 64, 30 N.E.2d 87, 88; *Beatty v. Employers' Liability Assur. Corporation*, 106 Vt. 25, 168 A. 919, 922. Waiver consists merely in renouncing some right or in ratifying what one might repudiate. *Williams v. Anaconda Copper Mining Co.*, 96 Mont. 204, 29 P.2d 649, 651. Waiver depends on what one party intends to do, rather than upon what he induces his adversary to do, as in "estoppel". *Nathan Miller, Inc. v. Northern Ins. Co. of New York*, 3 Terry 523, 39 A.2d 23, 25; *Wisdom v. Board of Sup'rs of Polk County*, 236 Iowa 669, 19 N.W.2d 602, 610.

Implied waiver is kin to estoppel and rests on course of conduct evidencing intention not to insist on some performance due. *Kansas City Life Ins. Co. v. Davis*, C.C.A.Cal., 95 F.2d 952, 957. It does not necessarily include all elements of estoppel. *Smith v. Coutant*, 232 Iowa 887, 6 N.W.2d 421, 425.

Legal effect of waiver and estoppel is the same. *Woodmen of the World Life Ins. Soc. v. Greathouse*, 242 Ala. 532, 7 So.2d 89, 91.

Technically, a distinction exists between "waiver" and "estoppel" but under insurance law, terms are used interchangeably. *Boyle Road & Bridge Co. v. American Employers' Ins. Co. of Boston, Mass.*, 195 S.C. 397, 11 S.E.2d 438, 440, 441; The doctrine of waiver, as asserted against insurance companies to avoid the strict enforcement of conditions contained in their policies, is only another name for the doctrine of estoppel. *Rushville Nat. Bank of Rushville v. State Life Ins. Co.*, 210 Ind. 492, 1 N.E.2d 445, 448. While there are distinguishing features between "waiver" and "estoppel," waiver belongs to family of estoppel and the terms are frequently used as meaning the same thing in law of insurance contracts. *Ellis v. Metropolitan Casualty Ins. Co. of New York*, 187 S.C. 162, 197 S.E. 510, 512.

Warranty

An estoppel based on principle of giving effect to manifest intent of grantor and of preventing grantor from derogating or destroying his own grant by subsequent act. *Lewis v. King*, 157 La.

718, 103 So. 19, 22; *Jordan v. Marks*, D.C.La., 55 F.Supp. 204, 209. See, also, *Deed, Estoppel By*.

For "Acquiescence, Estoppel By", "Admissions, Estoppel By", "Collateral Attack", "Concealment, Estoppel By", "Conduct, Estoppel By", "Contract, Estoppel By", "Deed, Estoppel By", "Election, Estoppel By", "Equitable Estoppel", "In Pais, Estoppel In", "Judgment, Estoppel By", "Judicial Estoppel", "Laches, Estoppel By", "Legal Estoppel", "Negligence, Estoppel By", "Promissory Estoppel", "Quasi Estoppel", "Record, Estoppel By", "Representation, Estoppel By", "Silence, Estoppel By" and "Verdict, Estoppel By," see those titles.

ESTOVERIA SUNT ARDENDI, ARANDI, CONSTRUENDI ET CLAUDENDI. 13 Coke, 68. Estovers are of fire-bote, plow-bote, house-bote, and hedge-bote.

ESTOVERIIS HABENDIS. A writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

ESTOVERS. The right to use, during lease, whatever timber there may be on leased premises necessary to promote good husbandry. *Hood v. Foster*, 194 Miss. 812, 13 So.2d 652, 653.

An allowance made to a person out of an estate or other thing for his or her support, as for food and raiment.

An allowance (more commonly called "alimony") granted to a woman divorced a *mensa et thoro*, for her support out of her husband's estate. 1 Bl.Comm. 441.

The right or privilege which a tenant has to furnish himself with so much wood from the demised premises as may be sufficient or necessary for his fuel, fences, and other agricultural operations. 2 Bl.Comm. 35; *Woodf.Landl. & Ten.* 232; *Zimmerman v. Shreeve*, 59 Md. 363; *Van Rensselaer v. Radcliff*, 10 Wend. (N.Y.) 639, 25 Am.Dec. 582.

There is much learning in the old books relative to the creation, apportionment, suspension, and extinguishment of these rights, very little of which, however, is applicable to the condition of things in this country, except perhaps in New York, where the grants of the manor-lands have led to some litigation on the subject. *Tayl.Landl. & T.* § 220. See 4 Wash.R.P. 99; 7 Bing. 640; *Richardson v. York*, 14 Me. 221; *Dalton v. Dalton*, 42 N.C. 197; *Loomis v. Wilbur*, 5 Mas. 13, Fed.Cas.No.8,498.

Common of estovers, see Common.

ESTRAY. Cattle whose owner is unknown. 2 Kent, Comm. 359; *Spelman*. Any beast, not wild, found within any lordship, and not owned by any man. *Cowell*; 1 Bl.Comm. 297. These belonged to the lord of the soil. *Britt. c. 17*. An animal that has strayed away and lost itself; a wandering beast which no one seeks, follows, or claims. *Campbell v. Hamilton*, 42 N.D. 216, 172 N.W. 810.

Estray must be understood as denoting a wandering beast whose owner is unknown to the person who takes it up. An estray is an animal that has escaped from its owner, and wanders or strays about; usually defined, at common law, as a wandering animal whose owner is unknown. An animal cannot be an estray when on the range where it was raised, and permitted by its owner to run, and especially when the owner is known to the party who takes it up. The fact of its being breachy or vicious does not make it an estray. *Kinney v. Roe*, 70 Iowa, 509, 30 N.W. 776; *Shepherd v. Hawley*, 4 Or. 208; *Lyman v.*

ESTRAY

Gipson, 18 Pick., Mass., 426; but see *Worthington v. Brent*, 69 Mo. 205; *State v. Apel*, 14 Tex. 431.

Helpers trespassing unattended upon adjoining ranch when taken up held "estrays" within Estray Act even if helpers' owners were known, since act covers animals belonging to known as well as to unknown owners. *Soares v. Ghisletta*, 1 Cal.App.2d 402, 36 P.2d 668, 669.

The term is used of flotsam at sea. 15 L.Q.R. 357.

ESTREAT, v. To take out a forfeited recognizance from the records of a court, and return it to the court of exchequer, to be prosecuted. See *Estreat, n.*

A forfeited recognizance taken out from among the other records for the purpose of being sent up to the exchequer, that the parties might be sued thereon, was said to be estreated. 4 Bl.Comm. 253. And see *Louisiana Society v. Cage*, 45 La. Ann. 1394, 14 So. 422.

There is no "estreat" or taking a judgment of forfeiture of a bail recognizance from the records and sending it up to the exchequer for suit thereon in Louisiana, since the same court which renders a judgment executes it, and the same officers who are charged with procuring it to be rendered are also charged with procuring it to be executed. *State v. Johnson*, 132 La. 11, 60 So. 702, 703.

ESTREAT, n. (From Lat. *extractum*.) In English law. A copy or extract from the book of estreats, that is, the rolls of any court, in which the ameracements or fines, recognizances, etc., imposed or taken by that court upon or from the accused, are set down, and which are to be levied by the bailiff or other officer of the court. *Cowell*; *Brown*. A true copy or note of some original writing or record, and especially of fines and ameracements imposed by a court, *extracted* from the record, and certified to a proper officer or officers authorized and required to collect them. *Fitzh.* N.B. 57, 76.

ESTRECIATUS. Straightened, as applied to roads. *Cowell*.

ESTREPE. To strip; to despoil; to lay waste; to commit waste upon an estate, as by cutting down trees, removing buildings, etc. To injure the value of a reversionary interest by stripping or spoiling the estate.

ESTREPEMENT. A species of aggravated waste, by stripping or devastating the land, to the injury of the reversioner, and especially pending a suit for possession.

ESTREPEMENT, WRIT OF. This was a common-law writ of waste, which lay in particular for the reversioner against the tenant for life, in respect of damage or injury to the land committed by the latter.

As it was only auxiliary to a real action for recovery of the land, and as equity afforded the same relief by injunction, the writ fell into disuse in England, and was abolished by 3 & 4 Will. IV. c. 27. In Pennsylvania, by statute, the remedy by estrepement is extended for the benefit of specified persons. See 10 Viner, Abr. 497; *Woodf. Landl. & T.* 447; *Arch. Civ. Pl.* 17; 7 *Com. Dig.* 659; *Byrne v. Boyle*, 37 Pa. 260.

ESTUARY, is that part of the mouth or lower course of a river flowing into the sea which is subject to tide; especially, an enlargement of a river channel toward its mouth in which the move-

ment of the tide is very prominent. *Alameda County v. Garrison*, 108 Cal.App. 122, 291 P. 464, 466.

ET. And. The introductory word of several Latin and law French phrases formerly in common use.

ET ADJOURNATUR. And it is adjourned.

A phrase used in the old reports, where the argument of a cause was adjourned to another day, or where a second argument was had. 1 *Keb.* 692, 754, 773.

ET AL. An abbreviation for *et alii*, "and others." *Mitchell v. Mason*, 90 Fla. 192, 105 So. 404, 405. The singular is "et alius" (*q. v.*). It may also mean "and another" in the singular. *Babb v. Dowdy*, 229 Ky. 767, 17 S.W.2d 1014, 1016; *Glen Falls Indemnity Co. v. Manning*, La.App., 168 So. 787, 788.

Where the words "et al." are used in a judgment against defendants, the quoted words include all defendants. *Williams v. Williams*, 25 Tenn.App. 290, 156 S.W.2d 363, 369.

ET ALII È CONTRA. And others on the other side.

A phrase constantly used in the Year Books, in describing a joinder in issue. P. 1 *Edw. II. Prist*; *et alii è contra*, *et sic ad patriam*: ready; and others, *è contra*, and so to the country. T. 3 *Edw. III.* 4.

ET ALIUS. And another.

The abbreviation *et al.* (sometimes in the plural written *et als.*) is often affixed to the name of the person first mentioned, where there are several plaintiffs, grantors, persons addressed, etc. See *In re McGovern's Estate*, 77 Mont. 182, 250 P. 812, 815; *Anderson v. Haas*, 160 Ga. 420, 128 S.E. 178, 179; *Conery v. Webb*, 12 La. Ann. 282; *Lyman v. Milton*, 44 Cal. 630.

ET ALLOCATUR. And it is allowed.

ET CETERA (or ET CÆTERA). And others; and other things; and others of like character; and others of the like kind; and the rest; and so on; and so forth. *Muir v. Kay*, 66 Utah, 550, 244 P. 901, 904; *Osterberg v. Section 30 Development Co.*, 160 Minn. 497, 200 N.W. 738, 739; *State on Inf. Haw v. Three States Lumber Co.*, 274 Mo. 361, 202 S.W. 1083, 1084; *Wagner v. Brady*, 130 Tenn. 554, 171 S.W. 1179; *Fleck v. Harmstad*, 304 Pa. 302, 155 A. 875, 877, 77 A.L.R. 874. In its abbreviated form (*etc.*) this phrase is frequently affixed to one of a series of articles or names to show that others are intended to follow or understood to be included. So, after reciting the initiatory words of a set formula, or a clause already given in full, *etc.* is added, as an abbreviation, for the sake of convenience. And other things of like kind or purpose as compared with those immediately theretofore mentioned. *Hisaw v. Ellison Ridge Consolidated School Dist.*, 189 Miss. 664, 198 So. 557, 558.

In its abbreviated form (*etc.*) this phrase means and other like purposes. *Anderson & Kerr Drilling Co. v. Bruhlmeier*, Tex.Civ.App., 115 S.W.2d 1212, 1214; other things of like character. *Lewis v. Ladner*, 177 Miss. 473, 168 So. 281, 282; other things or the rest; and so forth; used to indicate others of a kind specified, *Potter v. Borough of Metuchen*, 108 N.J.L. 447, 155 A. 369, 370; others of the like kind; and the rest; and so on; and so forth, *Forman v. Columbia Theater Co.*, 20 Wash.2d 685, 148 P.2d 951, 953. In such form it is frequently affixed to one of

a series of articles or names to show that others are intended to follow or understood to be included so, after reciting the initiatory words of a set formula, or a clause already given in full, etc. is added, as an abbreviation, for the sake of convenience. See *Lathers v. Keogh*, 39 Hun, N.Y., 579; *Morton v. Young*, 173 Ky. 301, 190 S.W. 1090; *Becker v. Hopper*, 22 Wyo. 237, 138 P. 179, 180, Ann.Cas. 1916D, 1041.

ET DE CEO SE METTENT EN LE PAYS. L. Fr. And of this they put themselves upon the country.

ET DE HOC PONIT SE SUPER PATRIAM. And of this he puts himself upon the country. The formal conclusion of a common-law plea in bar by way of traverse. See 3 Bl.Comm. 313. The literal translation is retained in the modern form.

ET EI LEGITUR IN HÆC VERBA. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record.

ET HABEAS IBI TUNC HOC BREVE. And have you then there this writ. The formal words directing the return of a writ. The literal translation is retained in the modern form of a considerable number of writs.

ET HABUIT. And he had it.

A common phrase in the Year Books, expressive of the allowance of an application or demand by a party. *Parn. demanda la view. Et habuit*, etc. M. 6 Edw. III. 49.

ET HOC PARATUS EST VERIFICARE. And this he is prepared to verify.

The Latin form of concluding a plea in confession and avoidance; that is, where the defendant has confessed all that the plaintiff has set forth, and has pleaded new matter in avoidance. 1 Salk. 2.

These words were used, when the pleadings were in Latin, at the conclusion of any pleading which contained new affirmative matter. They expressed the willingness or readiness of the party so pleading to establish by proof the matter alleged in his pleading. A pleading which concluded in that manner was technically said to "conclude with a verification," in contradistinction to a pleading which simply denied matter alleged by the opposite party, and which for that reason was said to "conclude to the country," because the party merely put himself upon the country, or left the matter to the jury. Brown.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM. And this he prays may be inquired of by the country. The conclusion of a plaintiff's pleading, tendering an issue to the country. 1 Salk. 6. Literally translated in the modern forms.

ET INDE PETIT JUDICIUM. And thereupon [or thereof] he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms. Bract. fol. 57b; Crabb, Eng. Law, 217.

ET INDE PRODUCIT SECTAM. And thereupon he brings suit. The Latin conclusion of a declaration, except against attorneys and other officers of the court. 3 Bl.Comm. 295.

ET MODO AD HUNC DIEM. Lat. And now at this day. This phrase was the formal beginning of an entry of appearance or of a continuance. The equivalent English words are still used in this connection.

ET NON. Lat. And not. A technical phrase in pleading, which introduces the negative averments of a special traverse. It has the same force and effect as the words *absque hoc*, "without this," and is occasionally used instead of the latter.

ET SEQ. An abbreviation for *et sequentes* (masculine and feminine plural) or *et sequentia* (neuter), "and the following." Thus a reference to "p. 1, et seq." means "page first and the following pages." Also abbreviated "et sqq.," which is preferred by some authorities for a reference to more than one following page.

ET SIC. And so. In the Latin forms of pleading these were the introductory words of a special conclusion to a plea in bar, the object being to render it positive and not argumentative; as *et sic nil debet*.

ET SIC AD JUDICIUM. And so to judgment. Yearb. T. 1 Edw. II. 10.

ET SIC AD PATRIAM. And so to the country. A phrase used in the Year Books, to record an issue to the country.

ET SIC FECIT. And he did so. Yearb. P. 9 Hen. VI. 17.

ET SIC PENDET. And so it hangs. A term used in the old reports to signify that a point was left undetermined. T. Raym. 168.

ET SIC ULTERIUS. And so on; and so further; and so forth. Fleta, lib. 2, c. 50, § 27.

ET UX. An abbreviation for *et uxor*,—"and wife." Where a grantor's wife joins him in the conveyance, it is sometimes expressed (in abstracts, etc.) to be by "A. B. et ux."

ETCHING. Strictly, the art of using acid to bite a design on metal; in a broader sense, the word includes the sand-blast process, which uses no acid, but relies on abrasion by sand, emery, or a like substance. *Graphic Arts Co. v. Photo-Chromotype Engraving Co.*, C.C.A.Pa., 231 F. 146, 148.

ETERNAL SECURITY. The doctrine of "eternal security" means that once one becomes a Christian or has been "regenerated" his future conduct, no matter what it may be, will not jeopardize his salvation. *Ashman v. Studebaker*, 115 Ind.App. 73, 56 N.E.2d 674, 678.

ETHICAL. "Of or relating to moral action, motive or character; as, ethical emotion; also, treating of moral feelings, duties or conduct; containing precepts of morality; moral"; and secondarily as "professionally right or befitting; conforming to professional standards of conduct." *Kraushaar v. La Vin*, 181 Misc. 508, 42 N.Y.S.2d 857, 859.

ETHICS. What is generally called the "ethics" of the profession is but consensus of expert opinion as to necessity of professional standards. *Cherry v. Board of Regents of University of State of New York*, 289 N.Y. 148, 44 N.E.2d 405, 412.

ETHICS

ETHICS, LEGAL. See Legal Ethics.

ETIQUETTE OF THE PROFESSION. The code of honor agreed on by mutual understanding and tacitly accepted by members of the legal profession, especially by the bar. Wharton.

EUM QUI NOCENTEM INFAMAT, NON EST ÆQUUM ET BONUM OB EAM REM CONDEMNARI; DELICTA ENIM NOCENTIUM NOTA ESSE OPORTET ET EXPEDIT. It is not just and proper that he who speaks ill of a bad man should be condemned on that account; for it is fitting and expedient that the crimes of bad men should be known. Dig. 47, 10, 17; 1 Bl.Comm. 125.

EUNDO, MORANDO, ET REDEUNDO. Lat. Going, remaining, and returning.

A person who is privileged from arrest (as a witness, legislator, etc.) is generally so privileged *eundo, morando, et redeundo*; that is, on his way to the place where his duties are to be performed, while he remains there, and on his return journey.

EUNDO ET REDEUNDO. Lat. In going and returning. Applied to vessels. 3 C.Rob.Adm. 141.

EUNOMY. Equal laws and a well-adjusted constitution of government.

EUNUCH. A male of the human species who has been castrated. See Domat. liv. pré. tit. 2, § 1, n. 10. Eckert v. Van Pelt, 69 Kan. 357, 76 P. 909, 66 L.R.A. 266.

EUTHANASIA. The act or practice of painlessly putting to death persons suffering from incurable and distressing disease. An easy or agreeable death.

EVASIO. Lat. In old practice. An escape from prison or custody. Reg. Orig. 312.

EVASION. An act of eluding or avoiding, or avoidance by artifice. City of Wink v. Griffith Amusement Co., 129 Tex. 40, 100 S.W.2d 695, 701.

A subtle endeavoring to set aside truth or to escape the punishment of the law.

Thus, if one person says to another that he will not strike him, but will give him a pot of ale to strike first, and, accordingly, the latter strikes, the returning the blow is punishable; and, if the person first striking is killed, it is murder, for no man shall evade the justice of the law by such a pretense. 1 Hawk.P.C. 81; Bac.Abr. *Fraud*, A. So no one may plead ignorance of the law to evade it. Jacob.

Artifice or cunning is implicit in the term as applied to contest between citizen and government over taxation. Clapp v. Heiner, C.C.A.Pa., 51 F.2d 224, 225.

In a general way the words "suppression," "evasion," and "concealment" mean to avoid by some device or strategy or the concealment or intentional withholding some fact which ought in good faith to be communicated. Murray v. Brotherhood of American Yeomen, 180 Iowa, 626, 163 N.W. 421, 423.

When an act is condemned as an "evasion," what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law. Wyndmoor Building & Loan Ass'n v. Power Building & Loan Ass'n, Pa.Super., 121 Pa.Super. 236, 183 A. 367, 369; Bullen v. State of Wisconsin, Wis., 240 U.S. 625, 36 S.Ct. 473, 474, 60 L.Ed. 830.

EVASIVE. Tending or seeking to evade; elusive; shifting; as an *evasive* argument or plea.

Deprivation of lessee of free enjoyment of premises, and, if it does so, deprivation need not be permanent. Title & Trust Co. v. Durkheimer Inv. Co., 155 Or. 427, 63 P.2d 909.

EVASIVE ANSWER. One which consists in refusing either to admit or to deny a matter as to which the defendant is necessarily presumed to have knowledge.

Hence, where a defendant is alleged to be a corporation, an answer declining, for want of sufficient information, either to admit or to deny such an averment would be evasive. Raleigh & Gaston Ry. Co. v. Pullman Co., 122 Ga. 700, 50 S.E. 1008. But an answer distinctly denying an allegation that the defendant is a corporation, although it may be false, is not evasive. Gaynor v. Travelers' Ins. Co., 12 Ga.App. 601, 77 S.E. 1072, 1073.

EVE. The period immediately preceding an important event. Jarvis v. Jarvis, 286 Ill. 478, 122 N.E. 121, 123.

EVEN. Although; if. May v. Missouri Pac. R. Co., 143 Ark. 75, 219 S.W. 756, 757.

EVENING. The closing part of the day and beginning of the night; in a strict sense, from sunset till dark; in common speech, the latter part of the day and the earlier part of the night, until bedtime. Golay v. Stoddard, 60 Idaho 168, 89 P. 2d 1002, 1005. The period between sunset or the evening meal and ordinary bedtime. City of Albany v. Black, 216 Ala. 4, 112 So. 433; State v. Foley, 89 Vt. 193, 94 A. 841, 842.

EVENINGS. In old English law. The delivery at even or night of a certain portion of grass, or corn, etc., to a customary tenant, who performs the service of cutting, mowing, or reaping for his lord, given him as a gratuity or encouragement. Kennett, Gloss.

EVENT. The consequence of anything, the issue, conclusion, end; that in which an action, operation, or series of operations, terminates. Geis v. Geis, 125 Neb. 394, 250 N.W. 252; Brewer v. Ash Grove Lime & Portland Cement Co., 223 Mo.App. 983, 25 S.W.2d 1086, 1088.

Anything that happens or comes to pass as distinguished from a thing that exists, Quinn v. Streeter, Sup., 175 Misc. 932, 24 N.Y.S.2d 916, 920. That which comes, arrives, or happens, especially an incident which is important or remarkable, Schulz v. Great Atlantic & Pacific Tea Co., 331 Mo. 616, 56 S.W.2d 126; the consequence, outcome, sequel, or end effected by prior operation of medium or contributing force or agency referred to as the "means" or "cause", Toups v. Penn Mut. Life Ins. Co., D.C.La., 49 F.Supp. 348, 349; the culmination or end that means may have produced or brought about. Whatcott v. Continental Casualty Co., 85 Utah 406, 39 P.2d 733, 736; Sentinel Life Ins. Co. v. Blackmer, C.C.A.Colo., 77 F.2d 347, 350.

An event may be injury itself rather than means producing it. Juhl v. Hussman-Ligonier Co., Mo.App., 146 S.W.2d 106, 108. An event need not necessarily be a cause, but may be and generally is a result. Guillod v. Kansas City Power & Light Co., 224 Mo.App. 382, 18 S.W.2d 97, 100.

The word includes all of steps or connected incidents from first cause to final result, and may include both cause and effect. Rinehart v. F. M. Stamper Co., 227 Mo.App. 653, 55 S.W.2d 729. The word is broad enough to include an omission. Texas Cities Gas Co. v. Dickens, Tex.Civ. App., 156 S.W.2d 1010, 1016.

The "making of a contract" is an "event". *Brown v. Oneida Knitting Mills*, 226 Wis. 662, 277 N.W. 653, 655.

In reference to judicial and quasi judicial proceedings, "event" means the conclusion, end, or final outcome or result of a litigation; as, in the phrase "abide the event," speaking of costs or of an agreement that one suit shall be governed by the determination in another. *Reeves v. McGregor*, 9 Adol. & El. 576; *Benjamin v. Ver Nooy*, 168 N.Y. 578, 61 N.E. 971; *Gordon v. Krellman*, 217 App.Div. 477, 216 N.Y.S. 778, 779.

Where costs are awarded to an appellant to abide the event, the "event" which determines whether the appellant is entitled to an award of costs of appeal is his success in obtaining a judgment on the merits on the retrial. *Commercial Sealeaf Co. v. Purepac Corporation*, 169 Misc. 133, 7 N.Y.S.2d 146, 148.

EVENT OF ANY SUIT. Means legal event of any suit. *Drainage Dist. No. 1 of Lincoln County v. Kirkpatrick-Pettis Co.*, 140 Neb. 530, 300 N.W. 582, 587; *Geis v. Geis*, 125 Neb. 394, 250 N.W. 252.

EVENTUS EST QUI EX CAUSÂ SEQUITUR; ET DICITUR EVENTUS QUIA EX CAUSIS EVENTIT. 9 Coke, 81. An event is that which follows from the cause, and is called an "event" because it eventuates from causes.

EVENTUS VARIOS RES NOVA SEMPER HABET. Co. Litt. 379. A new matter always produces various events.

EVERY. Each one of all; all the separate individuals who constitute the whole, regarded one by one. *Smith v. Hall*, 217 Ky. 615, 290 S.W. 480, 482; *Salo v. Pacific Coast Casualty Co.*, 95 Wash. 109, 163 P. 384, 385, L.R.A.1917D, 613. The term is sometimes equivalent to "all"; *Erskine v. Pyle*, 51 S.D. 262, 213 N.W. 500, 502; and sometimes to "each"; *Miller v. Rodd*, 285 Pa. 16, 131 A. 482, 483.

EVERY CONTRACT OF HIRING, VERBAL, WRITTEN OR IMPLIED. Means wherever and by whomsoever made. *De Gray v. Miller Bros. Const. Co.*, 106 Vt. 259, 173 A. 556, 562.

EVERY CORPORATION. Statute providing that books of "every corporation" shall be open to inspection of shareholders, held applicable to foreign corporation doing business within state. *Gettridge v. State Capital Co.*, 129 Cal.App. 86, 18 P. 2d 375, 376.

EVERY MAN MUST BE TAKEN TO CONTEMPLATE THE PROBABLE CONSEQUENCES OF THE ACT HE DOES. Lord Ellenborough, 9 East, 277. A fundamental maxim in the law of evidence. Best, Pres. § 16; 1 Phil.Ev. 444. (Every man is presumed to intend the natural and probable consequences of his own voluntary acts. 1 Greenl.Evid. § 18; 9 B. & C. 643; 3 Maule & S. 11; Webb, Poll.Torts 35.)

EVERY OTHER THING. This phrase, as used in requiring employer to furnish safe place of employment and to do "every other thing" reasonably necessary to protect employees, relates to things of same kind that employer must necessarily do in making place safe. *Northwestern*

Casualty & Surety Co. v. Industrial Commission, 194 Wis. 337, 216 N.W. 485, 486.

EVERY OWNER. As used in law making "every owner" of a motor vehicle liable for personal injuries in certain circumstances include a municipality. *Kelly v. City of Niagara Falls*, 131 Misc. 934, 229 N.Y.S. 328, 331.

EVERY PART. As used in charge on caveat to probate of will, the signature is included in "every part" of will. *Dulin v. Dulin*, 197 N.C. 215, 148 S.E. 175, 178.

EVERY PERSON. Statute making it misdemeanor for "every person" to sell appointments to public office applies to all persons whether public officials or not. *Smalley v. State*, 75 Okl.Cr. 10, 127 P.2d 869, 870.

Statute making it duty of "every person" to pay taxes without demand includes receivers. *Hood v. Bond*, 42 N.M. 295, 77 P.2d 180, 188.

Statute providing for arrest of every person in city engaged in violating law or ordinance includes female offenders. *City of Janesville v. Tweedell*, 217 Wis. 395, 258 N.W. 437.

Where a law specifically excludes any person engaged in certain transportation from definition of "contract hauler" and defines "for hire carrier" to include "every person," except "certified operator" and "contract hauler," "every person" includes those engaged in such transportation. *State ex rel. Scott v. Superior Court for Thurston County*, 173 Wash. 547, 24 P.2d 87.

EVERY PERSON, FIRM OR CORPORATION. City ordinance providing "every person, firm or corporation" should pay gasoline tax held to include receivers. *Kansas City, Mo. v. Johnson, C. C.A.Mo.*, 70 F.2d 360, 361.

EVERY RESIDENT OF THIS STATE. As used in constitutional provision partially exempting from taxation those honorably discharged from military service applies to every person who fulfills requirements of provision regardless of sex. *Lockhart v. Wolden*, 17 Cal.2d 628, 111 P.2d 319, 320.

EVERY RIGHT, TITLE, INTEREST OR THING. Tender of "every right, title, interest or thing" received is tender of everything received in action to rescind land contract. *Mathews v. Tannenbaum*, 139 Cal.App. 500, 34 P.2d 233, 235.

EVERY STOCK CORPORATION. Statute making stockholders of "every stock corporation" liable for employees' services refers to domestic stock corporations only. *Bogardus v. Fitzpatrick*, 139 Misc. 533, 247 N.Y.S. 692, 693.

EVERY SUCH PROVISION. In statute providing that devise for jointure of wife shall bar her dower and that every such provision by will shall be taken as intended in lieu of dower, "every such provision" means devise for jointure of wife. *Shackelford v. Shackelford*, 181 Va. 869, 27 S.E.2d 354, 359.

EVES-DROPPERS. See Eaves-Droppers.

EVICT. Civil law. To recover anything from a person by virtue of the judgment of a court or judicial sentence.

EVICT

Common law. To dispossess, or turn out of the possession of lands by process of law. Also to recover land by judgment at law. "If the land is *evicted*, no rent shall be paid." 10 Coke, 128a.

The term "evicted," means deprivation by one of office, or of salary attached thereto, to which another is, or may be, entitled. The term "evicted" properly applies only to realty and has been used to describe inability to get promised possession, and also, as deprivation of the possession of lands and tenements. *Hawkins v. Volsine*, 292 Mich. 357, 290 N.W. 827, 828.

To "evict" a tenant is to deprive him of possession of the leased premises or disturb him in their beneficial enjoyment so as to cause tenant to abandon the premises. *Estes v. Gatliff*, 291 Ky. 93, 163 S.W.2d 273, 276.

EVICITION. Dispossession by process of law; the act of depriving a person of the possession of lands which he has held, in pursuance of the judgment of a court. *Reasoner v. Edmundson*, 5 Ind. 395; *Cowdrey v. Coit*, 44 N.Y. 392, 4 Am.Rep. 690; *Home Life Ins. Co. v. Sherman*, 46 N.Y. 372.

Originally and technically, the dispossession must be by judgment of law; if otherwise, it is an *ouster*; *Webb v. Alexander*, 7 Wend.N.Y. 285; but the necessity of legal process was long ago abandoned in England; 4 Term 617; and in this country also it is settled that there need not be legal process; *Green v. Irving*, 54 Miss. 450, 28 Am.Rep. 360; *Thomas v. Becker*, 190 Iowa 237, 180 N.W. 285, 286. Any actual entry and dispossession, adversely and lawfully made under paramount title, will be an eviction. *Rawle*, Cov. § 133; *Gallison v. Downing*, 244 Mass. 33, 138 N.E. 315, 318.

In a more popular sense, the term denotes turning a tenant of land out of possession, either by re-entry or by legal proceedings, such as an action of ejectment. *Sweet*.

By a loose extension, the term is sometimes applied to the ousting of a person from the possession of chattels; but, properly, it applies only to realty.

A wrongful act upon the part of the landlord is involved in eviction. *Cerruti v. Burdick*, 130 Conn. 284, 33 A.2d 333, 335.

An entry under paramount title, so as to interfere with the rights of the grantee, is implied in eviction. The object of the party making the entry is immaterial, whether it be to take all or a part of the land itself or merely an incorporeal right. Phrases equivalent in meaning are "ouster by paramount title," "entry and disturbance," "possession under an elder title," and the like. *Mitchell v. Warner*, 5 Conn. 497.

An "eviction by title paramount" arises when a third person establishes title to demised premises superior to that of landlord, and by virtue of that title gains possession. *John R. Thompson Co. v. Northwestern Mut. Life Ins. Co.*, D.C. Ohio, 31 F.Supp. 399, 400.

Any act of landlord which deprives tenant of beneficial enjoyment of premises. *Adler v. Sklaroff*, 154 Pa.Super. 444, 36 A.2d 231, 233.

Any wrong of lessor which results in substantial interference with lessee's rights. *Harrison v. Fregger*, 88 Mont. 448, 294 P. 372, 373.

Deprivation of lessee of possession of premises or disturbance of lessee in beneficial enjoyment so as to cause tenant to abandon the premises. *Estes v. Gatliff*, 291 Ky. 93, 163 S.W.2d 273, 276.

Dispossession of tenant by landlord. *Leshner v. Louisville Gas & Electric Co.*, D.C.Ky., 49 F.Supp. 88, 89, 90.

Dispossession under judgment, though it need not be by force of process under judgment. *Edgemont Coal Co. v. Asher*, D.C.Ky., 298 F. 1000; *Walker v. Robinson*, 163 Ky. 618, 174 S.W. 503, 505.

Entry on and taking possession of any part of demised premises by landlord during continuance of lease and exclusion of tenant. *Landon v. Hill*, 136 Cal.App. 560, 29 P.2d 281, 282.

Formerly the word was used to denote an expulsion by the assertion of a paramount title or by process of law. *Port Utilities Commission of Charleston v. Marine Oil Co.*, 173 S.C. 345, 175 S.E. 818.

Intentional exclusion of lessee from some part of leased premises. *Gorfinke v. Abrams*, 263 Mass. 569, 161 N.E. 795.

Interference with tenant's beneficial enjoyment of premises. *Peale v. Tvette*, 172 Wash. 296, 20 P.2d 12, 13; *Kahn v. Bancamerica-Blair Corporation*, 327 Pa. 209, 193 A. 905, 906.

Manual or physical expulsion or exclusion from demised premises, or any part thereof is unnecessary to constitute eviction. *Kennerly v. B. F. Avery & Sons Plow Co.*, Tex. Civ.App., 300 S.W. 159, 161.

Originally an eviction was understood to be a dispossession of the tenant by some act of his landlord or the failure of his title. Of later years it has come to include any wrongful act of the landlord which may result in an interference with the tenant's possession in whole or in part. The act may be one of omission as well as one of commission. *Holden v. Tidwell*, 37 Okl. 553, 133 P. 54, 56, 49 L.R.A., N.S., 369.

Something of a grave and permanent character by landlord or those acting under his authority with intent and effect to deprive tenant of use, occupation, and enjoyment of premises or part thereof, or the establishment or assertion against tenant of a title paramount to the landlord. *Blomberg v. Evans*, 194 N.C. 113, 138 S.E. 593, 594, 53 A.L.R. 686; *Aguglia v. Cavicchia*, 229 Mass. 263, 118 N.E. 283, 284, L.R.A.1918C, 59; *Waldorf System v. Dawson*, 49 R.I. 57, 139 A. 789, 790; *Automobile Supply Co. v. Scene-in-Action Corporation*, 340 Ill. 196, 172 N.E. 35, 37, 69 A.L.R. 1085.

When it would be useless for covenantor to attempt to maintain his title, as where holder of superior title has taken actual possession or threatens suit, an eviction occurs in legal contemplation. *Love v. Minerva Petroleum Corporation*, Tex.Civ.App., 105 S.W.2d 892, 894.

When tenant's possession or enjoyment of premises is interfered with by a third person not acting by landlord's authority, or consent, there is no "eviction". *Smith v. Nortz Lumber Co.*, N.D., 72 N.D. 353, 7 N.W.2d 435, 437; *Prospect Point Land Improvement Co. v. Jackson*, 109 N.J.L. 385, 162 A. 576, 577.

Civil Law

The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so. *Poth.Contr.Sale*, pt. 2, c. 1, § 2, art. 1, no. 83. The abandonment which a buyer is compelled to make of a thing purchased, in pursuance of a judicial sentence.

Eviction is the loss suffered by the buyer of the totality of the thing sold, or of a part thereof, occasioned by the right or claims of a third person. *Civil Code La. art. 2500*.

For "Actual Eviction," "Constructive Eviction," "Partial Eviction," and "Total Eviction," see those titles.

EVIDENCE. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention. *Hotchkiss v. Newton*, 10 Ga. 567; *O'Brien v. State*, 69 Neb. 691, 96 N.W. 650; *Hubbell v. U. S.*, 15 Ct.Cl. 606; *McWilliams v. Rodgers*, 56 Ala. 93.

All circumstances in case, including opportunity of witnesses for observation, interest in case, demeanor on stand, and other circumstances. *Auschwitz v. Wabash Ry. Co.*, 346 Ill. 190, 178 N.E. 403, 410; all kinds of proof, *Kneezele v. Scott County Milling Co.*, Mo.App., 113 S.W.2d 817, 822.

All the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 *Greenl.Ev. c. 1, § 1*; *Bednarik v. Bednarik*, 18 N.J.Misc. 633, 16 A.2d 80, 89; *Latikos v. State*, 17 Ala.App. 592, 88 So. 45, 47.

Any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion of the existence or nonexistence of some matter of fact. *State v. Heavener*, 146 S.C. 138, 143 S.E. 674, 676.

Anything perceptible to the five senses constituting "evidence," when submitted to court or jury, if competent. In *re Fisher's Estate*, 47 Idaho 668, 279 P. 291, 293.

As a part of procedure "evidence" signifies those rules of law whereby it is determined what testimony should be admitted and what should be rejected in each case, and what is the weight to be given to the testimony admitted. *Kellman v. Stoltz*, D.C.Iowa, 1 F.R.D. 726, 728.

Competent evidence is meant by statute requiring trial court to hear evidence on controverted applications for change of venue. *State ex rel. Kansas City Public Service Co. v. Waltner*, 350 Mo. 1021, 169 S.W.2d 697, 703.

Documents and other exhibits which may properly be submitted to jury are evidence. *Madison v. State*, 138 Fla. 467, 189 So. 832, 835.

Evidence legally and properly introduced is meant by "evidence". *Young v. Industrial Accident Commission*, 38 Cal.App.2d 250, 100 P.2d 1062, 1066.

Exhibits are evidence, *Worland v. McGill*, 26 Ohio App. 442, 160 N.E. 478, 480.

Facts admitted upon trial of cause become "evidence". *American Extension School of Law v. Ragland*, 232 Mo.App. 763, 112 S.W.2d 110, 113.

Facts judicially noticed are equivalent to "evidence". *Zickefoose v. Thompson*, 347 Mo. 579, 148 S.W.2d 784, 792.

Inference arising under doctrine of "res ipsa loquitur" is "evidence". *Druzanich v. Criley*, 19 Cal.2d 439, 122 P.2d 53, 56.

Medical testimony is "evidence". *Farmer Motor Co. v. Smith*, 253 Ky. 151, 69 S.W.2d 1.

Opinion of expert is evidence which is to be weighed and considered like any other evidence. *Southern California Edison Co. v. Gemmill*, 30 Cal.App.2d 23, 85 P.2d 500, 502.

Reasonable inferences drawn from affirmative facts proven are "evidence". *Hepp v. Quicquel Auto & Supply Co.*, 37 N.M. 525, 25 P.2d 197.

Something of substance and relevant consequence. *Broadway & Fourth Ave. Realty Co. v. Metcalfe*, 230 Ky. 800, 20 S.W.2d 988, 990.

Substantial evidence is meant by word "evidence", *Indianapolis Power & Light Co. v. National Labor Relations Board*, C.C.A.7, 122 F.2d 757, 761; *Gelb v. Federal Trade Commission*, C.C.A.2, 144 F.2d 580, 582.

Such kinds of proof as may be legally presented at a trial, by the act of the parties, and through the aid of such concrete facts as witnesses, records or other documents.

That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. *Leonard v. State*, 100 Ohio St. 456, 127 N.E. 464, 466; *Lynch v. Rosenberger*, 121 Kan. 601, 249 P. 682, 683, 60 A.L.R. 376.

That which furnishes or tends to furnish proof. It is that which brings to the mind a just conviction of the truth or falsehood of any substantive proposition which is asserted or denied. *Wong Yee Toon v. Stump*, C.C.A.Md., 233 F. 194, 198; *Ex parte Lam Pul*, D.C.N.C., 217 F. 456, 467.

That which is legally submitted to a jury, to enable them to decide upon the questions in dispute or issue, as pointed out by the pleadings, and distinguished from all comment and argument. 1 *Starkie, Ev. pt. 1, § 3*.

That which tends to produce conviction in the mind as to existence of a fact. *Magazine v. Shull*, 116 Ind.App. 79, 60 N.E.2d 611, 613.

That which tends to prove or disprove any matter in question, or to influence the belief respecting it. Belief is produced by the consideration of something presented to the mind. The matter thus presented, in whatever shape it may come, and through whatever material organ it is derived, is evidence. *Parker, Lectures on Medical Jurisprudence*, in *Dartmouth College*.

The means sanctioned by law of ascertaining in a judicial proceeding the truth respecting a question of fact. *Cal.Code Civ.Proc. § 1823*.

The word signifies, in its original sense, the state of being evident, i. e., plain, apparent or notorious. But by an almost peculiar inflection of our language, it is applied to that which tends to render evident or to generate proof. *Best, Ev. § 10, 11*; *Dupont v. Pelletier*, 120 Me. 114, 113 A. 11, 12.

What transpires in jury's presence and what is necessarily obvious to them is "evidence" if relevant and unprejudicial. *Williamson v. Derry Electric Co.*, 89 N.H. 216, 196 A. 265 266.

Whatever is received to establish or disprove an alleged fact. In *re Seigle's Estate*, 26 N.Y.S.2d 410, 413, 176 Misc. 15.

Whatever may be given to the jury as tending to prove a case; includes testimony of witnesses, documents, admissions of parties, etc. *Harris v. Tomlinson*, 130 Ind. 426, 30 N.E. 214; *Carroll v. Bancker*, 43 La. Ann. 1078, 10 So. 192.

Whatever may properly be submitted to a court or jury to elucidate an issue or prove a case. *Superior Meat Products v. Hollicway*, 113 Ind. App. 320, 48 N.E.2d 83, 86.

Within prohibition against requiring an accused to give evidence against himself, "evidence" means evidence by accused out of court as well as in court. *State v. Bates*, 187 Miss. 172, 192 So. 832, 835.

Evidence may be false and of no probative value and so it differs from proof. *State v. Howard*, 162 La. 719, 111 So. 72, 75.

To "evidence" means to attest, prove, show clearly, make plain. *Indiana Harbor Belt R. Co. v. Jacob Stern & Sons*, D.C.Ill., 37 F.Supp. 690, 691.

For Presumption as evidence, see *Presumption*; Proof and evidence distinguished, see *Proof*; Testimony as synonymous or distinguishable, see *Testimony*; View as evidence, see *View*.

For "Admnicular Evidence", "Aliunde", "Best Evidence", "Beyond Reasonable Doubt", "Circumstantial Evidence", "Competent Evidence", "Corroborating Evidence", "Cumulative Evidence", "Demonstrative Evidence", "Direct Evidence", "Documentary Evidence," "Expert Evidence", "Extrajudicial Evidence", "Extraneous Evidence," "Extrinsic Evidence", "Fact", "Fair Preponderance", "Hearsay", "Incompetent Evidence", "Inculpatory", "Indirect Evidence", "Indispensable Evidence", "Inference", "Intrinsic Evidence", "Legal Evidence", "Material Evidence", "Mathematical Evidence", "Moral Evidence," "Newly-Discovered Evidence", "Opinion Evidence", "Oral Evidence", "Original Evidence", "Parol Evidence", "Partial Evidence," "Preponderance," "Presumptive Evidence," "Prima Facie Evidence," "Primary Evidence," "Probable Evidence," "Probative," "Probative Facts," "Proof," "Proper Evidence," "Real Evidence," "Rebutting Evidence," "Relevancy," "Satisfactory Evidence," "Scintilla of Evidence," "Second-Hand Evidence," "Secondary Evidence," "State's Evidence," "Substantive Evidence," "Substitutionary Evidence," "Traditionary Evidence," and "Weight of Evidence," see those titles.

EVIDENCE BY INSPECTION

EVIDENCE BY INSPECTION is such evidence as is addressed directly to the senses without intervention of testimony. *Kabase v. State*, 31 Ala. App. 77, 12 So.2d 758, 764.

EVIDENCE COMPLETED. Means that both sides have offered testimony and rested, or that plaintiff has rested and defendant has made motion for finding on plaintiff's case and stands on motion and declines to offer evidence. *Merriam v. Sugrue*, D.C.Mun.App., 41 A.2d 166, 167.

EVIDENCE; LAW OF. The aggregate of rules and principles regulating the admissibility, relevancy, and weight and sufficiency of evidence in legal proceedings. See *Ballinger's Ann.Codes & St.Or.*1901, § 678, Code 1930, § 9-102.

EVIDENCE OF DEBT. A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. 1 *Rev.St.N.Y.* p. 599, § 55.

EVIDENCE OF INSURABILITY SATISFACTORY TO COMPANY. Means evidence which would satisfy a reasonable person experienced in the life insurance business that insured was in an insurable condition. *Bowie v. Bankers Life Co.*, C.C.A.Colo., 105 F.2d 806, 808.

EVIDENCE OF TITLE. A deed or other document establishing the title to property, especially real estate.

EVIDENCE PROPER is something capable of being weighed in scales of reason and compared and estimated with other matter of the probative sort. *Neely v. Provident Life & Accident Ins. Co. of Chattanooga, Tenn.*, 322 Pa. 417, 185 A. 784, 788.

EVIDENCE REASONABLY TENDING TO SUPPORT VERDICT. Means evidence that is competent, relevant, and material, and which to rational and impartial mind naturally leads, or involuntarily tends to lead, to conclusion for which there is valid, just, and substantial reason. *Kelly v. Oliver Farm Equipment Sales Co.*, 169 Okl. 269, 36 P.2d 888, 891.

EVIDENCE SUFFICIENT IN LAW. Substantial evidence. *Almon v. Morgan County*, 245 Ala. 241, 16 So.2d 511, 516.

EVIDENCE TO SUPPORT FINDINGS. In action to review an order of the Unemployment Compensation Commission "evidence" to support findings meant substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for jury. *Jordan v. Craighead*, 114 Mont. 337, 136 P.2d 526, 528.

EVIDENCE TO SUPPORT THE VERDICT. Means some legal evidence tending to prove every material fact in issue as to which the party in whose favor the verdict was rendered had the burden of proof. *Nicolai-Neppach Co. v. Smith*, 154 Or. 450, 58 P.2d 1016, 1024, 107 A.L.R. 1124.

EVIDENT. Clear to the understanding and satisfactory to the judgment; manifest; plain; obvious; conclusive. *Russell v. State*, 71 Fla. 236, 71 So. 27, 28. Noticeable; apparent to observation. *Hamill v. Joseph Schlitz Brewing Co.*, 165 Iowa 266, 143 N.W. 99, 107. That is "evident" that suggests more than a mental process, but no difficulty in seeing that the thing is true. *Bremner v. Marc Eidlitz & Son*, 118 Conn. 666, 174 A. 172, 174.

A constitutional provision forbidding bail in capital cases when the proof is "evident," means that, if the evidence is such as to lead a dispassionate mind to the conclusion that the accused is guilty, and that if the law is properly administered a conviction would be had of a capital offense, bail should be denied. *Ex parte Vermillion*, 102 Tex.Cr.R. 590, 280 S.W. 771; *Ex parte Bates*, 90 Tex.Cr.R. 406, 235 S.W. 879, 880; *Ex parte Dumas*, 110 Tex.Cr.R. 1, 7 S.W.2d 90, 91.

Under constitutional provision that all prisoners shall be bailable unless for capital offenses when the proof is evident, the word "evident" means that the accused, with a cool and deliberate mind and formed design, did maliciously kill another, and that a dispassionate jury would not only convict him, but would also assess the death penalty. *Ex parte Redding*, 147 Tex.Cr.R. 434, 180 S.W.2d 951, 952; *Ex parte Shults*, 127 Tex.Cr.R. 484, 77 S.W.2d 877.

—**Proof Evident.** See *Proof*.

EVIDENTIA. L. Evidence. See *Preuve*.

EVIDENTIARY. Having the quality of evidence; constituting evidence; evidencing. A term introduced by Bentham, and, from its convenience, adopted by other writers.

EVIDENTIARY FACTS. Facts necessary to prove the essential or ultimate fact. *People ex rel. Hudson & M. R. Co. v. Sexton*, Sup., 44 N.Y. S.2d 884, 885. Facts which furnish evidence of existence of some other fact. *General Tire & Rubber Co. v. Cooper*, 176 Miss. 491, 165 So. 420, 421; proofs and testimony. In *re Britton's Will*, 167 Misc. 747, 4 N.Y.S.2d 715, 719; such facts must be found from testimony and other evidence. *Texas Employers Ins. Ass'n v. Reed*, Tex.Civ.App., 150 S.W.2d 858, 862.

Those which have a legitimate bearing on the matter or question in issue and which are directly (not inferentially) established by the evidence in the case. *Woodfill v. Patton*, 76 Ind. 579, 40 Am.Rep. 269. Facts which can be directly established by testimony or evidence;—distinguished from "ultimate facts." *Real Estate Title, Ins. & Trust Co. v. Lederer*, D.C.Pa., 229 F. 799, 804.

EVIDENTLY. Means in an evident manner, perceptibly, clearly, obviously, plainly. It is employed to express the idea of full-proof conviction. *Tennes v. Tennes*, 320 Ill.App. 19, 50 N.E.2d 132, 139.

EVIL. It is an "evil" within rule that either means or end of conspiracy must be evil, to frustrate or impede a government function, whether that function is performed under a constitutional or an unconstitutional law. *U. S. v. Rhoads*, D.C. D.C., 48 F.Supp. 175, 176.

EVIL REPUTATION. Character imputed to person in community is generally bad. *People v. Pieri*, 269 N.Y. 315, 199 N.E. 495, 497.

EVOCATION. In French law. The withdrawal of a cause from the cognizance of an inferior

court, and bringing it before another court or judge. In some respects this process resembles the proceedings upon *certiorari*.

EVOLUTION. Every useful art has its technique which is practiced by those who are skilled in it, and which is broadened in its usefulness thereto from precedent to precedent. This is the process of "evolution"—a phenomenon in which the expectable follows the expectable. *Less Car Load Lots Co. v. Pennsylvania R. Co.*, D.C.N.Y., 10 F. Supp. 642, 648.

EVOLVED. Means "developed" and may apply to any person attaining highly developed mental training and experience in arts and sciences and profession of teaching, medicine, or law. In *re Carpenter's Estate*, 163 Misc. 474, 297 N.Y.S. 649, 654.

EWAGE. (L. Fr. *Ewe*, water.) In old English law. Toll paid for water passage. *Cowell*. The same as *aquage* or *aquagium*. *Tomlins*.

EWBRICE. Adultery; spouse-breach; marriage-breach. *Cowell*; *Tomlins*.

EWRY. An office in the royal household where the table linen, etc., is taken care of. *Wharton*.

EX. A latin preposition meaning from, out of, by, on, on account of, or according to.

A prefix, denoting removal, cessation or former. Prefixed to the name of an office, relation, *status*, etc., it denotes that the person spoken of once occupied that office or relation, but does so no longer, or that he is now *out* of it. Thus, *ex-mayor*, *ex-partner*, *ex-judge*.

A prefix which is equivalent to "without," "reserving," or "excepting." In this use, probably an abbreviation of "except." Thus, *ex-interest*, *ex-coupons*.

"A sale of bonds 'ex. July coupons' means a sale reserving the coupons; that is, a sale in which the seller receives, in addition to the purchase price, the benefit of the coupons, which benefit he may realize either by detaching them or receiving from the buyer an equivalent consideration." *Porter v. Wormser*, 94 N.Y. 445.

Also used as an abbreviation for "exhibit." See *Dugan v. Trisler*, 69 Ind. 555.

EX ABUNDANTI. Out of abundance; abundantly; superfluously; more than sufficient. *Calvin*.

EX ABUNDANTI CAUTELA. Lat. Out of abundant caution. "The practice has arisen *abundanti cautela*." 8 East, 326; *Lord Ellenborough*, 4 Maule & S. 544.

EX ADVERSO. On the other side. 2 Show. 461. Applied to counsel.

EX ÆQUITATE. According to equity; in equity. *Fleta*, lib. 3, c. 10, § 3.

EX ÆQUO ET BONO. A phrase derived from the civil law, meaning, in justice and fairness; according to what is just and good; according to equity and conscience. 3 Bl. Comm. 163.

EX ALTERA PARTE. Of the other part.

EX ANTECEDENTIBUS ET CONSEQUENTIBUS FIT OPTIMA INTERPRETATIO. A passage in a statute is best interpreted by reference to what precedes and what follows it. *Behrens v. State*, 140 Neb. 671, 1 N.W.2d 289, 292; The best interpretation [of a part of an instrument] is made from the antecedents and the consequents, [from the preceding and following parts.] 2 Inst. 317.

The law will judge of a deed or other instrument, consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. *Broom*, Max. *577. The whole instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 Kent, Comm. 555.

EX ARBITRIO JUDICIS. At, in, or upon the discretion of the judge. 4 Bl. Comm. 394. A term of the civil law. Inst. 4, 6, 31.

EX ASSENSU CURLÆ. By or with the consent of the court.

EX ASSENSU PATRIS. By or with the consent of the father.

A species of dower *ad ostium ecclesie*, during the life of the father of the husband; the son, by the father's consent expressly given, endowing his wife with parcel of his father's lands. Abolished by 3 & 4 Wm. IV, c. 105, § 13.

EX ASSENSU SUO. With his assent. Formal words in judgments for damages by default. Comb. 220.

EX BONIS. Of the goods or property. A term of the civil law; distinguished from *in bonis*, as being descriptive of or applicable to property not in actual possession. *Calvin*.

EX CATHEDRA. From the chair. Originally applied to the decisions of the popes from their *cathedra*, or chair. Hence, authoritative; having the weight of authority.

EX CAUSA. L. Lat. By title.

EX CERTA SCIENTIA. Of certain or sure knowledge. These words were anciently used in patents, and imported full knowledge of the subject-matter on the part of the king. See 1 Coke, 40b.

EX COLORE. By color; under color of; under pretense, show, or protection of. Thus, *ex colore officii*, under color of office.

EX COMITATE. Out of comity or courtesy.

EX COMMODATO. From or out of loan. A term applied in the old law of England to a right of action arising out of a loan, (*commodatum*.) *Glanv. lib. 10, c. 13*; 1 *Reeve, Eng. Law*, 166.

EX COMPARATIONE SCRIPTORUM. By a comparison of writings or handwritings. A term in the law of evidence. *Best, Pres.* 218.

EX CONCESSIS. From the premises granted. According to what has been already allowed.

EX CONSULTO. With consultation or deliberation.

EX CONTINENTI

EX CONTINENTL Immediately; without any interval or delay; incontinently. A term of the civil law. Calvin.

EX CONTRACTU. From or out of a contract.

In both the civil and the common law, rights and causes of action are divided into two classes,—those arising *ex contractu*, (from a contract,) and those arising *ex delicto*, (from a delict or tort.) See 3 Bl.Comm. 117; Mackeld. Rom.Law, § 384. See Scharf v. People, 134 Ill. 240, 24 N.E. 761; Federal Life Ins. Co. v. Maxam, 70 Ind.App. 266, 117 N.E. 801, 807.

If cause of action declared in pleading arises from breach of promise, the action is "ex contractu". Chambers v. Birmingham Trust & Savings Co., 232 Ala. 699, 168 So. 893.

EX CURIA. Out of court; away from the court.

EX DEBITO JUSTITIÆ. From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of *ex gratia*, (*q. v.*). 3 Bl. Comm. 48, 67.

EX DEFECTU SANGUNIS. From failure of blood; for want of issue.

EX DELICTO. From a delict, tort, fault, crime, or malfeasance.

In both the civil and the common law, obligations and causes of action are divided into two great classes,—those arising *ex contractu*, (out of a contract,) and those *ex delicto*. The latter are such as grow out of or are founded upon a wrong or tort, *e. g.*, trespass, trover, replevin. These terms were known in English law at a very early period. See Inst. 4, 1, pr.; Mackeld.Rom.Law, § 384; 3 Bl.Comm. 117; Bract. fol. 101b; King v. New Orleans Ry. & Light Co., 140 La. 843, 74 So. 168, 169; Lamb v. McHan, 17 Ga.App. 5, 86 S.E. 252, 253; Seney v. Knight, 292 Ill. 206, 126 N.E. 761, 763.

An action "ex delicto" is an action of tort; an action arising out of fault, misconduct, or malfeasance. Sayers & Muir Service Station v. Indian Refining Co., 266 Ky. 779; 100 S.W.2d 687, 689. If cause of action declared in pleading arises from breach of duty growing out of contract, it is in form "ex delicto" and case. Chambers v. Birmingham Trust & Savings Co., 232 Ala. 609, 168 So. 893.

EX DELICTO NON EX SUPPLICIO EMERGIT INFAMIA. Infamy arises from the crime, not from the punishment.

EX DEMISSIONE (commonly abbreviated *ex dem.*) Upon the demise. A phrase forming part of the title of the old action of ejectment.

EX DIRECTO. Directly; immediately. Story, Bills, § 199.

EX DIUTURNITATE TEMPORIS, OMNIA PRÆSUMUNTUR SOLEMNITER ESSE ACTA. From length of time [after lapse of time] all things are presumed to have been done in due form. Co. Litt. 6b; Best, Ev. Introd. § 43; 1 Greenl. Ev. § 20.

EX DOLO MALO. Out of fraud; out of deceitful or tortious conduct. A phrase applied to obligations and causes of action vitiated by fraud or deceit.

EX DOLO MALO NON ORITUR ACTIO. Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. Cowp. 343; Broom, Max. 729.

EX DONATIONIBUS AUTEM FEODA MILITARIA VEL MAGNUM SERJEANTIUM NON CONTINENTIBUS ORITUR NOBIS QUODDAM NOMEN GENERALE, QUOD EST SOCAGIUM. Co. Litt. 86. From grants not containing military fees or grand serjeanty, a kind of general name is used by us, which is "socage."

EX EMPTO. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton. Inst. 4, 6, 28; Bract. fol. 102. See Actio ex Empto.

EX FACIE. From the face; apparently; evidently. A term applied to what appears on the face of a writing.

EX FACTO. From or in consequence of a fact or action; actually. Usually applied to an unlawful or tortious act as the foundation of a title, etc. Sometimes used as equivalent to "*de facto*." Bract. fol. 172.

EX FACTO JUS ORITUR. The law arises out of the fact. Broom, Max. 102. A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape. Best, Ev. Introd. § 1.

EX FICTIONE JURIS. By a fiction of law.

EX FREQUENTI DELICTO AUGETUR PÆNA. 2 Inst. 479. Punishment increases with increasing crime.

EX GRATIA. Out of grace; as a matter of grace, favor, or indulgence; gratuitous. A term applied to anything accorded as a favor; as distinguished from that which may be demanded *ex debito*, as a matter of right.

EX GRAVI QUERELA. (From or on the grievous complaint.) In old English practice. The name of a writ (so called from its initial words) which lay for a person to whom any lands or tenements in fee were devised by will, (within any city, town, or borough wherein lands were devisable by custom,) and the heir of the devisor entered and detained them from him. Fitzh. Nat. Brev. 198, L, et seq.; 3 Reeve, Eng. Law, 49. Abolished by St. 3 & 4 Wm. IV. c. 27, § 36.

EX HYPOTHESI. By the hypothesis; upon the supposition; upon the theory or facts assumed.

EX INDUSTRIA. With contrivance or deliberation; designedly; on purpose. See 1 Kent, Comm. 318; Martin v. Hunter, 1 Wheat. 334, 4 L.Ed. 97.

EX INTEGRO. Anew; afresh.

EX JUSTA CAUSA. From a just or lawful cause; by a just or legal title.

EX LEGE. By the law; by force of law; as a matter of law.

EX LEGIBUS. According to the laws. A phrase of the civil law, which means according to the intent or spirit of the law, as well as according to the words or letter. Dig. 50, 16, 6. See Calvin.

EX LICENTIA REGIS. By the king's license. 1 Bl. Comm. 168, note.

EX LOCATO. From or out of lease or letting. A term of the civil law, applied to actions or rights of action arising out of the contract of *locatum*, (*q. v.*) Inst. 4, 6, 28. Adopted at an early period in the law of England. Bract. fol. 102; 1 Reeve, Eng. Law, 168.

EX MALEFICIO. Has been defined variously as from or growing out of wrongdoing; tortious; tortiously; growing out of, or founded on, misdoing or tort; on account of misconduct; by virtue of or out of an illegal act. "Ex maleficio" is probably synonymous with "malfeasance". Lucas v. Central Missouri Trust Co., 350 Mo. 593, 166 S.W.2d 1053, 1056.

This term is frequently used in the civil law as the synonym of "*ex delicto*," (*q. v.*) and is thus contrasted with "*ex contractu*," in this sense it is of more rare occurrence in the common law, though found in Bracton (fols. 99, 101, 102.)

EX MALEFICIO NON ORITUR CONTRACTUS. A contract cannot arise out of an act radically vicious and illegal. 1 Term, 734; 3 Term, 422; Broom, Max. 734.

EX MALIS MORIBUS BONÆ LEGES NATÆ SUNT. 2 Inst. 161. Good laws arise from evil morals, *i. e.*, are necessitated by the evil behavior of men.

EX MALITIA. From malice; maliciously. In the law of libel and slander, this term imports a publication that is false and without legal excuse. Dixon v. Allen, 69 Cal. 527, 11 P. 179.

EX MERO MOTU. Of his own mere motion; of his own accord; voluntarily and without prompting or request.

Royal letters patent which are granted at the crown's own instance, and without request made, are said to be granted *ex mero motu*. When a court interferes, of its own motion, to object to an irregularity, or to do something which the parties are not strictly entitled to, but which will prevent injustice, it is said to act *ex mero motu*, or *ex proprio motu*, or *sua sponte*, all these terms being here equivalent.

EX MORA. From or in consequence of delay. Interest is allowed *ex mora*; that is, where there has been delay in returning a sum borrowed. A term of the civil law. Story, Bailm. § 84.

EX MORE. According to custom. Calvin.

EX MULTITUDINE SIGNORUM, COLLIGITUR IDENTITAS VERA. From a great number of signs or marks, true identity is gathered or made up. Bac. Max. 103, in *regula* 25. A thing described by a great number of marks is easily identified, though, as to some, the description may not be strictly correct. Id.

EX MUTUO. From or out of loan. In the old law of England, a debt was said to arise *ex mutuo* when one lent another anything which consisted in number, weight, or measure. 1 Reeve, Eng. Law, 159; Bract. fol. 99.

EX NECESSITATE. Of necessity. 3 Rep. Ch. 123.

EX NECESSITATE LEGIS. From or by necessity of law. 4 Bl. Comm. 394.

EX NECESSITATE REL. From the necessity or urgency of the thing or case. 2 Pow. Dev. (by Jarman.) 308.

EX NIHILO NIHILO FIT. From nothing nothing comes. Jackson v. Waldron, 13 Wend. N.Y. 178, 221; Root v. Stuyvesant, 18 Wend. N.Y. 257, 301.

EX NUDO PACTO NON ORITUR [NASCITUR] ACTIO. Out of a nude or naked pact [that is, a bare parol agreement without consideration] no action arises. Bract. fol. 99; Fleta, lib. 2, c. 56, § 3; Plowd. 305. Out of a promise neither attended with particular solemnity (such as belongs to a specialty) nor with any consideration no legal liability can arise. 2 Steph. Comm. 113. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law. Cod. 2, 3, 10; Id. 5, 14, 1; 2 Bl. Comm. 445; Smith, Cont. 85, 86.

EX OFFICIO. From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office.

Powers may be exercised by an officer which are not specifically conferred upon him, but are necessarily implied in his office; these are *ex officio*. Thus, a judge has *ex officio* the powers of a conservator of the peace. Courts are bound to notice public statutes judicially and *ex officio*. King v. Physicians' Casualty Ass'n of America, 97 Neb. 637, 150 N.W. 1010, 1011; Lobrano v. Police Jury of Parish of Plaquemines, 150 La. 14, 90 So. 423, 424; Allin v. Mercer County, 174 Ky. 566, 192 S.W. 638, 640.

EX OFFICIO INFORMATION. In English law. A criminal information filed by the attorney general *ex officio* on behalf of the crown, in the court of king's bench, for offenses more immediately affecting the government, and to be distinguished from informations in which the crown is the nominal prosecutor. Mozley & Whitley; 4 Steph. Comm. 372-378.

EX OFFICIO OATH. An oath taken by offending priests; abolished by 13 Car. II. St. 1, c. 12.

EX OFFICIO SERVICES. Services which the law annexes to a particular office and requires the incumbent to perform. City of Birmingham v. Hawkins, 208 Ala. 79, 94 So. 62, 64; Nichols v. Galveston County, 111 Tex. 50, 228 S.W. 547, 548.

"Ex officio services," which deputy attorney general may perform in place of Attorney General, are services imposed by law on public officer by virtue of his office and relating to public interests or business of county or state. Chemical Bank & Trust Co. v. Oakland County, 264 Mich. 673, 251 N.W. 395.

EX PACTO ILLICITO NON ORITUR ACTIO. From an illegal contract an action does not arise. Broom, Max. 742. See 7 Clark & F. 729.

EX PARTE. On one side only; by or for one party; done for, in behalf of, or on the application of, one party only.

EX PARTE

A judicial proceeding, order, injunction, etc., is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. *Janin v. Logan*, 209 Ky. 811, 273 S.W. 531, 532; *Van Alen v. Superior Court* in and for Los Angeles County, 37 Cal.App. 696, 174 P. 672; *Stella v. Mosele*, 299 Ill.App. 53, 19 N.E.2d 433, 435.

In its primary sense, *ex parte*, as applied to an application in a judicial proceeding, means that it is made by a person who is not a party to the proceeding, but who has an interest in the matter which entitles him to make the application. Thus, in a bankruptcy proceeding or an administration action, an application by A. B., a creditor, or the like, would be described as made "*ex parte* A. B.," i. e., on the part of A. B.

In its more usual sense, *ex parte* means that an application is made by one party to a proceeding in the absence of the other. Thus, an *ex parte* injunction is one granted without the opposite party having had notice of the application. It would not be called "*ex parte*" if he had proper notice of it, and chose not to appear to oppose it. Sweet.

"*Ex parte*," in the heading of a reported case, signifies that the name following is that of the party upon whose application the case is heard.

EX PARTE MATERNA. On the mother's side; of the maternal line.

EX PARTE PATERNA. On the father's side; of the paternal line.

The phrases "*ex parte materna*" and "*ex parte paterna*" denote the line or blood of the mother or father, and have no such restricted or limited sense as from the mother or father exclusively. *Banta v. Demarest*, 24 N.J.L. 431.

EX PARTE TALIS. A writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison. *Fitzh. Nat. Brev.* 129.

EX PAUCIS DICTIS INTENDERE PLURIMA POSSIS. Litt. § 384. You can imply many things from few expressions.

EX PAUCIS PLURIMA CONCIPIT INGENIUM. Litt. § 550. From a few words or hints the understanding conceives many things.

EX POST FACTO. After the fact; by an act or fact occurring after some previous act or fact, and relating thereto; by subsequent matter; the opposite of *ab initio*. Thus, a deed may be good *ab initio*, or, if invalid at its inception, may be confirmed by matter *ex post facto*.

EX POST FACTO LAW. A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed. By Const. U. S. art. 1, § 10, the states are forbidden to pass "any *ex post facto* law." In this connection the phrase has a much narrower meaning than its literal translation would justify, as will appear from the extracts given below.

A statute which changes punishment which may be imposed for a crime theretofore committed is "*ex post facto*" only if it prescribes or permits imposition of a greater sentence. *People ex rel. Pincus v. Adams*, 274 N.Y. 447, 9 N.E.2d 46, 110 A.L.R. 1303.

An "*ex post facto* law" has been defined as (1) Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action. (2) Every law that aggravates a crime, or

makes it greater than it was when committed. (3) Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. (4) Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are prohibited by the constitution. But a law may be *ex post facto*, and still not amenable to this constitutional inhibition; that is, provided it mollifies, instead of aggravating, the rigor of the criminal law. *Cummings v. Missouri*, 4 Wall. 277, 18 L.Ed. 356; 3 Story, Const. 212; *State v. Malloy*, 95 S.C. 441, 78 S.E. 995, 997, Ann.Cas.1915C, 1053; *In re Jamestown Caucus Law*, 43 R.I. 421, 112 A. 900, 902; *State v. Teasley*, 194 Ala. 574, 69 So. 723, 725, Ann.Cas. 1918E, 347; *Bezell v. State of Ohio*, 269 U.S. 167, 46 S.Ct. 68, 70 L.Ed. 216; *Hernandez v. State*, 43 Ariz. 424, 32 P. 2d 18, 24.

An "*ex post facto* law" includes every law that creates and punishes a criminal offense which, when done before the passing of the law, was innocent, and every law that aggravates a crime or makes it greater than it was when committed, and every law that inflicts a greater punishment than was attached to the crime when committed. *State v. Pleason*, 56 N.D. 499, 218 N.W. 154, 155.

An "*ex post facto* law" is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; a law which aggravates a crime or makes it greater than when it was committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; a law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right which, when done, was lawful; a law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of the proclamation of amnesty; every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage. *State v. Rowe*, 116 N.J.L. 48, 181 A. 706.

An "*ex post facto* law" is one which makes an act punishable in a manner in which it was not punishable when it was committed. *Statler v. U. S. Savings & Trust Co.*, 122 Pa.Super. 189, 186 A. 290, 292; *Southern Kraft Corporation v. Hardin*, 205 Ark. 512, 169 S.W.2d 637, 643.

An "*ex post facto* law" is one which makes a crime of an act which when committed was not a crime or a law which increases the punishment for an act already committed. *Commonwealth ex rel. Wall v. Smith*, 345 Pa. 512, 29 A.2d 912, 913.

An "*ex post facto* law" is one which renders an act punishable in manner in which it was not punishable when it was committed, or which deprives accused of any substantial right or immunity possessed by him before its passage as to prior offenses. *People of U. S. ex rel. Umbenhowar v. McDonnell*, D.C.Ill., 11 F.Supp. 1014, 1015.

An *ex post facto* law is one which renders an act punishable in manner in which it was not punishable when committed. Such a law may inflict penalties on the person, or pecuniary penalties which swell the public treasury. The legislature is therefore prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime, which was not declared, by some previous law, to render him liable to such punishment. *Fletcher v. Peck*, 6 Cranch, 87, 138, 3 L.Ed. 162.

An increase in possible penalty is "*ex post facto*" regardless of length of sentence actually imposed. *Ex parte Flora*, Ohio App., 31 N.E.2d 482, 485.

The plain and obvious meaning of prohibition is that the legislature shall not pass any law, after a fact done by any citizen, which shall have relation to that fact, so as to punish that which was innocent when done; or to add to the punishment of that which was criminal; or to increase the malignity of a crime; or to retrench the rules of evidence, so as to make conviction more easy. This definition of an *ex post facto* law is sanctioned by long usage. *Strong v. State*, 1 Black., Ind., 196.

The term "*ex post facto* law," in the United States constitution, cannot be construed to include and to prohibit the enacting any law after a fact, nor even to prohibit the depriving a citizen of a vested right to property. *Calder v. Bull*, 3 Dall. 386, 1 L.Ed. 648.

Any law passed after commission of offense for which the defendant is tried which inflicts greater punishment or which alters situation of accused is "*ex post facto*". *United States v. Platt*, D.C.Tex., 31 F.Supp. 788, 793.

Statute which punishes as a crime an act previously committed, which was innocent when done, which makes more burdensome punishment for a crime after its commission, or which deprives one charged with crime of any defense available according to law at time act was committed, is "*ex post facto*". *People ex rel. Luciano v. Murphy*, 290 N.Y.S. 1011, 1014, 160 Misc. 573.

The operation of a statute to repeal, extend the period of, or provide for the tolling of a statute of limitations under which a complete defense has already accrued, would be "*ex post facto*". *Hill v. State*, 146 Tex.Cr.R. 333, 171 S.W.2d 880, 882, 883, 884.

The prohibition of "*ex post facto*" laws applies only to criminal or penal matters. *Bannister v. Bannister*, 181 Md. 177, 29 A.2d 287, 289; *Garrett Freight Lines v. State Tax Commission*, 103 Utah 390, 135 P.2d 523, 527, 146 A.L.R. 1003; *Southern Kraft Corporation v. Hardin*, 205 Ark. 512, 169 S.W.2d 637, 643.

To render a statute "*ex post facto*," it must be one which imposes punishment for an act which was not punishable when it was committed, or imposes additional punishment or alters the situation of the accused to his disadvantage. *Andrus v. McCauley*, D.C.Wash., 21 F.Supp. 70.

Trial procedure may be changed by Legislature, and new procedure may be made applicable to offenses previously committed, without violation of constitutional provision. *People ex rel. Pincus v. Adams*, 274 N.Y. 447, 9 N.E.2d 46, 49, 50, 110 A.L.R. 1303.

"*Ex post facto*" and "retrospective" are not convertible terms. The latter is a term of wider signification than the former and includes it. All *ex post facto* laws are necessarily retrospective, but not *e converso*. A curative or confirmatory statute is retrospective, but not *ex post facto*. Constitutions of nearly all the states contain prohibitions against *ex post facto* laws, but only a few forbid retrospective legislation in specific terms. *Black, Const.Prohib.* §§ 170, 172, 222.

Retrospective laws divesting vested rights are impolitic and unjust; but they are not "*ex post facto* laws," within the meaning of the constitution of the United States, nor repugnant to any other of its provisions; and, if not repugnant to the state constitution, a court cannot pronounce them to be void, merely because in their judgment they are contrary to the principles of natural justice. *Albee v. May*, 2 Paine, 74 Fed.Cas.No.134.

Every retrospective act is not necessarily an *ex post facto* law. That phrase embraces only such laws as impose or affect penalties or forfeitures. *Locke v. New Orleans*, 4 Wall. 172, 18 L.Ed. 334.

Retrospective laws which do not impair the obligation of contracts, or affect vested rights, or partake of the character of *ex post facto* laws, are not prohibited by the constitution. *Bay v. Gage*, 36 Barb., N.Y., 447.

The act providing that every sentence of death imposed shall be by electrocution is not an "*ex post facto* law" because of its retrospective effect. *State ex rel. Pierre v. Jones*, 200 La. 808, 9 So.2d 42, 45, 47.

EX PRÆCEDENTIBUS ET CONSEQUENTIBUS OPTIMA FIT INTERPRETATIO. 1 Roll. 374. The best interpretation is made from the context.

EX PROPRIO MOTU. Of his own accord. See *Ex Mero Motu*.

EX PROPRIO VIGORE. By their or its own force. 2 Kent, Comm. 457.

EX PROVISIONE HOMINIS. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law. 11 Coke, 80b.

EX PROVISIONE MARITI. From the provision of the husband.

EX QUASI CONTRACTU. From *quasi* contract. *Fleta*, lib. 2, c. 60.

EX RELATIONE. Upon relation or information.

Legal proceedings which are instituted by the attorney general (or other proper person) in the name and behalf of the state, but on the information and at the instigation of an individual who has a private interest in the matter, are said to be taken "on the relation" (*ex relatione*) of such person, who is called the "relator." Such a cause is usually entitled thus: "*State ex rel. Doe v. Roe*."

In the books of reports, when a case is said to be reported *ex relatione*, it is meant that the reporter derives his account of it, not from personal knowledge, but from the relation or narrative of some person who was present at the argument.

EX RIGORE JURIS. According to the rigor or strictness of law; in strictness of law. *Fleta*, lib. 3, c. 10, § 3.

EX SCRIPTIS OLIM VISIS. From writings formerly seen.

A term used as descriptive of that kind of proof of handwriting where the knowledge has been acquired by the witness having seen letters or other documents professing to be the handwriting of the party, and having afterwards communicated personally with the party upon the contents of those letters or documents, or having otherwise acted upon them by written answers, producing further correspondence or acquiescence by the party in some matter to which they relate, or by the witness transacting with the party some business to which they relate, or by any other mode of communication between the party and the witness which, in the ordinary course of the transactions of life, induces a reasonable presumption that the letters or documents were the handwriting of the party. 5 *Adol. & E.* 730.

EX SHIP. See *Ship*.

EX STATUTO. According to the statute. *Fleta*, lib. 5, c. 11, § 1.

EX STIPULATU ACTIO. In the civil law. An action of stipulation. An action given to recover marriage portions. *Inst.* 4, 6, 29.

EX TEMPORE. From or in consequence of time; by lapse of time. *Bract. fols.* 51, 52. *Ex diuturno tempore*, from length of time. *Id.* fol. 51b.

Without preparation or premeditation.

EX TESTAMENTO. From, by, or under a will. The opposite of *ab intestato* (*q. v.*).

EX TOTA MATERIA EMERGAT RESOLUTIO. The explanation should arise out of the whole subject-matter; the exposition of a statute should be made from all its parts together. *Wing. Max.* 238.

EX TURPI CAUSA NON ORITUR ACTIO. Out of a base [illegal, or immoral] consideration, an action does [can] not arise. 1 *Selw. N. P.* 63; *Broom, Max.* 730, 732; *Story, Ag.* § 195.

No disgraceful matter can ground an action. *Eidson v. Maddox*, 195 Ga. 641, 24 S.E.2d 895, 897.

EX TURPI

EX TURPI CONTRACTU ACTIO NON ORITUR. From an immoral or iniquitous contract an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action. 2 Kent, Comm. 466; Dig. 2, 14, 27, 4.

EX UNA PARTE. Of one part or side; on one side.

EX UNO DISCES OMNES. From one thing you can discern all.

EX UTRAQUE PARTE. On both sides. Dyer, 126b.

EX UTRISQUE PARENTIBUS CONJUNCTI. Related on the side of both parents; of the whole blood. Hale, Com. Law, c. 11.

EX VI TERMINI. From or by the force of the term. From the very meaning of the expression used. 2 Bl. Comm. 109, 115.

EX VISCERIBUS. From the bowels. From the vital part, the very essence of the thing. 10 Coke, 24b; Homer v. Shelton, 2 Metc. Mass. 213. *Ex visceribus verborum*, from the mere words and nothing else. 1 Story, Eq. Jur. § 980; Fisher v. Fields, 10 Johns. N.Y. 495.

EX VISITATIONE DEI. By the dispensation of God; by reason of physical incapacity. Anciently, when a prisoner, being arraigned, stood silent instead of pleading, a jury was impeached to inquire whether he obstinately stood mute or was dumb *ex visitatione Dei*. 4 Steph. Comm. 394.

Also by natural, as distinguished from violent, causes. When a coroner's inquest finds that the death was due to disease or other natural cause, it is frequently phrased "*ex visitatione Dei*."

EX VISU SCRIPTIIONIS. From sight of the writing; from having seen a person write. A term employed to describe one of the modes of proof of handwriting. Best, Pres. 218.

EX VOLUNTATE. Voluntarily; from freewill or choice.

EXACTION. The wrongful act of an officer or other person in compelling payment of a fee or reward for his services, under color of his official authority; where no payment is due.

Between "extortion" and "exaction" there is this difference: that in the former case the officer extorts more than his due, when something is due to him; in the latter, he exacts what is not his due, when there is nothing due to him. Co.Litt. 368.

EXACTLY ALIKE. Representation that the living apartment on the first floor was exactly like the living apartment on the second floor is specific and definite; exactly alike meaning not absolutely identical, but substantially so in size, design, finish, and fixtures. Lipsher v. Resnikoff, 99 Conn. 13, 120 A. 859.

EXACTOR. Civil law. A gatherer or receiver of money; a collector of taxes. Cod. 10, 19.

Old English law. A collector of the public moneys; a tax gatherer. Thus, *exactor regis* was the name of the king's tax collector, who took up the taxes and other debts due the treasury.

EXALTARE. In old English law. To raise; to elevate. Frequently spoken of water, *i. e.*, to raise the surface of a pond or pool.

EXAMEN. L. Lat. A trial. *Examen computi*, the balance of an account. Townsh. Pl. 223.

EXAMINATION. An investigation; search; interrogating.

Criminal Practice

An investigation by a magistrate of a person who has been charged with crime and arrested, or of the facts and circumstances which are alleged to have attended the crime and to fasten suspicion upon the party so charged, in order to ascertain whether there is sufficient ground to hold him to bail for his trial by the proper court. U. S. v. Stanton, C.C.A.Conn., 17 C.C.A. 475, 70 F. 890; State v. Conrad, 95 N.C. 669. The preliminary hearing to determine whether person charged with having committed a crime should be held for trial. Commonwealth v. Cohen, 102 Pa.Super. 397, 157 A. 32, 33.

Trial Practice

The examination of a witness consists of the series of questions put to him by a party to the action, or his counsel, for the purpose of bringing before the court and jury in legal form the knowledge which the witness has of the facts and matters in dispute, or of probing and sifting his evidence previously given.

Of a long account. This phrase does not mean examination of the account to ascertain the result or effect of it, but proof by testimony of correctness of items composing it. Magown v. Sinclair, 5 Daly N.Y. 63; State ex rel. Hustisford Light, Power & Mfg. Co. v. Grimm, 208 Wis. 366, 243 N.W. 763.

Of bankrupt. This is the interrogation of a bankrupt, in the course of proceedings in bankruptcy, or prior to the adjudication (Cameron v. United States, 231 U.S. 710, 34 S.Ct. 244, 58 L.Ed. 448; In re Fleischer, D.C.N.Y., 151 F. 81), concerning the conduct of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and all matters which may affect the administration and settlement of his estate. This is authorized by Bankruptcy Act, § 7, 30 Stat. 548, 11 U.S.C.A. § 25. The bankrupt's wife or any other person may also be examined concerning the bankrupt's acts, conduct, or property. Bankruptcy Act, § 21, 30 Stat. 551, as amended by Act Feb. 5, 1903, c. 487, § 7, 32 Stat. 798, 11 U.S.C.A. § 44. In re Horgan, C.C.A.N.Y., 39 C.C.A. 118, 98 F. 414.

Of invention. An inquiry made at the patent-office, upon application for a patent, into the novelty and utility of the alleged invention, and as to its interfering with any other patented invention. Rev.St. U. S. § 4893, 35 U.S.C.A. § 36.

Of title. An investigation made by or for a person who intends to purchase real estate, in the offices where the public records are kept, to ascertain the history and present condition of the title to such land, and its *status* with reference to liens, incumbrances, clouds, etc.

Of wife. See Private Examination.

On his own behalf. For executor or devisee to be "examined on his own behalf", such executor or devisee must be a party to the action. In re Custer's Estate, 229 Iowa 1061, 295 N.W. 848, 852.

For "Cross-Examination," "De Bene Esse", "Direct Examination," "Preliminary Examination," "Pro Interesse Sui," "Reexamination," and "Separate Examination," see those titles.

EXAMINED COPY. A copy of a record, public book, or register, and which has been compared with the original. 1 Campb. 469.

EXAMINER. English law. A person appointed by a court to take the examination of witnesses in an action, *i. e.*, to take down the result of their interrogation by the parties or their counsel, either by written interrogatories or *vivâ voce*. An examiner is generally appointed where a witness is in a foreign country, or is too ill or infirm to attend before the court, and is either an officer of the court, or a person specially appointed for the purpose. Sweet.

New Jersey. An examiner is an officer appointed by the court of chancery to take testimony in causes depending in that court. His powers are similar to those of the English examiner in chancery.

Patent Office. An officer in the patent-office charged with the duty of examining the patentability of inventions for which patents are asked.

For "Special Examiner," see that title.

EXAMINER IN CHANCERY. An officer of the court of chancery, before whom witnesses are examined, and their testimony reduced to writing, for the purpose of being read on the hearing of the cause. Cowell.

EXAMINERS. Persons appointed to question students of law in order to ascertain their qualifications before they are admitted to practice.

EXANNUAL ROLL. In old English practice. A roll into which (in the old way of exhibiting sheriffs' accounts) the illeivable fines and desperate debts were transcribed, and which was *annually* read to the sheriff upon his accounting, to see what might be gotten. Cowell.

EXCAMB. In Scotch law. To exchange. 6 Bell, App. Cas. 19, 22.

EXCAMBIATOR. An exchanger of lands; a broker. Obsolete.

EXCAMBION. In Scotch law. Exchange. 1 Forb. Inst. pt. 2, p. 173.

EXCAMBIUM. An exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiæ*.

EXCELLENCY.

America. The title is sometimes given to the chief executive of a state or of the nation.

English law. The title of a viceroy, governor general, ambassador, or commander in chief.

EXCEPT. But. In re Naftzger's Estate, 24 Cal. 2d 595, 150 P.2d 873, 875; Not including. In re Kelly's Estate, 153 Misc. 445, 274 N.Y.S. 488. Other than, In re Nelson's Estate, 152 Misc. 245, 273 N.Y.S. 268; Ingram v. State, 241 Ala. 166, 3 So.2d 431, 432; Otherwise than, State v. White, 195 La. 1028, 197 So. 745, 747; Reserve. Adams v. Osage Tribe of Indians, C.C.A.Okl., 59 F.2d 653, 655; Brown v. Weare, 348 Mo. 135, 152 S.W.2d 649, 656, 136 A.L.R. 286. To exclude from an enumeration, the scope of statement or enactment, a privilege, etc.; to leave out of account or consideration. In re Garvin's Estate, 335 Pa. 542, 6 A.2d 796, 800; Rickman v. Commonwealth, 195 Ky. 715, 243 S.W. 929.

The expression "except for" is synonymous in many cases with "but for" and "only for." Rickman v. Commonwealth, 195 Ky. 715, 243 S.W. 929.

EXCEPT AS PROVIDED BY LAW. As used in statute held to refer to statutory and not general law of state, Pace v. Pace Bros. Co., 91 Utah 132, 59 P.2d 1, 8.

EXCEPT FOR THE INTESSTATE SHARE OF THE SURVIVING SPOUSE, IF ANY, OF SUCH RELICT. Phrase as used in statute relating to disposition of property coming from a deceased spouse to relict dying intestate and without issue, refers to share a surviving spouse would take under section covering generally distribution of an intestate's property. Russell v. Roberts, 54 Ohio App. 441, 7 N.E.2d 811, 813.

EXCEPT IN TIME OF WAR. In statute providing for delivery to civil authorities of persons accused of crime but subject to military law, "except in time of war", quoted words merely relieve military authorities in time of war of duty to deliver accused persons to civil authorities. Articles of War, art. 74, 10 U.S.C.A. § 1546. People v. Williams, 184 Misc. 510, 55 N.Y.S.2d 181, 182.

EXCEPT RIGHT OF WAY. Recitals "less the right of way" and "except right of way" in granting clause of deed have well-defined accepted certain and unambiguous meaning by which grantor conveys entire interest in servient estate and at same time expressly recognizes and acknowledges dominant estate. Jennings v. Amerada Petroleum Corporation, 179 Okl. 561, 66 P.2d 1069, 1071.

EXCEPTING. As used in a deed, the terms "reserving" and "excepting" are used interchangeably, and their technical meaning will give way to the manifest intent. Porter v. Warner-Caldwell Oil Co., 183 Okl. 1, 80 P.2d 252, 253.

The words "reserving" and "excepting," although strictly distinguishable, may be used interchangeably or indiscriminately. Stephan v. Kentucky Valley Distilling Co., 275 Ky. 705, 122 S.W.2d 493, 496.

EXCEPTIO.

Modern civil law. A plea by which the defendant admits the cause of action, but alleges new facts which, provided they be true, totally or

EXCEPTIO

partially answer the allegations put forward on the other side; thus distinguished from a mere traverse of the plaintiff's averments. Tomkins & J. Mod. Rom. Law, 90. In this use, the term corresponds to the common-law plea in confession and avoidance.

Roman law. An exception. In a general sense, a judicial allegation opposed by a defendant to the plaintiff's action. Calvin. A stop or stay to an action opposed by the defendant. Cowell.

Answering to the "defense" or "plea" of the common law. An allegation and defense of a defendant by which the plaintiff's claim or complaint is defeated, either according to strict law or upon grounds of equity.

In a stricter sense, the exclusion of an action that lay in strict law, on grounds of equity, (*actionis jure stricto competentis ob æquitatem exclusio.*) Heinecc. A kind of limitation of an action, by which it was shown that the action, though otherwise just, did not lie in the particular case. Calvin. A species of defense allowed in cases where, though the action as brought by the plaintiff was in itself just, yet it was unjust as against the particular party sued. Inst. 4, 13, pr.

EXCEPTIO DILATORIA. A dilatory exception; called also "*temporalis*," (temporary;) one which defeated the action for a time, (*quæ ad tempus nocet*;) and created delay, (*et temporis dilationem tribuit*;) such as an agreement not to sue within a certain time, as five years. Inst. 4, 13, 10. See Dig. 44, 1, 3.

EXCEPTIO DOLI MALI. An exception or plea of fraud. Inst. 4, 13, 1, 9; Bract. fol. 100b.

EXCEPTIO DOMINIUM. A claim of ownership set up in an action for the recovery of property not in the possession of the plaintiff. Mackeld. Rom. Law, § 299.

EXCEPTIO DOTIS CAUTÆ NON NUMERATÆ. A defense to an action for the restitution of a dowry that it was never paid, though promised, available upon the dissolution of the marriage within a limited time. Mackeld. Rom. Law, § 458.

EXCEPTIO EJUS REI CUJUS PETITUR DISSOLUTIO NULLA EST. A plea of that matter the dissolution of which is sought [by the action] is null, [or of no effect.] Jenk. Cent. 37, case 71.

EXCEPTIO FALSI OMNIUM ULTIMA. A plea denying a fact is the last of all.

EXCEPTIO FIRMAT REGULAM IN CASIBUS NON EXCEPTIS. An exception affirms the rule in cases not excepted. Bacon, Aph. 17.

EXCEPTIO FIRMAT REGULAM IN CONTRARIUM. An exception proves an opposite rule. See *exceptio probat regulam*. Bacon, Aph. 17.

EXCEPTIO IN FACTUM. An exception on the fact. An exception or plea founded on the peculiar circumstances of the case. Inst. 4, 13, 1.

EXCEPTIO IN PERSONAM. A plea or defense of a personal nature, which may be alleged only by the person himself to whom it is granted by the law. Mackeld. Rom. Law, § 217.

EXCEPTIO IN REM. A plea or defense not of a personal nature, but connected with the legal

circumstances on which the suit is founded, and which may therefore be alleged by any party in interest, including the heirs and sureties of the proper or original debtor. Mackeld. Rom. Law, § 217.

EXCEPTIO JURISJURANDI. An exception of oath; an exception or plea that the matter had been sworn to. Inst. 4, 13, 4. This kind of exception was allowed where a debtor, at the instance of his creditor, (*creditore deferente*;) had sworn that nothing was due the latter, and had notwithstanding been sued by him.

EXCEPTIO METUS. An exception or plea of fear or compulsion. Inst. 4, 13, 1, 9; Bract. fol. 100b. Answering to the modern plea of duress.

EXCEPTIO NON ADIMPLETI CONTRACTUS. An exception in an action founded on a contract involving mutual duties or obligations, to the effect that the plaintiff is not entitled to sue because he has not performed his own part of the agreement. Mackeld. Rom. Law, § 394.

EXCEPTIO NON SOLUTÆ PECUNIÆ. A plea that the debt in suit was not discharged by payment (as alleged by the adverse party) notwithstanding an acquittance or receipt given by the person to whom the payment is stated to have been made. Mackeld. Rom. Law, § 534.

EXCEPTIO NULLA EST VERSUS ACTIONEM QUÆ EXCEPTIONEM PERIMIT. There is [can be] no plea against an action which destroys [the matter of] the plea. Jenk. Cent. 106, case 2.

EXCEPTIO PACTI CONVENTI. An exception of compact; an exception or plea that the plaintiff had agreed not to sue. Inst. 4, 13, 3.

EXCEPTIO PECUNIÆ NON NUMERATÆ. An exception or plea of money not paid; a defense which might be set up by a party who was sued on a promise to repay money which he had never received. Inst. 4, 13, 2.

EXCEPTIO PEREMPTORIA. A peremptory exception; called also "*perpetua*," (perpetual;) one which forever destroyed the subject-matter or ground of the action, (*quæ semper rem de qua agitur perimit*;) such as the *exceptio doli mali*, the *exceptio metus*, etc. Inst. 4, 13, 9. See Dig. 44, 1, 3.

EXCEPTIO PROBAT REGULAM. The exception proves the rule. 11 Coke, 41; 3 Term, 722. Sometimes quoted with the addition "*de rebus non exceptis*," ("so far as concerns the matters not excepted.")

EXCEPTIO QUÆ FIRMAT LEGEM, EXPONIT LEGEM. An exception which confirms the law explains the law. 2 Bulst. 189.

EXCEPTIO QUOQUE REGULAM DECLARAT. The exception also declares the rule. Bacon, Aph. 17.

EXCEPTIO REI JUDICATÆ. An exception or plea of matter adjudged; a plea that the subject-matter of the action had been determined in a previous action. Inst. 4, 13, 5.

This term is adopted by Bracton, and is constantly used in modern law to denote a defense founded upon a previous adjudication of the same matter. Bract. fols. 100b, 177; 2 Kent, Comm. 120. A plea of a former recovery or judgment.

EXCEPTIO REI VENDITÆ ET TRADITÆ. An exception or plea of the sale and delivery of the thing.

This exception presumes that there was a valid sale and a proper tradition; but though, in consequence of the rule that no one can transfer to another a greater right than he himself has, no property was transferred, yet because of some particular circumstance the real owner is stopped from contesting it. Mackeld. Rom.Law, § 299.

EXCEPTIO SEMPER ULTIMO PONENDA EST. An exception should always be put last. 9 Coke, 53.

EXCEPTIO SENATUSCONSULTI MACEDONIANI. A defense to an action for the recovery of money loaned, on the ground that the loan was made to a minor or person under the paternal power of another; so named from the decree of the senate which forbade the recovery of such loans. Mackeld. Rom. Law, § 432.

EXCEPTIO SENATUSCONSULTI VELLEIANI. A defense to an action on a contract of suretyship, on the ground that the surety was a woman and therefore incapable of becoming bound for another; so named from the decree of the senate forbidding it. Mackeld. Rom. Law, § 455.

EXCEPTIO TEMPORIS. An exception or plea analogous to that of the statute of limitations in our law; viz., that the time prescribed by law for bringing such actions has expired. Mackeld. Rom. Law, § 213.

EXCEPTION. Act of excepting or excluding from a number designated or from a description; that which is excepted or separated from others in a general rule or description; a person, thing, or case specified as distinct or not included; an act of excepting, omitting from mention or leaving out of consideration; and "except" means not including. In re Kelly's Estate, 153 Misc. 445, 274 N.Y.S. 488.

For "General Exception" and "Special Exception," see those titles.

Admiralty and Equity Practice

An exception is a formal allegation tendered by a party that some previous pleading or proceeding taken by the adverse party is insufficient. Peck v. Osteen, 37 Fla. 427, 20 So. 549; Arnold v. Slaughter, 36 W.Va. 589, 15 S.E. 250.

In admiralty, an "exception" serves the function of a demurrer in common law or equity pleading. The *Nea Hellis*, C.C.A.N.Y., 116 F.2d 803, 805.

Bail

An exception to bail is an objection to the special bail put in by the defendant to an action at

law made by the plaintiff on grounds of the insufficiency of the bail. 1 Tidd, Pr. 255.

Bequests

Bequests of sums made to same persons by different paragraphs in same codicil held accumulative, where second paragraph stated that bequest was "exception" to other bequests made; term as used meaning in addition to person's bequests. In re Kelly's Estate, 153 Misc. 445, 274 N.Y.S. 488.

Civil Law

An *exceptio* or plea. Used in this sense in Louisiana. For "Declaratory Exceptions," "Dilatory Exceptions" and "Peremptory Exceptions," see those titles.

Constitution

Provision granting Legislature discretionary power to tax merchants, peddlers, and privileges is "exception" to constitutional requirement of equality. A "proviso" and an "exception" are substantially the same thing. *Evans v. McCabe*, 164 Tenn. 672, 52 S.W.2d 159, 160.

Contracts

An exception is something taken out of instrument and of kind dealt with in contract. *Reliance Ins. Co. v. Naman*, 118 Tex. 21, 6 S.W.2d 743, 745.

Deeds or Conveyances

A clause by which grantor excepts something out of that which he granted before by the deed. *Winston v. Johnson*, 42 Minn. 398, 45 N.W. 958; *Cox v. Colossal Cavern Co.*, 210 Ky. 612, 276 S.W. 540, 542; *Worcester v. Smith*, 117 Me. 168, 103 A. 65; *De Moss v. Sample*, 143 La. 243, 78 So. 482, 485; *Beardslee v. New Berlin Light & Power Co.*, 207 N.Y. 34, 100 N.E. 434, 437, Ann.Cas.1914B, 1287.

An exception withdraws from operation of deed part of thing granted which would otherwise pass to grantee. *Powell v. Big Horn Low Line Ditch Co.*, 81 Mont. 430, 263 P. 692, 693; *Johnson v. Peck*, 90 Utah, 544, 63 P.2d 251, 254; *Slone v. Kentucky West Virginia Gas Co.*, 289 Ky. 623, 159 S.W.2d 993, 994, 995.

Insurance Contract or Policy

An exclusion of one or more risks. *Kirkby v. Federal Life Ins. Co.*, C.C.A.Mich., 35 F.2d 126, 128; *Mancini v. Thomas*, 113 Vt. 322, 34 A.2d 105, 109. Provision of life and accident policy specifying that indemnity should be paid only when death occurred within thirty days after accident. *Mowery v. Washington Nat. Ins. Co.*, 289 Ill.App. 443, 7 N.E.2d 334, 336. Things taken out. *Raymond v. Great American Indemnity Co.*, 86 N.H. 93, 163 A. 713, 716.

The object of an exception is to exclude that which otherwise would be included, *Estabrook v. Eastern Commercial Travelers Accident Ass'n*, 308 Mass. 439, 32 N.E.2d 250, 252; to take special cases out of a general class or to guard against misinterpretation. *Landau v. Equitable Life Assur. Soc. of United States*, 1 N.Y.S.2d 891, 895, 166 Misc. 42.

Under liability policy, excluded uses of automobile held not "exceptions" since they were not in first instance included within any statement of insurance. *Raymond v. Great American Indemnity Co.*, 86 N.H. 93, 163 A. 713, 716.

EXCEPTION

Practice

A formal objection to the action of the court, during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal, and that he means to save the benefit of his request or objection in some future proceeding. *United States v. United States Fidelity & Guaranty Co.*, 236 U.S. 512, 35 S.Ct. 298, 303, 59 L.Ed. 696; *Liquid Carbonic Co. v. Rodman*, 52 Okl. 211, 152 P. 439; *State v. Laundry*, 103 Or. 443, 206 P. 290. It is also somewhat used to signify other objections in the course of a suit; for example, exception to bail is a formal objection that special bail offered by defendant is insufficient. 1 Tidd, Pr. 255.

An exception is, an objection formally taken to a decision of the court on a matter of law. *State v. Wolzenski*, 340 Mo. 1181, 105 S.W.2d 905, 907; an objection on a matter of law to a decision made, either before or after judgment, by a court, tribunal, judge, or other judicial officer in an action or proceeding. *Hearn v. Gunther*, 57 Cal. App.2d 82, 134 P.2d 3, 5; an objection, oral or written, taken, in course of an action or proceeding, as to bail, to the decision or a ruling of a judge, or to something in his charge to a jury. In *re Pardue's Estate*, 57 Cal.App.2d 918, 135 P.2d 394, 395.

An objection to a pleading or any part thereof for want of substance is a general exception; an objection to the form in which a cause of action is stated is a special exception. *Cochran v. People's Nat. Bank*, Tex.Civ.App., 271 S.W. 433, 434.

Objections to report of master on bill for injunction held "exceptions". *Respro, Inc., v. Worcester Backing Co.*, 291 Mass. 467, 197 N.E. 198, 200.

To authorize review of alleged error in admitting evidence in compensation case, there must be an "exception", that known to equity practice, and defined as act of appealing from rulings appearing of record, and nothing more. *Indrisano's Case*, 307 Mass. 520, 30 N.E.2d 538, 539.

Proviso and Exception Distinguished

A "proviso" and an "exception" are substantially the same thing. *Evans v. McCabe*, 164 Tenn. 672, 52 S.W.2d 159, 160.

A proviso differs from an exception. 1 Barn. & Ald. 99. An exception *exempts*, absolutely, from the operation of an engagement or an enactment; a proviso, properly speaking, defeats their operation, *conditionally*. An exception takes out of an engagement or enactment something which would otherwise be part of the subject-matter of it; a proviso avoids them by way of defeasance or excuse. 8 Am.Jur. 242; *Board of Com'rs of Noble County v. Whitney*, 73 Okl. 160, 175 P. 112, 113; *Philadelphia Life Ins. Co. v. Farnsley's Adm'r*, 162 Ky. 27, 171 S.W. 1004, 1005; *New Jersey State Board of Optometrists v. S. S. Kresge Co., Sup.*, 113 N.J.L. 287, 174 A. 353, 357; *Sowers Plan Crop Ins. Mut. Co. v. Hobbs*, 146 Kan. 166, 68 P.2d 1110, 1111.

The ordinary office of an "exception" or "proviso" in a policy is to take special cases out of a general class or to guard against misinterpretation. *Landau v. Equitable Life Assur. Soc. of United States*, 1 N.Y.S.2d 891, 895, 166 Misc. 42.

Reservation and Exception as Synonymous or Distinguishable

A reservation is always of a thing not in esse, but newly created or reserved out of the land or tenement demised;

an exception is always of a part of the thing granted, and of a thing in esse. Co.Litt. 47a; 4 Kent, Comm. 468.

A "reservation" creates some new right in grantor while an "exception" withholds from grant title to some part of property which would otherwise pass. *Clark v. Pauley*, 291 Ky. 637, 165 S.W.2d 161, 162; *Federal Land Bank of New Orleans v. Cooper*, 190 Miss. 490, 200 So. 729, 730, 731; *Goss v. Congdon*, 114 Vt. 155, 40 A.2d 429, 430.

A reservation does not affect the description of the property conveyed, but retains to the grantor some right upon the property, as an easement, whereas an exception operates upon the description and withdraws from the description the excepted property. *Moore v. Davis*, 273 Ky. 838, 117 S.W.2d 1033, 1035.

A "reservation" is always of something taken back out of that which is clearly granted, while an "exception" is of some part of the estate not granted at all. *Houghtaling v. Stoothoff*, 170 Misc. 773, 12 N.Y.S.2d 207, 210; *Lewis v. Standard Oil Co. of California*, C.C.A.Cal., 88 F.2d 512, 514.

A reservation provides for return of rent or service, regarded as issuing out of land granted. An exception withholds particular portion of land granted. *Cook v. Farley*, 195 Miss. 638, 15 So.2d 352, 355; *Marias River Syndicate v. Big West Oil Co.*, 98 Mont. 254, 38 P.2d 599, 601.

Reservation means something issuing or arising out of thing granted while an exception means some part of the estate not granted, or withdrawn from the effect of the grant, although the terms are often used indiscriminately and given effect according to the obvious intent of the parties. *Vance v. Pritchard*, 213 N.C. 552, 197 S.E. 182, 185.

Reservation must always be in favor of and for benefit of grantor, whereas exception is mere exclusion from grant, of some interest which may be vested in grantor or outstanding in another; reservation reserves to grantor some new thing, either issuing out of or incident to thing granted, while exception in deed is clause exempting from operation thereof and retaining in grantor title to some part of the thing granted or excepting some part of thing granted, title to which is at the time in another. *Klein v. Humble Oil & Refining Co.*, Tex.Civ.App., 67 S.W.2d 911, 915.

Reservation reserves to grantor some new interest out of thing granted, while exception excludes from operation of grant some existing part of estate. *Petty v. Griffith, Mo.*, 165 S.W.2d 412, 414; *U. S. v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del.*, D.C.Del., 56 F.Supp. 120, 128.

The terms "reservation" and "exception" are frequently used as interchangeable for synonymous terms. *Nelson v. Bacon*, 113 Vt. 161, 32 A.2d 140, 145; *Murphy v. Sunset Hills Ass'n*, 243 Wis. 139, 9 N.W.2d 613, 615; Meaning intended must be determined by reference to subject matter and surrounding circumstances. *Federal Land Bank of New Orleans v. Cooper*, 190 Miss. 490, 200 So. 729, 730, 731; *Duus v. Town of Ephrata*, 14 Wash.2d 426, 128 P.2d 510, 511; Parties' intention, not language used, is dominating factor in determining whether provision is reservation or exception. *Goss v. Congdon*, 114 Vt. 155, 40 A.2d 429, 430; Technical meaning will yield to the manifest intent. *Jensen v. Sheker*, 231 Iowa 240, 1 N.W.2d 262, 267; Technical misnomer does not operate to defeat contemplated reservation or exception. *Clark v. Pauley*, 291 Ky. 637, 165 S.W. 2d 161, 162; It has been also said that there is a diversity between an exception and a saving, for an exception exempts clearly, but a saving goes to the matters touched, and does not exempt. *Plowd. 361*. *Ogden v. Straus Bldg. Corporation*, 187 Wis. 232, 202 N.W. 34, 44; *Haymaker v. Windsor Reservoir & Canal Co.*, 81 Colo. 168, 254 P. 768, 770; *Central Bank & Trust Co. v. Wyatt*, 189 N.C. 107, 126 S.E. 93, 94; *Greenspan v. Yapple*, 194 N.Y.S. 658, 659, 201 App.Div. 575.

Statutory Law

An exception in a statute is a clause designed to reserve or exempt some individuals from the general class of persons or things to which the language of the act in general attaches. *People v. Bailey*, 103 Misc. 366, 171 N.Y.S. 394, 397.

An exception differs from an explanation, which, by the use of a *videlicet*, *proviso*, etc., is allowed only to explain

doubtful clauses precedent, or to separate and distribute generals into particulars. *Cutler v. Tufts*, 3 Pick., Mass., 272.

An "exception" exempts absolutely from the operation of the statute, while a "proviso" generally defeats operation of statute conditionally. *Oregon Liquor Control Commission v. Coe*, 163 Or. 646, 99 P.2d 29, 31; *People v. Thursam, City Ct.*, 23 N.Y.S.2d 706, 710, 713.

The office of an "exception" in a statute is to except something from the operative effect of a statute or to qualify or restrain the generality of the substantive enactment to which it is attached, and it is not necessarily limited to the section of the statute immediately following or preceding. *Gatliff Coal Co. v. Cox*, C.C.A.Ky., 142 F.2d 876, 882.

Two statutes relating to same subject must be read together, and provisions of one having special application to particular subject will be deemed an "exception" to other statute general in its terms. *Eagleton v. Murphy*, 348 Mo. 949, 156 S.W.2d 683, 685, 138 A.L.R. 749.

Zoning

An "exception" in zoning ordinance is one allowable where conditions detailed therein as those on which exception may be permitted exist. Application of *Devereux Foundation*, 351 Pa. 478, 41 A.2d 744, 746.

Exceptions may be treated as a legislative process, conditions for which must be found in the zoning ordinance and may not be varied, and variances may be treated as judicial function through appeals from administrative orders, whereby literal enforcement of ordinance may be disregarded. *Stone v. Cray*, 89 N.H. 483, 200 A. 517, 521.

EXCEPTION EN MASSE. An assignment in defendant's amended motion for new trial that "court erred in giving Instructions Nos. 1 to 10, inclusive", is "exception en masse". *Tugg v. State*, 206 Ark. 161, 174 S.W.2d 374, 376.

EXCEPTION OF LACK OF CAPACITY TO STAND IN JUDGMENT. Challenges authority of plaintiff to institute and prosecute suit regardless of whether plaintiff owns or has an interest in the claim. It is usually resorted to where plaintiff is alleged to be under some disability or where he sues through a representative who, it is alleged, has no authority. *Riche v. Ascension Parish School Board*, La.App., 200 So. 681, 685.

EXCEPTION OF MISJOINDER seeks to restrain plaintiff's pursuit of the cause when there is present another party whose liabilities or rights are not connected with the exceptor. *Henrichs v. New Orleans Public Service*, La.App., 179 So. 610.

EXCEPTION OF NO CAUSE OF ACTION addresses itself to sufficiency in law of the petition and exhibits attached. *Bartholomew v. Impastato*, La.App., 12 So.2d 700, 702.

EXCEPTION OF NO RIGHT OF ACTION challenges plaintiff's interest or right to assert cause of action. *McCain v. Le Blanc Bros.*, La.App., 10 So.2d 116, 118.

EXCEPTION OF WANT OF INTEREST or of "no right of action" is afforded as means of challenging preliminarily either interest or right of plaintiff to assert cause of action and is not limited to want of capacity in plaintiff as such to bring suit. *McCain v. Le Blanc Bros.*, La.App., 10 So.2d 116, 118.

EXCEPTIONAL CIRCUMSTANCES. Peculiar urgency, existed where death sentence was imposed, or defendant had not been given a reasonable opportunity to prepare for trial, or the commonwealth conceded belatedly, though not too late, that its material evidence is perjured. *Sharpe v. Commonwealth of Kentucky*, C.C.A.Ky., 135 F.2d 974, 977.

EXCEPTIS EXCIPIENDIS. Lat. With all necessary exceptions.

EXCEPTOR. In old English law. A party who entered an exception or plea.

EXCERPTA, or EXCERPTS. Extracts.

EXCESS. When a defendant pleaded to an action of assault that the plaintiff trespassed on his land, and he would not depart when ordered, whereupon he, *molliter manus imposuit*, gently laid hands on him, the replication of *excess* was to the effect that the defendant used more force than necessary. *Wharton*.

Degree or amount by which one thing or number exceeds another, and the remainder or the difference between two numbers is the excess of one over the other. In *Bunce's Estate*, 100 Misc. 385, 165 N.Y.S. 426.

Statute providing that, if capital used or invested in business of corporations includes borrowed capital in "excess" of capital stock, surplus and undivided profits, such excess of borrowed capital shall be added to capital stock, surplus and undivided profits as basis for computing franchise tax, means that, if corporation uses any borrowed or additional capital, such borrowed or additional capital must be added to the other capital in order to form basis for computing the tax. *State v. Union Bldg. Corporation*, 185 La. 598, 170 So. 7, 12.

EXCESS FEES of tax collector consist of sum remaining in collector's hands after deducting from total of all lawful fees collected, his maximum annual fees, his deputy hire, his official expenses and one-fourth of remainder until such one-fourth amounts to specified sum. *American Indemnity Co. v. Red River Nat. Bank in Clarksville, Tex.* Civ.App., 132 S.W.2d 473, 480.

EXCESS INSURANCE. No recovery for loss of cotton which was insured under another policy could be had except that recoverable as "excess insurance," although the other policy also provided for its avoidance by other insurance, for, as to such other policy, the litigated policy was not "other" but merely "excess insurance." *St. Paul Fire & Marine Ins. Co. v. Garza County Warehouse & Marketing Ass'n*, C.C.A.Tex., 93 F.2d 590, 592; *Travelers Indemnity Co. v. State Automobile Ins. Co.*, 67 Ohio App. 457, 37 N.E.2d 198, 200.

Where fire and theft policy issued to conditional seller of truck contained indorsement against accidental collision occurring after insured had repossessed truck, and policy provided that such insurance was excess insurance where any specific insurance existed for benefit of insured, when seller later repossessed truck, insurance taken by seller became "excess insurance." *Fageol Truck & Coach Co. v. Pacific Indemnity Co.*, 18 Cal.2d 731, 117 P.2d 661, 669.

Where materials which belonged to owners who carried fire insurance covering merchandise while in possession of contractors, were sent to contractors to be made into finished garments, fire policies of contractors covering merchandise held in trust but excluding property otherwise specifically insured, provided only "excess insurance" in accordance with terms thereof, as to goods in possession

EXCESS

of contractors who had insured themselves as bailees. *Gordon v. Franklin Fire Ins. Co. of Philadelphia*, 262 App.Div. 328, 28 N.Y.S.2d 480, 482.

EXCESS OF JURISDICTION. A case in which court has initially proceeded properly within its jurisdiction but steps out of jurisdiction in making of some order or in the doing of some judicial act. *Olson v. District Court of Salt Lake County*, 93 Utah, 145, 71 P.2d 529, 534, 112 A.L.R. 438. Act within judge's general power is unauthorized in particular case. *Beckwith v. McAlister*, 165 S.C. 1, 162 S.E. 623, 628; *Carter v. Mitchell*, 225 Ala. 287, 142 So. 514, 517; *In re Knox' Estate*, 52 Cal.App.2d 338, 126 P.2d 108, 112. Acts which exceed defined power of court in any instance. *Abelleira v. District Court of Appeal, Third Dist.*, 17 Cal.2d 280, 109 P.2d 942, 948, 132 A.L.R. 715.

A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an "excess of jurisdiction." *Wuest v. Wuest*, 53 Cal.App.2d 339, 127 P.2d 934, 937.

EXCESS OR SURPLUS WATER. Mean simply water which is flowing in stream in addition to what may be termed adjudicated waters. *Quigley v. McIntosh*, 88 Mont. 103, 290 P. 266, 268; Any water not needed for reasonable beneficial uses of those having prior rights is "excess or surplus water". *City of Pasadena v. City of Alhambra, Cal.*, 207 P.2d 17, 28.

EXCESSES. Spouse's gambling habits or extravagances when carried to excess, constitute "excesses" authorizing separation from bed and board. *Moore v. Moore*, 192 La. 289, 187 So. 670, 672.

EXCESSIVE. Greater than what is usual or proper; overmuch; a general term for what goes beyond just measure or amount. *Austin St. Ry. Co. v. Oldham, Tex.Civ.App.*, 109 S.W.2d 235, 237. Tending to or marked by excess, which is the quality or state of exceeding the proper or reasonable limit or measure. *Railway Co. v. Johnston*, 106 Ga. 130, 32 S.E. 78; *Morrow v. Missouri Gas & Electric Service Co.*, 315 Mo. 367, 286 S.W. 106, 111.

EXCESSIVE ASSESSMENT. A tax assessment grossly disproportionate as compared with other assessments. *Southern California Telephone Co. v. Los Angeles County*, 45 Cal.App.2d 111, 113 P. 2d 773, 776.

EXCESSIVE BAIL. Bail in a sum more than will be reasonably sufficient to prevent evasion of the law by flight or concealment; bail which is per se unreasonably great and clearly disproportionate to the offense involved, or shown to be so by the special circumstances of the particular case. *In re Losasso*, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847; *Ex parte Ryan*, 44 Cal. 558.

The denial of bail is not necessarily "excessive bail", although such denial may be in a particular case the equivalent of excessive bail. *People ex rel. Shapiro v. Keeper of City Prison, Tombs, New York County*, 265 App.Div. 474, 39 N.Y.S.2d 526, 531.

EXCESSIVE DAMAGES. See *Damages*.

EXCESSIVE DRUNKENNESS. Drunkenness is excessive where a party is so far deprived of his reason and understanding as to render him incapable of understanding character and consequences of his act. *Taylor v. Koenigstein*, 128 Neb. 809, 260 N.W. 544.

EXCESSIVE FINE OR PENALTY. Any fine or penalty which seriously impairs the capacity of gaining a business livelihood. *C. F. Smith Co. v. Fitzgerald*, 270 Mich. 659, 259 N.W. 352.

EXCESSIVE OR INTEMPERATE USE OF INTOXICANTS. In benefit certificate. Habitual indulgence in intoxicating liquors to such extent as to impair health or otherwise render insurance risk more hazardous. *Wising v. Brotherhood of American Yeomen*, 132 Minn. 303, 156 N.W. 247, 248, Ann.Cas.1918A, 621.

EXCESSIVE OXIDATION. As used in product patent for improvement in bleached and dyed furs and the like, relate to what would occur if it was attempted to effect oxidation, bleaching of a dark skin with an ordinary bleach, such as strong hydrogen peroxide, without a protecting agent. *Steinfur Patents Corporation v. J. Meyerson, Inc.*, D.C.N.Y., 56 F.2d 372, 382.

EXCESSIVE SENTENCE. No sentence is excessive which is within limits fixed by law. *Bryant v. State*, 39 Ga.App. 26, 145 S.E. 911; *State v. Brackett*, 218 N.C. 369, 11 S.E.2d 146, 149.

EXCESSIVE SPEED. Automobile's speed is "excessive" whenever it places car beyond driver's control. *Esponette v. Wiseman*, 130 Me. 297, 155 A. 650, 653.

EXCESSIVE TAX. One that exceeds what the tax would be if correctly calculated at the legal rate on the valuation as finally fixed by the county authorities. *Pocomoke Guano Co. v. City of New Bern*, 172 N.C. 258, 90 S.E. 202, 203.

EXCESSIVE VERDICT. A verdict which is result of passion or prejudice. *Babb v. Murray*, 26 Cal.App.2d 153, 79 P.2d 159, 160.

The test of whether a verdict is "excessive" is whether the amount thereof is such as to shock the conscience of the court. *Scheidegger v. Thompson*, Mo.App., 174 S.W.2d 216, 222.

EXCESSIVELY. To excess. *Penn Mut. Life Ins. Co. v. Nunnery*, 176 Miss. 197, 167 So. 416, 419.

EXCESSIVELY INTOXICATED. Where one is so intoxicated as to be so far deprived of his reason and understanding as to render him incapable of knowing the character and consequences of his act. *Keedick v. Brogan*, 116 Neb. 339, 217 N.W. 583, 585.

EXCESSIVUM IN JURE REPROBATUR. EXCESSUS IN RE QUALIBET JURE REPROBATUR COMMUNL. Co. Litt. 44. Excess in law is reprehended. Excess in anything is reprehended at common law.

EXCHANGE. To barter; to swap. *Dairymen's League Co-op. Ass'n v. Metropolitan Casualty Ins. Co. of New York, Sup., 8 N.Y.S.2d 403, 412.* To part with, give or transfer for an equivalent. *Kessler v. United States, C.C.A.Pa., 124 F.2d 152, 154; Dairymen's League Co-op. Ass'n v. Metropolitan Casualty Ins. Co. of New York, Sup., 8 N.Y.S.2d 403, 412.*

Act of giving or taking one thing for another. *United States v. Paine, D.C.Mass., 31 F.Supp. 898, 900; Kessler v. United States, C.C.A.Pa., 124 F.2d 152, 154;* contract by terms of which specific property is given in consideration of the receipt of property other than money. *Capps v. Mines Service, 175 Or. 248, 152 P.2d 414, 416;* Mutual grant of equal interests, the one in consideration of the other, *Hale v. Helvering, 66 App.D.C. 242, 85 F.2d 819, 821, 822;* mutual transfer of property other than for money although one of parties may pay a sum of money in addition to property, *Law v. McLaughlin, D.C.Cal., 2 F.Supp. 601, 603;* transaction in which one piece of property, usually something other than money or its equivalent, is given in return for another piece of property, *Hadley Falls Trust Co. v. United States, C.C.A.Mass., 110 F.2d 887, 891;* transfer of property for other property, *Helvering v. Nebraska Bridge Supply & Lumber Co., C.C.A.8, 115 F.2d 288, 290;* transfer of property for property or some value other than money, *Burger-Phillips Co. v. Commissioner of Internal Revenue, C.C.A.Ala., 126 F.2d 934, 936;* transfers of enduring interests and not such as must immediately be conveyed in fulfillment of preconceived plan, *Morgan v. Helvering, C.C.A.2, 117 F.2d 334, 336.*

An exchange is two sales. *Robbins v. Pacific Eastern Corporation, 8 Cal.2d 241, 65 P.2d 42, 56.*

The criterion in determining whether a transaction is a sale or an exchange is whether there is a determination of value of things exchanged, and if no price is set for either property it is an "exchange". *Gruver v. Commissioner of Internal Revenue, C.C.A.4, 142 F.2d 363, 366.*

The mutual transfers must be in kind, and any transaction into which money enters, either as the consideration or as a basis of measure is excluded. *Hoovel v. State, 125 Tex.Cr.R. 545, 69 S.W.2d 104, 108; Trenton Cotton Oil Co. v. C. I. R., C.C.A.6, 147 F.2d 33, 36.*

Capital Assets

Reciprocal transfers. *Helvering v. William Flaccus Oak Leather Co., 313 U.S. 247, 61 S.Ct. 878, 880, 85 L.Ed. 1310; Harwick v. Commissioner of Internal Revenue, C.C.A.8, 133 F.2d 732, 737.*

Conveyance of mortgaged realty by mortgagor in consideration of payment of past-due taxes thereon. *Phillips v. Commissioner of Internal Revenue, C.C.A.3, 112 F.2d 721, 722.*

Mortgagor's transfers of equity of redemption in property which constituted a capital asset of mortgagor to mortgagee in return for release of liability on accompanying bond given to evidence or further secure the mortgage debt. *Stamler v. C. I. R., C.C.A.3, 145 F.2d 37, 39.*

Commercial Law

A negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon or which is fixed by commercial usage. *Nicely v. Bank, 15 Ind.App. 563, 44 N.E. 572, 57 Am.St.Rep. 245; Iowa State Sav. Bank of Fairfield v. City Nat. Bank, 183 Iowa, 1347, 168 N.W. 148, 149, L.R.A.1918F, 169.*

The process of settling accounts or debts between parties residing at a distance from each other, without the intervention of money, by exchanging orders or drafts, called bills of exchange; the payment of debts in different places by an exchange or transfer of credits. *Webster, Dict.*

The profit which arises from a maritime loan, when such profit is a percentage on the money lent, considering it in the light of money lent in one place to be returned in an-

other, with a difference in amount in the sum borrowed and that paid, arising from the difference of time and place. The term is commonly used in this sense by French writers. *Hall, Emerig, Mar.Loans, 56n.*

A public place where merchants, brokers, factors, etc., meet to transact their business.

Conveyancing

A mutual grant of equal interests, (in lands or tenements,) the one in consideration of the other. *2 Bl.Comm. 323; Windsor v. Collinson, 32 Or. 297, 52 P. 26; Herring Motor Co. v. Aetna Trust & Savings Co., 87 Ind.App. 83, 154 N.E. 29, 31; Baltimore & O. R. Co. v. Western Union Telegraph Co., D.C.N.Y., 241 F. 162, 169; Finke v. Boyer, 331 Mo. 1242, 56 S.W.2d 372.*

Nontaxable Exchange

Elements are that property be transferred to a corporation solely in exchange for stock or securities in corporation and that transferors immediately after exchange be in control of corporation, through ownership of 80 per cent. of all voting stock and at least 80 per cent. of all other classes of stock of corporation. *Commissioner of Internal Revenue v. Cement Investors, C.C.A.10, 122 F.2d 380, 383.*

Personal Property Law

Exchange of goods is a commutation, transmutation, or transfer of goods for other goods, as distinguished from *sale*, which is a transfer of goods for money. *2 Bl.Comm. 446; 2 Steph. Comm. 120; Elwell v. Chamberlin, 31 N.Y. 624; Cooper v. State, 37 Ark. 418; Preston v. Keene, 14 Pet. 137, 10 L.Ed. 387.*

Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

The distinction between a sale and exchange of property is rather one of shadow than of substance. In both cases the title to property is absolutely transferred; and the same rules of law are applicable to the transaction, whether the consideration of the contract is money or by way of barter. It can make no essential difference in the rights and obligations of parties that goods and merchandise are transferred and paid for by other goods and merchandise instead of by money, which is but the representative of value or property. *Com. v. Clark, 14 Gray, Mass., 367.*

Stock and Securities

To exchange one security for a different security of some kind or for other property or rights. *Mertz v. H. D. Hudson Mfg. Co., 194 Minn. 636, 261 N.W. 472.*

Plan whereby preferred stock was issued in exchange for half of common stock held by voting trustees and other half was split up on basis of two for one constituted a genuine "exchange" of common stock for preferred stock in pursuance of a plan of "recapitalization". *Bass v. Commissioner of Internal Revenue, C.C.A.1, 129 F.2d 300, 307.*

Where holder of nearly all of a corporation's stock delivered securities to corporation, gave corporation his check in payment of preferred stock, and received from corporation its check in payment of his securities, and checks, which were simultaneously deposited, cancelled each other almost entirely, transaction was exchange. *Louis W. Gunby, Inc., v. Helvering, 74 App.D.C. 185, 122 F.2d 203, 206.*

EXCHANGE

For "Arbitration of Exchange," "Bill of Exchange," "Dry Exchange," "First of Exchange," and "Owely of Exchange," see those titles.

EXCHANGE BROKER. One who negotiates bills of exchange drawn on foreign countries or on other places in the same country; one who makes and concludes bargains for others in matters of money or merchandise. *Little Rock v. Barton*, 33 Ark. 444; *Portland v. O'Neill*, 1 Or. 219.

EXCHANGE OF LIVINGS. In ecclesiastical law. This is effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice. If either die before both are inducted, the exchange is void.

EXCHANGED means a complete divestment of property. *Lord v. Smith*, 293 Mass. 555, 200 N.E. 547, 550.

EXCHEQUER. That department of the English government which has charge of the collection of the national revenue; the treasury department.

It is said to have been so named from the chequered cloth, resembling a chess-board, which anciently covered the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 Bl.Comm. 44.

For "Court of Exchequer" and "Court of Exchequer Chamber," see those titles.

EXCHEQUER BILLS. Bills of credit issued in England by authority of parliament. *Brande*.

Instruments issued at the exchequer, under the authority, for the most part, of acts of parliament passed for the purpose, and containing an engagement on the part of the government for repayment of the principal sums advanced with interest. 2 Steph.Comm. 586. See *Briscoe v. Bank of Kentucky*, 11 Pet. 328, 9 L.Ed. 709.

EXCHEQUER DIVISION. A division of the English high court of justice, to which the special business of the court of exchequer was specially assigned by section 34 of the judicature act of 1873. Merged in the queen's bench division from and after 1881, by order in council under section 31 of that act. *Wharton*.

EXCISE. An inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale. 1 Bl.Comm. 318; *Patton v. Brady*, 184 U.S. 608, 22 S.Ct. 493, 46 L.Ed. 713; *Portland Bank v. Apthorp*, 12 Mass. 256.

An excise has been defined as meaning tribute, custom, tax, tollage, or assessment, a fixed absolute and direct charge laid on merchandise, products, or commodities without any regard to amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid. In re *Opinion of the Justices*, 282 Mass. 619, 186 N.E. 490, 491.

An excise is an impost for a license to pursue certain callings or to deal in special commodities or to exercise particular franchises. *East Ohio Gas Co. v. Tax Commission of Ohio*, D.C.Ohio, 43 F.2d 170, 172; any tax not falling within classification of poll or property tax, *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307, 312; any tax which is not directly on property or the rents or incomes from real estate, *Anne Arundel County Com'rs v. English*, 182 Md. 514, 35 A.2d 135, 141; duties laid on manufacture, sale, or consumption of commodities, or upon certain callings or occupations, In re *City of Enid*, 195 Okl. 365, 158 P.2d 348, 350, 159 A.L.R. 358; every form of charge im-

posed by public authority on performance of act, enjoyment of privilege, or engagement in occupation, *Idaho Gold Dredging Co. v. Balderston*, 258 Idaho 692, 73 P.2d 105, 112; every form of taxation which is not laid directly on persons or property. *Gila Meat Co. v. State*, 35 Ariz. 194, 276 P. 1, 2; *Lutz v. Arnold*, 208 Ind. 480, 193 N.E. 840; public charges on subjects other than manufacture and sale of commodities, such as licenses to pursue particular callings, franchises of corporations and particularly the franchise of corporate existence, and inheritance or succession of estates. *Pollock v. Farmers' L. & T. Co.*, 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108; *Albert Pick & Co. v. Jordan*, 169 Cal. 1, 145 P. 506, 513, Ann.Cas.1916C, 1237; *Des Moines Union Ry. Co. v. Chicago Great Western Ry. Co.*, 188 Iowa, 1019, 177 N.W. 90, 9 A.L.R. 1557; *Northern Cent. Ry. Co. v. Fidelity Trust Co.*, 152 Md. 94, 136 A. 66, 63, 60 A.L.R. 558; *Hattiesburg Grocery Co. v. Robertson*, 126 Miss. 34, 88 So. 4, 5, 25 A.L.R. 748; something cut off from price paid on sale of goods as contribution to government, *City of Louisville v. Churchill Downs*, 267 Ky. 339, 102 S.W.2d 10, 13; tax imposed on performance of act, engagement in occupation, or enjoyment of privilege, *State v. Fields*, Ohio App., 35 N.E.2d 744, 747; tax laid on manufacture, sale, or consumption of commodities or upon licenses to pursue certain occupations or upon corporate privileges. *Alexander Theatre Ticket Office v. U. S.*, C.C.A. N.Y., 23 F.2d 44, 46; *City of De Land v. Florida Public Service Co.*, 119 Fla. 804, 161 So. 735, 738.

An "excise tax" is often used as synonymous with "privilege" or "license tax". *Shannon v. Streckfus Steamers*, 279 Ky. 649, 131 S.W.2d 833, 838.

The terms excise tax and privilege tax are synonymous. *American Airways v. Wallace*, D.C.Tenn., 57 F.2d 877, 880.

English Law

The name given to the duties or taxes laid on certain articles produced and consumed at home, among which spirits have always been the most important; but, exclusive of these, the duties on the licenses of auctioneers, brewers, etc., and on the licenses to keep dogs, kill game, etc., are included in the excise duties. *Wharton*.

Tax and Excise Distinguished

A tax imposed directly by Legislature without assessment and measured by amount of business done, income previously received, or by extent to which privilege may have been enjoyed or exercised by the taxpayer, irrespective of nature or value of his assets or his investments in business, is excise tax while assessed tax on valuation of property is property tax. *City of De Land v. Florida Public Service Co.*, 119 Fla. 804, 161 So. 735, 738.

A "property tax" is a visitational tax and is the taking of part of taxpayer's wealth, represented by property he owns for needs of government, and is not an "excise tax" for privilege of owning property for period of fiscal year. *Bemis Hardwood Lumber Co. v. Graham County, N. C.*, 214 N.C. 167, 198 S.E. 843, 845.

A tax directly on property is a property tax; but a tax is an excise tax where it is not a tax on property as such, but on certain kinds of property, having reference to their origin and their intended use. *State ex rel. Porterie v. H. L. Hunt, Inc.*, 182 La. 1073, 162 So. 777, 103 A.L.R. 9.

An excise tax is an inland impost on articles of manufacture or sale, and also upon licenses to pursue certain trades, or to deal in certain commodities, and property tax is a tax which is not a capitation tax or a direct tax on land or personality. *Flynn, Welch & Yates v. State Tax Commission*, 38 N.M. 131, 28 P.2d 889, 891.

As usually used, "franchise tax" is tax on intangible values inhering to business and added value given to tangible property, being "ad valorem" as distinguished from "excise" or "privilege" tax. *State Tax Commission v. Petroleum Exploration*, 253 Ky. 119, 68 S.W.2d 777.

If a mortgage registration tax is in effect upon the instrument itself, the tax is a "property tax", but if the tax is imposed solely upon the privilege of registration, and validity or use of the instrument is not affected by failure to pay the tax, the tax is an "excise tax". *Community Public Service Co. v. James*, Tex.Civ.App., 167 S.W.2d 588, 595.

Income tax is a "property tax" and not an "excise tax." *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607, 610.

The words "tax" and "excise," although often used as synonymous, are to be considered as having entirely distinct and separate significations, under Const.Mass. c. 1, § 1, art. 4. The former is a charge apportioned either among the whole people of the state or those residing within certain districts, municipalities, or sections. It is required to be imposed, so that, if levied for the public charges of government, it shall be shared according to the estate, real and personal, which each person may possess; or, if raised to defray the cost of some local improvement of a public nature, it shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excise, on the other hand, is of a different character. It is based on no rule of apportionment or equality whatever. It is a fixed, absolute, and direct charge laid on merchandise, products, or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid. *Oliver v. Washington Mills*, 11 Allen, Mass., 268.

EXCISE LAW. A law imposing excise duties on specified commodities, and providing for the collection of revenue therefrom. In a more restricted and more popular sense, a law regulating, restricting, or taxing the manufacture or sale of intoxicating liquors.

A statute requiring payment of license fee for operating motor vehicle on state highway for hire is an "excise tax measure" rather than a "police measure." *Comp.Laws Nev. § 4437. Ziemer v. Babcock & Wilcox Co.*, D.C.Nev., 22 F.Supp. 384, 385.

EXCISE LIEU PROPERTY TAX. Tax on gross premiums received and collected by designated classes of insurance companies held "excise lieu property tax." *United Pacific Ins. Co. v. Bakes*, 57 Idaho 537, 67 P.2d 1024, 1029.

EXCLUSA. In old English law. A sluice to carry off water; the payment to the lord for the benefit of such a sluice. *Cowell*.

EXCLUSION. Denial of entry. *Ex parte Domingo Corypus*, D.C.Wash., 6 F.2d 336.

"Exclusions" are things barred and not admitted. *Raymond v. Great American Indemnity Co.*, 86 N.H. 93, 163 A. 713, 716.

EXCLUSION, RULE OF. A witness, whether a party to the cause or not, may not testify as to his uncommunicated intent, purpose or motive. *Occidental Life Ins. Co. of Cal. v. Nichols*, 97 So.2d 879, 885, 266 Ala. 521. This rule applies even though witness' intent or state of mind is material to the issue. *McCain v. City of Montgomery*, 92 So.2d 678, 681, 38 Ala.App. 568.

EXCLUSIVE. Appertaining to the subject alone, not including, admitting, or pertaining to any others. *Fellows v. Seymour*, 171 Misc. 833, 13 N.Y. S.2d 803, 805. *Sole. State v. Bridges*, 246 Ala. 486, 21 So.2d 316, 319. Shutting out; debarring from interference or participation; vested in one person alone.

The term "exclusive" as used to define quantity of control of offending agency for *res ipsa loquitur* to apply means that control must be exclusive as against all who do not have a concurrent joint control. *Frenkil v. Johnson National Retailers Mut. Ins. Co.*, 175 Md. 592, 3 A.2d 479, 485.

EXCLUSIVE AGENCY. A contract to give an "exclusive agency" to deal with property is ordinarily interpreted as not precluding competition by the principal generally, but only as precluding him from appointing another agent to accomplish the result. *Navy Gas & Supply Co. v. Schoech*, 105 Colo. 374, 98 P.2d 860, 861, 863, 126 A.L.R. 1225.

The grant of an "exclusive agency to sell," that is the exclusive right to sell the products of a wholesaler in a specified territory, ordinarily is interpreted as precluding competition in any form within designated area. *Navy Gas & Supply Co. v. Schoech*, 105 Colo. 374, 98 P.2d 860, 861, 126 A.L.R. 1225.

Relationship such as that created by contract between manufacturer and sole distributors within specified territory for outright sales to distributors who established retail prices. *Stratton & Terstege Co. v. Stiglitz Furnace Co.*, 258 Ky. 678, 81 S.W.2d 1, 3.

EXCLUSIVE AGENCY CONTRACT means that owner will not sell property through any other agency. *Torrey & Dean v. Coyle*, 138 Or. 509, 7 P.2d 561, 562.

EXCLUSIVE CONTROL. The "exclusive control" of thing causing accident, applies to right of control of instrumentality causing injury. *Gerhart v. Southern California Gas Co.*, 56 Cal.App.2d 425, 132 P.2d 874, 877.

As used in statute giving city exclusive control of school system, means control to exclusion of control exercised by county or state over other types of independent school districts authorized by school laws. *Temple Independent School Dist. v. Proctor*, Tex.Civ.App., 97 S.W.2d 1047, 1054.

EXCLUSIVE JURISDICTION. These words preclude idea of co-existence, and mean possessed to exclusion of others. *Dunn Const. Co. v. Craig*, 191 Miss. 682, 2 So.2d 166, 171.

The words "exclusive jurisdiction" when used in statutes with respect to inferior criminal courts were only intended to define jurisdiction of inferior criminal courts established thereby as between themselves. *People ex rel. Kawiecki v. Carhart*, 170 Misc. 894, 13 N.Y.S.2d 293, 294.

Under statute giving United States District Courts "exclusive jurisdiction" of violations of Securities Exchange Act, all criminal or civil proceedings for violations of the act must be brought in such courts. *Wright v. Securities and Exchange Commission*, C.C.A.2, 112 F.2d 89, 95.

EXCLUSIVE LICENSE is permission to do thing and contract not to give leave to any one else to do same thing. *Overman Cushion Tire Co. v. Goodyear Tire & Rubber Co.*, C.C.A.N.Y., 59 F.2d 998, 999.

A license which binds licensor not to enlarge thereafter the scope of other licenses already granted, or increase the number of licenses, is an "exclusive license". *Mechanical Ice Tray Corporation v. General Motors Corporation*, C.C. A.N.Y., 144 F.2d 720, 725.

EXCLUSIVE LICENSEE. One granted exclusive right and license to use, manufacture, and sell

EXCLUSIVE

patented article. *Deitel v. Chisholm*, C.C.A.N.Y., 42 F.2d 172, 173. One having exclusive right to use patented method and apparatus in designated territory. *Paul E. Hawkinson Co. v. Carnell*, C.C.A.Pa., 112 F.2d 396, 398.

EXCLUSIVE MOVING PICTURE RIGHTS. Granted by author in book held to include technical improvements in motion pictures developed during license. *L. C. Page & Co. v. Fox Film Corporation*, C.C.A.N.Y., 83 F.2d 196, 199.

EXCLUSIVE OF ANY OUT BUILDINGS as used in covenant that within restricted area, no residence should be erected, "actual bona fide cost" of which "exclusive of any outbuildings" should be less than \$10,000, meant that no buildings other than the residence could or should be considered. *Dillingham v. Kahn*, 188 Ark. 759, 67 S.W.2d 735.

EXCLUSIVE OF INTEREST AND COSTS as used in statute defining court's pecuniary jurisdiction, refers to interest accrued before filing of complaint, not that accruing after suit was brought. *Athan v. Hartford Fire Ins. Co.*, C.C.A.N.Y., 73 F.2d 66, 67.

EXCLUSIVE ORIGINAL JURISDICTION IN ALL CASES. Constitutional provision, giving circuit court "exclusive original jurisdiction in all cases in equity", established in circuit court exclusive jurisdiction in all cases in equity involving matters which were of exclusive equity jurisdiction under the common law. *In re Niernsee's Estate*, 147 Fla. 388, 2 So.2d 737, 739.

EXCLUSIVE OWNERSHIP. Ownership free from any kind of legal or equitable interest in any one else. *U. S. Casualty Co. v. Timmerman*, 118 N.J. Eq. 563, 180 A. 629.

EXCLUSIVE POSSESSION. Possession may be "exclusive" so as to entitle possessor to title by adverse possession, notwithstanding that the land is subject to exercise of easement by private party. *Young v. City of Lubbock*, Tex.Civ.App., 130 S.W.2d 418, 420.

Defendant, if in actual adverse open and notorious possession of land, had exclusive possession, visible to another accepting mortgage on premises sought to be foreclosed. *Whittaker v. Farmers' Nat. Bank of Somerset*, 237 Ky. 596, 36 S.W.2d 18, 19.

Exclusive possession by adverse possessor means that adverse possessor must show an exclusive dominion over the land and an appropriation of it to his own use and benefit. *Vernon's Ann.Civ.St. art. 5510. W. T. Carter & Bro. v. Holmes*, 131 Tex. 365, 113 S.W.2d 1225, 1226.

Under lease providing that lessor should give exclusive possession which was defined to include consent agreements signed by lienholder satisfactory to lessee, lessor whose mortgage was in default did not comply with lease requirement by tendering a consent agreement from a company which agreed to refinance the mortgage. *Fox Realty Co. v. Montgomery Ward & Co.*, C.C.A.Ind., 124 F.2d 710, 712, 713.

EXCLUSIVE POWER. If special power permits donee to bar one or more members of class from receiving portion of property it is "exclusive". *Moore v. Emery*, 137 Me. 259, 18 A.2d 781, 788, 792.

Power upon specified condition to appoint by will such full-blood relations of donor to take estate as donee might

designate held exclusive power. *In re Skidmore's Estate*, 148 Misc. 569, 266 N.Y.S. 312.

Under will giving testator's daughters power to dispose of principal of trusts created in their favor, provided it be bequeathed to testator's descendants, where testator's general intent was that property should be kept in the family, but that his children should share equally, power of appointment was exclusive. *Moore v. Emery*, 137 Me. 259, 18 A.2d 781, 788, 792.

EXCLUSIVE PRIVILEGE or FRANCHISE. A statute does not grant an "exclusive" privilege or franchise, unless it shuts out or excludes others from enjoying a similar privilege or franchise. *Sunnyside Land & Investment Co. v. Bernier*, 119 Wash. 386, 205 P. 1041, 1042, 20 A.L.R. 1261; *Toten v. Stuart*, 143 Va. 201, 129 S.E. 217, 218.

EXCLUSIVE REMEDY. Where a statute creates a new right or imposes a new duty or liability, unknown to the common law, and gives a remedy for its enforcement, the remedy prescribed is "exclusive". *Kosicki v. S. A. Healy Co.*, 312 Ill.App. 307, 38 N.E.2d 525, 528; *Kosicki v. S. A. Healy Co.*, 380 Ill. 298, 44 N.E.2d 27, 29.

Statute declaring right to compensation under Compensation Law exclusive remedy of employee injured by fellow employee means that injured employee suing fellow employee without having elected to take compensation under such law loses remedy against employer. *Hall v. Hill*, 158 Misc. 341, 285 N.Y.S. 815.

Statute providing method of recovery does not furnish exclusive remedy unless its terms indicate an intent to make statutory remedy exclusive. *Kosicki v. S. A. Healy Co.*, 312 Ill.App. 307, 38 N.E.2d 525, 528.

EXCLUSIVE RIGHT. An exclusive right is one which only the grantee thereof can exercise, and from which all others are prohibited or shut out.

By "exclusive right" essential to a right of way by prescription, the law means that the right should not depend for its enjoyment upon a similar right in others; it must be exclusive as against the right of the community at large. *Downie v. City of Renton*, 162 Wash. 181, 298 P. 454, 457.

The word "exclusive," as used in deed granting exclusive right to erect and maintain poles with wires meant that the right was exclusive of grantor, not exclusive in grantee. *American Telephone & Telegraph Co. of Massachusetts v. McDonald*, 273 Mass. 324, 173 N.E. 502, 503.

EXCLUSIVE USE. As used in law authorizing registration of trade-marks, means exclusive use not only of specific mark but also any other confusingly similar mark or term. *McKesson & Robbins v. Charles H. Phillips Chemical Co.*, C.C.A. Conn., 53 F.2d 1011.

Exclusive use does not mean that no one may or does not use way except claimant of easement, but means only that claimant's right to do so does not depend on like right in others. *Rush v. Collins*, 366 Ill. 307, 8 N.E.2d 659, 662.

Seminary property is fairly to be regarded as in "exclusive use" for educational purposes. *Trustees of Phillips Exeter Academy v. Exeter*, 90 N.H. 472, 27 A.2d 569, 591.

EXCLUSIVELY. Apart from all others. *Lee v. Gulf Oil Corporation*, 148 Fla. 612, 4 So.2d 868, 870, 871; *People ex rel. Divico v. Adams*, 264 App.Div. 315, 35 N.Y.S.2d 453, 455; *Only, Lee v. Gulf Oil Corporation*, 148 Fla. 612, 4 So.2d 868, 870, 871; *Standard Oil Co. of Texas v. State, Tex.Civ.App.*, 142 S.W.2d 519, 521, 522, 523. Purely. *Baptist Memorial Hospital v. Couillens*, 176 Tenn. 300, 140 S.W.2d 1088, 1092. Solely. *Provident Life & Acci-*

dent Ins. Co. v. Campbell, 18 Tenn.App. 452, 79 S.W.2d 292, 296; Stuart v. Occidental Life Ins. Co., 156 Or. 522, 68 P.2d 1037, 1044. Substantially all or for the greater part. Anoka County v. City of St. Paul, 194 Minn. 554, 261 N.W. 588, 99 A.L.R. 1137. To the exclusion of all others; without admission of others to participation; in a manner to exclude. Standard Oil Co. of Texas v. State, Tex. Civ.App., 142 S.W.2d 519, 521, 522, 523. Wholly. People ex rel. Divico v. Adams, 264 App.Div. 315, 35 N.Y.S.2d 453, 455; Baptist Memorial Hospital v. Couillens, 176 Tenn. 300, 140 S.W.2d 1088, 1092.

EXCLUSIVELY FOR PUBLIC PURPOSES. It is not essential to exemption from taxation under provisions exempting from taxation public property used "exclusively for any public purpose" that all the property that is part of the utility unit be used for public purposes. City of Toledo v. Jenkins, 143 Ohio St. 141, 54 N.E.2d 656, 664, 665.

EXCLUSIVELY INTERSTATE. Transportation of passengers by motor vehicles between points within state over route lying partly outside state held exclusively interstate. Conlin Bus Lines v. Old Colony Coach Lines, 282 Mass. 498, 185 N.E. 350, 352.

EXCLUSIVELY OF ALL OTHER CAUSES. Mean that, if accident is shown to be cause of injury for which action is brought, insured can recover. Williams v. General Accident Fire & Life Assur. Corporation, Limited, of Perth, Scotland, 144 Kan. 755, 62 P.2d 856, 857.

EXCLUSIVELY USED. The phrase in provision exempting from taxation properties exclusively used for religious worship, for schools or for purposes purely charitable, has reference to primary and inherent as over against a mere secondary and incidental use. Salvation Army v. Hoehn, Mo., 354 Mo. 107, 188 S.W.2d 826, 830.

EXCOMMENGEMENT. Excommunication (*q. v.*). Co. Litt. 134a.

EXCOMMUNICATION. A sentence of censure pronounced by one of the spiritual courts for offenses falling under ecclesiastical cognizance.

It is described in the books as two-fold: (1) The lesser excommunication, which is an ecclesiastical censure, excluding the party from the sacraments; (2) the greater, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties are abolished by St. 53 Geo. III. c. 127. 3 Steph.Comm. 721.

EXCOMMUNICATO CAPIENDO. In ecclesiastical law. A writ issuing out of chancery, founded on a bishop's certificate that the defendant had been excommunicated, and requiring the sheriff to arrest and imprison him, returnable to the king's bench. 4 Bl.Comm. 415; Bac. Abr. "Excommunication," E.

EXCOMMUNICATO DELIBERANDO. A writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction. Fitzh. Nat. Brev. 63.

EXCOMMUNICATO INTERDICTUR OMNIS ACTUS LEGITIMUS, ITA QUOD AGERE NON POTEST, NEC ALIQUEM CONVENIRE, LICET IPSE AB ALIIS POSSIT CONVENIRI. Co. Litt. 133. Every legal act is forbidden an excommunicated person, so that he cannot act, nor sue any person, but he may be sued by others.

EXCOMMUNICATO RECAPIENDO. A writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again. Reg. Orig. 67.

EXCULPATE is employed in sense of excuse of justification. State v. Langdon, 46 N.M. 277, 127 P.2d 875, 876.

EXCULPATION. In Scotland the law allows of an "exculpation", by which the prisoner is suffered before his trial to prove the thing to be impossible. State v. Langdon, 46 N.M. 277, 127 P.2d 875, 876.

EXCULPATION, LETTERS OF. In Scotch law. A warrant granted at the suit of a prisoner for citing witnesses in his own defense.

EXCULPATORY. Clearing or tending to clear from alleged fault or guilt; excusing. Moore v. State, 124 Tex.Cr.R. 97, 60 S.W.2d 453.

EXCULPATORY CLAUSE. Such clause in favor of a trustee in will implies that trustee has power which he purports to execute, and it exculpates him where this power is exercised in good faith. In re Wacht's Estate, Sur., 32 N.Y.S.2d 871, 897.

EXCUSABLE. Admitting of excuse or palliation.

As used in the law, this word implies that the act or omission spoken of is on its face unlawful, wrong, or liable to entail loss or disadvantage on the person chargeable, but that the circumstances attending it were such as to constitute a legal "excuse" for it, that is, a legal reason for withholding or foregoing the punishment, liability, or disadvantage which otherwise would follow.

EXCUSABLE ASSAULT. One committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent. People v. O'Connor, 82 App. Div. 55, 81 N.Y.S. 555.

EXCUSABLE HOMICIDE. See Homicide.

EXCUSABLE NEGLECT. In practice, and particularly with reference to the setting aside of a judgment taken against a party through his "excusable neglect," this means a failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party. See 1 Bl. Judgm. § 340; Brothers v. Brothers, 71 Mont. 378, 230 P. 60, 61; Westbrook v. Rice, 28 N.D. 324, 148 N.W.

EXCUSAT

827, 828; Boise Valley Traction Co. v. Boise City, 37 Idaho, 20, 214 P. 1037, 1038; Haas v. Scott, 115 Or. 580, 239 P. 202, 204.

EXCUSAT AUT EXTENUAT DELICTUM IN CAPITALIBUS QUOD NON OPERATUR IDEM IN CIVILIBUS. Bac. Max. r. 15. That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries. See Broom, Max. 324.

EXCUSATIO. In the civil law. An excuse or reason which exempts from some duty or obligation.

EXCUSATOR.

English law. An excuser.

Old German law. A defendant; he who utterly denies the plaintiff's claim. Du Cange.

EXCUSATUR QUIS QUOD CLAMEUM NON OPPOSUERIT, UT SI TOTO TEMPORE LITIGII FUT ULTRA MARE QUACUNQUE OCCASIONE. Co. Litt. 260. He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he has been beyond sea for any reason.

EXCUSE. A reason alleged for doing or not doing a thing. Worcester; State v. Weagley, 286 Mo. 677, 228 S.W. 817, 820; State v. Saffron, 143 Wash. 34, 254 P. 463. A matter alleged as a reason for relief or exemption from some duty or obligation.

That which is offered as a reason for being excused, or a plea offered in extenuation of a fault or irregular deportment; it is that plea or statement made by the accused which arises out of the state of facts constituting and relied on as the cause. State v. Craig, 161 S.C. 232, 159 S.E. 559, 560.

EXCUSS. To seize and detain by law.

EXCUSSIO.

Civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated "discussion" (q. v.).

Old English law. Rescue or rescous. Spelman.

EXEAT. A permission which a bishop grants to a priest to go out of his diocese; also leave to go out generally. For "Ne Exeat", see that title.

EXECUTE. To complete; to make; to perform; to do; to follow out. Glover v. American Mortgage Corporation, Tex.Civ.App., 94 S.W.2d 1235, 1236.

To finish, accomplish, make complete, fulfill. To perform; obey the injunctions of.

To make; to execute a deed, which includes signing, sealing, and delivery; performance of all necessary formalities. Heimbach v. Heimbach, 274 Mo. 301, 202 S.W. 1123, 1130; White v. Hendley, 35 Cal.App. 267, 169 P. 710, 713; Hathaway v. Cook, 258 Ill. 92, 101 N.E. 227, 228; Williams v. Kidd, 170 Cal. 631, 151 P. 1, 8, Ann.Cas.1916E, 703. The "execution" of a note involves not only the signing but the delivery of the note. Kennedy & Parsons Co. v. Lander Dairy & Produce Co., 36 Wyo. 58, 252 P. 1036, 1038, 51 A.

L.R. 315; Lynch v. Figge, 192 N.Y.S. 873, 876, 200 App. Div. 92; Perko v. Rock Springs Commercial Co., 37 Wyo. 98, 259 P. 520, 522; The execution of a contract includes performance of all acts necessary to render it complete as an instrument. Hofgesang v. Silver, 223 Ky. 101, 3 S.W.2d 185, 186; To make and sign contract, Glick v. Daniel, 184 Ark. 576, 42 S.W.2d 1007, 1008.

To perform; carry out according to its terms; as to execute a contract, or a writ. State v. Miller, 104 W.Va. 226, 139 S.E. 711, 712; Harrity v. Steers, 185 N.Y.S. 704, 195 App.Div. 11.

To fulfill the purpose of; to obey; to perform the commands of; as to execute a writ.

A statute is said to *execute* a use where it transmutes the equitable interest of the *cestui que use* into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to uses or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 Steph.Comm. 339.

Word "sign" as used in trial court's general oral charge and in special written charge given at request of defendant was synonymous with word "execute". Kinney v. Glenn, 29 Ala.App. 478, 198 So. 250, 253.

EXECUTED. Completed; carried into full effect; already done or performed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. The opposite of *executory*.

A contract is "executed" by being signed. Mastin Realty & Mining Co. v. Commissioner of Internal Revenue, C.C.A. 8, 130 F.2d 1003, 1005. A trust does not become fully "executed" until subject matter of it has been properly paid over to beneficiaries. Harlan v. Gleason, 180 Md. 24, 22 A. 2d 579, 581. Act or course of conduct carried to completion. Northwest Steel Rolling Mills v. Commissioner of Internal Revenue, C.C.A.9, 110 F.2d 286, 290. Term imports idea that nothing remains to be done. Pacific Finance Corporation v. Hendley, 119 Cal.App. 697, 7 P.2d 391, 393. Term when applied to contract includes delivery and implies complete contract. Smith v. School Dist. No. 1, Marshall County, 187 Okl. 184, 102 P.2d 131, 134, 135. Term when applied to deed includes the signing thereof. National Fire Ins. Co. v. Patterson, 170 Okl. 593, 41 P.2d 645, 647.

Generally a jail sentence is "executed" only when the convict has actually suffered the imprisonment. State ex rel. Libtz v. Coleman, 149 Fla. 28, 5 So.2d 60, 61.

EXECUTED CONSIDERATION. A consideration which is wholly past. 1 Pars. Cont. 391. An act done or value given before the making of the agreement.

EXECUTED CONTRACT. See Contract.

EXECUTED ESTATE. See Estate.

EXECUTED FINE. The fine *sur cognizance de droit, come ceo que il ad de son done*; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 & 4 Wm. IV. c. 74.

EXECUTED NOTE. Under Small Loan Act note was not "executed" until it was both signed and delivered. Trustees System Co. of Newark v. Stoll, 13 N.J.Misc. 490, 179 A. 372, 373.

EXECUTED ORAL AGREEMENT. An oral agreement is not "executed" unless it has been fully performed by both parties. Walther v. Occidental Life Ins. Co., 40 Cal.App.2d 160, 104 P.2d 551, 554.

EXECUTED REMAINDER. See Remainder.

EXECUTED SALE. See Sale.

EXECUTED TRUST. See Trust.

EXECUTED USE. See Use.

EXECUTED WRIT. In practice. A writ carried into effect by the officer to whom it is directed. The term "executed," applied to a writ, has been held to mean "used." Amb. 61.

EXECUTIO. Lat. The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration.

In old practice. Execution; the final process in an action.

EXECUTIO BONORUM. In old English law. Management or administration of goods. *Ad ecclesiam et ad amicos pertinebit executio bonorum*, the execution of the goods shall belong to the church and to the friends of the deceased. Bract. fol. 60b.

EXECUTIO EST EXECUTIO JURIS SECUNDUM JUDICIUM. 3 Inst. 212. Execution is the execution of the law according to the judgment.

EXECUTIO EST FINIS ET FRUCTUS LEGIS. Co. Litt. 289. Execution is the end and fruit of the law.

EXECUTIO JURIS NON HABET INJURIAM. 2 Roll. 301. The execution of law does no injury.

EXECUTION. Carrying out some act or course of conduct to its completion. *Northwest Steel Rolling Mills v. Commissioner of Internal Revenue*, C.C.A.9, 110 F.2d 286, 290. Completion of an act. *Domestic Finance Corporation v. Williams*, 174 Misc. 227, 20 N.Y.S.2d 467, 469. Putting into force, *Greene v. Wheeler*, C.C.A.Wis., 29 F.2d 468, 469. The completion, fulfillment, or perfecting of anything, or carrying it into operation and effect.

At common law, executions are said to be either *final* or *quousque*; the former, where complete satisfaction of the debt is intended to be procured by this process; the latter, where the execution is only a means to an end, as where the defendant is arrested on *ca. sa.*

The word cannot be stretched to include prescription; the natural meaning of "execution" is "performance," including excuses for performance. *Wood & Selick v. Compagnie Generale Transatlantique*, C.C.A.N.Y., 43 F.2d 941, 942.

Where testatrix left residue of her estate to be divided equally among named individuals, but provided that, if any of those beneficiaries should be deceased at time of "execution" of the will, their share "is" to revert to testatrix' estate, the word "execution" had reference to time when will should take effect and not to time when will was signed. *Central Nat. Bank v. Stevenson*, 25 Del.Ch. 215, 16 A.2d 114, 115.

Writ of assistance is in the nature of an "execution." *Davis v. Federal Land Bank of Columbia*, 217 N.C. 145, 7 S.E.2d 373, 376.

Attachment distinguished

Term "executions" as used in Code section dealing with commissions which sheriff may charge in cases where sheriff has collected a judgment on execution without making a sale of the judgment debtor's property is sufficiently broad to include attachment, *Jones-Noland Drilling Co. v. Bixby*, 34 N.M. 413, 282 P. 382, 384.

Under an attachment, property of defendant is placed in custody of law to await final determination of suit, and

the attachment is really a preliminary execution dependent for its ultimate efficacy upon the rendering of a judgment in plaintiff's favor; on the other hand, an "execution" is a remedy afforded by law for the enforcement of a judgment of the court. *J. M. Radford Grocery Co. v. Owenby*, Tex.Civ.App., 34 S.W.2d 385, 387.

Criminal Law

The carrying into effect of the sentence of the law by the infliction of capital punishment. 4 Bl.Comm. 403; 4 Steph. Comm. 470.

French Law

A method of obtaining satisfaction of a debt or claim by sale of the debtor's property privately, i. e., without judicial process, authorized by the deed or agreement of the parties or by custom; as, in the case of a stockbroker, who may sell securities of his customer, bought under his instructions or deposited by him, to indemnify himself or make good a debt. *Arg.Fr.Merc.Law*, 557.

Garnishment

Execution includes writ of garnishment. *Buckley v. F. L. Riley Mercantile Co.*, 155 Miss. 150, 124 So. 267.

Garnishee execution is an execution against property. *In re Howard Hotel Corporation*, 150 Misc. 782, 270 N.Y.S. 259.

Garnishment after judgment "is execution" within statute providing that execution shall only be issued from court in which judgment is rendered. Though a garnishment is not an execution, garnishment after execution is practically an equitable execution. *First Nat. Bank of Cordell v. City Guaranty Bank of Hobart*, 174 Okl. 545, 51 P.2d 573, 576.

Order of Sale

"Execution" in statute includes an order of sale. *Bartlett Mortg. Co. v. Morrison*, 183 Okl. 214, 81 P.2d 318, 322; *Blanscet v. Palo Duro Furniture Co.*, Tex.Civ.App., 68 S.W.2d 527, 528.

Practice

The name of a writ issued to a sheriff, constable, or marshal, authorizing and requiring him to execute the judgment of the court. *Raulerson v. Peeples*, 81 Fla. 206, 87 So. 629, 630.

For "Attachment execution," see Attachment.

For "Body Execution," "Dormant Execution," "Equitable Execution," "General Execution," "Junior Execution" and "Special Execution," see those titles.

For "Execution of Judgment or Decree," see that title.

For "Testatum execution," see Testatum.

EXECUTION CREDITOR. See Creditor.

EXECUTION LIEN. An "execution lien" may be created by service of execution, levy upon real estate, and filing of a certificate of levy in the proper office of county in which real estate is located. *Reconstruction Finance Corporation v. Maley*, C.C.A.Ill., 125 F.2d 131, 135.

EXECUTION OF INSTRUMENT. Execution includes signing, sealing, and delivering. *Erie R. Co. v. S. J. Groves & Sons Co.*, 111 N.J.L. 100, 166 A. 205, 207. Completion of instrument. *Domestic Finance Corporation v. Williams*, 174 Misc. 227, 20 N.Y.S.2d 467, 469. Subscribing and delivery of instrument. *Miller v. Jansen*, Cal. App., 128 P.2d 97, 98.

Delivery is essential to complete execution of deed. *Barnes v. Aycock*, 219 N.C. 360, 13 S.E.2d 611, 612.

Execution imports, includes or involves delivery. *Miller v. Jansen*, 21 Cal.2d 473, 132 P.2d 801, 802; *McCarthy Co.*

EXECUTION

v. Commissioner of Internal Revenue, C.C.A.9, 80 F.2d 618, 620; *Stocks v. Inzer*, 232 Ala. 482, 168 So. 877, 878.

Execution includes performance of all acts necessary to render instrument complete and of every act required to give instrument validity or to carry it into effect. *Northwest Steel Rolling Mills v. Commissioner of Internal Revenue*, C.C.A.9, 110 F.2d 286, 290.

Execution of deed means making thereof, *Turlington v. Neighbors*, 222 N.C. 694, 24 S.E.2d 648, 650.

Execution of instruments means making thereof, and when spoken of deeds, it includes all acts such as signing, sealing, and delivering, which are necessary to give effect thereto. *United States v. Peppia*, D.C.Cal., 13 F.Supp. 669, 670.

Execution of prescription means preparation and delivery by authorized person. *U. S. v. Peppia*, D.C.Cal., 13 F.Supp. 669.

"Execution" of written contract includes signing, unconditional delivery by promisor, and acceptance by promisee. *Coen v. American Surety Co. of New York*, C.C.A. Mo., 120 F.2d 393, 397.

Performance and completion of all of those formal acts essential for mortgage's effectiveness. *Southern Enterprises v. Foster*, La.App., 12 So.2d 842, 844.

Signing, acknowledging, delivering and acceptance of mortgage are essential to "execution" of mortgage. *Illinois Nat. Bank & Trust Co. v. Holmes*, 311 Ill.App. 286, 35 N.E.2d 823, 825.

Term "execution" as employed in respect to promissory note means both signing and delivery of bill or note, and mere signing is insufficient. *In re Tynan's Estate*, 142 Neb. 671, 7 N.W.2d 628, 630.

The signing and publication of a will.

The signing, sealing, and delivery of deeds. *Turlington v. Neighbors*, 222 N.C. 694, 24 S.E.2d 648, 650.

Words "issuing" and "execution," used in statutes in relation to passing of title by tax deed, are interchangeable terms. *Lance v. Smith*, 123 Fla. 461, 167 So. 366, 369.

EXECUTION OF JUDGMENT OR DECREE.

"Execution" is putting into effect of final judgment of court. *Tice v. Tice*, 208 Iowa 145, 224 N.W. 571, 572.

As used in Code provision regarding right to demand that nullity of judgment be declared unless defendant suffered judgment to be executed, means the seizure of property. *Frank v. Currie*, La.App., 172 So. 843, 848.

Execution embraces all appropriate means to execution of judgment, *Buckley v. F. L. Riley Mercantile Co.*, 155 Miss. 150, 124 So. 267.

Process to carry into effect decree or judgment is execution. *Painter v. Berglund*, 31 Cal.App.2d 63, 87 P.2d 360, 363; *Miller v. London*, 294 Mass. 300, 1 N.E.2d 198, 200.

Sometimes from the neglect of parties, or some other cause, it became impossible to carry a decree into execution without the further decree of the court upon a bill filed for that purpose. This happened generally in cases where, parties having neglected to proceed upon the decree, their rights under it became so embarrassed by a variety of subsequent events that it was necessary to have the decree of the court to settle and ascertain them. Such a bill might also be brought to carry into execution the judgment of an inferior court of equity, if the jurisdiction of that court was not equal to the purpose; as in the case of a decree in Wales, which the defendant avoided by fleeing into England. This species of bill was generally partly an original bill, and partly a bill in the nature of an original bill, though not strictly original. *Story*, Eq.Pl. 342; *Daniell*, Ch.Pr. 1429.

Statutory means provided for enforcement of judgment requiring the payment of money is execution. *Lupton v. Edmundson*, 220 N.C. 188, 16 S.E.2d 840, 841.

The last stage of a suit, whereby possession is obtained of anything recovered. It is styled "final process," and consists in putting the sentence of the law in force. 3 Bl.

Comm. 412. The carrying into effect of the sentence or judgment of a court. *U. S. v. Nourse*, 9 Pet. 28, 9 L.Ed. 31; *Griffith v. Fowler*, 18 Vt. 394; *Hurlbutt v. Currier*, 68 N.H. 94, 38 A. 502.

Within statute providing for execution of judgment after five years from its entry, "execution" is used in broad sense of execution or carrying into effect by such means as are provided by law for enforcement of various classes of judgments. *Bank of America N. T. & S. A. v. Katz*, 45 Cal.App.2d 138, 113 P.2d 759, 760.

Writ of execution is a civil proceeding for enforcement of a judgment against property. *Lash v. Mann*, 141 Ohio St. 577, 49 N.E.2d 689, 691.

EXÉCUTION PARÉE. In French law. A right founded on an act passed before a notary, by which the creditor may immediately, without citation or summons, seize and cause to be sold the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike a warrant of attorney. *Code Proc. La. art. 732*; 6 *Toullier*, no. 208; 7 *Toullier*, no. 99.

EXECUTION SALE. A sale by a sheriff or other ministerial officer under the authority of a writ of execution which he has levied on property of the debtor. *Noland v. Barrett*, 122 Mo. 181, 26 S.W. 692, 43 *Am.St.Rep.* 572; *Norton v. Reardon*, 67 Kan. 302, 72 P. 861, 100 *Am.St.Rep.* 459.

Sale under order in mortgage foreclosure proceeding is sale on execution. *Goslen v. Waddell Inv. Co.*, 145 Okl. 269, 292 P. 362, 364.

Execution sales relate to sales under a writ of execution. *Peebler v. Olds*, 56 Cal.App.2d 13, 132 P.2d 236, 237.

EXECUTION THEREOF. In ordinance providing that contractor should not have claim under city contract unless controller certified that at date of "execution thereof" sufficient amount stood to credit of appropriation for contract, words "execution thereof" mean date of certification. *Edwin E. Hallenbeck, Inc., v. Hadley*, 312 Pa. 176, 167 A. 574, 575.

EXECUTIONE FACIENDA. A writ commanding execution of a judgment. Obsolete. *Cowell*.

EXECUTIONE FACIENDÂ IN WITHERNAM-IUM. A writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them. *Reg. Orig.* 82.

EXECUTIONE JUDICII. A writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution. *Fitzh. Nat. Brev.* 20.

EXECUTIONER. The name given to him who puts criminals to death, according to their sentence; a hangman.

EXECUTIVE. As distinguished from the legislative and judicial departments of government, the executive department is that which is charged with the detail of carrying the laws into effect and securing their due observance. The word "executive" is also used as an impersonal designation of the chief executive officer of a state or nation. *In re Railroad Com'rs*, 15 Neb. 679, 50

N.W. 276; In re Davies, 168 N.Y. 89, 61 N.E. 118, 56 L.R.A. 855; State v. Denny, 118 Ind. 382, 21 N.E. 252, 4 L.R.A. 79.

Under constitutional provision dividing powers of government into the legislative, the executive, including the administrative, and the judicial departments, the word "administrative" is not used as synonymous with "executive". Tucker v. State, 218 Ind. 614, 35 N.E.2d 270, 290.

Words "executive" and "administrative" may be used as synonymous or interchangeable terms. Saint v. Allen, 169 La. 1046, 126 So. 548, 555.

EXECUTIVE ACT. "Executive" and "administrative" duties are such as concern the execution of existing laws. People ex rel. Holvey v. Kapp, 355 Ill. 596, 189 N.E. 920, 923.

EXECUTIVE ADMINISTRATION, or MINISTRY. A political term in England, applicable to the higher and responsible class of public officials by whom the chief departments of the government of the kingdom are administered.

The number of these amounts to fifty or sixty persons. Their tenure of office depends on the confidence of a majority of the house of commons, and they are supposed to be agreed on all matters of general policy except such as are specifically left open questions. Cab.Lawy.

EXECUTIVE AGENCY. These words include collector and Secretary of Treasury. U. S. v. Paramount Publix Corporation, Cust. & Pat. App., 73 F.2d 103, 105; Selective Training and Service Act boards. United States ex rel. Beers v. Selective Training and Service Local Board No. 1, Rock County, Wis., D.C.Wis., 50 F.Supp. 39, 40. Works Projects Administration. Thomason v. Works Projects Administration, C.C.A.Idaho, 138 F.2d 342, 343.

EXECUTIVE AGENT. President of a bank is but the "executive agent" of board of directors. Ex parte Lamberth, 242 Ala. 165, 5 So.2d 622, 623.

EXECUTIVE AUTHORITY. Petition for referendum filed with clerk is filed with executive authority of municipality. State ex rel. Tietje v. Collett, 138 Ohio St. 425, 35 N.E.2d 568, 570. State ex rel. City of Middletown v. City Commission of City of Middletown, 140 Ohio St. 368, 44 N.E.2d 459, 463.

EXECUTIVE CAPACITY. Duties in such capacity relate to active participation in control, supervision, and management of business. Arkansas Amusement Corporation v. Kempner, C.C.A.Ark., 57 F.2d 466, 473; Wilkinson v. Noland Co., D.C. Va., 40 F.Supp. 1009, 1012.

EXECUTIVE EMPLOYEES. Persons whose duties include some form of managerial authority, actually directing the work of other persons. Stanger v. Glenn L. Martin Co., D.C.Md., 56 F. Supp. 163, 166; persons whose duties relate to active participation in control, supervision and management of business, or who administer affairs, or who direct, manage, execute or dispense. Steiner v. Pleasantville Constructors, 181 Misc. 798, 46 N.Y.S.2d 120, 123.

The term executive employee carries the idea of supervision of or control over ordinary employees. Ralph Knight, Inc., v. Mantel, C.C.A.Mo., 135 F.2d 514, 517.

EXECUTIVE FUNCTIONS have relation to management of all or some part of a business and imply activity. Arkansas Amusement Corporation v. Kempner, 182 Ark. 897, 33 S.W.2d 42, 43.

General charge, control, and conduct of taxation is "executive function." In re Opinion of the Justices, 87 N.H. 492, 179 A. 357, 110 A.L.R. 819.

EXECUTIVE OFFICER. An officer of the executive department of government; one in whom resides the power to execute the laws; one whose duties are to cause the laws to be executed and obeyed. People v. Salsbury, 134 Mich. 537, 96 N. W. 939; Petterson v. State, Tex.Cr.App., 58 S.W. 100; Mekota v. State Board of Equalization and Assessment, Neb., 19 N.W.2d 633, 640. An administrative officer. Sheely v. People, 54 Colo. 136, 129 P. 201, 203.

Officers who are neither judicial nor legislative are executive officers. Spivey v. State, 69 Okl.Cr. 337, 104 P.2d 263, 277; State v. Emory, 55 Idaho 649, 46 P.2d 67, 68.

One vested with power to carry out obligations intrusted to him and charged with administrative duties relative to executing, performing, and carrying into effect purposes of his employment. State Automobile Mutual Ins. Ass'n of Columbus v. Friedman, 122 Ohio St. 334, 171 N.E. 591, 592.

One who assumes command or control and directs course of business, or some part thereof, and who outlines duties and directs work of subordinate employees. Arkansas Amusement Corporation v. Kempner, 182 Ark. 897, 33 S.W. 2d 42, 43.

Cashier of bank is executive officer. Mays v. Board of Com'rs of Creek County, 164 Okl. 231, 23 P.2d 664.

President and vice president of corporation are executive officers. Emmerglick v. Philip Wolf, Inc., C.C.A.N.Y., 138 F.2d 661, 662.

EXECUTIVE ORDER INDIAN RESERVATION is reservation created by order of Chief Executive withdrawing land within its boundaries from settlement or making other disposition of it under public land laws of United States. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P.2d 117, 122.

EXECUTIVE PARDON is an executive act of grace exempting an individual from punishment for a crime he has committed. People ex rel. Prisament v. Brophy, 287 N.Y. 132, 38 N.E.2d 468, 470, 139 A.L.R. 667. See Pardon.

EXECUTIVE POWERS AND DUTIES on which Supreme Court may advise Governor, means a duty appertaining to the execution of the laws as they exist. In re Advisory Opinion to Governor, 154 Fla. 866, 19 So.2d 370, 371.

The "executive power" vested in the Governor by the Constitution is the power to "execute" the laws, that is, to carry them into effect, as distinguished from the power to make the laws and the power to judge them. Tucker v. State, 218 Ind. 614, 35 N.E.2d 270, 291.

EXECUTIVE SALARIES. Means salaries of officers only. Leonard v. S. G. Frantz Co., 268 App. Div. 144, 49 N.Y.S.2d 329, 332.

EXECUTIVE WARRANT of Governor of asylum state is but license or privilege to move within state, and may be revoked before border is crossed. Downey v. Schmidt, D.C.Tex., 4 F.Supp. 1, 3.

EXECUTOR. A person appointed by a testator to carry out the directions and requests in his

EXECUTOR

will, and to dispose of the property according to his testamentary provisions after his decease. In re Lamb's Estate, 122 Mich. 239, 80 N.W. 1081; In re Sipchen's Estate, 180 Wis. 504, 193 N.W. 385, 387; Ricks v. Johnson, 134 Miss. 676, 99 So. 142, 146.

A person to whom a testator by his will commits the execution, or putting in force, of that instrument and its codicils. Fonbl. 307.

Appointment as executor of person on whom will casts affirmative duty to collect debts, adjust claims and make distribution of assets, is validated. In re Hazen's Estate, 175 Misc. 851, 25 N.Y.S.2d 293, 295, 296.

One named in will as executor is an "executor" even before probate of will. McKibban v. Scott, 131 Tex. 182, 114 S.W.2d 213, 215, 115 A.L.R. 1421.

One to whom another man commits by his last will the execution of that will and testament. 2 Bl.Comm. 503.

Person appointed under will appointing person as "administrator of my estate after my death," held testamentary "executor". Succession of Rassat, La.App., 157 So. 412, 414.

Person nominated as executor becomes "executor" only when will is admitted to probate and when he takes oath. Robertson v. National Spiritualists' Ass'n, Tex., 25 S.W.2d 889, 894.

Person or corporation empowered to discharge duties of a fiduciary, appointed as such by testator in his will. In re Watkins' Estate, 113 Vt. 126, 30 A.2d 305, 310.

Term "executor" as employed in statute providing that county judge shall receive commission on actual cash receipts of each executor, refers to executor administering estate of testator under control of probate court. Willis v. Harvey, Tex., 26 S.W.2d 288, 289.

Words "custodian and administrator" in will directing appointment of named person mean "executor." Frazier v. Frazier, 83 Colo. 188, 263 P. 413, 414.

Civil Law

A ministerial officer who executed or carried into effect the judgment or sentence in a cause.

Ecclesiastical Law

Executor à lege constitutus, an executor appointed by law; the ordinary of the diocese.

Executor ab episcopo constitutus, or *executor dativus*, an executor appointed by the bishop; an administrator to an intestate.

Executor à testatore constitutus, an executor appointed by a testator. Otherwise termed "*executor testamentarius*," a testamentary executor.

An *executor to the tenor* is one who, though not directly constituted executor by the will, is therein charged with duties in relation to the estate which can only be performed by the executor.

For "Coexecutor," "General Executor," "Instituted Executor," "Joint Executors," "Limited Executor," "Special Executor" and "Substituted Executor," see those titles.

EXECUTOR BY SUBSTITUTION. A successor executor appointed by testator entitled to succeed to administration of estate following resignation of first executor who had partially administered upon such estate. In re Stah's Estate, 113 Ind. App. 29, 44 N.E.2d 529, 532.

EXECUTOR CREDITOR. See Creditor.

EXECUTOR DATIVE. See Dative.

EXECUTOR DE SON TORT. See De Son Tort.

EXECUTOR LUCRATUS. An executor who has assets of his testator who in his life-time made himself liable by a wrongful interference with the property of another. 6 Jur., N.S., 543.

EXECUTOR NAMED IN WILL. Where will requested that executor named designate some person to act as executor in case of his own disability and requested that a bank be named as executor in event of failure of executor named to designate another to act in his place, and executor named executed formal instrument requesting that the bank be appointed in his stead, such bank was "executor named in the will." In re Crosby's Estate, 218 Minn. 149, 15 N.W.2d 501, 505.

EXECUTOR OR ADMINISTRATOR OF A DECEASED EXECUTOR. Under statute relating to right to require an accounting from "executor or administrator, of a deceased executor," representative of deceased representative of deceased representative of an estate cannot be compelled to file an account. In re Griffin's Estate, 170 Misc. 496, 1066, 10 N.Y.S.2d 161.

EXECUTOR-TRUSTEE. An executor whose duties of holding and managing assets were extended by the will beyond the period usually permissible for their administration. In re Putnam's Will, 173 Misc. 151, 17 N.Y.S.2d 238, 239.

EXECUTORIAL DUTIES are what any layman could perform or was capable of performing. In re Owen's Estate, 144 Misc. 688, 259 N.Y.S. 892.

For the most part, "executorial duties" consist in ascertaining proper net amount of various parts of testator's property after payment of debts and expenses, and distributing them among persons entitled. Keel v. First Nat. Bank of Pikeville, 271 Ky. 745, 113 S.W.2d 33, 36, 116 A.L.R. 151.

Generally, a power of sale given an executor which is of an imperative nature, and the exercise of which is not left to executor's discretion, creates an "executorial duty" rather than a "trust". Esser v. Chimmel, Del.Ch., 30 A.2d 685, 687.

EXECUTORY. That which is yet to be executed or performed; that which remains to be carried into operation or effect; incomplete; depending upon a future performance or event. The opposite of *executed*.

Right which is not vested but lies in action and which requires resort to court of equity to invest plaintiff with right claimed is "executory." Parks v. Classen Co., 156 Okl. 43, 9 P.2d 432, 435.

As to executory "Bequests," "Contracts," "Devises," "Estates," "Remainders," "Trusts," and "Uses," see those titles.

EXECUTORY CONSIDERATION. A consideration which is to be performed after the contract for which it is a consideration is made.

EXECUTORY CONTRACT TO SELL. Under which something remains to be done by either party before delivery and passing of title. Martin v. John Clay & Co., Mo.App., 167 S.W.2d 407, 411.

EXECUTORY FINES. These are the fines *sur cognizance de droit tantum*; *sur concessit*; and *sur done, grant et render*. Abolished by 3 & 4 Wm. IV. c. 74.

EXECUTORY INTERESTS. A general term, comprising all future estates and interests in land or personalty, other than reversions and remainders.

A right which is not vested in possession but lies in action, and which it is necessary to obtain the peculiar relief afforded by courts of equity in order to invest plaintiff with the right claimed, is an "executory interest". *Lang v. Shell Petroleum Corporation, Tex.Civ.App., 141 S.W.2d 667, 671.*

EXECUTORY LIMITATION. A limitation of a future interest by deed or will; if by will, it is also called an "executory devise."

EXECUTORY PROCESS. A process which can be resorted to in the following cases, namely: (1) When the right of the creditor arises from an act importing confession of judgment, and which contains a privilege or mortgage in his favor; (2) when the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. *Code Prac. La. art. 732; Marin v. Lalley, 17 Wall. 14, 21 L.Ed. 596.*

EXECUTORY SALE. See Sale.

EXECUTORY UNILATERAL ACCORD. Nothing more than an offer to enter a contract. *Boyd v. Christiansen, 229 Iowa 1, 293 N.W. 826, 828.*

EXECUTORY WARRANTIES. Arise where insured undertakes to perform some executory stipulation, as that certain acts will be done, or that certain facts will continue to exist. *Procacci v. United States Fire Ins. Co., 118 N.J.L. 423, 193 A. 180, 182.*

EXECUTRESS. A female executor. *Hardr. 165, 473.*

EXECUTRIX. A woman who has been appointed by will to execute such will or testament.

EXECUTRY. In Scotch law. The movable estate of a person dying, which goes to his nearest of kin. So called as falling under the distribution of an executor. *Bell.*

EXEDOS. See Ejidos.

EXIDOS. See Ejidos.

EXEMPLA ILLUSTRANT NON RESTRINGUNT LEGEM. *Co. Litt. 240.* Examples illustrate, but do not restrain, the law.

EXEMPLAR. A specimen which is capable of supporting both deduction and inference. *In re Fisher's Estate, 47 Idaho 668, 279 P. 291, 293.*

EXEMPLARY DAMAGES. See Damages.

EXEMPLI GRATIA. For the purpose of example, or for instance. Often abbreviated "*ex. gr.*" or "*e. g.*"

EXEMPLIFICATION. An official transcript of a document from public records, made in form to be used as evidence, and authenticated as a true copy.

EXEMPLIFICATIONE. A writ granted for the exemplification or transcript of an original record. *Reg. Orig. 290.*

EXEMPLUM. In the civil law. Copy; a written authorized copy. This word is also used in the modern sense of "example,"—*ad exemplum constituti singulares non trahi*, exceptional things must not be taken for examples. *Calvin.*

EXEMPT, v. To release, discharge, waive, relieve from liability. *Davidow v. Jenks, Sup., 48 N.Y.S. 2d 586, 588.*

To relieve, excuse, or set free from a duty or service imposed upon the general class to which the individual exempted belongs; as to exempt from militia service. *Jones v. Wells Fargo Co. Express, 83 Misc. 508, 145 N.Y.S. 601, 602. See 1 St. at Large, 272.*

To relieve certain classes of property from liability to sale on execution.

EXEMPT, n. One who is free from liability to military service; as distinguished from a *detail*, who is one belonging to the army, but detached or set apart for the time to some particular duty or service, and liable, at any time, to be recalled to his place in the ranks. *In re Strawbridge, 39 Ala. 379. Relieved. In re Miller's Estate, 330 Pa. 477, 199 A. 148, 149. See Exempts.*

EXEMPT FROM ALL TAXATION. In proposed constitutional amendment, exempting specified homesteads from taxation, mean exempt when not restrained by Federal Constitution. *Gray v. Winthrop, 115 Fla. 721, 156 So. 270, 94 A.L.R. 804.*

EXEMPTION. Freedom from a general duty or service; immunity from a general burden, tax, or charge. *Green v. State, 59 Md. 128, 43 Am.Rep. 542; Koenig v. Railroad Co., 3 Neb. 380; Long v. Converse, 91 U.S. 113, 23 L.Ed. 233; Poore v. Bowlin, 150 Tenn. 412, 265 S.W. 671.*

A privilege allowed by law to a judgment debtor, by which he may hold property to a certain amount, or certain classes of property, free from all liability to levy and sale on execution or attachment. *Turrill v. McCarthy, 114 Iowa, 681, 87 N.W. 667; Williams v. Smith, 117 Wis. 142, 93 N.W. 464; In re Trammell, D.C.Ga.; 5 F.2d 326, 327.*

A right given by law to a debtor to retain portion of his property free from claims of creditors. *Pickens v. Pickens, 125 Tex. 410, 83 S.W.2d 951, 954.*

An "exemption" contemplated by constitutional provision forbidding exemption of property from taxation is an exemption from all taxation in any form. *Turco Paint & Varnish Co. v. Kalodner, 320 Pa. 421, 184 A. 37, 43.*

An "exemption" from inheritance tax is a deduction. *In re Maxson's Estate, 30 Cal.App.2d 566, 86 P.2d 922, 924.*

As applied to taxation "exemption" is freedom from burden of enforced contributions to expenses and maintenance of government. *Washington Chocolate Co. v. King County, 21 Wash.2d 630, 152 P.2d 981, 984.*

Credit against income tax for income tax paid to other state or country is an "exemption". *Miller v. McColgan, 17 Cal.2d 432, 110 P.2d 419, 424, 134 A.L.R. 1424; Keasbey & Mattison Co. v. Rothensies, C.C.A.3, 133 F.2d 894, 898.*

Deduction made in determining taxable income is an "exemption," *Tupelo Garment Co. of Tupelo, Miss. v. State Tax Commission, 178 Miss. 730, 173 So. 656, 660.*

EXEMPTION

The words "exemption from seizure" in statute providing that a pension or other reward granted by the United States for military service is exempt from seizure in legal proceeding meant "not subject to debts." In re McCormick's Estate, 169 Misc. 672, 8 N.Y.S.2d 179, 188.

EXEMPTION LAWS. Laws which provide that a certain amount or proportion of a debtor's property shall be exempt from execution.

EXEMPTION, WORDS OF. It is a maxim of law that words of exemption are not to be construed to import any liability; the maxim *expressio unius exclusio alterius*, or its converse, *exclusio unius inclusio alterius*, not applying to such a case. For example, an exemption of the crown from the bankruptcy act 1869, in one specified particular, would not inferentially subject the crown to that act in any other particular. Brown.

EXEMPTS. Persons who are not bound by law, but excused from the performance of duties imposed upon others.

EXENNium. In old English law. A gift; a new year's gift. Cowell.

EXEQUATUR. Lat. Let it be executed.

In French practice, this term is subscribed by judicial authority upon a transcript of a judgment from a foreign country, or from another part of France, and authorizes the execution of the judgment within the jurisdiction where it is so indorsed.

International Law

A certificate issued by the foreign department of a state to a consul or commercial agent of another state, recognizing his official character, and authorizing him to fulfill his duties.

EXERCISE. To make use of. Thus, to exercise a right or power is to do something which it enables the holder to do. U. S. v. Souders, 27 Fed. Cas. 1267; Cleaver v. Comm., 34 Pa. 284; Snead v. Wood, 24 Ga.App. 210, 100 S.E. 714, 715.

To put in action or practice, to carry on something, to transact. Salway v. Multnomah Lumber & Box Co., 134 Or. 428, 293 P. 420, 421.

The "exercise" of an option to purchase is merely the election of optionee to purchase. Floyd v. Morgan, 60 Ga. App. 496, 4 S.E.2d 91, 97.

EXERCISE OF JUDGMENT. Exercise of sound discretion, that is, discretion exercised, not arbitrarily or willfully, but with regard to what is right and equitable. United States v. Beckman, C.C.A.Pa., 104 F.2d 260, 262.

EXERCISE OF JUDICIAL DISCRETION. In practical effect, "exercise of judicial discretion" by trial judge means doing as he pleases, unguided by law. Borger v. Mineral Wells Clay Products Co., Tex.Civ.App., 80 S.W.2d 333, 334.

EXERCISED DOMINION. Open acts and conduct relative to land as evidence claim of the right of absolute possession, use, and ownership. Whelan v. Henderson, Tex.Civ.App., 137 S.W.2d 150, 153.

EXERCISING AN OPTION. Elements are decision of optionee to purchase property under terms

of option and communication of decision to optionor within life of option. Floyd v. Morgan, 60 Ga.App. 496, 4 S.E.2d 91, 95.

EXERCITALIS. A soldier; a vassal. Spelman.

EXERCITOR NAVIS. Lat. The temporary owner or charterer of a ship. Mackeld. Rom. Law, § 512; The Phebe, 19 Fed.Cas. 418.

EXERCITORIA ACTIO. In the civil law. An action which lay against the employer of a vessel (*exercitor navis*) for the contracts made by the master. Inst. 4, 7, 2; 3 Kent, Comm. 161; Mackeld. Rom. Law, § 512.

EXERCITORIAL POWER. The trust given to a ship-master.

EXERCITUAL. In old English law. A heriot paid only in arms, horses, or military accouterments.

EXERCITUS. In old European law. An army; an armed force. The term was absolutely indefinite as to number. It was applied, on various occasions, to a gathering of forty-two armed men, of thirty-five, or even of four. Spelman.

EXETER DOMESDAY. The name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter Cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. The Exeter Domesday was published with several other surveys nearly contemporary, by order of the commissioners of the public records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816. Wharton.

EXFESTUCARE. To abdicate or resign; to resign or surrender an estate, office, or dignity, by the symbolical delivery of a staff or rod to the alienee.

EXFREDIARE. To break the peace; to commit open violence. Jacob.

EXHÆREDATIO. In the civil law. Disinheriting; disherison. The formal method of excluding an indefeasible (or forced) heir from the entire inheritance, by the testator's express declaration in the will that such person shall be *exhæres*. Mackeld. Rom. Law, § 711.

EXHÆRES. In the civil law. One disinherited. Vicat; Du Cange.

EXHAUSTION OF ADMINISTRATIVE REMEDIES. The doctrine is that, where an administrative remedy is provided by statute, relief must be sought from administrative body and such remedy exhausted before courts will act. Abelleira v. District Court of Appeal, Third Dist., 17 Cal.2d 280, 109 P.2d 942, 949, 132 A.L.R. 715; Hill v. Brisbane, 66 Cal.App.2d 15, 151 P.2d 578, 582.

EXHEREDATE. In Scotch law. To disinherit; to exclude from an inheritance.

EXHIBERE. To present a thing corporeally, so that it may be handled. Vicat. To appear personally to conduct the defense of an action at law.

EXHIBIT, v. To show or display; to offer or present for inspection. To produce anything in public, so that it may be taken into possession. Dig. 10, 4, 2.

To present; to offer publicly or officially; to file of record. Thus we speak of *exhibiting* a charge of treason, *exhibiting* a bill against an officer of the king's bench by way of proceeding against him in that court. In re Wiltse, 5 Misc. 105, 25 N.Y.Supp. 737; Newell v. State, 2 Conn. 40.

To administer; to cause to be taken; as medicines.

To submit to a court or officer in course of proceedings. In re Edwards' Estate, 138 Neb. 671, 294 N.W. 422, 425.

The word implies some affirmative act or at least some conduct on part of person charged with duty of exhibiting a thing or who exhibits it. Pecht v. Colby Management Corporation, 131 Cal.App. 2, 20 P.2d 768, 769.

EXHIBIT, n. A paper or document produced and exhibited to a court during a trial or hearing, or to a commissioner taking depositions, or to auditors, arbitrators, etc., as a voucher, or in proof of facts, or as otherwise connected with the subject-matter, and which, on being accepted, is marked for identification and annexed to the deposition, report, or other principal document, or filed of record, or otherwise made a part of the case.

A paper referred to in and filed with the bill, answer, or petition in a suit in equity, or with a deposition. Brown v. Redwyne, 16 Ga. 68.

EXHIBITANT. A complainant in articles of the peace. 12 Adol. & E. 599.

EXHIBITED. Displayed. Callison v. State, Tex. Civ.App., 146 S.W.2d 468, 469.

EXHIBITIO BILLÆ. Lat. Exhibition of a bill. In old English practice, actions were instituted by presenting or exhibiting a bill to the court, in cases where the proceedings were by bill; hence this phrase is equivalent to "commencement of the suit."

EXHIBITION. Something that one views, or at which one looks, and at the same time hears. Longwell v. Kansas City, 199 Mo.App. 480, 203 S.W. 657, 659.

As used in consignment of art objects, indicates a special showing. Lion v. Lillienfeld, Sup., 30 N.Y.S.2d 866, 869.

Motion pictures are "exhibitions" subject to regulation. Thayer Amusement Corporation v. Moulton, 63 R.I. 182, 7 A.2d 682, 686, 124 A.L.R. 236.

Ecclesiastical law. An allowance for meat and drink, usually made by religious appropriators of churches to the vicar. Also the benefaction settled for the maintaining of scholars in the universities, not depending on the foundation. Paroch. Antiq. 304.

Scotch law. An action for compelling the production of writings.

EXHIBITION VALUE. "Minimum sale" or "exhibition value" is interchangeably used with term "price expectancy" in moving picture industry, denoting minimum receipts which distributors expect to realize from exhibition of pictures. Export & Import Film Co. v. B. P. Schulberg Productions, 125 Misc. 756, 211 N.Y.S. 838, 839.

EXHUMATION. Disinterment; the removal from the earth of anything previously buried therein, particularly a human corpse.

EXIGENCE, or EXIGENCY. Demand, want, need, imperativeness; emergency, something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy; a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition. United States v. Atlantic Coast Line Co., D.C.N.C., 224 F. 160, 162; Los Angeles County v. Payne, 8 Cal.2d 563, 66 P.2d 658, 663. Something arising suddenly out of circumstances calling for immediate action or remedy, or where something helpful needs to be done at once, yet not so pressing as an emergency. State ex rel. Odenwald v. District Court of Tenth Judicial Dist. in and for Fergus County, 98 Mont. 1, 38 P.2d 269, 271.

EXIGENCY OF A BOND. That which the bond demands or exacts, *i. e.*, the act, performance, or event upon which it is conditioned.

EXIGENCY OF A WRIT. The command or imperativeness of a writ; the directing part of a writ; the act or performance which it commands.

EXIGENDARY. In English law. An officer who makes out exigents. See Exigenter.

EXIGENT, or EXIGI FACIAS. L. Lat. In English practice. A judicial writ made use of in the process of outlawry, commanding the sheriff to *demand* the defendant, (or *cause him to be demanded, exigi faciat*.) from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 1 Tidd Pr. 132; 3 Bl. Comm. 283, 284; Archb. N. Pr. 485. Outlawry has long been obsolete. See Allocato Comitatu; Allocatur Exigent.

EXIGENT LIST. A phrase used to indicate a list of cases set down for hearing upon various incidental and ancillary motions and rules.

EXIGENTER. An officer of the English court of common pleas, whose duty it was to make out the *exigents* and proclamations in the process of outlawry. Cowell. Abolished by St. 7 Wm. IV. and 1 Vict. c. 30. Holthouse.

EXIGI FACIAS. That you cause to be demanded. The emphatic words of the Latin form of the writ of *exigent*. They are sometimes used as the name of that writ.

EXIGIBLE

EXIGIBLE. Demandable; requirable.

EXIGIBLE DEBT. A liquidated and demandable or matured claim. *Gulf Refining Co. of Louisiana v. Glassell*, 186 La. 190, 171 So. 846, 853.

EXILE. Banishment; the person banished.

EXILIUM. Lat. In old English law. (1) Exile; banishment from one's country. (2) Driving away; despoiling. The name of a species of waste, which consisted in driving away tenants or vassals from the estate; as by demolishing buildings, and so compelling the tenants to leave, or by enfranchising the bond-servants, and unlawfully turning them out of their tenements. *Fleta*, 1, 1, c. 9.

EXILIUM EST PATRIÆ PRIVATIO, NATALIS SOLI MUTATIO, LEGUM NATIVARUM AMISSIO. 7 Coke, 20. Exile is a privation of country, a change of natal soil, a loss of native laws.

EXIST. To live; to have life or animation; to be in present force, activity, or effect at a given time; as in speaking of "existing" contracts, creditors, debts, laws, rights, or liens. *Wing v. Slater*, 19 R.I. 597, 35 Atl. 302, 33 L.R.A. 566; *Poe v. Poe*, 125 Ark. 391, 188 S.W. 1190; *In re Havel's Estate*, 156 Minn. 253, 194 N.W. 633, 34 A.L.R. 1300. To be or continue to be. *State v. Sawtooth Men's Club*, 59 Idaho 616, 85 P.2d 695, 698.

See, also, Existing.

EXISTENCE. As applied to will means physical existence. *In re Kerckhof's Estate*, 13 Wash.2d 469, 125 P.2d 284, 287, 290; unrevoked. *In re Flood's Estate*, 47 Cal.App.2d 809, 119 P.2d 168, 169.

EXISTIMATIO. In the civil law. The civil reputation which belonged to the Roman citizen, as such. *Mackeld. Rom. Law*, § 135. Called a state or condition of unimpeached dignity or character, (*dignitatis intææsæ status*;) the highest standing of a Roman citizen. *Dig.* 50, 13, 5, 1.

Also the decision or award of an arbiter.

EXISTING. The force of this word is not necessarily confined to the present.

EXISTING CLAIM. Claim which has arisen. *Great Western Oil Co. v. Bailey*, 35 N.M. 277, 295 P. 298, 299.

EXISTING CREDITORS. As used in statute regarding validity of chattel mortgage against existing creditors, means general creditors who have acquired a lien thereon. *In re Lewis' Estate*, 230 Iowa 694, 298 N.W. 842.

Persons having subsisting obligations against debtor at time fraudulent alienation was made or secret trust created, although claims may not have matured or been reduced to judgment until after such conveyance. *First Nat. Bank v. Merrick*, 103 N.J.Eq. 63, 142 A. 243; *First State Bank of Mobeetie v. Goodner*, *Tex.Civ.App.*, 168 S.W. 2d 941, 944.

To determine whether person is such an "existing creditor" as can invoke protection of statute of Elizabeth, inception of debt is time which controls. *Matthews v. Montgomery*, 193 S.C. 118, 7 S.E.2d 841, 848.

EXISTING DEBT. To have an "existing debt" it is sufficient if there is an absolute debt owing though the period for its payment may not yet have arrived. *Helms v. State*, 137 Okl. 55, 280 P. 416, 417.

A tax may be a "debt" within meaning of agreement to assume "existing debts". *Shepard v. Commissioner of Internal Revenue*, C.C.A.7, 101 F.2d 595, 598.

EXISTING DISEASE. A chronic or definite affliction such as would be embraced in the common understanding and meaning of the term "diseased" or "sick." *Browning v. Equitable Life Assur. Soc. of United States*, 94 Utah 532, 72 P.2d 1060, 1074.

EXISTING EQUITY implies an existing right to future payment, and including a contingent liability, as distinguished from an "existing debt," implying a present, enforceable liability. *Barkley v. Kerfoot*, 77 Wash. 556, 137 P. 1046, 1047; *State v. Smith*, 107 Ohio St. 1, 140 N.E. 737, 738.

EXISTING INDEBTEDNESS ON THE POLICY. Reference in statute to any "existing indebtedness on the policy," to be deducted from reserve value in computing extended term insurance, means indebtedness created by "proper assignment of policy". *Occidental Life Ins. Co. v. Jamora*, *Tex.Civ. App.*, 44 S.W.2d 808, 812.

EXISTING LAW. As used in appropriation act for street improvements requiring refund from street railways under "existing law" refer to statute law. *District of Columbia v. Georgetown & T. Ry. Co.*, 59 App.D.C. 335, 41 F.2d 424, 425.

As used in federal statute rendering initial carrier liable for negligence of connecting carrier and providing that nothing in statute should deprive holder of bill of lading of any remedy or right of action which he has under existing law mean existing federal law and not state law. *Fort Worth & Denver City Ry. Co. v. Motley*, *Tex.Civ.App.*, 87 S.W.2d 551, 554.

EXISTING LIABILITIES embrace conditional or contingent obligations, which may or may not in the future result in indebtedness. *Daniels v. Goff*, 192 Ky. 15, 232 S.W. 66, 67.

A tax may be a "liability" within meaning of agreement to assume "existing liabilities." *Shepard v. Commissioner of Internal Revenue*, C.C.A. 7, 101 F.2d 595, 598.

EXISTING PERSON. A child conceived, but not born, is to be deemed an "existing person" so far as may be necessary for its interests in the event of its subsequent birth. *Comp.Laws N.D.1913*, § 4337; 1 Bl.Comm. 130.

EXISTING PUBLIC SCHOOL. Mean not only the building, but the school grounds. *State ex rel. Fronton Exhibition Co. v. Stein*, 144 Fla. 387, 198 So. 82, 87.

EXISTING RAILROAD CORPORATIONS. Extends to such as are incorporated after as well as

before its passage, unless exception is provided in their charters. Indianapolis & St. L. R. Co. v. Blackman, 63 Ill. 117; Lawrie v. State, 5 Ind. 525; Fox v. Edwards, 38 Iowa, 215.

EXISTING RIGHT. Rights as exist under general laws. Funk v. Inland Power & Light Co., 164 Wash. 110, 1 P.2d 872, 874.

EXISTING USE. Construction or adaptability of a building or room for purpose, and employment of building or room or land within the purpose. Appeal of Yocom, 142 Pa.Super. 165, 15 A.2d 687, 690.

Utilization of premises so that they may be known in neighborhood as being employed for given purpose. De Felice v. Zoning Board of Appeals of Town of East Haven, 130 Conn. 156, 32 A. 2d 635, 637, 638; Landay v. MacWilliams, 173 Md. 460, 196 A. 293, 297, 114 A.L.R. 984.

EXISTS OR IS KEPT OR MAINTAINED. An actual being; something in fact in existence; something continuing and not failing. McCarron v. Commonwealth, 169 Va. 387, 193 S.E. 509, 512.

EXIT. Lat. It goes forth. This word is used in docket entries as a brief mention of the issue of process. Thus, "*exit fi. fa.*" denotes that a writ of *feri facias* has been issued in the particular case. The "*exit* of a writ" is the fact of its issuance.

EXIT WOUND. A term used in medical jurisprudence to denote the wound made by a weapon on the side where it emerges, after it has passed completely through the body, or through any part of it.

EXITUS. Children; offspring. The rents, issues, and profits of lands and tenements. An export duty. The conclusion of the pleadings.

EXLEGALITAS. In old English law. Outlawry. Spelman.

EXLEGALITUS. He who is prosecuted as an outlaw. Jacob.

EXLEGARE. In old English law. To outlaw; to deprive one of the benefit and protection of the law, (*exuere aliquem beneficio legis.*) Spelman.

EXLEX. In old English law. An outlaw; *qui est extra legem*, one who is out of the law's protection. Bract. fol. 125. *Qui beneficio legis privatatur.* Spelman.

EXOINE. In French law. An act or instrument in writing which contains the reasons why a party in a civil suit, or a person accused, who has been summoned, agreeably to the requisitions of a decree, does not appear. Poth. Proc. Crim. § 3, art. 3. The same as "*Essoin*" (*q. v.*).

EXONERATE. To relieve, to exculpate. Standard Oil Co. of New York v. Stevens, 103 Vt. 1, 151 A. 507, 508.

EXONERATION. The removal of a burden, charge, or duty. Particularly, the act of relieving

a person or estate from a charge or liability by casting the same upon another person or estate. Louisville & N. R. Co. v. Comm., 114 Ky. 787, 71 S.W. 916; Bannon v. Burnes, C.C.Mo., 39 Fed. 898.

A right or equity which exists between those who are successively liable for the same debt. "A surety who discharges an obligation is entitled to look to the principal for reimbursement, and to invoke the aid of a court of equity for this purpose, and a subsequent surety who, by the terms of the contract, is responsible only in case of the default of the principal and a prior surety, may claim *exoneratio* at the hands of either." Blsp.Eq. § 331.

A right to have a fund applied to payment of guaranteed claims. Stulz-Sickles Co. v. Fredburn Const. Corporation, 114 N.J.Eq. 475, 169 A. 27, 28.

The right which a person has who has been compelled to pay what another should be forced to pay in full. Fidelity & Casualty Ins. Co. of New York v. Sears, Roebuck & Co., 124 Conn. 227, 199 A. 93, 94.

Scotch Law

A discharge; or the act of being legally discharged, or liberated from, the performance of a duty or obligation. Bell.

EXONERATIONE SECTÆ. A writ that lay for the crown's ward, to be free from all suit to the county court, hundred court, leet, etc., during wardship. Fitzh. Nat. Brev. 158.

EXONERATIONE SECTÆ AD CURIAM BARON. A writ of the same nature as that last above described, issued by the guardian of the crown's ward, and addressed to the sheriffs or stewards of the court, forbidding them to distrain him, etc., for not doing suit of court, etc. New Nat. Brev. 352.

EXONERETUR. Lat. Let him be relieved or discharged. An entry made on a bailpiece, whereby the surety is relieved or discharged from further obligation, when the condition is fulfilled by the surrender of the principal or otherwise.

EXORBITANT. Deviating from the normal or customary course, or going beyond the rule of established limits of right or propriety. U. S. v. Oglesby Grocery Co., D.C.Ga., 264 F. 691, 695.

EXORDIUM. The beginning or introductory part of a speech.

EXPATRIATION. The voluntary act of abandoning one's country, and becoming the citizen or subject of another. Ludlam v. Ludlam, 31 Barb. (N. Y.) 489. See Emigration; Reynolds v. Haskins, C.C.A.Kan., 8 F.2d 473, 475, 45 A.L.R. 759; United States ex rel. Wrona v. Karnuth, D.C.N.Y., 14 F. Supp. 770, 771; 1 Barton, Conv. 31, note; Vaugh. 227, 281; 7 Co. 16; Dy. 2, 224, 298b, 300b; 2 P. Wms. 124; 1 Hale, Pl.Cr. 68; 1 Wood, Conv. 382; Westl.Priv.Int.Law; Story, Confl. Laws; Cockburn, Nationality. The voluntary renunciation or abandonment of nationality and allegiance. Schaufus v. Attorney General of United States, D.C.Md., 45 F.Supp. 61, 66; Perkins v. Elg, D.C., 307 U.S. 325, 59 S.Ct. 884, 889, 83 L.Ed. 1320.

EXPECT. To await; to look forward to something intended, promised, or likely to happen. Atchison, etc., R. Co. v. Hamlin, 67 Kan. 476, 73 P. 58; Kronenberg v. Whale, 21 Ohio App. 322, 153

EXPECT

N.E. 302, 308; to look for mentally, to look forward to, as to something about to happen or come, to have a previous apprehension of whether good or evil, to look for with some confidence, and once meant to demand, to require. *Holcomb v. Holcomb*, 173 Miss. 192, 159 So. 564, 566.

The word has also a secondary meaning, in which it implies a demand rather than anticipation, as where a person, in negotiating a contract, says he will "expect" to write half the fire insurance. *Sillman v. Spokane Savings & Loan Soc.*, 103 Wash. 619, 175 P. 296, 297.

Where testator gave life estate provided that after life tenant's death he "expected" his realty to be sold the word "expect" was almost equivalent of word "direct". *Wattjes v. Faeth*, 379 Ill. 290, 40 N.E.2d 521, 524.

EXPECTABLE RISK. Risk which is indefinite and uncertain. *Martin v. Hodson*, 93 N.H. 66, 35 A.2d 402, 404.

EXPECTANCY. That which is expected or hoped for. The condition of being deferred to a future time, or of dependence upon an expected event; contingency as to possession or enjoyment. With respect to the time of their enjoyment, estates may either be in possession or in expectancy; and of expectancies there are two sorts,—one created by the act of the parties, called a "remainder;" the other by act of law, called a "reversion." 2 Bl.Comm. 163.

"Expectancy" as applied to property, is contingency as to possession, that which is expected or hoped for. At most it is a mere hope or expectation, contingent upon the will and pleasure of the landowner, and hardly reaches the height of a property right, much less a vested right, because where there is no obligation, there is no right. It is a possibility for which a party may under certain circumstances properly hope." *Robinson v. Eagle-Picher Lead Co.*, 132 Kan. 860, 297 P. 697, 698, 75 A.L.R. 840.

EXPECTANCY OF LIFE. In the doctrine of life annuities, the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy. *Wharton*.

EXPECTANT. Contingent as to enjoyment. Having relation to, or dependent upon, a contingency.

EXPECTANT ESTATES. See Estate in Expectancy.

EXPECTANT HEIR. A person who has the expectation of inheriting property or an estate, but small present means.

The term is chiefly used in equity, where relief is afforded to such persons against the enforcement of "catching bargains," (*q. v.*) *Jeffers v. Lamson*, 10 Ohio St. 106; *In re Robbins' Estate*, 199 Pa. 500, 49 A. 233. "The phrase is used not in its literal meaning, but as including every one who has either a vested remainder, or a contingent remainder in a family property, including a remainder in a portion, as well as a remainder in an estate, and every one who has the hope of succession to the property of an ancestor, either by reason of his being the heir-apparent or presumptive, or by reason, merely, of the expectation of a devise or bequest on account of the supposed or presumed affection of his ancestor or relation. More than this, the doctrine as to expectant heirs has been extended to all reversioners and remaindermen. So that the doctrine not only included the class mentioned, who in some popular sense might be called 'expectant heirs,' but also all remaindermen and reversioners." *Jessel, M. R.*

EXPECTANT RIGHT. A contingent right, not vested; one which depends on the continued existence of the present condition of things until the

happening of some future event. *Pearsall v. Great Northern R. Co.*, 161 U.S. 646, 16 S.Ct. 705, 40 L. Ed. 838; *Pollack v. Meyer Bros. Drug Co.*, C.C.A. Mo., 233 F. 861, 868; *Adams v. Ernst*, 1 Wash.2d 254, 95 P.2d 799, 804. A right is contingent, not vested, when it comes into existence only on an event or condition which may not happen. *Wirtz v. Nestos*, 51 N.D. 603, 200 N.W. 524, 530.

EXPECTATION OF LIFE. See Expectancy of Life.

EXPECTED. A shipping agent's letter that a ship was "expected" to be ready to be loaded at a port on a stated date constituted a representation of a belief or expectation. *L. N. Jackson & Co. v. Seas Shipping Co.*, 185 Misc. 94, 56 N.Y.S.2d 501, 503.

EXPECTED SERVICE. Incidental to employment is that service which an employee has no absolute duty to perform but is of the type of duty which has the approval of the employer. *Severson v. Industrial Commission*, 221 Wis. 169, 266 N.W. 235, 236.

EXPEDIENCY. Involves utility. *Woolf v. Fuller*, 87 N.H. 64, 174 A. 193, 196, 94 A.L.R. 1067.

EXPEDIENT. Apt and suitable to end in view. *Werner v. Biederman*, 64 Ohio App. 423, 28 N.E.2d 957, 959. Whatever is suitable and appropriate in reason for the accomplishment of a specified object. *Eustace v. Dickey*, 240 Mass. 55, 132 N.E. 852, 862.

EXPEDIENTE. An historical record of proceedings in connection with grant of land by the sovereign. *State v. Balli*, Tex.Civ.App., 173 S.W.2d 522, 526. In Mexican law, a term including all the papers or documents constituting a grant or title to land from government. *Vanderslice v. Hanks*, 3 Cal. 27, 38.

EXPEDIMENT. The whole of a person's goods and chattels, bag and baggage. *Wharton*.

EXPEDIT REIPUBLICÆ NE SUA RE QUIS MALE UTATUR. It is for the interest of the state that a man should not enjoy his own property improperly (to the injury of others). Inst. 1, 8, 2.

EXPEDIT REIPUBLICÆ UT SIT FINIS LITUM. It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. *Co.Litt. 303b*; *Broom*, Max. 365-6; *Belcher v. Farrar*, 8 Allen, Mass. 329. This maxim belongs to the law of all countries: 1 Phill. Int. L. 553; *French v. Shotwell*, 5 Johns. Ch., N.Y., 555, 568.

EXPEDITATÆ ARBORES. Trees rooted up or cut down to the roots. *Fleta*, l. 2, c. 41.

EXPEDITATION. In old forest law. A cutting off the claws or ball of the forefeet of mastiffs or other dogs, to prevent their running after deer;—a practice for the preservation of the royal forests. *Cart. de For. c. 17*; *Spelman*; *Cowell*.

EXPEDITE. To hasten; to make haste; to speed. *Atchison, T. & S. F. Ry. Co. v. Ridley*, 119 Okl. 138, 249 P. 289, 290.

EXPEDITER. An employee whose duty is to see that shortage in material at one point in a plant is remedied by delivery of the needed material from another part of the plant where it is stacked or stored. *American Mut. Liability Ins. Co. v. Louisville & N. R. Co.*, 250 Ala. 354, 34 So. 2d 474, 476.

EXPEDITIO. An expedition; an irregular kind of army. *Spelman*.

EXPEDITIO BREVIS. In old practice. The service of a writ. *Townsh. Pl.* 43.

EXPEDITION. A sending forth or setting forth for the execution of some object of consequence. Progress. An important journey or excursion for a specific purpose; as, a military or exploring expedition; also, the body of persons making such an excursion. *Equitable Life Assur. Soc. of United States v. Dyess*, 194 Ark. 1023, 109 S.W.2d 1263, 1265.

An important journey or excursion for specific purpose; a journey, march, or voyage generally of several or many persons for definite purpose, such as a military or exploring expedition or a trading expedition to the African coast; the word carries an implication of a military exploit or of an exploration into remote regions or over new routes. *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 149.

EXPEDITIOUS. Possessed of, or characterized by, expedition or efficiency and rapidity in action; performed with, or acting with, expedition; quick; speedy. *Atchison, T. & S. F. Ry. Co. v. Ridley*, 119 Okl. 138, 249 P. 289, 290.

EXPEL. In regard to trespass and other torts, this term means to eject, to put out, to drive out, and generally with an implication of the use of force. *Perry v. Fitzhowe*, 8 Q.B. 779; *Smith v. Leo*, 92 Hun, 242, 36 N.Y.S. 949.

EXPEND. To pay out, use up, consume. *Adams v. Prather*, 176 Cal. 33, 167 P. 534, 538, 3 A.L.R. 928; *School Dist. No. 24 of Marion County v. Smith*, 82 Or. 443, 161 P. 706, 708. To pay out, lay out, use up, and implies receiving something in return. *In re Holmes' Estate*, 233 Wis. 274, 289 N.W. 638, 641.

EXPENDERE. The word "expense" had its origin in the Latin word "expendere"; "ex" meaning "out," and "pendere" meaning "to weigh." *State v. DeWitt C. Jones Co.*, 108 Fla. 613, 147 So. 230, 233.

EXPENDITORS. Paymasters. Those who expend or disburse certain taxes. Especially the sworn officer who supervised the repairs of the banks of the canals in Romney Marsh. *Cowell*.

EXPENDITURE. An expending, a laying out of money; disbursement;—it is not the same as an "appropriation," the setting apart or assignment

to a particular person or use, in exclusion of all others. *Grout v. Gates*, 97 Vt. 434, 124 A. 76, 80.

As used in constitutional provision relating to allowable increase over preceding fiscal year. Includes all expenditures legally made by county rather than expenditures in enforcement of law only. *Crow v. Board of Sup'rs of Stanislaus County*, 135 Cal.App. 451, 27 P.2d 655.

The word "expenditure" has been defined as the spending of money; the act of expending; disbursement expense; money expended; a laying out of money; payment; expenditure. *Crow v. Board of Sup'rs of Stanislaus County*, 135 Cal.App. 451, 27 P.2d 655.

EXPENSÆ LITIS. Costs or expenses of the suit, which are generally allowed to the successful party.

EXPENSE. That which is expended, laid out or consumed; an outlay; charge; cost; price. *Rowley v. Clarke*, 162 Iowa 732, 144 N.W. 908, 911.

Actual outlay or actual obligation to make outlay. *U. S. v. Block & Kohner Mercantile Co.*, D.C.Mo., 33 F.2d 196, 197; an actual and honest disbursement. *H. B. Humphrey Co. v. Pollack Roller Runner Sled Co.*, 278 Mass. 350, 180 N. E. 164, 166; an outlay of money; the expenditure of time, labor, and thought; the employment and consumption of time and labor; act of expending, disbursement, expenditure, etc. *State v. De Witt C. Jones Co.*, 108 Fla. 613, 147 So. 230, 233; expenditures, outlays, or disbursements of money. *In re McMurray*, 131 Misc. 182, 227 N.Y.S. 115, 117; laying out or expending of money or other resources, as time or strength; expenditure; hence drain on resources; detriment; loss: as, at the expense of health; the habit of expending; money expended; outlay; charge; as, expenses for the journey. *In re Bates' Will*, 152 Misc. 627, 274 N.Y.S. 93; laying out or spending of money or other resources. *In re Bond & Mortgage Guarantee Co.*, Sup., 39 N.Y.S.2d 760, 767.

For "Current Expenses," see that title.

EXPENSE IN CARRYING ON BUSINESS. Usual or customary expenditure in course of business during the year. *Whitney v. Commissioner of Internal Revenue*, C.C.A.3, 73 F.2d 589, 591.

EXPENSES OF ADMINISTRATION. As used in Revenue Act means obligations incurred after decedent's death by his representatives in administering his estate. *Mayer v. Reinecke*, D.C.Ill., 28 F.Supp. 334, 339.

EXPENSES OF FAMILY. Medical and funeral expenses are "expenses of the family" within meaning of statute making expenses of family chargeable upon property of both husband and wife. *Hansen v. Hayes*, 175 Or. 358, 154 P.2d 202, 205.

Under such a statute the term includes not only merchandise used by family as a whole, but also expenses, such as medical aid, hospital services and burial attendance, incurred or supplied for one of the spouses. *In re De Nisson's Guardianship*, 197 Wash. 265, 84 P.2d 1024, 1026.

EXPENSES OF RECEIVERSHIP. Comprehend allowances to receivers' counsel, master's fees, appraisers' fees, auditors' fees, and rent and expenses incurred by receivers in conducting business. *Philadelphia Dairy Products Co. v. Summit Sweets Shoppe, Ch.*, 113 N.J.Eq. 458, 167 A. 667.

EXPENSES OF THE STATE. Within constitutional provision for raising revenue has reference to general operating expenses of state government for fiscal year. *State ex rel. Conrad v. Langer*, 68 N.D. 167, 277 N.W. 504, 509.

EXPENSIS

EXPENSIS MILITUM NON LEVANDIS. An ancient writ to prohibit the sheriff from levying any allowance for knights of the shire upon those who held lands in ancient demesne. Reg.Orig. 261.

EXPERIENCE. A state, extent, or duration of being engaged in a particular study or work; the real life as contrasted with the ideal or imaginary. *Arthur v. City of Pittsburgh*, 330 Pa. 202, 198 A. 637, 638. A word implying skill, facility, or practical wisdom gained by personal knowledge, feeling, and action, and also the course or process by which one attains knowledge or wisdom. *Chicago, I. & L. Ry. Co. v. Gorman*, 58 Ind.App. 381, 106 N.E. 897, 898.

EXPERIENCE RATE. Under compensation policy "experience rate," which is payable or applicable rate, is made up by taking the basic rate and considering the business conducted by the insured. *Metropolitan Casualty Ins. Co. of New York v. Rochester Fruit & Vegetable Co.*, 232 App.Div. 321, 249 N.Y.S. 572, 575.

EXPERIENTIA PER VARIOS ACTUS LEGEM FACIT. MAGISTRA RERUM EXPERIENTIA. Co.Litt. 60; Branch, Princ. Experience by various acts makes law. Experience is the mistress of things.

EXPERIMENT. A trial or special test or observation made to confirm or disprove something doubtful. *Stone v. City of Florence*, 203 S.C. 527, 28 S.E.2d 409, 410, 150 A.L.R. 953; *Bragg v. Ohio Chemical & Manufacturing Co.*, 349 Mo. 577, 162 S.W.2d 832, 837.

In patent law, either a trial of an uncompleted mechanical structure to ascertain what changes or additions may be necessary to make it accomplish the design of the projector, or a trial of a completed machine to test or illustrate its practical efficiency. In the former case, the inventor's efforts, being incomplete, if they are then abandoned, will have no effect upon the right of a subsequent inventor; but if the experiment proves the capacity of the machine to effect what its inventor proposed, the law assigns to him the merit of having produced a complete invention. *Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co.*, 10 Phila. 227, 18 Fed.Cas. 394.

EXPERIMENTAL TESTIMONY. That of some witness who, after the commission of the crime, makes experiments for the purpose of ascertaining the effect of a certain act under certain conditions, and swears to such experiments. *State v. Harlan*, Mo.Sup., 240 S.W. 197, 201.

EXPERT EVIDENCE. Testimony given in relation to some scientific, technical, or professional matter by experts, *i. e.*, persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.

Evidence of persons who are skilled in some art, science, profession, or business, which skill or knowledge is not common to their fellow men, and which has come to such experts by reason of special study and experience in such art, science, profession, or business. *Culver v. Prudential Ins. Co. of America*, 6 W.W.Harr. 582, 179 A. 400.

Opinion by qualified person on facts already proved involving scientific or technical knowledge, and not evidence of thing done or measurement taken which any one is competent to prove. *Crichton v. Krouse*, La.App., 150 So.

443, 445; *Allen v. Tex. & N. O. R. Co.*, Tex.Civ.App., 70 S.W.2d 758, 763.

Opinion of witness possessing peculiar knowledge, wisdom, skill or information regarding subject matter under consideration, acquired by study, investigation, observation, practice or experience and not likely to be possessed by ordinary layman or inexperienced person. *Baker v. Kansas City Public Service Co.*, 353 Mo. 625, 183 S.W.2d 873, 875; *Ambruster v. Levitt Realty & Investment Co.*, 341 Mo. 364, 107 S.W.2d 74, 79.

Such as is given on questions of science, skill, or trade by persons learned or experienced therein. *Langford v. State*, 124 Tex.Cr.R. 473, 63 S.W.2d 1027.

EXPERT WITNESSES may be men of science educated in the art, or persons possessing special or peculiar knowledge acquired from practical experience. *Empire Oil & Refining Co. v. Hoyt*, C. C.A.Mich., 112 F.2d 356, 360.

One who gives result of process of reasoning which can be mastered only by special scientists. *Phillips v. Tidwell*, 26 Tenn.App. 543, 174 S.W.2d 472, 477; one who has skilled experience or extensive knowledge in his calling, or in any branch of learning, *King v. State*, 109 Tex.Cr.R. 173, 3 S.W.2d 802, 804, 57 A.L.R. 407; one who has special knowledge of subject, *Pennsylvania Threshermen & Farmers' Mut. Casualty Ins. Co. v. Messenger*, 181 Md. 295, 29 A.2d 653, 655; *Hutchens v. Humble Oil & Refining Co.*, Tex.Civ.App., 161 S.W.2d 571, 573; *Greenstreet v. Greenstreet*, 65 Idaho 36, 139 P.2d 239, 242; one who is skilled in some art, science, trade, profession, or other human activity, and possesses peculiar knowledge concerning it, *Tri-State Broadcasting Co. v. Federal Communications Commission*, 68 App.D.C. 292, 96 F.2d 564, 568; person competent to give expert testimony, *Ambruster v. Levitt Realty & Investment Co.*, 341 Mo. 364, 107 S.W.2d 74, 79.

Witnesses who have acquired ability to deduce correct inferences from hypothetically stated facts, or from facts involving scientific or technical knowledge. *City of Chicago v. Lehmann*, 262 Ill. 468, 104 N.E. 829, 830.

Witnesses who have had special opportunity for observation, or special training or special skill in obtaining the facts in a case. *Mills v. Richardson*, 126 Me. 244, 137 A. 689, 690.

Experts. An expert is a skillful or experienced person; a person having skill or experience, or peculiar knowledge on certain subjects, or in certain professions; a scientific witness. See *Congress & E. Spring Co. v. Edgar*, 99 U.S. 657, 25 L.Ed. 487; *Koccis v. State*, 56 N.J.Law, 44, 27 A. 800; *Ellingwood v. Bragg*, 52 N.H. 489; *United States Fidelity & Guaranty Co. v. Rochester*, Tex.Civ.App., 281 S.W. 306, 311.

One possessing, with reference to particular subject, knowledge not acquired by ordinary persons, *Oklahoma Natural Gas Corporation v. Schwartz*, 146 Okl. 250, 293 P. 1087, 1090; one skilled in any particular art, trade, or profession, being possessed of peculiar knowledge concerning the same, and one who has given subject in question particular study, practice, or observation. *Hardy v. Dahl*, 210 N.C. 530, 187 S.E. 788, 790; one who by habits of life and business has peculiar skill in forming opinion on subject in dispute, *Robertson v. Ætna Life Ins. Co.*, 37 Ga.App. 703, 141 S.E. 504, 505; *Sims v. State*, 40 Ga.App. 10, 148 S.E. 769, 771; one who can see all sides of a subject, *Kentucky & West Virginia Power Co. v. Howes*, 246 Ky. 843, 56 S.W.2d 539.

Persons professionally acquainted with the science or practice in question. Strickl. Ev. 408. Persons conversant with the subject-matter on questions of science, skill, trade, and others of like kind. Best, Ev. § 346; Crosby v. City of East Orange, 84 N.J. Law, 708, 87 A. 341, 342; Pridgen v. Gibson, 194 N.C. 289, 139 S.E. 443, 445, 54 A.L.R. 885.

Persons selected by the court or parties in a cause, on account of their knowledge or skill, to examine, estimate, and ascertain things and make a report of their opinions. Merlin, *Répert.*

Persons who are professionally acquainted with some science or are skilled in some art or trade, or who have experience or knowledge in relation to matters which are not generally known to the people. Miller v. State, 9 Okl. Cr. 255, 131 P. 717, 718, L.R.A. 1915A, 1088.

EXPILARE. In the civil law. To spoil; to rob or plunder. Applied to inheritances. Dig. 47, 19; Cod. 9, 32.

EXPILATIO. In the civil law. The offense of unlawfully appropriating goods belonging to a succession. It is not technically theft (*furtum*) because such property no longer belongs to the decedent, nor to the heir, since the latter has not yet taken possession.

In the common law, the grant of letters testamentary, or letters of administration, relates back to the time of the death of the testator or intestate; so that the property of the estate is vested in the executor or administrator from that period.

EXPILATOR. In the civil law. A robber; a spoiler or plunderer. *Expilatores sunt atrociores fures.* Dig. 47, 18, 1, 1.

EXPIRATION. Cessation; termination from mere lapse of time; as the expiration of a lease, statute, and the like. Marshall v. Rugg, 6 Wyo. 270, 45 Pac. 486, 33 L.R.A. 679; Harris v. Goldberg, 111 Misc. Rep. 600, 182 N.Y.S. 262, 263. Coming to a close. Clevenger v. Kern, 100 Ind. App. 581, 197 N.E. 731, 737. Termination or end. Petition of Prime, 335 Pa. 218, 6 A.2d 530, 532.

The record known in insurance circles as "expirations" is in effect a copy of policy issued to insured which contains the date of issuance, name of insured, expiration, amount, premiums, property covered and terms of insurance. Woodruff v. Auto Owners Ins. Co., 300 Mich. 54, 1 N.W.2d 450, 453; Kerr & Elliott v. Green Mountain Mut. Fire Ins. Co., 111 Vt. 502, 18 A.2d 164, 168.

The term "expiration," as in an insurance policy, refers to termination of the policy by lapse of time covering the policy period, while "cancellation" refers to termination of the policy by act of either or both parties prior to ending of the policy period. Beha v. Breger, 223 N.Y.S. 726, 731, 130 Misc. Rep. 235; Hanson v. Royal Ins. Co., C.C.A. Tenn., 257 F. 715, 716.

EXPIRATION OF CREDIT. As used in statute, refers to expiration of additional period of grace or credit extension accorded the debtor. Fleshman v. Whiteside, 148 Or. 73, 34 P.2d 648, 650, 93 A.L.R. 1456.

EXPIRATION OF PERIOD FOR REDEMPTION. As used in statute concerning conveyance of title by tax deed, it means time of application for tax deed. Hartman v. Mimmack, 116 Mont. 392, 154 P.2d 279, 281.

EXPIRE. Where term of lease has ended, either by lapse of time or by limitation, it has expired. Burnee Corporation v. Uneeda Pure Orange Drink Co., 132 Misc. 435, 230 N.Y.S. 239, 246.

EXPIRY OF THE LEGAL. In Scotch law and practice. Expiration of the period within which an adjudication may be redeemed, by paying the debt in the decree of adjudication. Bell; 3 Jurid. Styles, 3d ed. 1107.

EXPLEES. See Esplees.

EXPLETA, EXPLETIA, or EXPLECIA. In old records. The rents and profits of an estate.

EXPLICATIO. In the civil law. The fourth pleading; equivalent to the surrejoinder of the common law. Calvin.

EXPLICIT. Not obscure or ambiguous, having no disguised meaning or reservation. Eclipse Lumber Co. v. Bitler, 213 Iowa 1313, 241 N.W. 696, 698.

EXPLOITATION. Act or process of exploiting, making use of, or working up; utilization by application of industry, argument, or other means of turning to account, as the exploitation of a mine or a forest. State Finance Co. v. Hamacher, 171 Wash. 15, 17 P.2d 610, 613.

EXPLORATION. In mining law. The examination and investigation of land supposed to contain valuable minerals, by drilling, boring, sinking shafts, driving tunnels, and other means, for the purpose of discovering the presence of ore and its extent. Colvin v. Weimer, 64 Minn. 37, 65 N.W. 1079.

EXPLORATOR. A scout, huntsman, or chaser.

EXPLOSION. A sudden expansion of a liquid substance with result that gas generated by the expansion escapes with violence, usually causing a loud noise. Standard Accident Ins. Co. v. Harrison-Wright Co., 207 N.C. 661, 178 S.E. 235.

A sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. United Life, Fire & Marine Ins. Co. v. Foote, 22 Ohio St. 343, 10 Am. Rep. 735; Hartford Fire Ins. Co. v. Empire Coal Mining Co., C.C.A. Colo., 30 F.2d 794, 798. In the common acceptance of the term, it includes the sudden bursting or breaking up from an internal or other force, and is not limited to cases caused by combustion or fire. American Paper Products Co. v. Continental Ins. Co., 208 Mo. App. 87, 225 S.W. 1029, 1030. The ordinary idea is that the explosion is the cause, while the rupture is the effect. Mitchell v. Ins. Co., 183 U.S. 42, 22 S.Ct. 22, 46 L.Ed. 74.

A violent bursting or expansion with noise following the sudden production of great pressure or a sudden release of pressure. Lever Bros. Co. v. Atlas Assur. Co., C.C.A. Ind., 131 F.2d 770, 775, 776.

A violent expansion of some force, accompanied by noise. Sweeney v. Blue Anchor Beverage Co., 325 Pa. 216, 189 A. 331, 335.

Bursting of something with great noise and violence. Lever Bros. Co. v. Atlas Assur. Co., C.C.A. Ind., 131 F.2d 770, 775, 776.

Bursting with a loud noise or detonation. Bower v. Aetna Ins. Co., D.C. Tex., 54 F. Supp. 897, 898.

Sudden release of pressure such as disruption of steam boiler, Travellers' Indemnity Co. v. B. & B. Ice & Coal Co., 248 Ky. 443, 58 S.W.2d 640.

The word "explosion" is variously used in ordinary speech, and is not one that admits of exact definition. Every combustion of an explosive substance, whereby other property is ignited and consumed, would not be an "explosion," within the ordinary meaning of the term. It is not

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used as a synonym of "combustion." An explosion may be described generally as a sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. But the rapidity of the combustion, the violence of the expansion, and the vehemence of the report vary in intensity as often as the occurrences multiply. Hence an explosion is an *idea* of degrees; and the true meaning of the word, in each particular case, must be settled, not by any fixed standard or accurate measurement, but by the common experience and notions of men in matters of that sort. *Insurance Co. v. Foote*, 22 Ohio St. 348, 10 Am.Rep. 735. And see *Insurance Co. v. Dorsey*, 56 Md. 81, 40 Am.Rep. 403; *Louisville Underwriters v. Durland*, 123 Ind. 544, 24 N.E. 221, 7 L.R.A. 399.

The word "explosion," when used in a fire policy, is that which ordinary men, not scientists, understand an explosion to be. *Roma Wine Co. v. Hardware Mut. Fire Ins. Co. of Minnesota*, 31 Cal.App.2d 455, 88 P.2d 260, 262.

EXPLOSION OF ANY KIND. Under fire policy exempting insurer from liability, phrase refers not to agency producing explosion, but to kinds of material which explode. *McDonald v. Royal Ins. Co.*, 98 Mont. 572, 40 P.2d 1005, 1006.

EXPLOSIVE. Any substance by whose decomposition or combustion gas is generated with such rapidity that it can be used for blasting or in fire-arms. *Schwartz v. Northern Life Ins. Co.*, C.C. A.Cal., 25 F.2d 555, 559.

"Explosive" is compound or mixture susceptible of explosive chemical reaction, as gunpowder or nitroglycerine, and has been construed not to cover specific things which do explode or contain explosive material. *Henderson v. Massachusetts Bonding & Ins. Co.*, 337 Mo. 1, 84 S.W.2d 922, 925.

EXPORT, v. To carry or to send abroad. *Tennessee Oil Co. v. McCanless*, 178 Tenn. 683, 157 S.W. 2d 267, 271, 272. To send, take, or carry an article of trade or commerce out of the country. To transport merchandise from one country to another in the course of trade. To carry out or convey goods by sea. *State v. Turner*, 5 Har., Del., 501.

Transportation of goods from United States to foreign country. *West India Oil Co. v. Sancho*, C.C.A.Puerto Rico, 108 F.2d 144, 147.

"Export," in its primary sense, means to carry or send out of a place, and in secondary sense means to carry from one state or country. *McKesson & Robbins v. Collins*, 18 Cal.App.2d 648, 64 P.2d 469, 470.

While the word *export* technically includes the landing in as well as the shipment to a foreign country, it is often used as meaning only the shipment from this country. *U. S. v. Chavez*, 228 U.S. 525, 33 S.Ct. 595, 57 L.Ed. 950.

EXPORT, n. A thing or commodity exported. More commonly used in the plural.

In American law, this term is only used of goods carried to foreign countries, not of goods transported from one state to another. *Swan v. U. S.*, 190 U.S. 143, 23 S.Ct. 702, 47 L.Ed. 984; *Rothermel v. Meyerle*, 136 Pa. 250, 20 A. 583, 9 L.R.A. 366.

EXPORT TAX. A tax on goods going out and which actually leave the country. *Krauter v. Menchacatorre*, 202 App.Div. 200, 195 N.Y.S. 361, 363.

EXPORTATION. A severance of goods from mass of things belonging to United States with intention of uniting them to mass of things belonging to some foreign country. *U. S. v. Hill*,

C.C.A.N.Y., 34 F.2d 133, 135. The act of sending or carrying goods and merchandise from one country to another.

EXPOSE, v. To show publicly; to display; to offer to the public view; as, to "expose" goods to sale, to "expose" a tariff or schedule of rates, to "expose" the person. *Comm. v. Byrnes*, 158 Mass. 172, 33 N.E. 343; *Adams Exp. Co. v. Schlessinger*, 75 Pa. 246. To "expose for sale" means to keep and show for the purpose of selling. *State v. Hogan*, 212 Mo.App. 473, 252 S.W. 90; to have in stock. *People ex rel. Goldstein v. Glass*, 154 Misc. 569, 278 N.Y.S. 764.

To place in a position where the object spoken of is open to danger, on where it is near or accessible to anything which may affect it detrimentally; as, to "expose" a child, or to expose oneself or another to a contagious disease or to danger or hazard of any kind. *In re Smith*, 146 N.Y. 68, 40 N.E. 497, 28 L.R.A. 820; *Davis v. Insurance Co.*, 81 Iowa, 496, 46 N.W. 1073, 10 L.R.A. 359; *Eau Claire Sand & Gravel Co. v. Industrial Commission of Wisconsin*, 173 Wis. 561, 181 N.W. 718. To cast out to chance, to place abroad, or in a situation unprotected. *Shannon v. People*, 5 Mich. 90.

Word "exposed" as used in pedestrian's complaint against city meant that city negligently permitted hole to remain in street open and unguarded. *City of Birmingham v. Chambless*, 222 Ala. 249, 132 So. 313.

EXPOSÉ. Fr. A statement; account; recital; explanation. The term is used in diplomatic language as descriptive of a written explanation of the reasons for a certain act or course of conduct.

EXPOSITIO. Lat. Explanation; exposition; interpretation.

EXPOSITIO QUÆ EX VISCERIBUS CAUSÆ NASCITUR, EST APTISSIMA ET FORTISSIMA IN LEGE. That kind of interpretation which is born [or drawn] from the bowels [or vitals] of a cause is the aptest and most forcible in the law. 10 Coke, 24b.

EXPOSITION. Explanation; interpretation.

EXPOSITION DE PART. In French law. The abandonment of a child, unable to take care of itself, either in a public or private place.

EXPOSITORY STATUTE. One the office of which is to declare what shall be taken to be the true meaning and intent of a statute previously enacted. *Black, Const.Law* (3d ed.) 89. And see *Lindsay v. United States Sav. & Loan Co.*, 120 Ala. 156, 24 So. 171, 42 L.R.A. 783; *People v. Board of Sup'rs*, 16 N.Y. 424.

They are often expressed thus: "The true intent and meaning of an act passed * * * be and is hereby declared to be;" "the provisions of the act shall not hereafter extend"; or "are hereby declared and enacted not to apply," and the like. This is a common mode of legislation.

EXPOSURE. The act or state of exposing or being exposed. See *Expose*.

Words "exposure to unnecessary danger" and the words "unnecessary exposure to danger", include all cases of exposure to unnecessary danger attributable to insured's negligence. *Oakley v. National Casualty Co.*, 217 N.C. 150, 7 S.E.2d 495, 496; *Micca v. Wisconsin Nat. Life Ins. Co.*, C.C.A.Ill., 75 F.2d 710, 712.

For "Indecent exposure", see *Indecent*.

EXPOSURE OF CHILD. Placing it (with the intention of wholly abandoning it) in such a place or position as to leave it unprotected against danger and jeopard its health or life or subject it to the peril of severe suffering or serious bodily harm. *Shannon v. People*, 5 Mich. 90.

EXPOSURE OF PERSON. In criminal law. Such an intentional exposure, in a public place, of the naked body or the private parts as is calculated to shock the feelings of chastity or to corrupt the morals of the community. *Gilmore v. State*, 118 Ga. 299, 45 S.E. 226.

EXPRESS. Clear; definite; explicit; unmistakable; not dubious or ambiguous. In *re Moon's Will*, 107 Vt. 92, 176 A. 410, 412. Clear, definite, plain, direct. *State ex rel. Andrews v. Zangerle*, 101 Ohio St. 235, 128 N.E. 165, 167. Declared in terms; set forth in words. Directly and distinctly stated. *State ex rel. Ashauer v. Hostetter*, 344 Mo. 665, 127 S.W.2d 697, 699. Explicit. *Elliott v. Hudson*, 117 W.Va. 345, 185 S.E. 465, 467; made known distinctly and explicitly, and not left to inference. *Minneapolis Steel & Machinery Co. v. Federal Surety Co.*, C.C.A.Minn., 34 F.2d 270, 274. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied." *State v. Denny*, 118 Ind. 449, 21 N.E. 274, 4 L.R.A. 65.

"Express" necessarily implies previous knowledge of intended personal use. *Burford v. Huesby*, 35 Cal.App.2d 643, 96 P.2d 380, 381.

To force out by pressure; to press or squeeze out, as the juice of a fruit; to empty by pressure or squeezing. *Strommen v. Prudential Ins. Co.*, 187 Minn. 381, 245 N.W. 632, 634.

As to express "Conditions," "Consent," "Consideration," "Contracts," "Covenants," "Dedication," "Emancipation," "Invitation," "Malice," "Notice," "Obligation," "Trust," "Waiver," and "Warranty," see those titles.

EXPRESS ABROGATION. Abrogation by express provision or enactment; the repeal of a law or provision by a subsequent one, referring directly to it.

Express abrogation is that literally pronounced by the new law either in general terms, as when a final clause abrogates or repeals all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates certain preceding laws which are named.

EXPRESS ACTIVE TRUST. See Trust.

EXPRESS ASSUMPSIT. An undertaking to do some act, or to pay a sum of money to another, manifested by express terms.

An assumpsit is "express" if promisor puts his engagement in distinct and definite language. *Dukes v. Rogers*, 67 Ga.App. 661, 21 S.E.2d 295, 297.

An undertaking made orally, by writing not under seal, or by matter of record, to perform act or to pay sum of money to another. *Holcomb v. Kentucky Union Co.*, 262 Ky. 192, 90 S.W.2d 25, 27; *Anderson v. Biesman & Carrick Co.*, 287 Ill. App. 507, 4 N.E.2d 639, 640, 641.

EXPRESS AUTHORITY. Authority delegated to agent by words which expressly authorize him to do a delegable act. *Greep v. Bruns*, 160 Kan. 48, 159 P.2d 803, 808. Authority distinctly, plainly expressed, orally or in writing. *Ulen v. Kneettle*, 50 Wyo. 94, 58 P.2d 446, 449, 111 A.L.R. 565. Authority which is directly granted to or conferred upon agent in express terms. *Stevens v. Frost*, 140 Me. 1, 32 A.2d 164, 168; *Riefsnyder v. Dougherty*, 301 Pa. 328, 152 A. 98, 100.

That which confers power to do a particular identical thing set forth and declared exactly, plainly, and directly with well-defined limits; an authority given in direct terms, definitely and explicitly, and not left to inference or implication, as distinguished from authority which is general, implied, or not directly stated or given. *Fergus v. Brady*, 277 Ill. 272, 115 N.E. 393, 396, Ann.Cas.1918B, 220.

EXPRESS COLOR. An evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the common-law procedure act, 1852, 15 & 16 Vict. c. 76, § 64.

EXPRESS COMMON-LAW DEDICATION. See Dedication.

EXPRESS COMPANY. A firm or corporation engaged in the business of transporting parcels or other movable property, in the capacity of common carriers, and especially undertaking the safe carriage and speedy delivery of small but valuable packages of goods and money. Also *v. Southern Exp. Co.*, 104 N.C. 278, 10 S.E. 297, 6 L.R.A. 271; *Pfister v. Central Pac. Ry. Co.*, 70 Cal. 169, 11 P. 686, 59 Am.Rep. 404.

A common carrier that carries at regular and stated times, over fixed and regular routes, money and other valuable packages, which cannot be conveniently or safely carried as common freight; and also other articles and packages of any description which the shipper desires or the nature of the article requires should have safe and rapid transit and quick delivery, transporting the same in the immediate charge of its own messenger on passenger steamers and express and passenger railway trains, which it does not own or operate, but with the owners of which it contracts for the carriage of its messengers and freights. *Pacific Exp. Co. v. Seibert*, C.C.Mo., 44 F. 310.

EXPRESS DISSATISFACTION. Where will declares that any one expressing dissatisfaction with its provisions should forfeit his interest, "dissatisfaction" is legally "expressed" when beneficiary contests or objects in legal proceeding to enforcement of any provision of will. In *re Hickman's Estate*, 308 Pa. 230, 162 A. 168, 169.

EXPRESS PERMISSION within statute respecting automobile owner's liability includes prior knowledge of intended use and affirmative and active consent thereto. *Bradford v. Sargent*, 136 Cal.App. 324, 27 P.2d 93.

EXPRESS PRIVATE TRUST. See Trust.

EXPRESS REPEAL. Abrogation or annulment of previously existing law by enactment of subsequent statute declaring that former law shall be revoked or abrogated. *Brockman v. Board of Directors of Jefferson County Bridge Dist.*, 188 Ark. 396, 66 S.W.2d 619. A repeal of statute is "ex-

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press" when it is literally declared by a subsequent statute. *Stoker v. Police Jury of Sabine Parish, La.App.*, 190 So. 192, 194.

EXPRESS REPUBLICATION of will occurs where testator repeats ceremonies essential to valid execution, with avowed intention of republishing will. In *re Simeone's Estate*, 141 Misc. 737, 253 N.Y.S. 683, 689.

EXPRESS REQUEST. That which occurs when one person commands or asks another to do or give something, or answers affirmatively when asked whether another shall do a certain thing. *Zeidler v. Goelzer*, 191 Wis. 378, 211 N.W. 140, 144.

EXPRESS TERMS. Within provision that qualified acceptance, in "express terms," varies effect of draft, "express terms" means clear, unambiguous, definite, certain, and unequivocal terms. *International Finance Corp. v. Philadelphia Wholesale Drug Co.*, 312 Pa. 280, 167 A. 790, 792.

EXPRESSA NOCENT, NON EXPRESSA NON NOCENT. Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm. Dig. 35, 1, 52; Id. 50, 17, 195. See Calvin.

EXPRESSA NON PROSUNT QUÆ NON EXPRESSA PRODERUNT. 4 Coke, 73. The expression of things of which, if unexpressed, one would have the benefit, is useless. Thing expressed may be prejudicial which when not expressed will profit.

EXPRESSED. Means stated or declared in direct terms, set forth in words; not left to inference or implication. *Anderson v. Board of Ed. of School Dist. No. 91*, 390 Ill. 412, 61 N.E.2d 562, 567.

EXPRESSIO EORUM QUÆ TACITE INSUNT NIL OPERATUR. The expression or express mention of those things which are tacitly implied avails nothing. 2 Inst. 365.

A man's own words are void, when the law speaketh as much. *Finch, Law, b. 1, c. 3, no. 26.* Words used to express what the law will imply without them are mere words of abundance. 5 Coke, 11; *Broom, Max. 669, 753*; 2 *Pars.Contr. 28*; 4 Co. 73; *Andr.Steph.Pl. 366*; *Hob. 170*; 3 *Atk. 138*; 11 *M. & W. 569*; 7 *Exch. 28.*

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS. Expression of one thing is the exclusion of another. *Co.Litt. 210a*; *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. *Fazio v. Pittsburgh Rys. Co.*, 321 Pa. 7, 182 A. 696, 698; *Saslaw v. Weiss*, 133 Ohio St. 496, 14 N.E.2d 930, 932. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. *Little v. Town of Conway*, 171 S.C. 27, 170 S.E. 447, 448.

Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded. *People v. One 1941 Ford 8 Stake Truck, Engine No. 99T370053, License No. P.8410, Cal.*, 159 P.2d 641, 642.

EXPRESSIO UNIUS PERSONÆ EST EXCLUSIO ALTERIUS. *Co.Litt. 210.* The mention of one person is the exclusion of another. See *Broom, Max. 651.*

EXPRESSLY. In an express manner; in direct or unmistakable terms; explicitly; definitely; directly. *Le Ballister v. Redwood Theatres*, 1 Cal. App.2d 447, 36 P.2d 827; *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W.2d 685, 689. In an express manner; in direct terms; with distinct purpose; particularly. *Hawkins v. Mattes*, 171 Okl. 186, 41 P.2d 880, 891; the opposite of impliedly. *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 58 N.E.2d 381, 396.

EXPRESSUM FACIT CESSARE TACITUM. That which is expressed makes that which is implied to cease, [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant. 4 Coke, 80; *Broom, Max. 651*; 5 *Bingh.N.C. 185*; 6 *B. & C. 609*; 2 *C. & M. 459*; 2 *E. & B. 856*; *Andover & Medford Turnpike Corp. v. Hay*, 7 Mass. 106; *Galloway v. Holmes*, 1 *Doug., Mich.*, 330.

Where a law sets down plainly its whole meaning the court is prevented from making it mean what the court pleases. *Munro v. City of Albuquerque*, 48 N.M. 306, 150 P.2d 733, 743.

EXPRESSUM SERVITIUM REGAT VEL DECLARET TACITUM. Let service expressed rule or declare what is silent.

EXPROMISSIO. In the civil law. The species of novation by which a creditor accepts a new debtor, who becomes bound instead of the old, the latter being released. 1 *Bouv.Inst. no. 802.*

EXPROMISSOR. In the civil law. A person who assumes the debt of another, and becomes solely liable for it, by a stipulation with the creditor. He differs from a surety, inasmuch as this contract is one of novation, while a surety is jointly liable with his principal. *Mackeld.Rom.Law*, § 538; Dig. 12, 4, 4; 16, 1, 13; 24, 3, 64, 4; 38, 1, 37, 8.

EXPROMITTERE. In the civil law. To undertake for another with the view of becoming liable in his place. Calvin.

EXPROPRIATION. This word primarily denotes a voluntary surrender of rights or claims; the act of divesting oneself of that which was previously claimed as one's own, or renouncing it. In this sense it is the opposite of "appropriation."

A meaning has been attached to the term, imported from its use in foreign jurisprudence, which makes it synonymous with the exercise of the power of eminent domain, i. e., the compulsory taking from a person, on compensation made, of his private property for the use of a railroad, canal, or other public work. *Brownsville v. Pavazos*, 2 *Woods 293, Fed.Cas.No.2,043.* In Louisiana expropriation is used as is taking under eminent domain in most of the other states. In England "compulsory purchase" is used; *Halsbury, Laws of England.*

French Law

Expropriation is the compulsory realization of a debt by the creditor out of the lands of his debtor,

or the usufruct thereof. When the debtor is cotenant with others, it is necessary that a partition should first be made. It is confined, in the first place, to the lands (if any) that are in *hypothèque*, but afterwards extends to the lands not in *hypothèque*. Moreover, the debt must be of a liquidated amount. Brown.

EXPULSION. A putting or driving out. Ejection; banishment; a cutting off from the privileges of an institution or society permanently. *John B. Stetson University v. Hunt*, 88 Fla. 510, 102 So. 637, 639. The act of depriving a member of a corporation, legislative body, assembly, society, commercial organization, etc., of his membership in the same, by a legal vote of the body itself, for breach of duty, improper conduct, or other sufficient cause. *New York Protective Ass'n v. McGrath*, Super.Ct., 5 N.Y.S. 10; *Palmetto Lodge v. Hubbell*, 2 Strob., S.C., 462, 49 Am. Dec. 604. Also, in the law of torts and of landlord and tenant, an eviction or forcible putting out. See *Expel*.

"Separation" from a church by reason of a schism is not like "expulsion" or "excommunication," which terms necessarily involve involuntary and compulsory separation of members. *Lindstrom v. Tell*, 131 Minn. 203, 154 N.W. 969, 971.

EXPUNGE. Means to destroy or obliterate; it implies not a legal act, but a physical annihilation. *Andrews v. Police Court of City of Stockton*, Cal. App., 123 P.2d 128, 129. To blot out; to efface designedly; to obliterate; to strike out wholly. Webster. See *Cancel*.

EXPURGATION. The act of purging or cleansing, as where a book is published without its obscene passages.

EXPURGATOR. One who corrects by expurgating.

EXQUÆSTOR. In Roman law. One who had filled the office of *quæstor*. A title given to Tribonian. Inst. præm. § 3. Used only in the ablative case, (*exquæstore*.)

EXROGARE. (From *ex*, from, and *rogare*, to pass a law.) In Roman law. To take something from an old law by a new law. *Tayl. Civil Law*, 155.

EXTEND. Lends itself to great variety of meanings, which must in each case be gathered from context. *Blouch v. Stevens*, 106 N.J.L. 488, 150 A. 581, 583.

It may mean to broaden the application or action of, *Meyering v. Miller*, 30 Mo. 885, 51 S.W.2d 65, 66; to carry forward, *Loeffler v. Federal Supply Co.*, 187 Okl. 373, 102 P.2d 862, 864; to cause to reach or continue as from point to point, *Henderson Development Co. v. United Fuel Gas Co.*, 121 W.Va. 284, 3 S.E.2d 217, 219; to expand, enlarge, prolong, lengthen, widen, carry out, further than the original limit; as, to extend the time for filing an answer, to extend a lease, term of office, charter, railroad track, etc., *State v. Armstrong*, 31 N.M. 220, 243 P. 333, 345; *Lesser-Goldman Cotton Co. v. Cache River Drainage Dist.*, 174 Ark. 160, 294 S.W. 711, 713; *State v. Scott*, 113 Mo. 559, 20 S.W. 1076; *Moers v. Reading*, 21 Pa. 201; *Keetch v. Corder*, 90 Utah 423, 62 P.2d 273, 277, 108 A.L.R. 52; to give as a privilege, *Tantum v. Keller*, 95 N.J.Eq. 466, 123 A. 299, 300, 301, 302; to give wider range, *State ex rel. Berthot v. Gallatin County High School Dist.*, 102 Mont. 356, 58 P.2d

264, 266; to make more comprehensive or capricious, *Meyering v. Miller*, 33 Mo. 885, 51 S.W.2d 65, 66; *Keetch v. Corder*, 90 Utah 423, 62 P.2d 273, 277, 108 A.L.R. 52; to stretch out or to draw out, *Crane Enamelware Co. v. Smith*, 168 Tenn. 203, 76 S.W.2d 644; *Loeffler v. Federal Supply Co.*, 187 Okl. 373, 102 P.2d 862, 864.

Statute authorizing Interstate Commerce Commission to require carriers to "extend" lines is confined to extensions within undertaking of carriers to serve, and does not embrace new lines reaching new territory. *Interstate Commerce Commission v. Oregon-Washington R. & Nav. Co.*, Or., 288 U.S. 14, 53 S.Ct. 266, 77 L.Ed. 588.

To extend a charter is to give one which now exists greater or longer time to operate in than that to which it was originally limited. *Fidelity & Columbia Trust Co. v. Louisville Ry. Co.*, 258 Ky. 817, 81 S.W.2d 896, 900.

To "extend" a lease or contract is not necessarily the same as "renew," for a stipulation to renew requires the making of a new lease, while one to extend does not. *Sanders v. Wender*, 205 Ky. 422, 265 S.W. 939, 941. See, also, *Nenzel v. Rochester Silver Corporation*, 48 Nev. 41, 226 P. 1102, 1105; *Livingston Waterworks v. City of Livingston*, 53 Mont. 1, 162 P. 381, 383, L.R.A.1917D, 1074; *Buckland v. Tarble*, 95 Vt. 87, 112 A. 217, 218. But whether a clause in a lease is a covenant of renewal or an agreement for an extension depends on the parties' intention and the use of the word "renewal"; *Freiheit v. Broch*, 98 Conn. 166, 118 A. 828, 829; and the two terms may be used practically synonymously; *American Press v. City of St. Louis*, 314 Mo. 288, 284 S.W. 482, 486; *Orr v. Doubleday, Page & Co.*, 157 N.Y.S. 1009, 1012, 172 App.Div. 96. The word "extend" as used in a lease does not necessarily mean the same, as "renew," but context may show intent that the words be given a similar meaning. *Candler v. Smyth*, 168 Ga. 276, 147 S.E. 552, 554.

To extend a street means to prolong and continue it in the direction in which it already points, but does not include deflecting it from the course of the existing portion. *In re Charlotte St.*, 23 Pa. 288; *Seattle & M. Ry. Co. v. State*, 7 Wash. 150, 34 P. 551, 22 L.R.A. 217.

English Practice

To value the lands or tenements of a person bound by a statute or recognizance which has become forfeited, to their full *extended* value. 3 Bl.Comm. 420; *Fitzh.Nat.Brev.* 131. To execute the writ of *extent* or *extendi facias* (q. v.). 2 Tidd, Pr. 1043, 1044.

Taxation

Extending a tax consists in adding to the assessment roll the precise amount due from each person whose name appears thereon. "The subjects for taxation having been properly listed, and a basis for apportionment established, nothing will remain to fix a definite liability but to *extend* upon the list or roll the several proportionate amounts, as a charge against the several taxables." *Cooley, Tax'n*, 2d Ed., 423.

EXTENDED. A lengthening out of time previously fixed and not the arbitrary setting of a new date. *In re Parent*, D.C.N.H., 30 F.Supp. 943, 945. Stretched, spread, or drawn out. *Rathbone v. State Board of Land Com'rs of Montana*, 100 Mont. 109, 47 P.2d 47, 49.

As used in constitutional inhibition against extending provisions of statute by reference to its title only, has reference to an attempt to add something to text of pre-existing law. *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420, 422.

EXTENDED INSURANCE. An option to use dividend to procure extended insurance is one to procure extension of term of insurance from date

EXTENDED

to which premiums have been paid, without further payment. *Williams v. Union Central Life Ins. Co.*, Tex., 291 U.S. 170, 54 S.Ct. 348, 78 L.Ed. 711, 92 A.L.R. 693.

EXTENDED LEASE. An "extended lease" is merely enlarged upon all the terms and conditions of the instrument, while a "renewed lease" is a new lease. *Rathbone v. State Board of Land Com'rs of Montana*, 100 Mont. 109, 47 P.2d 47, 49.

EXTENDI FACIAS. Lat. You cause to be extended. In English practice. The name of a writ of execution, (derived from its two emphatic words;) more commonly called an "extent." 2 Tidd, Pr. 1043; 4 Steph.Comm. 43.

EXTENDING as used in agreement to extend railroad siding at point of termination signified making connection with. *Blouch v. Stevens*, 106 N.J.L. 488, 150 A. 581, 582.

EXTENSION. A part constituting an addition or enlargement, as an annex, as to build on an extension to a house. *Northwestern Light & Power Co. v. Town of Grundy Center*, 220 Iowa 108, 261 N.W. 604. Addition of existing facilities. *People ex rel. Anderson v. Baltimore & O. S. W. R. Co.*, 359 Ill. 301, 194 N.E. 568, 569. Enlargement of main body; addition of something smaller than that to which it is attached; to cause to reach or continue as from point to point; to lengthen or prolong. *City of Lancaster v. Public Service Commission*, 120 Pa.Super. 597, 182 A. 781, 783. That property of a body by which it occupies a portion of space. *Newark Stove Co. v. Gray & Dudley Co.*, D.C.Tenn., 39 F.Supp. 992, 993.

Renewal of paper is not a loan but an extension of time for payment. *McRoberts v. Spaulding*, D.C.Iowa, 32 F.2d 315, 318.

The word "extension" ordinarily implies the existence of something to be extended. *State v. Graves*, 352 Mo. 1102, 182 S.W.2d 46, 51.

Bankruptcy

An extension proposal is an agreement on part of creditors that they will extend time within which their claims are probably to be paid, in full as to secured creditors, on terms proposed by debtor and approved by court. *Heldstab v. Equitable Life Assur. Soc. of United States*, C.C.A. Kan., 91 F.2d 655, 658.

"Extension" under Bankruptcy Act is proceeding wherein debtor merely obtains extension of time within which to pay in full. In re *Thompson*, D.C.Va., 51 F.Supp. 12, 14.

Proposal under which debts which were not settled in full but were merely extended in time for ultimate payment in full was an "extension proposal". *Mullican v. Texas Land & Mortgage Co.*, C.C.A.Tex., 117 F.2d 576, 578.

Carrier's Lines

Tracks over which there are to be train movements in the sense that such movements are a part of the actual transportation haul from shipper to the consignee. *Missouri Pac. R. Co. v. Chicago Great Western R. Co.*, 137 Kan. 217, 19 P.2d 484, 489.

Lease

An option for renewal implies giving of new lease on same terms as old lease, while an option for extension contemplates a continuance of old lease for a further period. *Mutual Paper Co. v. Hoague-Sprague Corporation*, 297 Mass. 294, 8 N.E.2d 802, 806.

"Renewal" and "extension," as used in leases with reference to options for renewal or for extension, are synonymous. *Economy Stores v. Moran*, 178 Miss. 62, 172 So. 865, 867.

The distinction between "extension" and "renewal" of lease is chiefly that, in the case of renewal, a new lease is requisite, while, in the case of extension, the same lease continues in force during additional period upon performance of stipulated act. *Carrano v. Shoor*, 118 Conn. 86, 171 A. 17, 20.

The word "extension," when used in its proper and usual sense in connection with a lease, means a prolongation of the previous leasehold estate. *Talbot v. Rednalloh Co.*, 283 Mass. 225, 186 N.E. 273, 275.

Mercantile Law

An allowance of additional time for the payment of debts. An agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities. A creditor's indulgence by giving a debtor further time to pay an existing debt. *State v. Mestayer*, 144 La. 601, 80 So. 891, 892. Among the French, a similar agreement is known by the name of *attermoient*. *Merlin, Répert. mot Attermoient*.

Patent Law

An extension of the life of a patent for an additional period of seven years, formerly allowed by law in the United States, upon proof being made that the inventor had not succeeded in obtaining a reasonable remuneration from his patent-right. This is no longer allowed, except as to designs. See Rev.St.U.S. § 4924.

EXTENSION OF PAYMENT. To constitute "extension of payment" of obligation which would release sureties, there must be agreement between obligor and obligee supported by consideration by which obligee has precluded himself from taking action against obligor during period of extension. *O'Banion v. Willis*, 14 La.App. 638, 129 So. 440, 441.

EXTENSION OR RENEWAL OF NOTE. Takes place when parties agree upon valuable consideration for maturity of debt on day subsequent to that provided in original contract. *Elk Horn Bank & Trust Co. v. Spraggins*, 182 Ark. 27, 30 S.W.2d 858, 859.

EXTENSIVE. Widely extended in space, time, or scope; great or wide or capable of being extended. *American Cannel Coal Co. v. Indiana Cotton Mills*, 78 Ind.App. 115, 134 N.E. 891, 893.

EXTENSIVE RAINFALL is not same as "extraordinary rainfall," for which damages could not be recovered; word "extensive" being applicable to area embraced in circumference of particular rainfall, but not implying necessarily rainfall out of ordinary. *Johnson v. Ratliff*, 233 Ky. 187, 25 S.W.2d 355, 356. See *Extraordinary Rainfall*.

EXTENSORES. In old English law. Extenders or appraisers.

The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule, or inventory of the lands, to lay them out under certain heads, and then to ascertain the value of each, as preparatory to the division or partition. *Bract. fols. 72b, 75; Britt. c. 71*.

EXTENT. Amount. *Cox v. State Industrial Accident Commission*, 121 P.2d 919, 921, 168 Or. 508, 23 P.2d 800, 159 A.L.R. 899.

English Practice

A writ of execution issuing from the exchequer upon a debt due the crown, or upon a debt due a private person, if upon recognizance or statute merchant or staple, by which the sheriff is directed to appraise the debtor's lands, and, instead of selling them, to set them off to the creditor for a term during which the rental will satisfy the judgment. *Hackett v. Amsden*, 56 Vt. 201; *Nason v. Fowler*, 70 N.H. 291, 47 A. 263. It is so called because the sheriff is to cause the lands to be appraised at their full extended value before he delivers them to the plaintiff. *Fitzh.N.B.* 131. The term is sometimes used in the various states of the United States to denote writs which give the creditor possession of the debtor's lands for a limited time till the debt be paid. *Roberts v. Whiting*, 16 Mass. 186.

Scotch Practice

The value or valuation of lands. Bell.

The rents, profits, and issues of lands. Skene.

For "Manorial Extent," see that title.

EXTENT IN AID. That kind of extent which issues at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself. 2 Tidd, Pr. 1045; 4 Steph.Comm. 47. This writ was much abused, owing to some peculiar privileges possessed by crown-debtors, and its use was regulated by Stat. 57 Geo. III. c. 117. See 3 Bla.Comm. 419. The writ used by a debtor of the king against his debtor to enforce the right of preference given to him because of his indebtedness to the king. *United States Fidelity & Guaranty Co. v. Carter*, 161 Va. 381, 170 S.E. 764, 768, 90 A.L.R. 191.

EXTENT IN CHIEF. A summary process by which the king's action was commenced against his debtor and his body, personal property (tangible and intangible), and lands at once seized for the satisfaction of the king's debt. *United States Fidelity & Guaranty Co. v. Carter*, 161 Va. 381, 170 S.E. 764, 768, 90 A.L.R. 191. The principal kind of extent, issuing at the suit of the crown, for the recovery of the crown's debt. 4 Steph.Comm. 47. An adverse proceeding by the king, for the recovery of his own debt. 2 Tidd, Pr. 1045.

EXTENT OF SUCH PAYMENT. Under statute extending right of subrogation to Federal Deposit Insurance Corporation, phrase "to the extent of such payment" is equivalent to term "pro tanto" or words "as to the portion of the deposit paid". *Federal Deposit Ins. Corporation v. Citizens State Bank of Niangua*, C.C.A.Mo., 130 F.2d 102, 103.

EXTENTA MANERII. (The extent or survey of a manor.) The title of a statute passed 4 Edw. I. St. 1; being a sort of direction for making a *survey* or *terrier* of a *manor*, and all its appendages. 2 Reeve, Eng.Law, 140.

EXTENUATE. To lessen; to palliate; to mitigate. *Connell v. State*, 46 Tex.Cr.R. 259, 81 S.W. 748.

EXTENUATING CIRCUMSTANCES. Such as render a delict or crime less aggravated, heinous, or reprehensible than it would otherwise be, or tend to palliate or lessen its guilt. Such circumstances may ordinarily be shown in order to reduce the punishment or damages.

EXTENUATION. That which renders a crime or tort less heinous than it would be without it. It is opposed to aggravation.

EXTERIOR. As used in policy means on the outside, external, pertaining to the outside part, *Northwestern Casualty & Surety Co. v. Barzune*, Tex.Civ.App., 42 S.W.2d 100, 103; the surface outside, *Jackson Steam Laundry v. Aetna Casualty & Surety Co.*, 156 Miss. 649, 126 So. 478, 480.

The phrase "exterior of the building" as used in a lease of a building adjacent to another building, each having its own wall, the two against each other forming a solid double wall, means co-extensive with its external parts and including the four walls. *B. Siegel Co. v. Codd*, 183 Mich. 145, 149 N.W. 1015, 1017.

EXTERNAL. Apparent, outward, visible from the outside, capable of being perceived. *Toliver v. Massachusetts Bonding & Insurance Co.*, Mo. App., 47 S.W.2d 140, 141. Outward; exterior; relating to the outside, as of the body; really being without; acting from without, as the external surface of a body; and outwardly; perceptible, visible; physical or corporeal; as distinguished from mental or moral. *Provident Life & Accident Ins. Co. v. Campbell*, 18 Tenn.App. 452, 79 S.W.2d 292, 296.

In double indemnity clause of life policy, the term "external" applies to the force or means and not to the injury. *Hanna v. Rio Grande Nat. Life Ins. Co.*, Tex.Civ. App., 181 S.W.2d 908, 911.

EXTERNAL, VIOLENT AND ACCIDENTAL MEANS. Death through "external, violent and accidental means" necessarily implies that death did not result indirectly from disease or bodily infirmity. *Mutual Life Ins. Co. of New York v. Hassing*, C.C.A.10, 134 F.2d 714, 716.

EXTErrITORIALITY. The privilege of those persons (such as foreign ministers) who, though temporarily resident within a state, are not subject to the operation of its laws. The exemption from the operation of the ordinary laws of the state accorded to foreign monarchs temporarily within the state and their retinue, to diplomatic agents and the members of their household, to consuls in non-Christian states, and to foreign men of war in port. 1 Opp. 460-469. See Capitulation; Extraterritoriality.

EXTERUS. Lat. A foreigner or alien; one born abroad. The opposite of *civis*.

EXTERUS NON HABET TERRAS. An alien holds no lands. *Tray.Lat.Max.* 203.

EXTINCT. Extinguished. A rent is said to be extinguished when it is destroyed and put out. *Co.Litt.* 147b. See Extinguishment.

EXTINCTO SUBJECTO, TOLLITUR ADJUNCTUM. When the subject [or substance] is extinguished, the incident [or adjunct] ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end,

EXTINGUISH

the partnership itself ceases. Inst. 3, 26, 6; 3 Kent, Conm. 52, note; Griswold v. Waddington, 16 Johns., N.Y., 438, 492.

EXTINGUISH. To put an end to. Onondaga Water Service Corporation v. Crown Mills, Inc., 132 Misc. 848, 230 N.Y.S. 691, 698. To put out, quench, stife, as to extinguish a fire or flame. Gally v. Wynne, 96 Cal.App. 145, 273 P. 825, 826.

EXTINGUISHMENT. The destruction or cancellation of a right, power, contract, or estate. The annihilation of a collateral thing or subject in the subject itself out of which it is derived. Prest. Merg. 9. For the distinction between an extinguishment and passing a right, see 2 Shars.Bl. Comm. 325, note.

"Extinguishment" is sometimes confounded with "merger," though there is a clear distinction between them. "Merger" is only a mode of extinguishment, and applies to estates only under particular circumstances; but "extinguishment" is a term of general application to rights, as well as estates. 2 Crabb, Real Prop. p. 367, § 1487. "Extinguishment" connotes the end of a thing, precluding the existence of future life therein; in "mergers" there is a carrying on of the substance of the thing, except that it is merged into and becomes a part of a separate thing with a new identity. McRoberts v. McRoberts, 177 Okl. 156, 57 P.2d 1175, 1177.

EXTINGUISHMENT OF COMMON. Loss of the right to have common. This may happen from various causes. 2 Steph.Com. 41; Co.Litt. 280; 1 Bacon, Abr. 628; Cro.Eliz. 594.

EXTINGUISHMENT OF COPYHOLD. In English law. A copyhold is said to be extinguished when the freehold and copyhold interests unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold or by the freehold interest coming to the copyhold. 1 Crabb, Real Prop. p. 670, § 864; Hutt. 81; Cro.Eliz. 21; Wms.R.P. 287.

EXTINGUISHMENT OF DEBTS. This takes place by payment; by accord and satisfaction; by novation, or the substitution of a new debtor; by merger, when the creditor recovers a judgment or accepts a security of a higher nature than the original obligation; by a release; by the marriage of a *feme sole* creditor with the debtor, or of an obligee with one of two joint obligors; and where one of the parties, debtor or creditor, makes the other his executor.

EXTINGUISHMENT OF LEGACY. This occurs in case the identical thing bequeathed is not in existence, or has been disposed of so that it does not form part of the testator's estate, at the time of his death. Welch v. Welch, 147 Miss. 728, 113 So. 197, 198. See Ademption.

EXTINGUISHMENT OF LIEN. Discharge by operation of law. Schreiber v. Cook County, 388 Ill. 297, 58 N.E.2d 40, 44, 155 A.L.R. 1162.

EXTINGUISHMENT OF RENT. If a person have a yearly rent of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished. Termes de la Ley; Cowell; Co.Litt. 147. Rent may also be extinguished by conjunction of es-

tates, by confirmation, by grant, by release, and by surrender. 1 Crabb, Real Prop. pp. 210-213, § 209.

EXTINGUISHMENT OF WAYS. This is usually effected by unity of possession. As if a man have a way over the close of another, and he purchase that close, the way is extinguished. 1 Crabb, Real Prop. p. 341, § 384; 2 Washb.Real Prop.

EXTIRPATION. In English law. A species of destruction or waste, analogous to estrepement. See Estrepement.

EXTIRPATIONE. A judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, etc., maliciously overthrew any house or extirpated any trees upon it. Reg.Jud. 13, 56.

EXTOCARE. In old records. To grub woodland, and reduce it to arable or meadow; "to stock up." Cowell.

EXTORSIVELY. A technical word used in indictments for extortion.

It is a sufficient averment of a corrupt intent, in an indictment for extortion, to allege that the defendant "extorsively" took the unlawful fee. Leeman v. State, 35 Ark. 438, 37 Am.Rep. 44. When a person is charged with extorsively taking, the very import of the word shows that he is not acquiring possession of his own, 4 Cox, Cr.Cas. 387. In North Carolina the crime may be charged without using this word, State v. Dickens, 2 N.C. 406.

EXTORT. To compel or coerce, as a confession or information by any means serving to overcome one's power of resistance, or making the confession or admission involuntary. Sutton v. Commonwealth, 207 Ky. 597, 269 S.W. 754, 757.

To gain by wrongful methods, to obtain in an unlawful manner, to compel payments by means of threats of injury to person, property, or reputation. McKenzie v. State, 113 Neb. 576, 204 N.W. 60, 61; State v. Richards, 97 Wash. 587, 167 P. 47, 48. To take from unlawfully; to exact something wrongfully by threats or putting in fear. State v. Adams, Del., 106 A. 287, 288, 7 Boyce, 335. See Extortion.

To wrest from, to exact, to take under a claim of protection. Commonwealth v. Neubauer, 142 Pa.Super. 528, 16 A.2d 450, 452.

The natural meaning of the word "extort" is to obtain money or other valuable thing either by compulsion, by actual force, or by the force of motives applied to the will, and often more overpowering and irresistible than physical force. Com. v. O'Brien, 12 Cush., Mass., 90.

EXTORTIO EST CRIMEN QUANDO QUIS COLLORE OFFICII EXTORQUET QUOD NON EST DEBITUM, VEL SUPRA DEBITUM, VEL ANTE TEMPUS QUOD EST DEBITUM. 10 Coke, 102. Extortion is a crime when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due.

EXTORTION. Unlawful obtaining of money from another. People v. Parkinson, 181 Misc. 603, 41 N.Y.S.2d 331, 334.

It has also been defined as corrupt demanding or receiving by a person in office of a fee for services which should be performed gratuitously; or, where compensation is permissible, of a larger fee than the law justifies, or a fee not

due, 2 Bish.Crim.Law, § 390; exaction of money by reason of oppressive conditions or circumstances, *People v. Weljer*, 237 N.Y. 316, 143 N.E. 205, 208, 38 A.L.R. 613; obtaining of property from another, with his consent, induced by wrongful use of force or fear, or under color of official right. And see *State v. Logan*, 104 La. 760, 29 So. 336; *In re Rempfer*, 51 S.D. 393, 216 N.W. 355, 359, 55 A.L.R. 1346; *Lee v. State*, 16 Ariz. 291, 145 P. 244, 246, Ann.Cas.1917B, 131. Obtaining of property of another by threats to injure him and to destroy his property, *State v. Phillips*, 62 Idaho 656, 115 P.2d 418, 420. Taking or obtaining of anything from another by means of illegal compulsion or oppressive exaction, *Daniels v. U. S.*, C.C.A.Cal., 17 F.2d 339, 342; whether by an officer or otherwise, *United States v. Dunkley*, D.C.Cal., 235 F. 1000, 1001. Unlawful taking by any officer, by color of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due, 4 Bla.Comm. 141; *Com. v. Saulsbury*, 152 Pa. 554, 25 A. 610; 1 Russ.Cr.* 144; 2 Bish.Cr.L. 390; *U. S. v. Deaver*, D.C.N.C., 14 F. 595; *Bush v. State*, 19 Ariz. 195, 168 P. 508, 509. Wrongful exaction of money or other valuable thing, either by compulsion, actual force, or by force of motives applied at will, *Commonwealth v. Donoghue*, 250 Ky. 343, 63 S.W.2d 3, 89 A.L.R. 819.

A taking under color of office is of essence of offense. *La Tour v. Stone*, 139 Fla. 681, 190 So. 704, 709, 710.

At common law, any oppression by color or pretense of right, and particularly and technically the exaction or unlawful taking by an officer of money or thing of value, by color of his office, either when none at all is due, or not so much is due, or when it is not yet due. *Preston v. Bacon*, 4 Conn. 480. See *People v. Barondess*, 16 N.Y.S. 436, 61 Hun, 571; *Murray v. State*, 125 Tex.Cr.R. 252, 67 S.W.2d 274, 275; *State v. Anderson*, 66 N.D. 522, 267 N.W. 121, 123; *Whart.Cr.L.* 833.

Term applies to persons who exact money either for the performance of a duty, the prevention of injury, or the exercise of influence, and covers the obtaining of money or other property by operating on fear or credulity, or by promise to conceal the crimes of others. *Commonwealth v. Mann*, 111 Pa.Super. 371, 170 A. 381, 382.

Term in comprehensive or general sense signifies any oppression under color of right, and in strict or technical sense signifies unlawful taking by any officer, under color of office, of any money or thing of value not due him, more than is due, or before it is due. *State v. Barts*, 132 N.J.L. 74, 38 A.2d 838, 843, 844, 848; *State v. Vallee*, 136 Me. 432, 12 A.2d 421.

To constitute "extortion," money or other thing of value must have been wilfully and corruptly received. *La Tour v. Stone*, 139 Fla. 681, 190 So. 709, 710.

To constitute "extortion," the wrongful use of fear must be the operating cause producing consent. *People v. Biggs*, 178 Cal. 79, 172 P. 152, 153.

The distinction between "bribery" and "extortion" seems to be this: the former offense consists in the offering a present, or receiving one, if offered; the latter, in demanding a fee or present, by color of office. *Jacob*.

For the distinction between "extortion" and "exaction," see *Exaction*.

EXTRA. A Latin preposition, occurring in many legal phrases, and meaning beyond, except, without, out of, outside.

Work outside contract, performed by subcontractor was properly claimed as an "extra." *United States ex rel. Park L. Davis Co. v. Matthew Cummings Co.*, D.C.Mass., 27 F.Supp. 405, 407, 408.

EXTRA ALLOWANCE. In New York practice. A sum in addition to costs, which may, in the discretion of the court, be allowed to the successful party in cases of unusual difficulty. See *Hascall v. King*, 54 App.Div. 441, 66 N.Y.S. 1112.

EXTRA COMMERCIA. Property once dedicated to public use is "extra commercia". *J. B. McCrary Co. v. Town of Winnfield*, D.C.La., 40 F.Supp. 427, 435.

EXTRA COMPENSATION. Within constitutional provision prohibiting Legislature from granting extra compensation to contractor, is compensation over and above that fixed by contract for agreed work, and is in nature of gratuity. *Weston v. State*, 262 N.Y. 46, 186 N.E. 197, 200, 88 A.L.R. 1219.

Under statutes providing for extra compensation to customs inspectors payment made by licensees to Collector at rates fixed by Secretary of the Treasury constitute "extra compensation" over and above the annual salary, and not a payment from licensees. *United States v. Myers*, Ct.Cl., 320 U.S. 561, 64 S.Ct. 337, 341, 88 L.Ed. 312.

EXTRA COSTS. In English practice. Those charges which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc., an affidavit of which must be made, to warrant the master in allowing them upon taxation of costs. *Whar-ton*.

EXTRA-DOTAL PROPERTY. In Louisiana this term is used to designate that property which forms no part of the dowry of a woman, and which is also called "paraphernal property." Civ. Code La. art. 2335. *Fleitas v. Richardson*, 147 U.S. 550, 13 S.Ct. 495, 37 L.Ed. 276.

EXTRA FEODUM. Out of his fee; out of the seigniori, or not holden of him that claims it. *Co.Litt.* 1b; *Reg.Orig.* 97b.

EXTRA JUDICIUM. Extrajudicial; out of the proper cause; out of court; beyond the jurisdiction. See *Extrajudicial*.

EXTRA JUS. Beyond the law; more than the law requires. *In jure, vel extra jus*. *Bract.* fol. 169b.

EXTRA LEGEM. Out of the law; out of the protection of the law.

EXTRA LEGEM POSITUS EST CIVILITER MORTUUS. *Co. Litt.* 130. He who is placed out of the law is civilly dead. A bankrupt is, as it were, civilly dead. *International Bank v. Sherman*, 101 U.S. 406, 25 L.Ed. 866.

EXTRA PRÆSENTIAM MARITI. Out of her husband's presence.

EXTRA QUATUOR MARIA. Beyond the four seas; out of the kingdom of England. 1 Bl. Comm. 457.

EXTRA REGNUM. Out of the realm. 7 Coke, 16a; 2 Kent, Comm. 42, note.

EXTRA SERVICES, when used with reference to officers, means services incident to the office in question, but for which compensation has not been provided by law. *Miami County v. Blake*, 21 Ind. 32.

EXTRA TERRITORIUM. Beyond or without the territory. 6 Bin. 353; 2 Kent, Comm. 407. Outside the territorial limits of a state. *Milne v. Moreton*, 6 Binn., Pa., 353, 6 Am.Dec. 466.

EXTRA

EXTRA TERRITORIUM JUS DICENTI IMPUNE NON PARETUR. One who exercises jurisdiction out of his territory is not obeyed with impunity. Dig. 2, 1, 20; Branch, Princ.; 10 Coke, 77; Story, Conf.Laws, § 539. He who exercises judicial authority beyond his proper limits cannot be obeyed with safety.

EXTRA VIAM. Outside the way. Where the defendant in trespass pleaded a right of way in justification, and the replication alleged that the trespass was committed outside the limits of the way claimed, these were the technical words to be used. 16 East, 343, 349.

EXTRA VIRES. Beyond powers. See Ultra Vires.

EXTRA WORK. As used in connection with construction contract, means work done not required in performance of the contract, something done or furnished in addition to or in excess of the requirement of the contract. Kansas City Bridge Co. v. State, 61 S.D. 580, 250 N.W. 343; work entirely outside and independent of contract—something not required or contemplated in its performance. Bradshaw v. Wolfe City, Tex.Civ.App., 3 S.W.2d 527, 530; while additional work on the other hand, is usually work which results from a change or alteration in plans concerning work which has to be done under a contract. De Martini v. Elade Realty Corp., Co.Ct., 52 N.Y.S.2d 487, 489; or such work as may fairly be presumed to arise in the construction, and is within the contract, although not included in the plans and specifications. Wilson v. Salt Lake City, 52 Utah, 506, 174 P. 847, 850.

But in a sewer construction contract providing that the city engineer might make such changes in the lines, grades, and dimensions which do not entail any extra expense to the contractor, the word "extra" was deemed equivalent to additional work which was required in the performance of the contract, and not necessary to such performance in the sense that the contract could not have been carried out without it, but necessary in the sense that by means of it the contract could be more conveniently and beneficially performed in the interest of both parties thereto, and did not include work arising out of and entirely independent of the contract, something not required in its performance. City of Richmond v. Burton, 115 Va. 206, 78 S.E. 560, 563. See, also, Fetterolf v. S. & L. Const. Co., 161 N.Y.S. 549, 550, 175 App.Div. 177; McHugh v. City of Tacoma, 76 Wash. 127, 135 P. 1011, 1015.

Materials and labor not contemplated by the contract, but which are required by changes in the plans and specifications made after the contract had been entered into, are "extra work". Collins v. Hall, Tex.Civ.App., 161 S.W.2d 311, 314.

EXTRACT, v. To draw out or forth; to pull out from a fixed position. Webster.

To "extract" ore within the meaning of a royalty provision in a mining lease contemplates not only the removal of the ore from the mine and throwing it on a dump, but also the separation of the ore from the dirt and refuse in which it was found on the dump. Giersa v. Creech, Mo.App., 181 S.W. 588, 589.

EXTRACT, n. A portion or fragment of a writing. In Scotch law, the certified copy, by a clerk of a court, of the proceedings in an action carried on before the court, and of the judgment pronounced; containing also an order for execution or proceedings thereupon. Jacob; Whishaw.

EXTRACTA CURIÆ. In old English law. The issues or profits of holding a court, arising from the customary fees, etc.

EXTRADITION. The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender. Waller v. Jordan, 58 Ariz. 169, 118 P. 2d 450, 451.

The surrender of a criminal by a foreign state to which he has fled for refuge from prosecution to the state within whose jurisdiction the crime was committed, upon the demand of the latter state, in order that he may be dealt with according to its laws. Extradition may be accorded as a mere matter of comity, or may take place under treaty stipulations between the two nations. It also obtains as between the different states of the American Union. Terlinden v. Ames, 184 U.S. 270, 22 S.Ct. 484, 46 L.Ed. 534; Fong Yue Ting v. U. S., 149 U.S. 698, 13 S.Ct. 1016, 37 L.Ed. 905.

Extradition between the states must be considered and defined to be a political duty of imperfect obligation, founded upon compact, and requiring each state to surrender one who, having violated the criminal laws of another state, has fled from its justice, and is found in the state from which he is demanded, on demand of the executive authority of the state from which he fled. Abbott.

—**Extradition warrant.** See Executive Warrant.

EXTRAHAZARDOUS. In the law of insurance. Characterized or attended by circumstances or conditions of special and unusual danger. Reynolds v. Insurance Co., 47 N.Y. 597; Russell v. Insurance Co., 71 Iowa 69, 32 N.W. 95.

EXTRAHURA. In old English law. An animal wandering or straying about, without an owner; an estray. Spelman.

EXTRAJUDICIAL. That which is done, given, or effected outside the course of regular judicial proceedings; not founded upon, or unconnected with, the action of a court of law; as extrajudicial evidence, an extrajudicial oath.

That which, though done in the course of regular judicial proceedings, is unnecessary to such proceedings, or interpolated, or beyond their scope; as an extrajudicial opinion, (*dictum*.)

That which does not belong to the judge or his jurisdiction, notwithstanding which he takes cognizance of it.

EXTRAJUDICIAL CONFESSION. See Confession.

EXTRAJUDICIAL EVIDENCE is that which is used to satisfy private persons as to facts requiring proof.

EXTRAJUDICIAL OATH. One taken not in the course of judicial proceedings, or taken without any authority of law, though taken formally before a proper person. State v. Scatena, 84 Minn. 281, 87 N.W. 764.

EXTRAJUDICIALLY. The testimony of an expert witness based upon information obtained "extrajudicially", which means in any other manner

than from evidence given in court, is objectionable. *State v. David*, 222 N.C. 242, 22 S.E.2d 633, 640.

EXTRALATERAL RIGHT. In mining law. The right of the owner of a mining claim duly located on the public domain to follow, and mine, any vein or lode the apex of which lies within the boundaries of his location on the surface, notwithstanding the course of the vein on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the side lines of his location. See Rev.Stat. U.S. § 2322, 30 U.S.C.A. § 26.

EXTRAMURAL. As applied to the powers of a municipal corporation, its "extramural" powers are those exercised outside the corporate limits, as distinguished from "intramural" powers. *State v. Port of Astoria*, 79 Or. 1, 154 P. 399, 404.

EXTRANEOUS EVIDENCE. With reference to a contract, deed, will, or any writing, extraneous evidence is such as is not furnished by the document itself, but is derived from outside sources; the same as evidence *aliunde*. See, also, *Aliunde*.

EXTRANEOUS OFFENSE. Is one that is extra, beyond, or foreign to the offense for which the party is on trial. *Ridinger v. State*, 146 Tex. Cr.R. 286, 174 S.W.2d 319, 320.

EXTRANEUS.

Old English law. One foreign born; a foreigner. 7 Coke, 16.

Roman law. An heir not born in the family of the testator. Those of a foreign state. The same as *alienus*. Vicat; Du Cange.

EXTRANEUS EST SUBDITUS QUI EXTRA TERRAM, i. e., POTESTATEM REGIS NATUS EST. 7 Coke, 16. A foreigner is a subject who is born out of the territory, *i. e.*, government of the king.

EXTRAORDINARY. Out of the ordinary; exceeding the usual, average, or normal measure or degree; beyond or out of the common order or rule; not usual, regular, or of a customary kind; remarkable; uncommon; rare. *Puget Sound Traction, Light & Power Co. v. Reynolds*, D.C. Wash., 223 F. 371, 378; *Courtney v. Ocean Accident & Guaranty Corporation*, 346 Mo. 703, 142 S.W.2d 858, 861, 130 A.L.R. 234. The word is both comprehensive and flexible in meaning. *Zollman v. Baltimore & O. S. W. R. Co.*, 121 N.E. 135, 140, 70 Ind.App. 395.

Beyond or out of the common order or method; exceeding the ordinary degree; not ordinary; unusual; employed for an exceptional purpose or on a special occasion; as a noun it is defined as, something extraordinary; especially, an extraordinary expense or allowance; specifically (Eng.) any allowance made to troops beyond the customary gross paid. *State v. Rogers*, 142 Kan. 841, 52 P.2d 1185, 1195.

EXTRAORDINARY AVERAGE. A contribution by all the parties concerned in a mercantile voyage, either as to the vessel or cargo, toward a loss sustained by some of the parties in interest for the benefit of all. *Wilson v. Cross*, 33 Cal. 69.

EXTRAORDINARY CARE. Synonymous with greatest care, utmost care, highest degree of care. *Railroad Co. v. Baddeley*, 54 Ill. 24, 5 Am.Rep. 71; *Railway Co. v. Causler*, 97 Ala. 235, 12 So. 439; *Sorey v. Yazoo & M. V. R. Co.*, 17 La.App. 538, 136 So. 155, 158. See Care; Diligence; Negligence.

EXTRAORDINARY CASE. "The extraordinary motions or cases contemplated by the statute are such as do not ordinarily occur in the transaction of human affairs; as, when a man has been convicted of murder, and it afterwards appears that the supposed deceased is still alive, or where one is convicted on the testimony of a witness who is subsequently found guilty of perjury in giving that testimony, or where there has been some providential cause, and cases of like character." *Herrington v. State*, 32 Ga.App. 83, 123 S.E. 147, 148; *Farmers' Union Warehouse of Metter v. Boyd*, 31 Ga.App. 104, 119 S.E. 542.

The presence of an unexplored point of law determinative of litigation makes litigation an "extraordinary case" within statute authorizing additional allowance. *National Bank of Far Rockaway v. City of New York*, Sup., 46 N.Y.S.2d 153, 154.

EXTRAORDINARY DANGER. In the law of master and servant, one not ordinarily incident to the service. *Piorkowski v. A. Leschen & Sons Rope Co.*, 190 Mo.App. 597, 176 S.W. 258, 260.

EXTRAORDINARY DIVIDENDS. Cash disbursements by "wasting asset" companies are apportioned as "extraordinary dividends" where they represent, in part at least, distribution of proceeds of capital assets. *In re Nirdlinger's Estate*, 327 Pa. 160, 193 A. 33.

"Extraordinary dividends" may assume unusual form and amount, paid at irregular intervals from accumulated surplus or earnings. *In re Nirdlinger's Estate*, 327 Pa. 160, 193 A. 33.

EXTRAORDINARY EXPENSES. This term in a constitutional provision that the state may incur indebtedness for extraordinary expenses, means other than ordinary expenses and such as are incurred by the state for the promotion of the general welfare, compelled by some unforeseen condition which is not regularly provided for by law, such as flood, famine, fire, earthquake, pestilence, war, or any other condition that will compel the state to put forward its highest endeavors to protect the people, their property, liberty, or lives. *State v. Davis*, 113 Kan. 4, 213 P. 171, 172.

EXTRAORDINARY FLOOD. One of those unexplained visitations whose comings are not foreshadowed by the usual course of nature, *Jensen v. Buffalo Drainage Dist. of Cloud County*, 148 Kan. 712, 84 P.2d 961, 965; and whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight. *Eikland v. Casey*, C.C.A.Alaska, 266 F. 821, 823, 12 A.L.R. 179; *Clements v. Phœnix Utility Co.*, 119 Kan. 190, 237 P. 1062, 1065.

One of such unusual occurrence that it could not have been foreseen by men of ordinary experience and prudence.

EXTRAORDINARY

Soules v. Northern Pac. R. Co., 34 N.D. 7, 157 N.W. 823, 830, L.R.A.1917A, 501. A flood is not extraordinary which is such as residents of the neighborhood might expect from their observation. *City of Richmond v. Cheatwood*, 130 Va. 76, 107 S.E. 830, 833.

EXTRAORDINARY GRAND JURY is limited in scope of its investigation which may not go beyond terms of executive proclamation, and examination of witness must be confined within those terms, and must not be used as means of disclosing or intermeddling with extraneous matters. *People v. Doe*, 247 App.Div. 324, 286 N.Y.S. 343.

EXTRAORDINARY HAZARD. If hazards are increased by what other servants do, and injured servant has no part in increasing them, they are "extraordinary". *Stone v. Howe*, 92 N.H. 425, 32 A.2d 484, 487.

EXTRAORDINARY MOTIONS FOR NEW TRIAL are such as do not ordinarily occur. *King v. State*, 174 Ga. 432, 163 S.E. 168, 171.

EXTRAORDINARY OBSOLESCENCE. An extensive supersession of property used for transmission or generation of power or instrumentalities used for the transportation of passengers. *State ex rel. City of St. Louis v. Public Service Commission*, 341 Mo. 920, 110 S.W.2d 749, 775.

EXTRAORDINARY RAINFALL. Not such a downpour of rain as may not have been known to occur, but only such rainfall that is so unusual and extraordinary that men of ordinary prudence would not have anticipated and provided for. *City of Portsmouth v. Weiss*, 145 Va. 94, 133 S.E. 781, 787. Cf. *Extensive Rainfall*.

EXTRAORDINARY REMEDIES. The writs of *mandamus*, *quo warranto*, *habeas corpus*, and some others are sometimes called "extraordinary remedies," in contradistinction to the ordinary remedy by action. Receivership is also said to be an "extraordinary remedy." *Prudential Securities Co. v. Three Forks, H. & M. V. R. Co.*, 49 Mont. 567, 144 P. 158, 159.

EXTRAORDINARY REPAIRS. Within the meaning of a lease, such as are made necessary by some unusual or unforeseen occurrence which does not destroy the building but merely renders it less suited to the use for which it was intended. *Nixon v. Gammon*, 191 Ky. 175, 229 S.W. 75, 77; *Courtney v. Ocean Accident & Guaranty Corporation*, 346 Mo. 703, 142 S.W.2d 858, 861, 130 A.L.R. 234.

EXTRAORDINARY RISK. The expression is generally used to describe risks arising from the negligence of the master. *Tenney v. Baird Machine Co.*, 87 Conn. 119, 87 A. 352, 354; *Royal Collieries Co. v. Wells*, 210 Ky. 600, 276 S.W. 515, 518. An "extraordinary risk" is one lying outside of the sphere of the normal, arising out of conditions not usual in the master's business. *Brazeale v. Piedmont Mfg. Co.*, 184 S.C. 471, 193 S.E. 39, 43. It is one which is not normally and necessarily incident to the employment. *Pollard v. Weeks*, 60 Ga.App. 664, 4 S.E.2d 722, 727. It is one which is not naturally incident to occupation

and grows out of future of employer to furnish safe place to work and proper and safe appliances and tools for work. *Snow v. Texas & P. Ry. Co.*, La.App., 166 So. 200, 203. It is one which may be obviated by the exercise of reasonable care by the employer. *Wheeler v. Chicago & W. I. R. Co.*, 267 Ill. 306, 108 N.E. 330, 336; *Louisiana Ry. & Nav. Co. of Texas v. Disheroon*, Tex.Civ.App., 295 S.W. 250, 252. It is a risk which is only indirectly connected with the employment. *Emerick v. Slavonian Roman Greek Catholic Union*, 93 N.J.L. 282, 108 A. 223.

As respects assumption of risks, an "extraordinary risk" is not one which is uncommon or unusual in the sense that it is rare, but is one which arises out of unusual conditions not resulting in the ordinary course of business, as by reason of the master's negligence. *Leyba v. Albuquerque & Cerrillos Coal Co.*, 22 N.M. 455, 164 P. 823, 825; *Houston Lighting & Power Co.*, 1905 v. *Conley*, Tex.Civ.App., 171 S.W. 561, 563; it is a risk arising from the master's negligence. *Simowitz v. Register*, 60 Ga.App. 180, 3 S.E.2d 231, 233; it is a risk which may be obviated by exercise of reasonable care on master's part. *Tyner v. Atlantic Coast Line R. Co.*, 149 S.C. 89, 146 S.E. 663, 670. A servant does not assume "extraordinary risks" unless they are known to and appreciated by him, or are so obvious that ordinarily prudent person under circumstances would have observed and appreciated them. *Brazeale v. Piedmont Mfg. Co.*, 184 S.C. 471, 193 S.E. 39, 43; unless they are known or obvious. *Pollard v. Weeks*, 60 Ga.App. 664, 4 S.E.2d 722, 727. If injury results from master's breach of duty of due care the risk is "extraordinary" and is assumed only if servant knew or ought to have known of dangerous condition and comprehended it or must be taken to have known of and comprehended it. *Stone v. Howe*, 92 N.H. 425, 32 A.2d 484, 486.

Under Federal Employers' Liability Act, "extraordinary risks" are risks not normally and necessarily incident to employment. *Southern Ry. Co. v. Blanton*, 63 Ga.App. 93, 10 S.E.2d 430, 434; an employee is not treated as assuming extraordinary risks arising from defects due to negligence of employer unless he has knowledge of them or danger is so obvious that it would be appreciated by ordinarily prudent person. *Snow v. Texas & P. Ry. Co.*, La.App., 166 So. 200, 203.

EXTRAORDINARY SERVICES. As applied to the care and attention of an old and infirm person, such services as are unusual, extra, or above those generally required or to be anticipated in usual course of things, not such services as are rendered to an old and feeble person, even though sick, which are not different from those usually required by such persons in similar circumstances. *Allen v. Smith*, 208 Ky. 207, 270 S.W. 782, 783.

As used in statute authorizing allowance of additional compensation to guardian, means services in addition to guardian's usual or regular services. In re *Gislason's Estate*, 73 N.D. 731, 19 N.W.2d 447, 451, 452.

EXTRAORDINARY STORM is not necessarily an unprecedented one, but one that happens so rarely that it is unusual and not ordinarily to be expected. *Spitzer v. City of Waterbury*, 113 Conn. 84, 154 A. 157, 160; *Oklahoma City v. Evans*, 173 Okl. 586, 50 P.2d 234, 238.

EXTRAPAROCHIAL. Out of a parish; not within the bounds or limits of any parish. 1 Bl. Comm. 113, 284.

EXTRATERRITORIALITY. The extraterritorial operation of laws; that is, their operation upon persons, rights, or jural relations, existing beyond the limits of the enacting state, but still

amendable to its laws. A term used, especially formerly, to express, in lieu of the word *extraterritoriality* (q. v.), the exemption from the obligation of the laws of a state granted to foreign diplomatic agents, warships, etc. Wheaton, § 224. The term is used to indicate jurisdiction exercised by a nation in other countries, by treaty, as, by the United States in China or Egypt; or by its own ministers or consuls in foreign lands. Crime is said to be extraterritorial when committed in a country other than that of the forum in which the party is tried. See 2 Moore, Int.L.Dig.; U. S. v. Lucas, D.C.Wash., 6 F.2d 327, 328.

EXTRAVAGANTES. In canon law. Those decretal epistles which were published after the Clementines.

They were so called because at first they were not digested or arranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII., successor of Clement V. The last collection was brought down to the year 1483, and was called the "Common Extravagantes," notwithstanding that they were likewise incorporated with the rest of the canon law. Enc.Lond.

EXTREME. At the utmost point, edge, or border; most remote. Last; conclusive. Greatest, highest, strongest, or the like. Immoderate; violent. Webster.

EXTREME AND REPEATED CRUELTY. Acts of physical violence producing bodily harm. *Holmstedt v. Holmstedt*, 383 Ill. 290, 49 N.E.2d 25, 29; physical acts of violence, bodily harm or suffering, or such acts as endanger life or limb, or raise a reasonable apprehension of great bodily harm, but does not include bad temper, petulance, rude language, want of civil attentions, or angry and abusive words. *Moore v. Moore*, 362 Ill. 177, 199 N.E. 98, 99.

EXTREME CARE. Such care as prudent man would exercise in place of danger. *Schlossstein v. Bernstein*, 293 Pa. 245, 142 A. 324, 327.

EXTREME CASE. An extreme case, in which an injunction granted inadvertently or improvidently may be dissolved ex parte, means one in which the injunction was manifestly granted improperly, and its continuation until hearing in due course might cause great injury. *Teacle v. Hughes*, 146 La. 195, 83 So. 457, 458.

EXTREME CRUELTY is condition of extreme discomfort and wretchedness incapacitating spouse to discharge duties or seriously endangering health. *McKee v. McKee*, 107 N.J.Eq. 1, 151 A. 620, 622. It is grave and serious misconduct which defeats marriage relation. *Kennedy v. Kennedy*, 101 Fla. 239, 134 So. 201, 203.

Any habitual indulgence by one spouse, that causes mental torture, undermines the health, or tends to dethrone reason of other, is sufficient to constitute "extreme cruelty". *Bergman v. Bergman*, 145 Fla. 10, 199 So. 920, 922.

As respects constructive abandonment, "extreme cruelty" per se by husband is conduct which law presumes to be malicious, intended to force separation, and dangerous to

life or health of wife, or incapacitates her from performing her duties. *Fallon v. Fallon*, 111 N.J.Eq. 512, 162 A. 406, 409.

Extreme cruelty is conduct or treatment which: causes reasonable apprehension of bodily hurt, *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694, 702; constitutes aggravated or inhuman ill treatment, having regard to the physical and temperamental constitution of the parties and all the surrounding circumstances, *Donald v. Donald*, 21 Fla. 573; *Blain v. Blain*, 45 Vt. 544; *Poor v. Poor*, 8 N.H. 315, 29 Am.Dec. 664; damages health, *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694, 703; destroys concord, harmony, happiness, or affection, *Hassell v. Hassell*, 185 Okl. 154, 90 P.2d 885; destroys happiness and health and defeats the very purposes of matrimony, *Hassell v. Hassell*, 185 Okl. 154, 90 P.2d 885; destroys legitimate ends and objects of matrimony, *Dier v. Dier*, 141 Neb. 685, 4 N.W.2d 731, 734; *McCarty v. McCarty*, 193 Okl. 18, 141 P.2d 103, 104; destroys peace of mind, *Dier v. Dier*, 141 Neb. 685, 4 N.W.2d 731, 734; destroys peace of mind as to seriously impair health or endanger life, *Smith v. Smith*, 61 Ariz. 373, 149 P.2d 683, 684; *McCarty v. McCarty*, 193 Okl. 18, 141 P.2d 103, 104; *Hornor v. Hornor*, 151 Okl. 292, 3 P.2d 670, 671; endangers health and prevents proper discharge of matrimonial duties, *Brinkerhoff v. Brinkerhoff*, 106 N.J.Eq. 331, 150 A. 679, 680; endangers health or safety, *MacArthur v. MacArthur*, 135 N.J.Eq. 215, 37 A.2d 76; whether actually inflicted or reasonably apprehended, *Rosengren v. Rosengren*, 115 N.J.Eq. 283, 170 A. 660, 661; *Bamberg v. Bamberg*, 123 N.J.Eq. 570, 199 A. 54, 55; endangers life or health, *Fallon v. Fallon*, 111 N.J.Eq. 512, 162 A. 406, 408; *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694, 702; impairs bodily health, *Dier v. Dier*, 141 Neb. 685, 4 N.W.2d 731, 734; incapacitates one from performing marital duties, *Fallon v. Fallon*, 111 N.J.Eq. 512, 162 A. 406, 408; inflicts grievous bodily injury or grievous mental suffering, *Civ. Code Cal. § 94*, *McFall v. McFall*, 58 Cal.App.2d 208, 136 P.2d 580, 583; produces bodily hurt to physical system or reasonable apprehension thereof, *Morris v. Morris*, 132 Okl. 291, 133 Okl. 176, 270 P. 833, 835; produces continuous, intense mental pain and suffering, danger to health, or a forced abnegation of the marital relation, *Currie v. Currie*, 120 Fla. 28, 162 So. 152; wounds, feelings, *Nelson v. Nelson*, 89 Okl. 318, 117 P.2d 110, 111; *Smith v. Smith*, 61 Ariz. 373, 149 P.2d 683, 684; renders cohabitation intolerable, *Stocker v. Stocker*, 173 Okl. 64, 47 P.2d 107, 108; renders cohabitation intolerable and unsafe, *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694, 703.

Physical violence is extreme cruelty. *Baker v. Baker*, 94 Fla. 1001, 114 So. 661, 663. But "extreme cruelty" is not confined to physical violence. *Henderson v. Henderson*, 137 Fla. 770, 189 So. 24, 25; *Bastien v. Bastien*, 57 R.I. 176, 189 A. 37, 38.

To constitute "extreme cruelty" within divorce statute, the acts must be directed toward the other party and must be committed with a malevolent motive. *Nason v. Nason*, 48 Cal.App.2d 500, 120 P.2d 37, 39, 40.

Voluntary or intentional extreme cruelty is the "extreme cruelty," which is ground for divorce, *Heim v. Heim*, 35 Ohio App. 408, 172 N.E. 451.

EXTREME HAZARD. To constitute extreme hazard, the situation of a vessel must be such that there is imminent danger of her being lost, notwithstanding all the means that can be applied to get her off. *King v. Hartford Ins. Co.*, 1 Conn. 421.

EXTREME LOW TIDE are tides which are lower than lower low. *State v. Edwards*, 188 Wash. 467, 62 P.2d 1094, 1095.

EXTREMIS. When a person is sick, beyond the hope of recovery, and near death, he is said to be *in extremis*.

EXTREMIS PROBATUS, PRÆSUMUNTUR MEDIA. Extremes being proved, intermediate things are presumed. *Tray*, Lat. Max. 207.

EXTREMITY

EXTREMITY. The furthest point. *Roberts v. Hart*, Tex.Civ.App., 165 S.W. 473, 476.

EXTRINSIC. Foreign; from outside sources; *dehors*. As to "Extrinsic Fraud", see "Fraud."

Grounds for quashing of indictment may be matters "intrinsic" to the pleading, as defects apparent upon its face, *United States v. Frankfeld*, D.C.D.C., 38 F.Supp. 1018, 1019.

EXTRINSIC AMBIGUITY. In a written contract is an uncertainty which does not arise by the terms of the instrument itself, but is created by some collateral matter not appearing in the instrument. *Pacific Indemnity Co. v. California Electric Works*, 29 Cal.App.2d 260, 84 P.2d 313, 320.

EXTRINSIC EVIDENCE is external evidence, or that which is not contained in the body of an agreement, contract, and the like. Extrinsic evidence is also said to be evidence not legitimate before the tribunal in which the determination is made. *Baldwin v. City of Buffalo*, 35 N.Y. 375, 382.

EXTUMÆ. In old records. Relics. Cowell.

EXUERE PATRIAM. To throw off or renounce one's country or native allegiance; to expatriate one's self. *Phillim. Dom.* 18.

EXULARE. In old English law. To exile or banish. *Nullus liber homo, exuletur, nisi*, etc., no freeman shall be exiled, unless, etc. *Magna Charta*, c. 29; 2 Inst. 47.

EXUPERARE. To overcome; to apprehend or take. *Leg. Edm. c. 2.*

EY. A watery place; water. *Co.Litt.* 6.

EYDE. Aid; assistance; relief. A subsidy.

EYEWITNESS. A person who could testify as to what he had seen. *Wigginton v. Order of United Commercial Travelers of America*, C.C.A.Ind., 126 F.2d 659, 662, 665, 666, 667. One who saw the act, fact, or transaction to which he testifies. Distinguished from an ear-witness, (*auritus*.) *Bankers' Health & Accident Ass'n v. Wilkes*, Tex.Civ.App., 209 S.W. 230, 233; *Pannell v. Sovereign Camp, W. O.W.*, 171 Tenn. 245, 102 S.W.2d 50, 52. Persons able to testify from their observation. *Hayes v. Stunkard*, 233 Iowa 582, 10 N.W.2d 19.

"Eye-witness" does not necessarily mean one who obtains knowledge of an act through the sense of sight alone, and may include one who is able to identify a person by his voice and who could not recognize the person on account of absence of sight. *Anderson v. Commonwealth*, 291 Ky. 727, 166 S.W.2d 30, 36.

EYEWITNESS RULE is that, in absence of eye-witness, or of any obtainable direct evidence as to what deceased did or failed to do by way of precaution, at and immediately before injury, presumption is that he, prompted by natural instinct, was in exercise of care for his own safety, obtains. *Edwards v. Perley*, 223 Iowa 1119, 274 N.W. 910, 915.

EYGNE. The same as "eigne" (*q. v.*).

EYOTT. A small island arising in a river. *Fleta*, 1. 3, c. 2, § b; *Bract.* 1. 2, c. 2.

EYRE. A journey; a court of itinerant justices.

Justices in eyre were judges commissioned in Anglo-Norman times in England to travel systematically through the kingdom, once in seven years, holding courts in specified places for the trial of certain descriptions of causes.

EYRER. L. Fr. To travel or journey; to go about or itinerate. *Britt. c. 2.* See Eyre.

EZARDAR. In Hindu law. A farmer or renter of land in the districts of Hindoostan.