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**U.B.** An abbreviation for "Upper Bench."

**Uberrima fides** /yúwbéhrémá fáydíyz/. Lat. The most abundant good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception, however slight. A phrase used to express the perfect good faith, concealing nothing, with which a contract must be made; for example, in the case of insurance, the insured must observe the most perfect good faith towards the insurer. Contracts of life insurance are said to be "uberrimæ fidæ" when any material misrepresentation or concealment is fatal to them.

**Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest** /yúwbay ælækwæð kæn(t)síydæðar, kæn(t)síydæðar èd id sáyniy kwòw ríyz ípsæ ésiy nõn pówdæst/. When anything is granted, that also is granted without which the thing granted cannot exist.

**Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum** /yúwbay ælækwæð impíydæðar próptar yúwnam, íyow ræmówdow, tólæðar impèðaméntow/. Where anything is impeded by one single cause, if that be removed, the impediment is removed.

**Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium** /yúwbay sésæt ræmfíyd(i)yam, òrdanériyám, áybay ðækáhræðar æð èkstr(æ)òrdanériyám/. Where the ordinary remedy fails, recourse must be had to an extraordinary one.

**Ubi culpa est, ibi pœna subesse debet** /yúwbay kálpæ èst, áybay píynæ sàbésiy débæt/. Where the crime is committed, there ought the punishment to be undergone.

**Ubi cunq̄ue est injuria, ibi damnum sequitur** /yúwbaykúnkwíy èst injúriyæ, áybay ðæmnam sékwæðar/. Wherever there is a wrong, there damage follows.

**Ubi damna dantur, victus victori in expensis condemnari debet** /yúwbay ðæmna ðæntar víktas víktóray in ækspén(t)sæs kondæmnéray débæt/. Where damages are given, the vanquished party ought to be condemned in costs to the victor.

**Ubi eadem ratio, ibi eadem lex; et de similibus idem est iudicium** /yúwbay iyéydám réysh(iy)ow, áybay iyéydám léks; èt díy sæmílabæs áydam èst juwdísh(iy)ám/. Where the same reason exists, there the same law prevails; and, of things similar, the judgment is similar. Where there is the same reason, there is the same law, and the same judgment should be rendered on the same state of facts.

**Ubi est forum, ibi ergo est jus** /yúwbay èst fóram, áybay árgow èst jás/. The law of the forum governs.

**Ubi est specialis, et ratio generalis generaliter accipienda est** /yúwbay èst spèshiyéylas, èt réysh(iy)ow jènaréylas jènaréylæðar æksipiyénda èst/. See **Ubi lex est specialis**, etc.

**Ubi et dantis et accipientis turpitude versatur, non posse repeti dicimus; quotiens autem accipientis turpitude versatur, repeti posse** /yúwbay èt ðæntas èd æksipiyéntas tærpæt(y)úwdow varséyðar, nõn pósiy rapéday dísmas; kwówshæn(d)z óðam æksipiyéntas tærpæt(y)úwdow varséyðar, repéday pósiy/. Where there is turpitude on the part of both giver and receiver, we say it cannot be recovered back; but as often as the turpitude is on the side of the receiver [alone] it can be recovered back.

**Ubi factum nullum, ibi fortia nulla** /yúwbay fáktam nólám, áybay fóresh(iy)æ nólæ/. Where there is no principal fact, there can be no accessory. Where there is no act, there can be no force.

**Ubi jus, ibi remedium** /yúwbay jás, áybay ræmfíyd(i)yám/. Where there is a right, there is a remedy. It is said that the rule of primitive law was the reverse: Where there is a remedy, there is a right.

**Ubi jus incertum, ibi jus nullum** /yúwbay jás in(t)sárdam, áybay jás nólám/. Where the law is uncertain, there is no law.

**Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima** /yúwbay léks ælækwæm kó(w)jæð osténdariy kózam, nasésíy èst kwòð kóza sit jéstæ èt læjídæmæ/. Where the law compels a man to show cause, it is necessary that the cause be just and lawful.

**Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est** /yúwbay léks èst speshiyéylas, èt réysh(iy)ow iyjæs, jènaréylæðar æksipiyénda èst/. Where the law is special, and the reason of it general, it ought to be taken as being general. When the reason for a particular legislative act and acts of the same general character is the same, they should have the same effect. *Guile v. La Crosse Gas & Electric Co.*, 145 Wis. 157, 130 N.W. 234, 241.

**Ubi lex non distinguit, nec nos distinguere debemus** /yúwbay léks nõn ðæstíngwæt, nèk nõws ðæstíngwæriy ðæbíymas/. Where the law does not distinguish, neither ought we to distinguish.

**Ubi major pars est, ibi totum** /yúwbay méyjar párz èst, áybay tówdam/. Where the greater part is, there the whole is. That is, majorities govern.

**Ubi matrimonium, ibi dos** /yúwbay mætrámówn(i)yam, áybay dóws/. Where there is marriage, there is dow-er.

**Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt** /yúwbay nòn ædest nórma lífjæs, ómn(i)yæ kwéysay prów saspéktas habénda sánt/. When the law fails to serve as a rule, almost everything ought to be suspected.

**Ubi non est annua renovatio, ibi decimæ non debent solvi** /yúwbay nón èst ænyuwæ rênævéysh(i)yow, áybay désæmiy nòn débønt sólvay/. Where there is no annual renovation, there tithes ought not to be paid.

**Ubi non est condendi auctoritas, ibi non est parendi necessitas** /yúwbay nón èst kânténday októhrætæs, áybay nón èst parénday násésætæs/. Where there is no authority for establishing a rule, there is no necessity of obeying it.

**Ubi non est directa lex, standum est arbitrio iudicis, vel procedendum ad similia** /yúwbay nón èst daréktæ léks, stándam èst arbitriyow júwdæsas, vél pròwsædéndam æd sæmil(i)yæ/. Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.

**Ubi non est lex, ibi non est transgressio, quoad mundum** /yúwbay nón èst léks, áybay nón èst træn(d)z-grésh(i)yow, kwówæd mándam/. Where there is no law, there is no transgression, so far as relates to the world.

**Ubi non est manifesta injustitia, iudices habentur pro bonis viris, et iudicatum pro veritate** /yúwbay nón èst mânáféstæ injástish(i)yæ, júwdæsiyz hábéntar prów bównæs víras, èt júwdakéydæm prów vèhrætéydiy/. Where there is no manifest injustice, the judges are to be regarded as honest men, and their judgment as truth.

**Ubi non est principalis, non potest esse accessorius** /yúwbay nón èst prin(t)sapéylas, nòn pówdest ésiy æksæsóriyæs/. Where there is no principal, there cannot be an accessory.

**Ubi nulla est conjectura quæ ducat alio, verba intelligenda sunt ex proprietate, non grammatica, sed populari ex usu** /yúwbay nálæ èst kònjekt(y)úra kwiy d(y)úwkdæ éyl(i)yow, vérba intèlájénda sánt èks prèprætéydiy, nòn gramædæka, sèd pòpyaléray èks yúwsyuw/. Where there is nothing to call for a different construction, [the] words [of an instrument] are to be understood, not according to their strict grammatical meaning, but according to their popular and ordinary sense.

**Ubi nullum matrimonium, ibi nulla dos** /yúwbay nálæm mætrámówn(i)yam, áybay nálæ dóws/. Where there is no marriage, there is no dower.

**Ubi periculum, ibi et lucrum collocatur** /yúwbay pèrik(y)ælæm, áybay èt l(y)úwkræm kòlakéydær/. He at whose risk a thing is, should receive the profits arising from it.

**Ubi pugnancia inter se in testamento juberentur, neutrum ratum est** /yúwbay pøgnæns(i)yæ íntar siy in tètæméntow júwbæréntar, n(y)úwtræm réydam èst/. Where repugnant or inconsistent directions are contained in a will, neither is valid.

**Ubi quid generaliter conceditur inest hæc exceptio, si non aliquid sit contra jus fasque** /yúwbay kwíd jenæréylædar kæn(t)síydædar ínest híyk æksépsh(i)yow, sây nòn ælækwæd sit kóntræ jås fæskwiy/. Where a thing is conceded generally [or granted in general terms], this exception is implied: that there shall be nothing contrary to law and right.

**Ubi quis delinquit, ibi punietur** /yúwbay kwís dalínkwæt, áybay pyúwniyýdar/. Where a man offends, there he shall be punished. In cases of felony, the trial shall be always by the common law in the same place where the offense was, and shall not be supposed in any other place.

**Ubiquity** /yúwbikwædiy/. Omnipresence; presence in several places, or in all places, at one time. A fiction of English law is the "legal ubiquity" of the sovereign, by which he is constructively present in all the courts. 1 Bl.Comm. 270.

**Ubi re vera** /yúwbay ríy víræ/. Where in reality; when in truth or in point of fact.

**Ubi supra** /yúwbay s(y)úwpræ/. Lat. Where above mentioned.

**Ubi verba conjuncta non sunt sufficit alterutrum esse factum** /yúwbay vérbæ kånjéktæ nòn sánt sáfæsæd óltar(y)úwtræm ésiy féktæm/. Where words are not conjoined, it is enough if one or other be complied with. Where words are used disjunctively, it is sufficient that either one of the things enumerated be performed.

**U.C.** An abbreviation for "Upper Canada," used in citing the reports.

**U.C.C.** Uniform Commercial Code.

**U.C.C.C.** Uniform Consumer Credit Code.

**U.C.M.J.** Uniform Code of Military Justice; rules of conduct and criminal behavior for members of the Armed Forces. See **Code of Military Justice**.

**Udal.** A term mentioned by Blackstone as used in Finland to denote that kind of right in real property which is called, in English law, "allodial."

**Ukaas, ukase** /uwkás/yuwkéyz/. Originally, a law or ordinance made by the czar of Russia.

Hence, any official decree or proclamation.

**ULA.** Uniform Laws Annotated.

**Ullage** /ólaj/. In commercial law, the amount wanting when a cask, on being gauged, is found not to be completely full.

**Ulna ferrea** /ólna féhriyæ/. L. Lat. In old English law, the iron ell; the standard ell of iron, kept in the exchequer for the rule of measure.

**Ulnage** /ólnaj/. Alnage. See **Alnager**.

**Ultior.** Beyond what is manifest, seen or avowed, intentionally kept concealed. *Harding v. McCulough*, 236 Iowa 556, 19 N.W.2d 613, 616.

**Ultima ratio** /últəmə réysh(iy)ow/. Lat. The last argument; the last resort; the means last to be resorted to.

**Ultimate.** At last, finally, or at the end. The last in the train of progression or sequence tended toward by all that precedes; arrived at as the last result; final. *Texas Employers Ins. Ass'n v. Reed*, Tex.Civ.App., 150 S.W.2d 858, 862.

**Ultimate facts.** Issuable facts; facts essential to the right of action or matter of defense. *Wichita Falls & Oklahoma Ry. Co. v. Pepper*, 134 Tex. 360, 135 S.W.2d 79, 84. Facts necessary and essential for decision by court. *People ex rel. Hudson & M. R. Co. v. Sexton*, Sup., 44 N.Y.S.2d 884, 885. Those facts which it is expected evidence will support. *McDuffie v. California Tehama Land Corporation*, 138 Cal.App. 245, 32 P.2d 385, 386. The issuable, constitutive, or traversable facts essential to statement of cause of action. *Johnson v. Johnson*, 92 Mont. 512, 15 P.2d 842, 844. The logical conclusions deduced from certain primary evidentiary facts. *Mining Securities Co. v. Wall*, 99 Mont. 596, 45 P.2d 302, 306. Final facts required to establish plaintiff's cause of action or defendant's defense. *Williams v. Pilot Life Ins. Co.*, 288 N.C. 388, 218 S.E.2d 368, 371.

Those facts found in that vaguely defined field lying between evidential facts on the one side and the primary issue or conclusion of law on the other, being but the logical results of the proofs, or, in other words, mere conclusions of fact. *Christmas v. Cowden*, 44 N.M. 517, 105 P.2d 484, 487.

One that is essential to the right of action or matter of defense, and the trial court is under the duty of submitting only ultimate or controlling issues. *Perales v. Braslau's Furniture Co.*, Tex.Civ.App., 493 S.W.2d 638, 640.

**Ultimate issue.** That question which must finally be answered as the defendant's negligence is the ultimate issue in a personal injury action.

**Ultimatum** /últəméydəm/. Lat. The last. The final and ultimate proposition made in negotiating a treaty, a contract, or the like. The word also means the result of a negotiation, and it comprises the final determination of a party concerned in the matter in dispute.

**Ultima voluntas testatoris est perimplenda secundum veram intentionem suam** /últəmə válántəs testátórs èst pə̀rə̀mplénda səkándəm vírəm inténshiyównəms(y)úwəm/. The last will of a testator is to be fulfilled according to his true intention.

**Ultimum supplicium** /últəməm səplish(iy)əm/. Lat. The last or extreme punishment; the extremity of punishment; the punishment of death. 4 Bl.Comm. 17.

**Ultimum supplicium esse mortem solam interpretamur** /últəməm səplish(iy)əm ésiy mórdəm sówləm àntə̀prətéymər/. The extremest punishment we consider to be death alone.

**Ultimus hæres** /últəməs híriyz/. Lat. The last or remote heir; the lord. So called in contradistinction to the *hæres proximus* and the *hæres remotior*.

**Ultra** /áltra/. Lat. Beyond; outside of; in excess of.

**Damages ultra.** Damages beyond a sum paid into court.

**Ultra mare** /áltra mériy/. Beyond sea. One of the old essoins or excuses for not appearing in court at the return of process.

**Ultra reprises.** After deduction of drawbacks; in excess of deductions or expenses.

**Ultra vires** /áltra váyriyz/. Acts beyond the scope of the powers of a corporation, as defined by its charter or laws of state of incorporation. *State ex rel. v. Holston Trust Co.*, 168 Tenn. 546, 79 S.W.2d 1012, 1016. The term has a broad application and includes not only acts prohibited by the charter, but acts which are in excess of powers granted and not prohibited, and generally applied either when a corporation has no power whatever to do an act, or when the corporation has the power but exercises it irregularly. *People ex rel. Barrett v. Bank of Peoria*, 295 Ill.App. 543, 15 N.E.2d 333, 335. Act is ultra vires when corporation is without authority to perform it under any circumstances or for any purpose. By doctrine of ultra vires a contract made by a corporation beyond the scope of its corporate powers is unlawful. *Community Federal Sav. & Loan Ass'n of Independence, Mo. v. Fields, C.C.A.Mo.*, 128 F.2d 705, 708. Ultra vires act of municipality is one which is beyond powers conferred upon it by law. *Charles v. Town of Jeanerette, Inc.*, La.App., 234 So.2d 794, 798.

**Ultra posse non potest esse, et vice versa** /áltra pósiy nõn pówdəst ésiy, èt váysi yársə/. What is beyond possibility cannot exist, and the reverse [what cannot exist is not possible].

**Umpirage** /émpərəj/. The decision of an umpire. The word "Umpirage," in reference to an umpire, is the same as the word "award," in reference to arbitrators; but "award" is commonly applied to the decision of the umpire also.

**Umpire** /émpay(ə)r/. Third party selected to arbitrate labor dispute. One clothed with authority to act alone in rendering a decision where arbitrators have disagreed. *Hughes v. National Fuel Co.*, 121 W.Va. 392, 3 S.E.2d 621, 626. When matters in dispute are submitted to two or more arbitrators, and they do not agree in their decision, it is usual for another person to be called in as "umpire," to whose sole judgment it is then referred. An umpire, strictly speaking, makes his award independently of that of the arbitrators.

**Un-** A prefix used indiscriminately, and may mean simply "not." Thus, "unlawful" means "not authorized by law."

**Unable** /ənéybəl/. This term, as used in a statute providing that evidence given in a former trial may be proved in a subsequent trial, where the witness is unable to testify, means mentally and physically unable.

**Unaccrued** /ə̀nəkrúwd/. Not become due, as rent on a lease.

**Unadjusted** /ʌnəˈdʒʌstəd/. Uncertain; not agreed upon.

**Unalienable** /ʌˈneɪl(i)jənəbəl/. Inalienable; incapable of being alienated, that is, sold and transferred.

*Inalienable rights.* Rights which can never be abridged because they are so fundamental.

**Unambiguous** /ʌnæmbɪgyuəs/. Susceptible of but one meaning. *Lawrie v. Miller*, Tex.Com.App., 45 S.W.2d 172, 173.

**Unanimity** /yʊnənɪmɪdi/. Agreement of all the persons concerned, in holding one and the same opinion or determination of any matter or question; as the concurrence of a jury in deciding upon their verdict or of judges in concurring in their decision. See **Unanimous**.

**Unanimous** /yʊnənɪməs/. To say that a proposition was adopted by a "unanimous" vote does not always mean that every one present voted for the proposition, but it may, and generally does, mean, when a *viva voce* vote is taken, that no one voted in the negative. See also **Unanimity**.

**Una persona vix potest supplere vices duarum** /yʊnwə pɜːsɔːnwə vɪks pɔːwdɛst sɒplɪrɪz vɑːsɪjz d(y)uəwɛrəm/. One person can scarcely supply the place of two.

**Unascertained.** Not certainly known or determined. *Commissioner of Internal Revenue v. Owens*, C.C. A.10, 78 F.2d 768, 773.

**Unascertained duties.** Payment in gross, on an estimate as to amount, and where the merchant, on a final liquidation, will be entitled by law to allowances or deductions which do not depend on the rate of duty charged, but on the ascertainment of the quantity of the article subject to duty.

**Unauthorized.** That which is done without authority, as a signature or indorsement made without actual, implied or apparent authority and this includes a forgery. U.C.C. § 1-201(43).

**Unauthorized use.** The criminal offense of use of a motor vehicle without authority of the owner, knowing that such use is without his permission. It differs from larceny to the extent that in the crime of unauthorized use, the government need not prove the intent to deprive permanently the owner of the vehicle.

**Unavailability.** In law of evidence, on a showing that a witness or his testimony is not available, prior reported testimony of that witness which can be faithfully reproduced is admissible as an exception to the hearsay rule. A witness is unavailable if he is dead, insane or beyond reach of a summons. His testimony is unavailable if he has a privilege permitting him to refuse to testify. See Fed.Evid.R. 804.

Unavailability as defined in rule providing for admission of prior testimony, requires, among other things, either that the witness be beyond the jurisdiction of the court's process to compel his appearance, or that the proponent of the prior statement be unable, despite due diligence, to obtain the attendance of the witness. *Sacawa v. Polikoff*, 150 N.J.Super. 172, 375 A.2d 279, 283.

**Una voce** /yʊwnə vɔːwsɪ/. Lat. With one voice; unanimously; without dissent.

**Unavoidable.** Not avoidable, incapable of being shunned or prevented, inevitable, and necessary.

**Unavoidable accident.** An inevitable accident; one which could not have been foreseen and prevented by using ordinary diligence, and resulting without fault. Not necessarily an accident which it was physically impossible, in the nature of things, for the person to have prevented, but one not occasioned in any degree, either remotely or directly, by the want of such care or skill as the law holds every man bound to exercise. An accident which could not be prevented by the exercise of ordinary care and prudence. A casualty which occurs without negligence of either party and when all means which common prudence suggests have been used to prevent it. See also **Accident**; **Act of God**.

**Unavoidable casualty.** An event or accident which human prudence, foresight, and sagacity cannot prevent, happening against will and without negligence. *Sabin v. Sunset Garden Co.*, 184 Okl. 106, 85 P.2d 294, 295. Within the meaning of statutes in several states relating to the vacation of judgments, means some casualty or misfortune growing out of conditions or circumstances that prevented the party or his attorney from doing something that, except therefor, would have been done, and does not include mistakes or errors of judgment growing out of misconstruction or understanding of the law, or the failure of parties or counsel through mistake to avail themselves of remedies, which if resorted to would have prevented the casualty or misfortune. If by any care, prudence, or foresight a thing could have been guarded against, it is not unavoidable. The term is not ordinarily limited to an act of God. See also **Accident**; **Act of God**; **Unavoidable accident**.

**Unavoidable cause.** A cause which reasonably prudent and careful men under like circumstances do not and would not ordinarily anticipate, and whose effects, under similar circumstances, they do not and would not ordinarily avoid.

**Unavoidable dangers.** This term in a marine policy covering unavoidable dangers of the river includes those unpreventable by persons operating the vessel, and, like the term perils of the sea, includes all kinds of marine casualties, thus including accidents in which there is human intervention.

**Unborn beneficiaries.** Those persons named in a general way as sharing in an estate or gift though not yet born. Commonly, a court appoints a guardian ad litem to protect and to represent their interests.

**Unborn child.** The individual human life in existence and developing from fertilization until birth.

A child not yet born at the happening of an event. A child not born at the time of an injury to his mother which causes the child to suffer an injury may recover in most jurisdictions after birth if the child were viable in his mother's womb at the time of the defendant's wrongdoing.

See also **Child**; **Viable child**.

**Unbroken.** Continuous, as adverse possession.

**Unceasesath.** In Saxon law, an oath by relations not to avenge a relation's death.

**Uncertainty.** The state or quality of being unknown or vague. Such vagueness, obscurity, or confusion in any written instrument, e.g., a will, as to render it unintelligible to those who are called upon to execute or interpret it, so that no definite meaning can be extracted from it.

**Unchastity.** Impurity in mind and conduct, which may exist without actually engaging in unlawful sexual intercourse.

**Uncia** /*ánshiyə*/. Lat. In Roman law, an ounce; the twelfth of the Roman "as," or pound. The twelfth part of anything; the proportion of one-twelfth. 2 Bl.Comm. 462, note *m*.

**Uncia agri, uncia terræ** /*ánsh(iy)ə égray, ánsh(iy)ə téh-riy*/. These phrases often occur in the charters of the British kings, and signify some measure or quantity of land. It is said to have been the quantity of twelve *modii*; each *modius* being possibly one hundred feet square.

**Unclarius hæres** /*ánshiyériyəs híriyz*/. Lat. In Roman law, an heir to one-twelfth of an estate or inheritance.

**Uncle.** The brother of one's father or mother.

**Unclean hands doctrine.** Principle that one who has unclean hands is not entitled to relief in equity. Doctrine means no more than that one who has defrauded his adversary in the subject matter of the action will not be heard to assert right in equity. The doctrine has no application unless party's wrongdoing has some proximate relation to the subject matter in controversy.

**Unconditional.** Not limited or affected by any condition;—applied especially to the quality of an insured's estate in the property insured. See *Owner (Sole and unconditional owner)*.

**Unconditional discharge.** One whose term of confinement has expired is unconditionally discharged if there are attached no parole provisions to his release.

A release from liability without any terms or delimiting conditions attached.

**Unconscionability.** Basic test of "unconscionability" of contract is whether under circumstances existing at time of making of contract and in light of general commercial background and commercial needs of particular trade or case, clauses involved are so one-sided as to oppress or unfairly surprise party. *Division of Triple T Service, Inc. v. Mobil Oil Corp.*, 60 Misc.2d 720, 304 N.Y.S.2d 191, 201. Unconscionability is generally recognized to include an absence of meaningful choice on the part of one of the parties, to a contract together with contract terms which are unreasonably favorable to the other party. *Gordon v. Crown Central Petroleum Corp.*, D.C.Ga., 423 F.Supp. 58, 61.

Typically the cases in which unconscionability is found involve gross overall one-sidedness or gross one-sidedness of a term disclaiming a warranty, limiting damages, or granting procedural advantages. In these cases one-sidedness is often coupled with the fact that the imbalance is buried in small print and often couched in language unintelligible to even a person of moderate education. Often the seller deals

with a particularly susceptible clientele. *Kugler v. Romain*, 58 N.J. 522, 279 A.2d 640.

**Uniform Commercial Code.** (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. U.C.C. § 2-302.

Section 2-302 should be considered in conjunction with the obligation of good faith imposed at several places in the Code. See e.g. U.C.C. § 1-203.

**Restatement of Contracts.** If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result. *Restatement of Contracts, Second, (Tent.Draft) § 234.*

**Unconscionable bargain.** An unconscionable bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other. *Hume v. U. S.*, 132 U.S. 406, 10 S.Ct. 134, 33 L.Ed. 393. See also **Unconscionability**.

**Unconscious.** Not possessed of mind. *Wilson v. Ray*, 64 Ga.App. 540, 13 S.E.2d 848, 852. A state of mind of persons of sound mind suffering from some voluntary or involuntary agency rendering them unaware of their acts. *Greenfield v. Com.*, 214 Va. 710, 204 S.E.2d 414, 417. Insensible to the reception of any stimuli and incapable of performing or experiencing any controlled functions. One who engages in what would otherwise be criminal conduct is not guilty of a crime if he does so in a state of unconsciousness. See e.g. *Calif. Penal Code § 26(5)*. See also **Automatism**.

**Unconstitutional.** That which is contrary to the constitution. The opposite of "constitutional." *Norton v. Shelby County*, 118 U.S. 425, 6 S.Ct. 1121, 30 L.Ed. 178.

This word is used in two different senses. One, which may be called the English sense, is that the legislation conflicts with some recognized general principle. This is no more than to say that it is unwise, or is based upon a wrong or unsound principle, or conflicts with a generally accepted policy. The other, which may be called the American sense, is that the legislation conflicts with some provision of our written Constitution, which it is beyond the power of the Legislature to change. *U. S. v. American Brewing Co.*, D.C.Pa., 1 F.2d 1001, 1002.

**Uncontrollable.** Incapable of being controlled or un governable.

**Uncontrollable impulse.** As an excuse for the commission of an act otherwise criminal, this term means an impulse towards its commission of such fixity and intensity that it cannot be resisted by the person subject to it, in the enfeebled condition of his will and moral sense resulting from derangement or mania. See *Insanity*.

**Uncore prist** /ənkɔr prɪst/. L. Fr. Still ready. A species of plea or replication by which the party alleges that he is still ready to pay or perform all that is justly demanded of him. In conjunction with the phrase "*tout temps prist*," it signifies that he has always been and still is ready to do what is required, thus saving costs where the whole cause is admitted, or preventing delay where it is a replication, if the allegation is made out. 3 Bl.Comm. 303.

**Uncuth** /ənkúwθ/. In Saxon law, unknown; a stranger. A person entertained in the house of another was, on the first night of his entertainment, so called. See *Twa night gest*.

**Unde nihil habet** /əndiy náy(h)əl héybat/. Lat. In old English law, the name of the writ of dower, which lay for a widow, where *no dower* at all had been assigned her within the time limited by law. 3 Bl.Comm. 183.

**Under.** Sometimes used in its literal sense of below in position, beneath, but more frequently in its secondary meaning of "inferior" or "subordinate." Also according to; as, "under the testimony."

**Under and subject.** Words frequently used in conveyances of land which is subject to a mortgage, to show that the grantee takes subject to such mortgage.

**Under-chamberlains of the exchequer.** In old English law, two officers who cleaved the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and comptrollers thereof might see their entries were true. They also made searches for records in the treasury, and had the custody of Domesday Book. The office is now abolished.

**Under color of law.** See *Color of law*.

**Under control.** This phrase does not necessarily mean the ability to stop instantly under any and all circumstances, an automobile being "under control" within the meaning of the law if it is moving at such a rate, and the mechanism and power under such control, that it can be brought to a stop with a reasonable degree of celerity. And motorist is only bound to use that degree of care, caution, and prudence that an ordinarily careful, cautious, and prudent man would have used at the time under same or similar circumstances in operation of said automobile. In general, as applied to street cars or railroad trains, the term denotes the control and preparation appropriate to probable emergencies. It is such control as will enable a train to be stopped promptly if need should arise. It implies the ability to stop within the distance the track is seen to be clear. See also *Control*; *Lookout*.

**Undercover agent.** A person who works as an agent without disclosing his role as an agent. In police work, one who makes contact with suspected criminals without disclosing his role as an agent of the police. He gathers evidence of criminal activity

which may later be used at trial of the criminals. Such agents are commonly used in narcotic investigations.

**Undercurrent or underflow of surface stream.** Those waters which slowly find their way through sand and gravel constituting bed of a stream, or lands under or immediately adjacent to stream, and are themselves part of surface stream. *Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co.*, 39 Ariz. 65, 4 P.2d 369, 380.

**Underflow.** See *Undercurrent*.

**Underground waters.** See *Water (Subterranean waters)*.

**Under herd.** A term conveying the idea that a considerable number of domestic animals are gathered together and held together by herders in constant attendance and in control of their movements from place to place on a public range or within certain areas.

**Under insurance.** Insurance coverage in an amount less than the value of the property insured or less than the risk exposure.

**Under-lease.** Where lessee lets premises for less time than period of his unexpired term; a sub-lease. Also the transfer of a part only of the lands, though for the whole term.

**Under protest.** A payment made or an act done under compulsion while the payor or actor asserts that he waives no rights by making the payment or by doing the act. See *Protest*.

**Under-sheriff.** An officer who acts directly under the sheriff, and performs all the duties of the sheriff's office, a few only excepted where the personal presence of the high-sheriff is necessary. See *Delfelder v. Teton Land and Investment Co.*, 46 Wyo. 142, 24 P.2d 702.

A sheriff's deputy, who, being designated by the sheriff as an "under sheriff," becomes his chief deputy with authority by virtue of his appointment to execute all the ordinary duties of the office of sheriff. A distinction is sometimes made between this officer and a *deputy*, the latter being appointed for a special occasion or purpose, while the former discharges, in general, all the duties required by the sheriff's office.

**Undersigned, the.** The person whose name is signed or the persons whose names are signed at the end of a document; the subscriber or subscribers.

**Understand.** To know; to apprehend the meaning; to appreciate; as, to understand the nature and effect of an act. *International-Great Northern R. Co. v. Pence*, Tex.Civ.App., 113 S.W.2d 206, 210. To have a full and clear knowledge of; to comprehend. Thus, to invalidate a deed on the ground that the grantor did not understand the nature of the act, the grantor must be incapable of comprehending that the effect of the act would divest him of the title to the land set forth in the deed. As used in connection with the execution of wills and other instruments, the term includes the realization of the practical effects and consequences of the proposed act. See *Capacity*.

- Understanding.** In the law of contracts, an agreement. An implied agreement resulting from the express terms of another agreement, whether written or oral. An informal agreement, or a concurrence as to its terms. A valid contract engagement of a somewhat informal character. This is a loose and ambiguous term, unless it be accompanied by some expression to show that it constituted a meeting of the minds of parties upon something respecting which they intended to be bound. See **Agreement**; **Contract**.
- Understood.** The phrase "it is understood," when employed as a word of contract in a written agreement, has the same general force as the words "it is agreed."
- Undertake.** To take on oneself; to engage in; to enter upon; to take in hand; set about; attempt; as, to undertake a task or a journey; and, specifically, to take upon oneself solemnly or expressly. To lay oneself under obligation or to enter into stipulation; to perform or to execute; to covenant; to contract. Hence, to guarantee; be surety for; promise; to accept or take over as a charge; to accept responsibility for the care of. To engage to look after or attend to, as to undertake a patient or guest. To endeavor to perform or try; to promise, engage, agree, or assume an obligation.
- Undertaker.** One who undertakes (to do something). In a mechanic's lien statute, the word has been held not to include a mere furnisher of material in connection with the erection of the building. One whose business is to prepare the dead for burial and to take the charge and management of funerals.
- Undertaking.** A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form. See **Stipulation**.
- Under-tenant.** A tenant under one who is himself a tenant; one who holds by under-lease. See also **Under-lease**.
- Under the influence of intoxicating liquor.** Phrase as used in statutes or ordinances prohibiting the operation of motor vehicle by a party under the influence of intoxicating liquor covers not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging in any degree of intoxicating liquors, and which tends to deprive one of that clearness of intellect and control of himself which he would otherwise possess. Any condition where intoxicating liquor has so far affected the nervous system, brain or muscles of the driver as to impair, to an appreciable degree, his ability to operate his automobile in the manner that an ordinary, prudent and cautious man, in full possession of his faculties, using reasonable care, would operate or drive under like conditions. *Luellen v. State*, 64 Okl.Cr. 382, 81 P.2d 323, 328. See also **Intoxication**.
- Undertook.** Agreed; promised; assumed. This is the technical word to be used in alleging the promise which forms the basis of an action of *assumpsit*.
- Under-treasurer of England.** He who transacted the business of the lord high treasurer.
- Under-tutor.** In Louisiana, in every tutorship there shall be an under-tutor, whom it shall be the duty of the judge to appoint at the time letters of tutorship are certified for the tutor. It is the duty of the under-tutor to act for the minor whenever the interest of the minor is in opposition to the interest of the tutor. Civ.Code La. Art. 273.
- Underwrite.** To insure life or property. To agree to sell bonds, etc., to the public, or to furnish the necessary money for such securities, and to buy those which cannot be sold. An underwriting contract, aside from its use in insurance, is an agreement, made before corporate shares are brought before the public, that in the event of the public not taking all the shares of the number mentioned in the agreement, the underwriter will take the shares which the public do not take; "underwriting" being a purchase, together with a guaranty of a sale of the bonds. In re *Hackett, Hoff and Thiermann*, C.C.A.Wis., 70 F.2d 815, 819. See also **Underwriter**.
- Underwriter.** Any person, banker, or syndicate that guarantees to furnish a definite sum of money by a definite date to a business or government in return for an issue of bonds or stock. In insurance, the one assuming a risk in return for the payment of a premium.
- One who agrees to purchase an entire security issue for a specified price, usually for resale to others. A person who has acquired securities from an issuer or control person, pursuant to contract or exchange and intends to reoffer or resell said securities to the public.
- Term refers to any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. Investment Company Act, § 2.
- See also **Underwrite**.
- Undisclosed agency.** Exists where agent deals with a third person without notifying that person of the agency.
- Undisclosed principal.** If, at time of transaction conducted by agent, other party thereto has no notice that agent is acting for a principal, the principal is "undisclosed principal."
- Undisputed.** Not questioned or challenged; uncontested.
- Undisputed fact.** An admitted fact, which the court has not deemed sufficiently material to add to the finding, or has inadvertently omitted from it; a fact not found by the court does not become an "undisputed fact,"

merely because one or more witnesses testify to it without direct contradiction.

**Undistributed profits.** See **Undivided profits.**

**Undistributed profits tax.** Tax imposed on the unreasonable accumulation of profits by a corporation which has sufficient surplus for expansion and other needs beyond the amount which it could but does not pay out in dividends. I.R.C. § 535.

**Undivided profits.** Profits which have not in fact been divided or distributed. Current undistributed earnings. *Edwards v. Douglas*, 269 U.S. 204, 46 S.Ct. 85, 89, 70 L.Ed. 235; *Winkelman v. General Motors Corporation*, D.C.N.Y., 44 F.Supp. 960, 966. Profits not set aside as surplus or distributed in dividends. *Phillips v. U. S.*, D.C.Pa., 12 F.2d 598, 600.

"Surplus" and "undivided profits," as commonly employed in corporate accounting, denote an excess in the aggregate value of the assets of the corporation over the sum of liabilities, including capital stock; "surplus" describing such part of the excess in the value of the corporate assets as is treated by the corporation as part of the permanent capital, while the term "undivided profits" designates such part of the excess as consists of profits neither distributed as dividends nor carried to the surplus account. *Willcuts v. Milton Dairy Co.*, 275 U.S. 215, 48 S.Ct. 71, 72, 72 L.Ed. 247.

**Undivided right.** An undivided right or title, or a title to an undivided portion of an estate, is that owned by one of two or more tenants in common or joint tenants before partition. Held by the same title by two or more persons, whether their rights are equal as to value or quantity, or unequal.

**Undres /ándarz/.** In old English law, minors or persons under age not capable of bearing arms.

**Undue.** More than necessary; not proper; illegal. It denotes something wrong, according to the standard of morals which the law enforces in relations of men, and in fact illegal, and qualifies the purpose with which influence is exercised or result which it accomplishes. *Morris v. Morris*, 192 Miss. 518, 6 So.2d 311, 312.

**Undue influence.** Any improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely. Influence which deprives person influenced of free agency or destroys freedom of his will and renders it more the will of another than his own. Misuse of position of confidence or taking advantage of a person's weakness, infirmity, or distress to change improperly that person's actions or decisions.

Term refers to conduct by which a person, through his power over mind of testator, makes the latter's desires conform to his own, thereby overmastering the volition of the testator. *Parrisella v. Fotopulos*, 111 Ariz. 4, 522 P.2d 1081, 1083. For purpose of executing instruments, such exists when there was such dominion and control exercised over mind of person executing such instruments, under facts and circumstances then existing, as to overcome his free agency and free will and to substitute will of another

so as to cause him to do what he would not otherwise have done but for such dominion and control. *Board of Regents of University of Tex. v. Yarbrough*, Tex. Civ.App., 470 S.W.2d 80, 86, 92.

Undue influence consists in the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; in taking an unfair advantage of another's weakness of mind; or in taking a grossly oppressive and unfair advantage of another's necessities or distress. Calif. Civil Code, § 1575.

See also **Coercion; Duress.**

**Unearned income.** See **Income.**

**Unearned increment.** Value due to no labor or expenditure on the part of an owner but to natural causes making an increased demand for it, such as increase of population or the general progress of society. *Miller v. Huntington & Ohio Bridge Co.*, 123 W.Va. 320, 15 S.E.2d 687, 699.

**Unearned surplus.** Term "unearned surplus" of corporation suggests something other than "earned surplus" and includes: (a) "paid-in surplus"—amounts contributed for or assigned to shares in excess of stated capital applicable thereto; (b) "revaluation surplus"—surplus arising from a revaluation of assets above cost, and (c) "donated surplus"—contributions other than for shares, whether from shareholders or others. *Conine v. Leikam*, Okl., 570 P.2d 1156, 1160.

**Uneducated.** Not synonymous with illiterate. A man might be able to read and write, carry on a business correspondence, understand business transactions, and be bound by all his contracts, and yet be an "uneducated" man.

**Unemployment.** State of being not employed; lack of employment. *A. J. Meyer & Co. v. Unemployment Compensation Commission*, 348 Mo. 147, 152 S.W.2d 184, 189.

**Unequal.** Not uniform. *Los Angeles County v. Ransohoff*, 24 Cal.App.2d 238, 74 P.2d 828, 830. Ill-balanced; uneven; partial; discriminatory; prejudicial; unfair;—not synonymous with inappropriate, which means unsuitable, unfit, or improper. See **Discrimination; Separate but equal doctrine.**

**Unequivocal.** Clear; plain; capable of being understood in only one way, or as clearly demonstrated. Free from uncertainty, or without doubt; and, when used with reference to the burden of proof, it implies proof of the highest possible character and it imports proof of the nature of mathematical certainty. *Berry v. Maywood Mut. Water Co.* No. 1, 11 Cal.App.2d 479, 53 P.2d 1032; *Molyneux v. Twin Falls Canal Co.*, 54 Idaho 619, 35 P.2d 651, 656.

**Unerring.** Incapable of error or failure; certain; sure; infallible.

**Unethical.** Not ethical; hence, colloquially, not according to business or professional standards.



**Unethical conduct.** See **Code of Professional Responsibility**.

**Unexceptionable.** Without any fault; not subject to any objection or criticism.

**Unexpected.** Not expected, coming without warning, sudden. See **Act of God**; **Accident**.

**Unexpired term.** Remainder of a period prescribed by law after a portion of such time has passed, and phrase is not synonymous with "vacancy." State ex rel. Sanchez v. Dixon, La.App., 4 So.2d 591, 596.

**Unfair competition.** A term which may be applied generally to all dishonest or fraudulent rivalry in trade and commerce, but is particularly applied to the practice of endeavoring to substitute one's own goods or products in the markets for those of another, having an established reputation and extensive sale, by means of imitating or counterfeiting the name, title, size, shape, or distinctive peculiarities of the article, or the shape, color, label, wrapper, or general appearance of the package, or other such simulations, the imitation being carried far enough to mislead the general public or deceive an unwary purchaser, and yet not amounting to an absolute counterfeit or to the infringement of a trade-mark or trade-name. Singer Mfg. Co. v. June Mfg. Co., 163 U.S. 169, 16 S.Ct. 1002, 41 L.Ed. 118. The simulation by one person of the name, materials, color scheme, symbols, patterns, or devices employed by another for purpose of deceiving the public, or substitution of goods, or wares of one person for those of another, thus falsely inducing purchase of goods and obtaining benefits belonging to competitor. Mathews Conveyor Co. v. Palmer-Bee Co., C.C.A.Mich., 135 F.2d 73, 84; American Fork & Hoe Co. v. Stampit Corporation, C.C.A.Ohio, 125 F.2d 472, 474, 475. Passing off, or attempting to pass off upon the public the goods or business of one person as the goods or business of another. Socony-Vacuum Oil Co. v. Oil City Refiners, C.C.A.Ohio, 136 F.2d 470, 474. The selling of another's product as one's own. A. L. A. Schechter Poultry Corporation v. United States, N.Y., 295 U.S. 495, 55 S.Ct. 837, 844, 79 L.Ed. 1570. Also, deceitful advertising which injures a competitor, bribery of employees, secret rebates and concessions, and other devices of unfair trade. In re Northern Pigment Co., Cust. & Pat.App., 71 F.2d 447, 453.

The equitable doctrine of "unfair competition" is not confined to cases of actual market competition between similar products of different parties, but extends to all cases in which one party fraudulently seeks to sell his goods as those of another. Wisconsin Electric Co. v. Dumore Co., C.C.A.Ohio, 35 F.2d 555, 557.

That which constitutes "unfair competition" or "unfair or fraudulent business practice" within statute providing that person performing or proposing to perform act of unfair competition within state may be enjoined in any court of competent jurisdiction is question of fact, the essential test being whether the public is likely to be deceived. Payne v. United California Bank, 23 Cal.App.3d 850, 100 Cal.Rptr. 672, 676.

Under statute providing for enjoining of unfair competition and defining the same as meaning and

including "unlawful, unfair or fraudulent business practice" courts may enjoin on-going wrongful business conduct in whatever context such activity may occur; "unfair competition" within such statute is not limited to deceptive or fraudulent conduct. As used in statute prohibiting unfair competition and defining the same as meaning and including "unlawful, unfair or fraudulent business practice," "unfair competition" is not confined to practices involving competitive injury but extends to practices resulting in injury to consumers. Barquis v. Merchants Collection Ass'n of Oakland, Inc., 7 Cal.3d 94, 101 Cal.Rptr. 745, 496 P.2d 817, 828, 829.

Test of "unfair competition" is, not whether distinction between two competing products can be recognized when placed alongside each other, but whether, when the two products are not viewed together, a purchaser of ordinary prudence would be induced by reason of the marked resemblance in general effect to mistake one for the other despite differences in matters of detail. Ralston Purina Co. v. Checker Food Products Co., Mo.App., 80 S.W.2d 717, 719, 720.

See also **Unfair methods of competition**.

**Unfair hearing.** Where the defect, or the practice complained of, was such as might have led to a denial of justice, or where there was absent one of the elements deemed essential to due process. Ex parte Bridges, D.C.Cal., 49 F.Supp. 292, 302, 306; Bufalino v. Irvine, C.C.A.Kan., 103 F.2d 830, 832; Kielema v. Crossman, C.C.A.Tex., 103 F.2d 292, 293.

**Unfair labor practice.** Within National Labor Relations Act, it is an unfair labor practice for an employer: (1) To interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act. (5) To refuse to bargain collectively with the representatives of his employees. National Labor Relations Act, §§ 7, 8; 29 U.S.C.A. §§ 102.1 et seq., 157, 158.

The following acts have been held to be unfair labor practices under National Labor Relations Act:

Failure to re-employ striking employees. Western Cartridge Co. v. National Labor Relations Board, C.C.A.7, 139 F.2d 855, 858. Refusal of employer to reinstate union members who were evicted from plant unless members would withdraw from union. National Labor Relations Board v. J. G. Boswell Co., C.C.A.9, 136 F.2d 585, 590, 592, 596. Refusal of employer to bargain collectively in good faith. National Labor Relations Board v. Griswold Mfg. Co., C.C.A.3, 106 F.2d 713, 724; National Labor Relations Board v. Somerset Shoe Co., C.C.A.1, 111 F.2d 681, 688, 689. Threats by employer to close if union gained a foothold in plant. National Labor Relations Board v. J. G. Boswell Co., C.C.A.9, 136 F.2d 585, 590,

592, 596. Anti-union statements made by employer's supervisory employees during and after strike, together with statement to one of the strikers that he would never get a job in that town anymore. *N. L. R. B. v. Indiana Desk Co.*, C.C.A.7, 149 F.2d 987, 992, 996. Refusal of employer to permit posting of a notice that employer would not discriminate against employees who wished to join union. *National Labor Relations Board v. J. G. Boswell Co.*, C.C.A.9, 136 F.2d 585, 590, 592, 596. Discharge of an employee because of membership in or activity on behalf of a labor organization. *National Labor Relations Board v. Newark Morning Ledger*, C.C.A.3, 120 F.2d 262, 268; *National Labor Relations Board v. Bank of America Trust & Savings Ass'n*, C.C.A.9, 130 F.2d 624, 628, 629. Employer's interference with and his dominating formation and administration of new labor organization. *National Labor Relations Board v. Swift & Co.*, C.C.A.8, 116 F.2d 143, 145, 146; *National Labor Relations Board v. Blossom Products Corporation*, C.C.A.3, 121 F.2d 260, 262; *National Labor Relations Board v. Stackpole Carbon Co.*, C.C.A.3, 105 F.2d 167, 173, 175. Refusal of employer which had refused to bargain with union which had been certified as the exclusive bargaining agent. *National Labor Relations Board v. John Engelhorn & Sons*, C.C.A.3, 134 F.2d 553, 558. Assault by persons employed by manufacturer upon union organizers or sympathizers. *National Labor Relations Board v. Ford Motor Co.*, C.C.A.6, 114 F.2d 905, 911, 915. Discharge of employee because he would not become member of union in accordance with closed shop agreement. *Virginia Electric & Power Co. v. National Labor Relations Board*, C.C.A.4, 132 F.2d 390, 396.

**Unfair methods of competition.** This phrase within Federal Trade Commission Act has broader meaning than common-law term "unfair competition," but its scope cannot be precisely defined, and what constitutes "unfair methods of competition" must be determined in particular instances, upon evidence, in light of particular competitive conditions and of what is found to be a specific and substantial public interest. Federal Trade Commission Act § 5, 15 U.S.C.A. § 45. *A. L. A. Schechter Poultry Corporation v. United States*, N. Y., 295 U.S. 495, 55 S.Ct. 837, 844, 79 L.Ed. 1570.

The term though not defined by the statute is clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade. *In re Amtorg Trading Corporation*, Cust. & Pat.App., 75 F.2d 826, 830. But a method was said to be an unfair method if it does not leave to each actual or potential competitor a fair opportunity for play of his contending force engendered by an honest desire for gain. *California Rice Industry v. Federal Trade Commission*, C.C.A.9, 102 F.2d 716, 721.

See also **Unfair competition**.

**Unfair trade practices.** See **Unfair competition**; **Unfair methods of competition**.

**Unfaithful.** Characterized by bad faith;—not synonymous with "illegal," which means unlawful or contrary to law, nor with "improper," which, as applied to conduct, implies such conduct as a man of ordinary and reasonable prudence would not, under the circumstances, have been guilty of.

**Unfinished.** Not completed; not brought to an end; imperfect; the last effort, as a final touch is given to a work. *Bell & Graddy v. O'Brien*, Tex.Civ.App., 113 S.W.2d 560, 562.

**Unfit.** Unsuitable; incompetent; not adapted or qualified for a particular use or service; having no fitness. Word "unfit" means, in general, unsuitable, incompetent or not adapted for a particular use or service. In *Interest of Johnson*, 214 Kan. 780, 522 P.2d 330, 334. As applied to relation of rational parents to their child, word "unfit" usually, though not necessarily, imports something of moral delinquency, but, unsuitability for any reason, apart from moral defects, may render a parent unfit for custody. In *Interest of Johnson*, 214 Kan. 780, 522 P.2d 330, 334.

**Unforeseen.** Not foreseen, not expected. *Pampel v. Board of Examiners*, 114 Mont. 380, 136 P.2d 991, 994.

**Ungeld.** In Saxon law, an outlaw; a person whose murder required no composition to be made, or *weregeld* to be paid, by his slayer.

**Unharmful.** Within provision of Federal Kidnapping Act that death sentence shall not be imposed if kidnapped person has been liberated unharmed, means uninjured. Federal Kidnapping Act § 1 et seq., as amended, 18 U.S.C.A. § 1201 et seq. See also *Robinson v. U. S.*, Ky., 324 U.S. 282, 65 S.Ct. 666, 668, 89 L.Ed. 944.

**Unica taxatio** /yúwnəkə tækséysh(iy)ow/. The obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default.

**Unifactorial obligation** /yúwnafáktərəl òbləgéyshan/. See **Contract**.

**Unified.** Made one. *Adams v. Salt River Valley Water Users' Ass'n*, 53 Ariz. 374, 89 P.2d 1060, 1071. See **Consolidation**; **Joinder**; **Merger**.

**Unified credit.** A credit against the federal Unified Transfer Tax, replacing the former lifetime gift tax exemption and the estate tax exemption.

**Unified transfer tax.** A federal tax applicable to transfers by gift and death made after 1976.

**Uniform.** Conforming to one rule, mode, pattern, or unvarying standard; not different at different times or places; applicable to all places or divisions of a country. Equable; applying alike to all within a class; sameness.

A statute is general and uniform in its operation when it operates equally upon all persons who are brought within the relations and circumstances provided for; when all persons under the same condi-

tions and in the same circumstances are treated alike, and classification is reasonable and naturally inherent in the subject-matter. The words "general" and "uniform" as applied to laws have a meaning antithetical to special or discriminatory laws.

The burdens of taxation, to be uniform, must have the essential of equality, and must bear alike upon all the property within the limits of the unit wherein it is lawful to levy taxes for a purpose, whether that unit be the state, county, or a municipality. And requirement is met when tax is equal on all persons belonging to described class on which tax is imposed. With reference to locality, a tax is "uniform" when it operates with equal force and effect in every place where the subject of it is found, and with reference to classification, it is uniform when it operates without distinction or discrimination upon all persons composing the described class. Uniformity in taxation implies equality in the burden of taxation, which cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. Further, the uniformity must be coextensive with the territory to which it applies. And it must be extended to all property subject to taxation, so that all property may be taxed alike and equally. *Edye v. Robertson*, 112 U.S. 580, 5 S.Ct. 247, 28 L.Ed. 798.

**Uniform Code of Military Justice.** The body of law which governs military persons in their conduct as military personnel. 10 U.S.C.A. §§ 801-940. See **Code of Military Justice**.

**Uniform Commercial Code.** One of the Uniform Laws drafted by the National Conference of Commissioners on Uniform State Laws governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). The U.C.C. has been adopted by all states, except Louisiana.

**Uniform Consumer Credit Code.** (Also called the "U.3C.") A Uniform Law, adopted by some states: (a) to simplify, clarify, and modernize the law governing consumer credit and usury; (b) to provide rate ceilings to assure an adequate supply of credit to consumers; (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost; (d) to protect consumers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors; (e) to permit and encourage the development of fair and economically sound consumer credit practices; (f) to conform the regulation of disclosure in consumer credit transactions to the Federal Truth-in-Lending Act; and (g) to make uniform the law, including administrative rules, among the various jurisdictions. See also **Consumer Credit Protection Act**; **Truth-in-Lending Act**.

**Uniform Controlled Substances Act.** A uniform and comprehensive law governing use, sale, and distribution of drugs and narcotics adopted by most states, including Puerto Rico and the Virgin Islands. See **Controlled Substance Act**.

**Uniform Divorce Recognition Act.** One of the Uniform Laws adopted by some states governing questions of full faith and credit and recognition of divorces of sister states.

**Uniform Gifts to Minors Act.** See **Gifts to Minors Act**.

**Uniformity.** See **Uniform**.

**Uniform Laws or Acts.** Laws in various subject areas, approved by the Commissioners on Uniform State Laws, that are often adopted, in whole or substantially, by individual states. Examples are the Uniform Anatomical Gifts Act, the Reciprocal Enforcement of Support Act, and the Uniform Commercial Code. See also **Model Act**.

**Uniform Principal and Income Act.** One of the Uniform Laws adopted by some states governing allocation of principal and income in trusts and estates.

**Uniform State laws.** See **Model Act**; **Uniform Laws or Acts**.

**Unify.** To cause to be one; to make into a unit; to unite; to become one; to consolidate.

**Unigeniture** /yüwnäjənschar/. The state of being the only begotten.

**Unilateral.** One-sided; ex parte; having relation to only one of two or more persons or things.

**Unilateral contract.** See **Contract**.

**Unilateral mistake.** A mistake or misunderstanding as to the terms or effect of a contract, made or entertained by one of the parties to it but not by the other.

**Unilateral record.** Records are unilateral when offered to show a particular fact, as a *prima facie* case, either for or against a stranger.

**Unimproved land.** A statutory term which includes lands, once improved, that have reverted to a state of nature, as well as lands that have never been improved.

**Uninclosed place.** A place not entirely inclosed, an "inclosed" place being a place inclosed on all sides by some sort of material.

**Unincorporated association.** Voluntary group of persons, without a charter, formed by mutual consent for purpose of promoting common enterprise or prosecuting common objective. *Local 4076, United Steelworkers of America v. United Steelworkers of America, AFL-CIO, D.C.Pa.*, 327 F.Supp. 1400, 1402. An organization composed of a body of persons united with a charter for the prosecution of a common enterprise. *Heifetz v. Rockaway Point Volunteer Fire Dept.*, Sup., 124 N.Y.S.2d 257, 260.

**Uninfected.** Untainted or uncontaminated, not affected unfavorably, not impregnated or permeated with that which is bad or harmful. *Leonardi v. A. Habermann Provision Co.*, 143 Ohio St. 623, 56 N.E.2d 232, 237, 28 O.O. 511.

**Uninsured motorist coverage.** Protection afforded an insured by first party insurance against bodily injury inflicted by an uninsured motorist, after the liability of the uninsured motorist for the injury has been

established. *Sturdy v. Allied Mut. Ins. Co.*, 203 Kan. 783, 457 P.2d 34, 36. Purpose is to guarantee that the injured insured will be in the same position in the event of injury attributable to negligence of an uninsured motorist as the insured would be if he were injured through the negligence of a motorist carrying liability insurance. *Jarstad v. National Farmers Union Property & Cas. Co.*, Nev., 552 P.2d 49, 50.

Uninsured motorist coverage in automobile liability policies is designed to close the gaps inherent in motor vehicle financial responsibility and compulsory insurance legislation, and this insurance coverage is intended, within fixed limits, to provide financial recompense to innocent persons who receive injuries and dependents of those who are killed, through the wrongful conduct of motorists who, because they are uninsured and not financially responsible, cannot be made to respond in damages. *Wright v. Fidelity & Cas. Co. of New York*, 270 N.C. 577, 155 S.E.2d 100, 106.

**Unintelligible.** That which cannot be understood.

**Unio** /yúwn(i)yow/. Lat. In canon law, a consolidation of two churches into one.

**Union.** An organization of workers, formed for the purpose of negotiating with employers on matters of wages, seniority, working conditions and the like.

A league; a federation; an unincorporated association of persons for a common purpose; as, a trade or labor union. A joinder of separate entities. State ex rel. *Dawson v. Dinwiddie*, 186 Okl. 63, 95 P.2d 867, 869.

A popular term in America for the United States; also, in Great Britain, for the consolidated governments of England and Scotland, or for the political tie between Great Britain and Ireland.

See also Agency shop; Bargaining unit; Craft union; Credit union; Labor organization; Labor union; Open shop; Preferential shop; Right-to-work laws.

**Closed union.** Union with highly restrictive membership requirements such as high initiation fees, and long apprenticeship periods. See also **Closed shop**; compare **Open union**, *infra*.

**Company union.** Union formed or sponsored by the employer. For all practical purposes, such union is now illegal because employers are prohibited from interfering with union representation by the National Labor Relations Act.

**Craft union.** Union composed of members of the same trade or craft, as carpenters, plumbers, etc. regardless of the company for which they work.

**Horizontal union.** A craft union which cuts across employer or industry lines.

**Independent union.** Union formed by employees of a particular employer without affiliation with an international union.

**Industrial union.** Union composed of workers in a particular industry regardless of their particular trade or craft, as for example, the United Automobile Workers union.

**International union.** A parent union with affiliates in other countries such as Canada and Mexico.

**Local union.** A union of workers in one plant or location but affiliated with a parent or larger union. The local is the bargaining unit of the union.

**National union.** A parent union with locals in various parts of the United States, though not outside the country.

**Open union.** A union whose admission requirements are relatively easy to meet. See also **Open shop**; compare **Closed union**, *supra*.

**Trade union.** Generically, a labor union. Restrictively, a craft union.

**Union shop.** Exists where all workers are union members.

**Vertical union.** An industrial union organized along lines of industry and not craft.

**Union certification.** The process by which an official, governmental body such as the National Labor Relations Board declares that a particular union has qualified as the bargaining representative of the employees of a company or industry by reason of a majority vote of the workers.

**Union contract.** A written agreement between the union and employer covering such matters as wages, seniority rights and working conditions.

**Union-jack.** The national flag of Great Britain and Ireland, which combines the banner of St. Patrick with the crosses of St. George and St. Andrew. The word "jack" is most probably derived from the surcoat, charged with a red cross, anciently used by the English soldiery. This appears to have been called a "jacque," whence the word "jacket," anciently written "jacquit." Some, however, without a shadow of evidence, derive the word from "*Jacques*," the first alteration having been made in the reign of King James I.

**Union mortgage clause.** A clause, as in a fire policy (together with the rider making the loss, if any, payable to the mortgagee), which provides that if the policy is made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee, or his agents or those claiming under him, shall affect his right to recover in case of loss on such real estate. *Prudential Ins. Co. of America v. German Mut. Fire Ins. Ass'n of Lohman*, 231 Mo.App. 699, 105 S.W.2d 1001. Such clause creates independent contract between insurer and mortgagee and is distinguished from "open mortgage clause" in that latter clause simply provides that policy is payable to mortgagee as his interest may appear. *Prudential Ins. Co. of America v. German Mut. Fire Ins. Ass'n of Lohman*, 231 Mo.App. 699, 105 S.W.2d 1001. And mortgagee under such latter clause is merely an appointee to receive fund recoverable in case of loss to extent of his interest. *Capital Fire Ins. Co. of Cal. v. Langhorne*, C.C.A.Minn., 146 F.2d 237, 241.

**Union rate.** The wage scale set by a union as a minimum wage to be paid and generally expressed as an hourly rate or piece-work rate.

**Union security clause.** Provision in union contract which establishes status of union in a plant. It provides for the relation of the union to the workers and their positions. Any contract clause requiring some

or all employees represented by a union to become or remain members of the union as a condition of employment.

**Unissued stock.** Stock of a corporation which has been authorized but is not outstanding.

**Unit.** A single thing of any kind. A term sometimes used in the sense of a share, as in an oil syndicate, or as equivalent to an investment security. With respect to labor unit, see **Bargaining unit**.

**Unitas personarum.** Lat. The unity of persons, as that between husband and wife, or ancestor and heir.

**Unite.** To join in an act; to concur; to act in concert.

**United in interest.** A statutory term applicable to codefendants only when they are similarly interested in and will be similarly affected by the determination of the issues involved in the action; e.g., joint obligors upon a guaranty.

**United Kingdom of Great Britain and Ireland.** The official title of the kingdom composed of England, Scotland, Ireland, and Wales, and including the colonies and possessions beyond the seas, under the act of January 1, 1801, effecting the union between Ireland and Great Britain.

**United Nations.** An organization started by the allied powers in World War II for the stated purposes of preventing war, providing justice and promoting welfare and human rights of peoples. Its membership is made up of nearly all nations of the world. New members may be admitted by a two-thirds vote of the General Assembly. It consists of a Security Council and a General Assembly and subordinate agencies.

**United States.** This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. *Hooven & Allison Co. v. Evatt*, U.S. Ohio, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252.

**United States Attorney.** A United States Attorney is appointed by the President for each judicial district. The general duties of U.S. attorneys are to: prosecute for all offenses against the United States; prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned; appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury; institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings. 28 U.S.C.A. § 547.

**United States Code.** Prior to 1926, the positive law for federal legislation was contained in the one volume of the Revised Statutes of 1875 and then in each subsequent volume of the Statutes at Large. In 1925,

Congress authorized the preparation of the United States Code. This was prepared by a Revisor of Statutes appointed by Congress, who extracted all sections of the Revised Statutes of 1875 that had not been repealed and then all of the public and general laws from the Statutes at Large since 1873 that were still in force. These were then rearranged into fifty titles and published as the United States Code, 1926 ed., in four volumes. Each year thereafter a cumulative supplement containing the laws passed since 1926 was published. In 1932 a new edition was issued which incorporated the cumulated supplements to the 1926 edition, and this became the United States Code, 1932 ed. Every six years a new edition of the U.S. Code is published with cumulative supplement volumes being issued during the intervening years.

**United States Code Annotated.** This multi-volume publication includes the complete text of the United States Code, together with case notes of state and federal decisions which construe and apply specific Code sections, cross references to related sections, historical notes, and library references. U.S.C.A. is further supplemented with United States Code Congressional and Administrative News.

**United States Commissioners.** See **Magistrate**.

**United States Courts.** Except in the case of impeachments, the judicial power of the United States is vested by the Constitution in a Supreme Court and such other inferior courts as may be from time to time established by congress. All the judges are appointed by the President, with the advice and consent of the senate, to hold office during good behavior, and their compensation cannot be diminished during their term of office. Art. III, U.S.Const. Such "inferior" courts include the Courts of Appeals, District Courts, Court of Claims, Customs Court, and Court of Customs and Patent Appeals. 28 U.S.C.A. § 1 *et seq.* See also specific courts.

**United States currency.** Commonly understood to include every form of currency authorized by the United States government, whether issued directly by it or under its authority. See **Legal tender**.

**United States Magistrates.** See **Magistrate**.

**United States notes.** See **Treasury bill**; **Treasury note**.

**United States officer.** Usually and strictly, in United States statutes, a person appointed in the manner declared under Art. II, § 2, U.S.Const., providing for the appointment of officers, either by the President and the Senate, the President alone, the courts of law, or the heads of departments, *Steele v. U. S.*, 267 U.S. 505, 45 S.Ct. 417, 418, 69 L.Ed. 761; *Dropp v. U. S.*, C.C.A.Minn., 34 F.2d 15, 17.

**United States Reports.** The official printed record of cases heard and decided by the U.S. Supreme Court which usually includes a syllabus of each case, the opinion of the Court, concurring and dissenting opinions, if any, the disposition made of each case, and orders of the Court. Originally a series of Reports was issued during the incumbency of each successive court reporter and such were cited as Dallas (1790-

1800); Cranch (1801–1815); Wheaton (1816–1827); Peters (1828–1843); Howard (1843–1860); Black (1861–1862); and Wallace (1863–1874). By 1874, when the number of volumes totalled 90, the practice began of eliminating the reporter's name and citing them as United States Reports.

**United States Supreme Court.** See **Supreme Court.**

**Unit of production.** The "unit of production" method of determining the taxable net income or profit in the oil or gas business is accomplished by a system of accounting by which is ascertained, as nearly as science will permit, the total amount of recoverable oil in the property, and to each barrel of this oil is assigned its part of the capital investment, and from the sale price of each barrel produced and sold there is deducted the expenses of producing it, and its proportion of the capital investment, leaving the balance as profit, and thus, when the property is exhausted, the operator has received back his capital and expenses, and accounted for his net income or loss.

**Unit ownership acts.** State laws governing condominium ownership. See **Planned unit development.**

**Unit pricing.** System under which contract items are priced per unit and not on the basis of a flat contract price.

**Unit rule.** A method of valuing securities by multiplying the total number of shares held by the sale price of one share sold on a licensed stock exchange, ignoring all other facts regarding value. *Citizens Fidelity Bank & Trust Co. v. Reeves, Ky., 259 S.W.2d 432, 434.*

**Unitrust.** A trust from which a fixed percentage of the net fair market value of the trust's assets, valued annually, is paid each year to the beneficiary. See also **Trust.**

**Unity.** In the law of estates, the peculiar characteristic of an estate held by several in joint tenancy, and which is fourfold, viz., unity of interest, unity of title, unity of time, and unity of possession. In other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 2 Bl.Comm. 180.

**Unity of interest.** As required in case of joint tenancy, means that interests must accrue by one and same conveyance. *Hernandez v. Becker, C.C.A.N.M., 54 F.2d 542, 547.* It also signifies that no one of joint tenants can have a greater interest in the property than each of the others, while, in the case of tenants in common, one of them may have a larger share than any of the others.

**Unity of possession.** Joint possession of two rights by several titles. Exists for example where a person takes a lease of land from another at a certain rent, and afterwards purchases the fee-simple of such land. By this he acquires unity of possession, by which the lease is extinguished. It is also one of the essential properties of a joint estate, requiring that the joint tenants must hold the same undivided possession of the whole and enjoy same rights until death of one. *Hernandez v. Becker, C.C.A.N.M., 54 F.2d 542, 547.*

**Unity of seisin.** Where a person seised of land which is subject to an easement, *profit à prendre*, or similar right, also becomes seised of the land to which the easement or other right is annexed.

**Unity of time.** One of the essential properties of a joint estate; the estates of the tenants being vested at one and the same period. 2 Bl.Comm. 181; *Hernandez v. Becker, C.C.A.N.M., 54 F.2d 542, 547.*

**Unity of title.** As applied to joint tenants, signifies that they hold their property by one and the same title, while tenants in common may take property by several titles.

**Uniuscujusque contractus initium spectandum est, et causa** /yənâyask(y)əjəskwiy kantrəktəs ənîsh(iy)əm spektəndəm èst, ét kóza/. The commencement and cause of every contract are to be regarded.

**Unius omnino testis responsio non audiat** /yuwnâyəs omnâynow téstəs rəspónsh(iy)ow nón odiyédər/. The answer of one witness shall not be heard at all; the testimony of a single witness shall not be admitted under any circumstances. A maxim of the civil and canon law.

**Universal.** Having relation to the whole or an entirety; pertaining to all without exception; a term more extensive than "general," which latter may admit of exceptions.

**Universal agent.** One who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do.

**Universalia sunt notiora singularibus** /yuwnávərséyl(i)yə sànt nówshiyóra singylérəbəs/. Things universal are better known than things particular.

**Universal legacy.** See **Legacy.**

**Universal partnership.** See **Partnership.**

**Universal succession.** In the civil law, succession to the entire estate of another, living or dead, though generally the latter, importing succession to the entire property of the predecessor as a juridical entirety, that is, to all his active as well as passive legal relations.

**Universitas** /yuwnávərsətəs/. Lat. In the civil law, a corporation aggregate. Literally, a whole formed out of many individuals. 1 Bl.Comm. 469.

**Universitas facti** /yuwnávərsətəs fəktay/. In the civil law, a plurality of corporeal things of the same kind, which are regarded as a whole; e.g., a herd of cattle, a stock of goods.

**Universitas juris** /yuwnávərsətəs júras/. In the civil law, a quantity of things of all sorts, corporeal as well as incorporeal, which, taken together, are regarded as a whole; e.g., an inheritance, an estate.

**Universitas rerum** /yuwnávərsətəs ríram/. In the civil law, literally, a whole of things. Several single things, which, though not mechanically connected with one another, are, when taken together, regarded as a whole in any legal respect.

**Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiamsi major pars id**

**faciat** /yüwnávársætæs vèl kòrparéysh(iy)ow nòn dísdòdər ælækwid fássariy náysay íd sit kállyijyéylədər dálíberéydəm, èshiyæmsay méyjər párz íd féysh(iy)ət/. A university or corporation is not said to do anything unless it be deliberated upon as a body, although the majority should do it.

**University.** An institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned professions, and conferring degrees.

**Universus** /yüwnávársæs/. Lat. The whole; all together.

**Unjust.** Contrary to right and justice, or to the enjoyment of his rights by another, or to the standards of conduct furnished by the laws.

**Unjust enrichment, doctrine of.** General principle that one person should not be permitted unjustly to enrich himself at expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. *Tulalip Shores, Inc. v. Mortland*, 9 Wash. App. 271, 511 P.2d 1402, 1404. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. *Hummel v. Hummel*, 133 Ohio St. 520, 14 N.E.2d 923, 927. Thus one who has conferred a benefit upon another solely because of a basic mistake of fact induced by a nondisclosure is entitled to restitution on above doctrine. *Conkling's Estate v. Champlin*, 193 Okl. 79, 141 P.2d 569, 570. See also **Quantum meruit**.

**Unknown persons.** Persons whose identities cannot be ascertained.

**Unkouth** /ənkúwθ/. Unknown. The law French form of the Saxon "uncouth."

**Unlage.** Sax. An unjust law.

**Unlawful.** That which is contrary to, prohibited, or unauthorized by law. That which is not lawful. The acting contrary to, or in defiance of the law; disobeying or disregarding the law. While necessarily not implying the element of criminality, it is broad enough to include it.

**Unlawful act.** Act contrary to law, and presupposes that there must be an existing law. A violation of some prohibitory law and includes all willful, actionable violations of civil rights, and is not confined to criminal acts. *State v. Hailey*, 350 Mo. 300, 165 S.W.2d 422, 427. The "unlawful acts" within manslaughter statutes consist of reckless conduct or conduct evincing marked disregard for safety of others. *State v. Newton*, 105 Utah 561, 144 P.2d 290, 293; *State v. Thatcher*, 108 Utah 63, 157 P.2d 258, 261.

**Unlawful assembly.** At common law, the meeting together of three or more persons, to the disturbance of the public peace, and with the intention of co-operat-

ing in the forcible and violent execution of some unlawful private enterprise. If they take steps towards the performance of their purpose, it becomes a *riot*; and, if they put their design into actual execution, it is a *riot*. 4 Bl.Comm. 146. An unlawful assembly is a meeting of three or more persons with a common plan in mind which, if carried out, will result in a riot. In other words, it is such a meeting with intent to (a) commit a crime by open force, or (b) execute a common design lawful or unlawful, in an unauthorized manner likely to cause courageous persons to apprehend a breach of the peace.

Unlawful assembly is the meeting or coming together of not less than five (5) persons for the purpose of engaging in conduct constituting either disorderly conduct, or a riot, or when in a lawful assembly of not less than five (5) persons, agreeing to engage in such conduct. Kansas Criminal Code.

See also **Riot**.

**Unlawful belligerents.** Enemies passing the boundaries of the United States for purpose of destroying war industries and supplies without a uniform or other emblem signifying their belligerent status or discarding that means of identification after entry. *Ex parte Quirin*, App.D.C., 317 U.S. 1, 63 S.Ct. 2, 15, 87 L.Ed. 3.

**Unlawful detainer.** The unjustifiable retention of the possession of lands by one whose original entry was lawful and of right, but whose right to the possession has terminated and who refuses to quit, as in the case of a tenant holding over after the termination of the lease and in spite of a demand for possession by the landlord. *Brandley v. Lewis*, 97 Utah 217, 92 P.2d 338, 339. Actions of "unlawful detainer" concern only right of possession of realty, and differ from ejectment in that no ultimate question of title or estate can be determined. *McCracken v. Wright*, 159 Kan. 615, 157 P.2d 814, 817. See also **Detainer**; **Forcible detainer**.

**Unlawful entry.** An entry upon lands effected peaceably and without force, but which is without color of title and is accomplished by means of fraud or some other willful wrong.

**Unlawfully.** Illegally; wrongfully. See **Unlawful**; **Unlawful act**.

This word is frequently used in indictments in the description of the offence; it was formerly necessary when the crime did not exist at common law, and when a statute, in describing an offence which it created, used the word; but was unnecessary whenever the crime existed at common law and was manifestly illegal.

**Unlawful picketing.** Picketing which is not honest or truthful. *Park & Tilford Import Corporation v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, Local No. 848, A. F. of L., Cal.App., 139 P.2d 963, 971; *Magill Bros. v. Building Service Employees' International Union*, 20 Cal.2d 506, 127 P.2d 542, 543. Picketing which involves false statements or misrepresentations of facts. *Wiest v. Dirks*, 215 Ind. 568, 20 N.E.2d 969, 971. Picketing when it ceases to serve the purpose it seeks to accomplish. *E. M. Loew's Enterprises v. International Alliance of Theatrical Stage Em-*

ployees, 125 Conn. 391, 6 A.2d 321, 323. When force or violence is used to persuade or prevent workers from continuing their employment. *Ex parte Bell*, 37 Cal.App.2d 582, 100 P.2d 339, 343. See also **Picketing**.

**Unless.** If it be not that; if it be not the case that; if not; supposing not; if it be not; except. A reservation or option to change one's mind provided a certain event happens, a conditional promise. A subordinate conjunction in common usage, connecting a dependent or subordinate clause to the main clause of a sentence. *Kansas City Structural Steel Co. v. L. G. Barcus & Sons, Inc.*, 217 Kan. 88, 535 P.2d 419, 423.

**Unless lease.** An oil and gas lease which provides that lease will be rendered null and void and lessee will automatically be relieved from liability, upon failure to commence operations or to pay rent. It must be expressly stipulated in the lease that lease shall become null and void at a certain time "unless" the lessee begins operations or pays the rental stipulated. Where the word "unless" precedes the description of the act to be performed under an oil lease, no obligation to perform that act is imposed by the lease. *McCraab v. Moulton, C.C.A.Mo.*, 124 F.2d 689, 691.

**Unlimited.** Without confines, unrestricted, boundless.

**Unliquidated.** Not ascertained in amount; not determined; remaining unassessed or unsettled, as unliquidated damages; *Davies v. Turner*, 61 Ga.App. 531, 6 S.E.2d 356, 358. A debt is spoken of as "unliquidated," if the amount thereof cannot be ascertained at the trial by a mere computation, based on the terms of the obligation or on some other accepted standard. *Hettrick Mfg. Co. v. Barish*, 120 Misc. 673, 199 N.Y.S. 755, 767. Under the law of accord and satisfaction, a claim or debt will be regarded as unliquidated if it is in dispute as to the proper amount. *Paulsen Estate v. Naches-Selah Irr. Dist.*, 190 Wash. 205, 67 P.2d 856, 858.

**Unliquidated claim.** A claim which has not been finally determined either as to liability or damages. A disputed claim. See also **Unliquidated**.

**Unliquidated damages.** Damages which have not been determined or calculated. See also **Damages**.

**Unliquidated debt.** See **Unliquidated**.

**Unliquidated demand.** Such exists where it is admitted that one of two specific sums is due, but there is a dispute as to which is proper amount. *Perryman Burns Coal Co. v. Seaboard Coal Co. of Connecticut*, 128 Conn. 70, 20 A.2d 404, 405.

**Unlivery.** A term used in maritime law to designate the unloading of cargo of a vessel at the place where it is properly to be delivered.

**Unloading.** Act of discharging a cargo; taking a load from; disburdening or removing from. *American Oil & Supply Co. v. United States Casualty Co.*, 19 N.J. Misc. 7, 18 A.2d 257, 259.

An unloading clause in an automobile liability policy covers the entire process involved in the movement of articles by and from a motor vehicle to the place where they are turned over to the one to whom the insured is to make delivery, if the clause is con-

strued in accordance with what may be called the "complete operation" rule. *Pacific Auto. Ins. Co. v. Commercial Cas. Ins. Co. of N. Y.*, 108 Utah 500, 161 P.2d 423. There are, however, two other rules or doctrines used by various courts in applying the unloading clause of such a policy. One is known as the "coming to rest" rule, and the other is the "continuous passage" rule. But the complete operation rule is said to be the modern doctrine, supported by the trend of the later cases. *London Guarantee & Acc. Co. v. C. B. White & Bros.*, 188 Va. 195, 49 S.E.2d 254.

In determining whether activity constitutes "unloading" within meaning of insurance policy which provides coverage for liability arising out of loading and unloading truck, "complete operations" rule is followed under which "unloading" embraces all operations required in any specific situation to effect a complete delivery of the article; the number of temporary or intermediate stops or resting places is immaterial. *Manhattan Fire & Marine Ins. Co. v. Travelers Ins. Co.*, 66 Cal.App.3d 794, 136 Cal.Rptr. 400, 402. "Loading or unloading" within homeowner's policy excluding personal liability coverage with respect to "loading or unloading" of automobiles has primary reference to objects transported from one place for delivery to some at least temporary final destination. *Morari v. Atlantic Mut. Fire Ins. Co.*, 10 Ariz.App. 142, 457 P.2d 304, 306. "Unloading" as used in a motor vehicle liability policy has been completed when, following removal of the material from the vehicle, the deliverer has finished his handling of it and has placed the material in the hands of the receiver at the designated reception point, even though it is necessary for the consignee, or someone in his behalf, to transport it thereafter to another point. *General Acc. Fire & Life Assur. Corp. v. Liberty Mut. Ins. Co.*, Fla.App., 260 So.2d 249, 255.

**Unlooked for mishap or untoward event.** One occurring unexpectedly and not naturally or in ordinary course of events.

**Unmarketable title.** Exists when for vendee to accept title proffered such would lay him open to fair probability of vexatious litigation with possibility of serious loss. It being sufficient to render it so if ordinarily prudent man with knowledge of the facts and aware of legal questions involved would not accept it in the ordinary course of business but title need not be bad in fact. *Barrett v. McMannis*, 153 Kan. 420, 110 P.2d 774, 777, 778; *Ayers v. Graff*, 153 Kan. 209, 109 P.2d 202, 203; *Ghormley v. Kleeden*, 155 Kan. 319, 124 P.2d 467, 470. Exists where some defect of substantial character exists and facts are known which fairly raise reasonable doubt as to title. *Schul v. Clapp*, 154 Kan. 372, 118 P.2d 570, 574. Title is "unmarketable" where it is of such a character as to expose the purchaser to the hazards of litigation and where there are outstanding possible interests in third persons. *Boecher v. Borth*, 377 N.Y.S.2d 781, 784. And mere quibbles and pécadilloes which the ingenuity of counsel can raise against a title do not alone render it an "unmarketable title". *Barrett v. McMannis*, 153 Kan. 420, 110 P.2d 774, 778. Compare **Marketable title**.

**Unmarried.** Its primary meaning is never having been married; but it is a word of flexible meaning and it may be construed as not having a husband or wife at



the time in question; e.g. widow or widower or divorcee.

**Unnatural offense.** The infamous crime against nature; i.e., sodomy or buggery.

**Unnatural will.** An expression applied to disposition of estate or large portion thereof to strangers, to exclusion of natural objects of testator's bounty without apparent reason.

**Unnecessary.** Not required by the circumstances of the case.

**Unnecessary hardship.** Unnecessary hardship, sufficient to establish basis for granting variance, is shown by establishing that: physical characteristics of property are such that it could not be used for any permitted purpose; property could be so used only at prohibitive expense; or that characteristics of area are such that property has no value or any distress value for any permitted purpose. *Eighteenth & Rittenhouse Associates v. Zoning Bd. of Adjustment*, 26 Pa.Cmwlt. 554, 364 A.2d 973, 975. Within zoning ordinance so as to authorize granting of variance on such ground if land cannot yield a reasonable return if used only for a purpose allowed in zone, such exists where the plight of owner is due to unique circumstances not to general conditions in the neighborhood and use to be authorized will not alter essential character of the locality. *Calcagno v. Town Board of Town of Webster*, 265 App.Div. 687, 41 N.Y.S.2d 140, 142. It has also been said that test whether terms of zoning ordinance impose an "unnecessary hardship" depends on whether use restriction is so unreasonable as to constitute an arbitrary interference with basic right of private property. *Scaduto v. Town of Bloomfield*, 127 N.J.L. 1, 20 A.2d 649, 650.

**Un ne doit prise advantage de son tort demesne** /ən nə dwá priýz advontázh də sòn tór dəméyn/. One ought not to take advantage of his own wrong.

**Uno absurdo dato, infinita sequuntur** /yúwnow əbsərdow déydow infənýdə səkwántər/. One absurdity being allowed, an infinity follows.

**Uno actu** /yúwnow əkt(y)uw/. Lat. In a single act; by one and the same act.

**Unoccupied.** Within fire policy exempting insurer from liability in case dwelling is "unoccupied," means when it is not used as a residence, when it is no longer used for the accustomed and ordinary purposes of a dwelling or place of abode, or when it is not the place of usual return and habitual stoppage. Hence a mere temporary absence of occupants of dwelling house from such premises, with intention to return thereto does not render dwelling "unoccupied". *Foley v. Sonoma County Farmers' Mut. Fire Ins. Co.*, 18 Cal.2d 232, 115 P.2d 1, 2, 3. See **Occupation**.

**Uno flatu** /yúwnow fléyt(y)uw/. Lat. In one breath. *Uno flatu, et uno intuitu*, at one breath, and in one view.

**Unprecedented.** Having no precedent or example, novel, new, unexampled. *State v. Malone*, Tex.Civ.App., 168 S.W.2d 292, 300. Unusual and extraordinary; affording no reasonable warning or expectation of recurrence.

**Unprecedented rainfall.** An unusual and extraordinary rainfall as has no example or parallel in the history of rainfall in the vicinity affected, or as affords no reasonable warning or expectation that it will likely occur again.

**Unprofessional conduct.** That which is by general opinion considered to be unprofessional because immoral, unethical or dishonorable. *State Board of Dental Examiners v. Savelle*, 90 Colo. 177, 8 P.2d 693, 697. That which violates ethical code of profession (e.g. Code of Professional Responsibility (*q.v.*)) or such conduct which is unbecoming member of profession in good standing. It involves breach of duty which professional ethics enjoin. Within statutes, rules, etc., promulgating standards of professional conduct for attorneys denotes conduct which it is recommended be made subject to disciplinary sanctions. *Hawk v. Superior Court In and For Solano County*, 42 C.A.3d 108, 116 Cal.Rptr. 713, 721.

**Unques** /əŋkwíyz/əŋkwíyz/. L. Fr. Ever; always. *Ne unques, never.*

**Unques prist** /əŋkwíyz prist/. L. Fr. Always ready. Another form of *tout temps prist*.

**Unreasonable.** Irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid. *Southern Kansas State Lines Co. v. Public Service Commission*, 135 Kan. 657, 11 P.2d 985, 987. Not reasonable; immoderate; exorbitant. *Cass v. State*, 124 Tex.Cr.R. 208, 61 S.W.2d 500. Capricious; arbitrary; confiscatory. *Harris v. State Corporation Commission*, 46 N.M. 352, 129 P.2d 323, 328.

**Unreasonable appreciation.** An unrealized holding gain; frequently used in the context of marketable securities. A paper profit (*q.v.*). See also **Equity**.

**Unreasonable compensation.** Under the Internal Revenue Code, a deduction is allowed for "reasonable" salaries or other compensation for personal services actually rendered. To the extent compensation is "excessive" (i.e., "unreasonable"), no deduction will be allowed. The problem of unreasonable compensation usually is limited to closely-held corporations where the motivation is to pay out profits in some form deductible to the corporation. Deductible compensation, therefore, becomes an attractive substitute for nondeductible dividends when the shareholders also are employed by the corporation.

**Unreasonable refusal to submit to operation.** An injured employee's refusal to submit to an operation is unreasonable, so as to deprive him or her of right to workers' compensation if it appears that an operation of a simple character not involving serious suffering or danger will result in substantial physical improvement. *Black Star Coal Co. v. Surgener*, 297 Ky. 653, 181 S.W.2d 53, 54.

**Unreasonable restraint of trade.** Within Sherman Anti-Trust Act, term refers to agreements for price maintenance of articles moving in interstate commerce. *Sherman Anti-Trust Act*, § 1, 15 U.S.C.A. § 1. *American Tobacco Co. v. U. S.*, C.C.A.Ky., 147 F.2d 93, 108. Any combination or conspiracy that operates directly on prices or price structure and has for its purpose the fixing of prices. *United States v. Waltham*

Watch Co., D.C.N.Y., 47 F.Supp. 524, 531. See **Price-fixing**; **Restraint of trade**; **Robinson-Patman Act**.

**Unreasonable restraint on alienation.** Such act is brought about by gift of absolute ownership in property followed by such condition as takes away incidents of such ownership.

**Unreasonable search.** See **Probable cause**; **Search**.

**Unrelated offenses.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Fed.Evid.R. 404(b).

**Unresponsive evidence.** In evidence, an answer to a question which is irrelevant to the question asked.

**Unruly and dangerous animals.** Within the meaning of the law, such as are likely to injure other domestic animals and persons.

**Unsafe.** Dangerous; not secure.

**Unseaworthy.** A vessel which is unable to withstand the perils of an ordinary voyage at sea. *Fireman's Fund Ins. Co. v. Compania de Navegacion, Interior, S. A., C.C.A.La.*, 19 F.2d 493, 495. One that could not reasonably have been expected to make the voyage. *Interlake Iron Corporation v. Gartland S. S. Co., C.C. A.Mich.*, 121 F.2d 267, 269, 270. One not manned by a competent crew; or not carrying proper navigational charts. But a ship is not unseaworthy where defect in ship is such that defect can be remedied on the spot in a short time by materials available. *Middleton & Co. (Canada) Limited v. Ocean Dominion Steamship Corporation, C.C.A.N.Y.*, 137 F.2d 619, 622. Compare **Seaworthy**.

**Unsolemn war.** War denounced without a declaration; war made not upon general but special declaration; imperfect war. *People v. McLeod*, 1 Hill, N.Y., 409, 37 Am.Dec. 328.

**Unsolemn will.** In the civil law, one in which an executor is not appointed.

**Unsound mind.** Non-legal term referring to one who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons (see **Insanity**). It exists where there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life. *Oklahoma Natural Gas Corporation v. Lay*, 175 Okl. 75, 51 P.2d 580, 582. But eccentricity, uncleanness, slovenliness, neglect of person and clothing, and offensive and disgusting personal habits do not constitute unsoundness of mind. See also **Capacity**.

**Unthrif.** A prodigal; a spendthrift. 1 Bl.Comm. 306.

**Until.** Up to time of. A word of limitation, used ordinarily to restrict that which precedes to what immediately follows it, and its office is to fix some point of time or some event upon the arrival or occurrence of which what precedes will cease to exist. *Empire Oil and Refining Co. v. Babson*, 182 Okl. 336, 77 P.2d 682, 684.

**Untoward event.** See **Unlooked for mishap**.

**Untrue.** *Prima facie* inaccurate, but not necessarily wilfully false. A statement is "untrue" which does not express things exactly as they are. *Zolintakis v. Equitable Life Assur. Soc. of United States, C.C.A. Utah*, 108 F.2d 902, 905. See **Misrepresentation**.

**Unumquodque dissolvitur eodem ligamine quo ligatur /yüwnæmkwódkwiý dazólvæðar iyówdæm lægéymány kwów lægéydær/. Every obligation is dissolved by the same solemnity with which it is created.**

**Unumquodque eodem modo quo colligatum est, dissolvitur,—quo constituitur, destruitur /yüwnæmkwódkwiý iyówdæm mówdow kwów kolægéydæm èst, dazólvæðar, kwów kõnstátyüwæðar, dæstrúwæðær/. Everything is dissolved by the same means by which it is put together,—destroyed by the same means by which it is established.**

**Unumquodque est id quod est principalis in ipso /yüwnæmkwódkwiý èst id kwòd èst prin(t)spépýl(i)yæs in ípsow/. That which is the principal part of a thing is the thing itself.**

**Unumquodque princípiorum est sibimetipsi fides; et perspicua vera non sunt probanda /yüwnæmkwódkwiý prin(t)siپیóræm èst sibaynædípsay fáydiyz, èt pærspíkyuwæ víræ nón sânt præbændær/. Every general principle [or maxim of law] is its own pledge or warrant; and things that are clearly true are not to be proved.**

**Unus nullus rule, the /ðæ yúwnæs náles rúwl/. The rule of evidence which obtains in the civil law, that the testimony of one witness is equivalent to the testimony of none.**

**Unusual.** Uncommon; not usual, rare. *Thompson v. Anderson*, 107 Utah 331, 153 P.2d 665, 666.

**Unusual punishment.** See **Corporal punishment**; **Punishment (Cruel and unusual punishment)**.

**Unvalued policy.** One where the value of property insured is not settled in policy, and in case of loss must be agreed on or proved. *Hartford Live Stock Ins. Co. v. Gibson*, 256 Ky. 338, 76 S.W.2d 17, 18.

**Unwholesome food.** Food not fit to be eaten; food which if eaten would be injurious.

**Unworthy.** Unbecoming; discreditable; not having suitable qualities or value.

**Unwritten law.** All that portion of the law, observed and administered in the courts, which has not been enacted or promulgated in the form of a statute or ordinance, including the unenacted portions of the common law, general and particular customs having the force of law, and the rules, principles, and maxims established by judicial precedents or the successive like decisions of the courts. See also **Natural law**.

**UPA.** Uniform Partnership Act.

**Upkeep.** The act of keeping up or maintaining; maintenance, repair.

**Uplands.** Lands bordering on bodies of waters.

**Uplifted hand.** The hand raised towards the heavens, in one of the forms of taking an oath, instead of being laid upon the Gospels.

**Upper bench.** The court of king's bench, in England, was so called during the interval between 1649 and 1660, the period of the commonwealth, Rolle being then chief justice. See 3 Bl.Comm. 202.

**Upset price.** The price at which any subject, as lands or goods, is exposed to sale by auction, below which it is not to be sold. In a final decree in foreclosure, the decree should name an upset price large enough to cover costs and all allowances made by the court, receiver's certificates and interest, liens prior to the bonds, amounts diverted from the earnings, and all undetermined claims which will be settled before the confirmation and sale.

**U.R.** Initials of "*uti rogas*," be it as you desire, a ballot thus inscribed, by which the Romans voted in favor of a bill or candidate.

**Urban.** Of or belonging to a city or town. Within city limits. Derived from the Latin "*urbanis*," which in that language imports the same meaning. *City of South Pasadena v. City of San Gabriel*, 134 Cal.App. 403, 25 P.2d 516.

**Urban homestead.** See **Homestead**.

**Urban renewal.** Comprehensive term embracing redevelopment plan indicating its relationship to such local objectives as appropriate land uses, improved traffic, public transportation, public utilities, recreation, community facilities and other public improvements. It also includes acquisition of air rights over highways and railroads which have a blighting influence if the rights are developed for low or moderate income housing.

**Urban servitude.** In the civil law, city servitudes, or servitudes of houses are called "*urban*." They are the easements appertaining to the building and construction of houses; as, for instance, the right to light and air, or the right to build a house so as to throw the rain-water on a neighbor's house.

**Urbs /úrbr/. Lat.** In Roman law, a city, or a walled town. Sometimes it is put for *civitas*, and denotes the inhabitants, or both the city and its inhabitants; *i.e.*, the municipality or commonwealth. By way of special pre-eminence, *urbs* meant the city of Rome.

**Ure /yúr/. L. Fr.** Effect; practice. *Mis en ure*, put in practice; carried into effect.

**U.S.** An abbreviation for "United States."

**Usage.** A reasonable and lawful public custom in a locality concerning particular transactions which is either known to the parties, or so well established, general, and uniform that they must be presumed to have acted with reference thereto. Practice in fact. *Electrical Research Products v. Gross*, C.C.A.Alaska, 120 F.2d 301, 305. Uniform practice or course of conduct followed in certain lines of business or professions or some procedure or phase thereof. *Turner v. Donovan*, 3 Cal.App.2d 485, 39 P.2d 858, 859. Usage cannot be proved by isolated instances, but must be certain, uniform and notorious. *Unkovich v.*

*New York Cent. R. Co.*, 128 N.J.Eq. 377, 16 A.2d 558, 561. Habitual or customary practice which prevails within geographical or sociological area, and is course of conduct based upon series of actual occurrences, and in order to be controlling upon parties to contract, it must be adopted by them, or be well known to parties or to persons in their circumstances. *Sam Levitz Furniture Co. v. Safeway Stores, Inc.*, 10 Ariz.App. 225, 457 P.2d 938, 941. See also **Custom and usage**; **Local usage**; **Trade usage**.

**"Custom" distinguished.** "Usage" is a repetition of acts, and differs from "custom" in that the latter is the law or general rule which arises from such repetition; while there may be usage without custom, there cannot be a custom without a usage accompanying or preceding it. *U. S. for Use of E & R Const. Co., Inc. v. Guy H. James Const. Co.*, D.C.Tenn., 390 F.Supp. 1193, 1209. It is distinguished from "custom" in that "usage" derives its efficacy from assent of parties to transaction, and hence is important only in consensual agreements, while "custom" derives its efficacy from its adoption into the law, is binding irrespective of any manifestation of assent by parties concerned, and may be of importance in any department of law. *Gulf Refining Co. v. Universal Ins. Co.*, C.C.A.N.Y., 32 F.2d 555, 557.

**Fair usage.** See **Fair use doctrine**.

**General usage.** One which prevails generally throughout the country, or is followed generally by a given profession or trade, and is not local in its nature or observance.

**Usage of trade.** A course of dealing; a mode of conducting transactions of a particular kind. A mode of dealing generally observed in a particular trade. *United States v. Stanolind Crude Oil Purchasing Co.*, C.C.A.Okla., 113 F.2d 194, 200; *Codd v. Westchester Fire Ins. Co.*, 14 Wash.2d 600, 128 P.2d 968, 973.

A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court. U.C.C. § 1-205(2). See also **Course of dealing**.

**Usance.** In mercantile law, the common period fixed by the usage or custom or habit of dealing between the country where a bill is drawn, and that where it is payable, for the payment of bills of exchange. It means, in some countries, a month, in others two or more months, and in others half a month.

**U.S.C.** United States Code.

**U.S.C.A.** United States Code Annotated.

**U.S.D.C.** United States District Court.

**Use, v.** To make use of, to convert to one's service, to avail one's self of, to employ. *Hopkins v. Howard's Ex'x*, 266 Ky. 685, 99 S.W.2d 810, 812. To leave no capacity of force or use in. *Bridgeport Mach. Co. v. McKnab*, 136 Kan. 781, 18 P.2d 186, 187.

**Use, n.** Act of employing everything, or state of being employed; application, as the use of a pen, or his machines are in use. Also the fact of being used or employed habitually; usage, as, the wear and tear resulting from ordinary use. *Berry-Kofron Dental Laboratory Co. v. Smith*, 345 Mo. 922, 137 S.W.2d 452, 454, 455, 456. The purpose served; a purpose, object or end for useful or advantageous nature. *Brown v. Kennedy*, Ohio App., 49 N.E.2d 417, 418. To put or bring into action or service; to employ for or apply to a given purpose. *Beggs v. Texas Dept. of Mental Health and Mental Retardation*, Tex.Civ.App., 496 S.W.2d 252, 254. To avail oneself of; to employ; to utilize; to carry out a purpose or action by means of; to put into action or service, especially to attain an end. *State v. Howard*, 221 Kan. 51, 557 P.2d 1280, 1281.

A confidence reposed in another, who was made tenant of the land, or terre-tenant, that he would dispose of the land according to the intention of the *cestui que use*, or him to whose use it was granted, and suffer him to take the profits. 2 Bl.Comm. 328.

That enjoyment of property which consists in its employment, occupation, exercise or practice. *Central Sur. & Ins. Corp. v. Anderson*, Tex.Civ.App., 446 S.W.2d 897, 903.

A right in one person, called the "*cestui que use*," to take the profits of land of which another has the legal title and possession, together with the duty of defending the same, and of making estates thereof according to the direction of the *cestui que use*.

*Uses and trusts* are not so much different things as different aspects of the same subject. A use regards principally the beneficial interest; a trust regards principally the nominal ownership. The usage of the two terms is, however, widely different. The word "use" is employed to denote either an estate vested since the statute of uses, and by force of that statute, or to denote such an estate created before the statute as, had it been created since, would have become a legal estate by force of the statute. The word "trust" is employed since that statute to denote the relation between the party invested with the legal estate (whether by force of that statute or independently of it) and the party beneficially entitled, who has hitherto been said to have the equitable estate.

See also Beneficial use; Best use; Charitable use; Conforming use; Exclusive use; Highest and best use; Nonconforming use; Public use; Raising a use; Unauthorized use.

**Civil law.** A right of receiving so much of the natural profits of a thing as is necessary to daily sustenance. It differs from "usufruct," which is a right not only to use, but to enjoy.

Right given to any one to make a gratuitous use of a thing belonging to another, or to exact such a portion of the fruit it produces as is necessary for his personal wants and those of his family. Civ.Code La. art. 626.

**Conveyancing.** "Use" literally means "benefit;" thus, in an ordinary assignment of chattels, the assignor transfers the property to the assignee for his "absolute use and benefit." In the expressions "separate use," "superstitious use," and "charitable use," "use" has the same meaning.

**Non-technical sense.** The "use" of a thing means that one is to enjoy, hold, occupy, or have some manner of benefit thereof. Use also means usefulness, utility, advantage, productive of benefit.

#### Generally

**Cestui que use.** A person for whose use and benefit lands or tenements are held by another. The latter, before the statute of uses, was called the "feoffee to use," and held the nominal or legal title.

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

**Contingent use.** A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B., after a marriage shall be had between them.

**Exclusive use.** See **Exclusive use**.

**Executed use.** The first use in a conveyance upon which the statute of uses operates by bringing the possession to it, the combination of which, *i.e.*, the use and the possession, form the legal estate, and thus the statute is said to execute the use.

**Executory uses.** These are springing uses, which confer a legal title answering to an executory devise; as when a limitation to the use of A. in fee is defeasible by a limitation to the use of B., to arise at a future period, or on a given event.

**Feoffee to uses.** A person to whom (before the statute of uses) land was conveyed "for the use" of a third person. He held the nominal or legal title, while the third person, called the "*cestui que use*," was entitled to the beneficial enjoyment of the estate.

**Official use.** An active use before the statute of uses, which imposed some duty on the legal owner or feoffee to uses; as a conveyance to A. with directions for him to sell the estate and distribute the proceeds among B., C., and D. To enable A. to perform this duty, he had the legal possession of the estate to be sold.

**Passive use.** A permissive use (*q.v.*).

**Permissive use.** A passive use which was resorted to before the statute of uses, in order to avoid a harsh law; as that of mortmain or a feudal forfeiture. It was a mere invention in order to evade the law by secrecy; as a conveyance to A. to the use of B. A. simply held the possession, and B. enjoyed the profits of the estate.

**Resulting use.** A use raised by equity for the benefit of a feoffor who has made a voluntary conveyance to uses without any declaration of the use. A resulting use arises where the legal seisin is transferred, and no use is expressly declared, nor any consideration or evidence of intent to direct the use. The use then remains in the original grantor, for it cannot be supposed that the estate was intended to be given away, and the statute immediately transfers the legal estate to such resulting use.

**Secondary use.** A use limited to take effect in derogation of a preceding estate, otherwise called a "shifting use," as a conveyance to the use of A. and his heirs, with a proviso that, when B. returns from India, then to the use of C. and his heirs.

**Shifting use.** A use which is so limited that it will be made to shift or transfer itself, from one beneficiary to another, upon the occurrence of a certain event after its creation. For example, an estate is limited to the use of A. and his heirs, provided that, upon the return of B. from Rome, it shall be to the use of C. and his heirs; this is a shifting use, which transfers itself to C. when the event happens. 2 Bl.Comm. 335. These shifting uses are common in all settlements; and, in marriage settlements, the first use is always to the owner in fee till the marriage, and then to other uses. The fee remains with the owner until the marriage, and then it *shifts* as uses arise.

**Springing use.** A use limited to arise on a future event where no preceding use is limited, and which does not take effect in derogation of any other interest than that which results to the grantor, or remains in him in the meantime.

**Statute of uses.** An English statute enacted in 1536 (27 Hen. VIII, c. 10), directed against the practice of creating uses in lands, and which converted the purely equitable title of persons entitled to a use into a legal title or absolute ownership with right of possession. The statute is said to "execute the use," that is, it abolishes the intervening estate of the feoffee to uses, and makes the beneficial interest of the *cestui que use* an absolute legal title.

**Superstitious use.** See that title.

**Use and habitation.** Within a grant does not mean the exclusive use and habitation, but the necessities of the grantee are determinative of extent of privileges to be enjoyed. Barrett v. Barrett, La.App., 5 So.2d 381, 383.

**Use and occupation.** This is the name of an action, being a variety of *assumpsit*, to be maintained by a landlord against one who has had the occupation and enjoyment of an estate, under a contract to pay therefor, express or implied, but not under such a lease as would support an action specifically for rent. Thackray v. Ritz, 130 Misc. 403, 223 N.Y.S. 668, 669.

**Use plaintiff.** In common law pleading, one for whose use (benefit) an action is brought in the name of another. Thus, where the assignee of a chose in action is not allowed to sue in his own name, the action would be entitled "A. B. (the assignor) for the Use of C. D. (the assignee) against E. F." In this case, C. D. is called the "use plaintiff."

**Usee.** A person for whose use a suit is brought; otherwise termed the "use plaintiff."

**Useful.** The term as used in the patent law, when applied to a machine, means that the machine will accomplish its purpose practically when applied in industry. By "useful" is meant such an invention as may be applied to some beneficial use in society, in contradistinction to an invention which is injurious to the morals, the health, or the good order of society.

**Useful life.** In accounting and taxation, the period of time for which an asset is capable of being used for the production of income.

For income tax purposes, the "useful life" of depreciable property is period over which asset may reasonably be expected to be useful to taxpayer in his trade or business or in production of income, and

such is necessarily an estimate made at time when property is first put to use. Cohn v. U. S., C.A.Tenn., 259 F.2d 371, 377. Useful life for depreciation purposes is an estimate; length of the useful period must be shown by evidence that allows it to be estimated with reasonable accuracy. Richard S. Miller & Sons, Inc. v. U. S., Ct.Cl., 537 F.2d 446, 455. The term "depreciable life," as used in general excise tax law, is synonymous with the term "useful life" as used for purpose of the depreciation deduction under income tax law. Matter of 711 Motors, Inc., 56 Hawaii 644, 547 P.2d 1343, 1347.

**Usefulness.** Capabilities for use. The word pertains to the future as well as to the past.

**Use immunity.** Term generally refers to order of court which compels witness to give testimony of self-incriminating nature but provides that such testimony may not be used as evidence in subsequent prosecution of such witness. People v. Koba, 55 Ill.App.3d 298, 13 Ill.Dec. 306, 371 N.E.2d 1. See also **Immunity**.

**User.** The actual exercise or enjoyment of any right, property, drugs, franchise, etc.

**Adverse user.** Such a use of the property under claim of right as the owner himself would make, asking no permission, and disregarding all other claims to it, so far as they conflict with this use. See also **Adverse possession**.

**User de action** /yúwzár dækshán/. L. Fr. In old practice, the pursuing or bringing an action.

**Use tax.** An ad valorem tax on the use, consumption, or storage of tangible property, usually at the same rate as the sales tax, and levied for the purpose of preventing tax avoidance by the purchase of articles in a state or taxing jurisdiction which does not levy sales taxes.

**Use variance.** See **Variance**.

**Usher.** This word is said to be derived from "*huissier*," and is the name of a subordinate officer in some English courts of law.

**Usher of the Black Rod.** In old English law, the gentleman usher of the black rod is an officer of the house of lords appointed by letters patent from the crown. His duties are, by himself or deputy, to desire the attendance of the commons in the house of peers when the royal assent is given to bills, either by the king in person or by commission, to execute orders for the commitment of persons guilty of breach of privilege, and also to assist in the introduction of peers when they take the oaths and their seats.

**Using mail to defraud.** The elements of this offense are the formation of a scheme or artifice to defraud, and use of mails for purpose of executing or attempting to execute such scheme or artifice; the latter element being gist of the offense. 18 U.S.C.A. § 1341. Stryker v. United States, C.C.A.Colo., 95 F.2d 601, 604, 605. The crime is complete when mails are used in such scheme, and what happened subsequently is not controlling. United States v. Ames, D.C.N.Y., 39 F.Supp. 885, 886. See **Mail fraud**.

**Using the service of another for pay.** This phrase as used in Compensation Act defining employer means

right to control the means and manner of that service, as distinguished from results of such service, the word "service" meaning the performance of labor for the benefit of another. *Rutherford v. Tobin Quarries*, 336 Mo. 1171, 82 S.W.2d 918, 923.

**Uso** /úwsow/. In Spanish law, usage; that which arises from certain things which men say and do and practice uninterruptedly for a great length of time, without any hindrance whatever.

**Usque** /ískwiy/. Lat. Up to; until. This is a word of exclusion, and a release of all demands *usque ad* a certain day does not cover a bond made on that day. Usually applied to ownership of property. Applied to right to air it has been held that ownership extends "*usque ad coelum*." See *A coelo usque ad centrum*.

**Usque ad filum aquæ, or viæ** /ískwiy æd fáyləm ékwiy/°váyiy/. Up to the middle of the stream or road.

**Usual**. Habitual; ordinary; customary; according to usage or custom; commonly established, observed, or practiced. That which happens in common use or occurs in ordinary practice or course of events. Synonymous with custom, common, normal, regular. *Dancy v. Abraham Bros. Packing Co.*, 171 Tenn. 311, 102 S.W.2d 526, 528.

**Usual course**. These words in statute excepting from application of Compensation Act employment not in usual course of employer's trade or business, refer to normal operations constituting regular business of employer. *Longshoremen's and Harbor Workers' Compensation Act*. *Hoage v. Hartford Accident & Indemnity Co.*, 64 App.D.C. 258, 77 F.2d 381.

**Usual covenants**. See *Covenant*.

**Usual place of abode**. Within meaning of statute relating to service of process is place where defendant is actually living at time of service. See *Domicile; Residence*.

**Usual terms**. A phrase in the common-law practice, which meant pleading issuably, rejoining *gratis*, and taking short notice of trial. When a defendant obtained further time to plead, these were the terms usually imposed.

**Usuaris** /yúwsyuwériyas/. Lat. In the civil law, one who had the mere use of a thing belonging to another for the purpose of supplying his daily wants; a usuary.

**Usucapio, or usucaptio** /yúwsyuwkéyp(i)yow/yúwsyuwkéypsh(i)yow/. A term of Roman law used to denote a mode of acquisition of property. It corresponds very nearly to the term "prescription." But the prescription of Roman law differed from that of the English law, in this: that no *mala fide* possessor (*i.e.*, person in possession knowingly of the property of another) could, by however long a period, acquire title by possession merely. The two essential requisites to *usucapio* were *justa causa* (*i.e.*, title) and *bona fides* (*i.e.*, ignorance). The term "*usucapio*" is sometimes, but erroneously, written "*usucaptio*." As to "*lucrativa usucapio*," see that title.

**Usucapio constituta est ut aliquis litium finis esset** /yúwsyuwkéyp(i)yow kòn(t)stat(y)úwdæ èst æd ælakwæs lish(i)yəm fáynæs èsæt/. Prescription was instituted that there might be some end to litigation.

**Usufruct** /yúwz(y)əfrækt/. In the civil law, the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing. *Civ.Code La. art. 533*.

Under Greek law, a right attached to the person which may not be inherited. *New England Trust Co. v. Wood*, 326 Mass. 239, 93 N.E.2d 547, 549.

**Imperfect usufruct**. An imperfect or quasi usufruct is that which is of things which would be useless to the usufructuary if he did not consume or expend them or change the substance of them; as, money, grain, liquors. *Civ.Code La. art. 534*. See *Quasi usufruct, infra*.

**Legal usufruct**. See that title.

**Perfect usufruct**. An usufruct in those things which the usufructuary can enjoy without changing their substance, though their substance may be diminished or deteriorate naturally by time or by the use to which they are applied, as, a house, a piece of land, furniture, and other movable effects. *Civ.Code La. art. 534*.

**Quasi usufruct**. In the civil law, originally the usufruct gave no right to the substance of the thing, and consequently none to its consumption; hence only an inconsumable thing could be the object of it, whether movable or immovable. But in later times the right of usufruct was, by analogy, extended to consumable things, and therewith arose the distinction between true and *quasi* usufructs. *Civ.Code La. art. 534*. See *Imperfect usufruct, supra*.

**Usufructuary** /yúwz(y)əfrákchuwəriy/. In the civil law, one who has the usufruct or right of enjoying anything in which he has no property.

**Usufruit** /yúwz(y)əfrúwt/. In French law, the same as the *usufruct* of the English and Roman law.

**Usura** /yuwz(y)úrs/. Lat. In the civil law, money given for the use of money; interest. Commonly used in the plural, "*usuræ*" /yuwz(y)úriy/yúwzhəriy/.

**Usura est commodum certum quod propter usum rei mutuata recipitur. Sed secundario spirare de aliqua retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum** /yuwz(y)úrs èst kómædam sordæm kwòd próptær yúwsæm riýay myúwtiyuwéydiy rasípædær. sèd sèkændériyow spærériy diy ælakwæ retræb(y)uwshiyówniy, æd volântéydam íyþæs kwây myúwtiyuwéydas èst, hók nòn èst vishiyówsæm/. Usury is a certain benefit which is received for the use of a thing lent. But to have an understanding [literally, to breathe or whisper], in an incidental way, about some compensation to be made at the pleasure of the borrower, is not lawful.

**Usura manifesta** /yuwz(y)úrs mænáfèstæ/. Manifest or open usury; as distinguished from *usura velata*, veiled or concealed usury, which consists in giving a bond for the loan, in the amount of which is included the stipulated interest.

**Usura maritima** /yuzw(y)úre mæridəmə/°mæretáymə/. Interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and is not affected by the usury laws.

**Usurarius** /yúwzhæriyəs/. In old English law, a usurer.

**Usurious** /yuzwhúriyəs/. Pertaining to usury; partaking of the nature of usury; involving usury; tainted with usury; as, a usurious contract. See **Usury**.

**Usurious contract**. A contract where interest to be paid exceeds the rate established by statute. *Commerce Farm Credit Co. v. Ramp*, Tex.Civ.App., 116 S.W.2d 1144, 1149. It being sufficient when there is contingency whereby lender may get more than lawful rate of interest. *Reynolds Mortg. Co. v. Thomas*, Tex.Civ.App., 61 S.W.2d 1011, 1013. See also **Usury**.

**Usurp** /yuzwsárp/. To seize and hold any office by force, and without right; applied to seizure of office, place, functions, powers, rights, etc. of another. *State ex rel. Scanes v. Babb*, 124 W.Va. 428, 20 S.E.2d 683, 686.

**Usurpatio** /yúwsærpéysh(iy)ow/. Lat. In the civil law, the interruption of a usucaption, by some act on the part of the real owner.

**Usurpation** /yúwsærpéyshən/. The unlawful encroachment or assumption of the use of property, power or authority which belongs to another. An interruption or the disturbing a man in his right and possession.

The unlawful seizure or assumption of sovereign power. The assumption of government or supreme power by force or illegally, in derogation of the constitution and of the rights of the lawful ruler.

Usurpation for which writ of prohibition may be granted involves attempted exercise of power not possessed by inferior officer.

**Usurpation of advowson** /yúwsærpéyshən əv ədváwzən/. An injury which consists in the absolute ouster or dispossession of the patron from the advowson or right of presentation, and which happens when a stranger who has no right presents a clerk, and the latter is thereupon admitted and instituted.

**Usurpation of franchise or office** /yúwsærpéyshən əv frəntʃayz əv ófəs/. The unjustly intruding upon or exercising any office, franchise, or liberty belonging to another. "Usurpation" of public office authorizing quo warranto action under statute may be with or without forcible seizure of office and prerogatives thereof, and may consist of mere unauthorized assumption and exercise of power in performing duties of office upon claim of right thereto. *State ex rel. Kirk v. Wheatley*, 133 Ohio St. 164, 12 N.E.2d 491, 493, 10 O.O. 236. See also **Usurpation**.

**Usurped power**. See **Usurp**; **Usurpation**.

**Usurper**. One who assumes the right of government by force, contrary to and in violation of the constitution of the country.

**Usurper of a public office**. One who either intrudes into a vacant office or ousts the incumbent without any color of title. *Neal v. Parker*, 200 Ark. 10, 139 S.W.2d 41, 44. One who intrudes on office and as-

sumes to exercise its functions without legal title or color of right thereto. *Alleger v. School Dist. No. 16*, Newton County, Mo.App., 142 S.W.2d 660, 663; *State ex rel. City of Republic v. Smith*, 345 Mo. 1158, 139 S.W.2d 929, 933. Any person attempting to fill pretended office attempted to be created by an unconstitutional law. *Bodcaw Lumber Co. of Louisiana v. Jordan*, La.App., 14 So.2d 98, 101.

**Usury**. Collectively, the laws of a jurisdiction regulating the charging of interest rates. A usurious loan is one whose interest rates are determined to be in excess of those permitted by the usury laws. An illegal contract for a loan or forbearance of money, goods, or things in action, by which illegal interest is reserved, or agreed to be reserved or taken. An unconscionable and exorbitant rate or amount of interest. An unlawful contract upon the loan of money, to receive the same again with exorbitant increase. The reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest. A profit greater than the lawful rate of interest, intentionally exacted as a bonus, for the forbearance of an existing indebtedness or a loan of money, imposed upon the necessities of the borrower in a transaction where the money is to be returned at all events. *Anderson v. Beadle*, 35 N.M. 654, 5 P.2d 528, 529. See also **Legal interest**; **Loan sharking**.

*Old English law*. Interest of money; increase for the loan of money; a reward for the use of money. 2 Bl.Comm. 454. The taking of any compensation whatever for the use of money.

**Usury laws**. See **Usury**.

**Usus** /yúwsəs/. Lat. In Roman law, a precarious enjoyment of land, corresponding with the right of *habitatio* of houses, and being closely analogous to the tenancy at sufferance or at will of English law. The *usuarius* (i.e., tenant by *usus*) could only hold on so long as the owner found him convenient, and had to go so soon as ever he was in the owner's way (*molestus*). The *usuarius* could not have a friend to share the produce. It was scarcely permitted to him (Justinian says) to have even his wife with him on the land; and he could not let or sell, the right being strictly personal to himself.

**Usus bellic** /yúwsəs bélasay/. Lat. In international law, warlike uses or objects. It is the *usus bellici* which determine an article to be contraband.

**Usus est dominium fiduciarium** /yúwsəs ést dəmíniyəm fəd(y)úwshiyériyəm/. Use is a fiduciary dominion.

**Usus et status sive possessio potius differunt secundum rationem fori, quam secundum rationem rei** /yúwsəs èt stéydəs sáyviy pazésh(iy)ow pówsh(iy)əs difərənt səkándəm rəshiyównəm fóray, kwəm səkándəm rəshiyównəm riyyay/. Use and estate, or possession, differ more in the rule of the court than in the rule of the matter.

**Usus fructus** /yúwsəs frúktəs/. Lat. In Roman law, usufruct; usufructuary right or possession. The temporary right of using a thing, without having the ultimate property, or full dominion, of the substance. 2 Bl.Comm. 327.

**Utas** /yúwdás/. In old English practice, octave; the octave; the eighth day following any term or feast.

**Ut currere solebat** /át káhrariy sáilybæt/. Lat. As it was wont to run; applied to a water-course.

**Ut de feodo** /át diy fyúwdow/. L. Lat. As of fee.

**Uterine** /yúwdærən/. Born of the same mother. A uterine brother or sister is one born of the same mother, but by a different father.

**Utero-gestation** /yúwdærowjestyshən/. Pregnancy.

**Uterque** /yuwtárkwiy/. Lat. Both; each. "The justices, being in doubt as to the meaning of this word in an indictment, demanded the opinions of grammarians, who delivered their opinions that this word doth aptly signify *one of them*."

**Utfangthef, or utfangenethef** /áwtfæg(ən)θiyf/. In Saxon and old English law, the privilege of a lord of a manor to judge and punish a thief dwelling out of his liberty, and committing theft without the same, if he were caught within the lord's jurisdiction.

The right of the lord of a manor to hang a thief caught with the stolen goods, whether or not the capture was made on the manor. See **Infangenthef**.

**Ut hospites** /át hóspadiyz/. Lat. As guests.

**Uti** /yúwday/. Lat. In the civil law, to use. Strictly, to use for necessary purposes; as distinguished from "frui," to enjoy.

**Uti frui** /yúwday frúway/. Lat. In the civil law, to have the full use and enjoyment of a thing, without damage to its substance.

**Utile per inutile non vitiatur** /yúwdaliy pâr inyúwdaliy nón vishiyédar/. The useful is not vitiated by the useless. Surplusage does not spoil the remaining part if that is good in itself.

**Utilidad** /uwtiliyóád/. Span. In Spanish law, the profit of a thing.

**Utills** /yúwdalás/. Lat. In the civil law, useful; beneficial; equitable; available. *Actio utilis*, an equitable action. *Dies utilis*, an available day.

**Utility**. In patent law, industrial value; the capability of being so applied in practical affairs as to prove advantageous in the ordinary pursuits of life, or add to the enjoyment of mankind. *Callison v. Dean*, C.C.A.Okl., 70 F.2d 55, 58. The absence of frivolity and mischievousness, and utility for some beneficial purpose. But there is no utility if the invention can be used only to commit a fraud with, *Klein v. Russell*, 86 U.S. (19 Wall.) 433, 22 L.Ed. 116; or for some immoral purpose, or can be used only for gambling purposes in saloons, or if the invention is dangerous in its use, *Mitchell v. Tilghman*, 86 U.S. (19 Wall.) 287, 22 L.Ed. 125.

Utility is established if only partial success is attained. *Emery Industries v. Schumann*, C.C.A.Ill., 111 F.2d 209, 211. The "utility" which an infringing defendant is estopped to deny means sufficient practical utility to make a device useful in the sense of the patent statute. The estoppel does not forbid him to deny that there is any useful function, or new result serving to give inventive character to the slight step

which a patentee has taken in differentiation from prior art. *Sandy MacGregor Co. v. Vaco Grip Co.*, C.C.A.Ohio, 2 F.2d 655, 656.

**Uti possidetis** /yúwday pösidiyéydás/. Lat. *Civil law*. A species of interdict for the purpose of retaining possession of a thing, granted to one who, at the time of contesting suit, was in possession of an immovable thing, in order that he might be declared the legal possessor. See **Utrubi**.

**International law**. A phrase used to signify that the parties to a treaty are to retain possession of what they have acquired by force during the war. A treaty which terminates a war may adopt this principle or that of the *status quo ante bellum*, or a combination of the two. In default of any treaty stipulation, the former doctrine prevails. *Guillermo Alvarez y Sanches v. U. S.*, 42 Ct.Cl. 458.

**Uti rogas** /yúwday rówgás/. Lat. In Roman law, the form of words by which a vote in favor of a proposed law was orally expressed. *Uti rogas, volo vel jubeo*, as you ask, I will or order; I vote as you propose; I am for the law. The letters "U. R." on a ballot expressed the same sentiment.

**Utlagatus, or utlagatum** /ätlagéydás/\*əm/. In old English law, an outlawed person; an outlaw.

**Utlagatus est quasi extra legem positus. Caput gerit lupinum** /ätlagéydás èst kwéysay ékstræ líyjam pózdás. kæpat jérat l(y)uwpáynam/. An outlaw is, as it were, put out of the protection of the law. He bears the head of a wolf.

**Utlagatus pro contumacia et fuga, non propter hoc convictus est de facto principall** /ätlagéydás prów kóntaméysh(iy)è èt fyúwga, nón próptar hòk kánviktas èst/. One who is outlawed for contumacy and flight is not on that account convicted of the principal fact.

**Utlage**. L. Fr. An outlaw.

**Utlasse**. An escape of a felon out of prison.

**Utmost care**. Term is substantially synonymous with "highest care."

**Utmost resistance**. This term, under the rule that to constitute rape there must be utmost resistance by the woman, is a relative rather than a positive term, and means that greatest effort of which she is capable must be used to foil assailant.

**Ut pene ad paucos, metus ad omnes perveniat** /æt píyniy æd pókows, míydás æd ómniyz pærvíyn(i)yat/. That the punishment may reach a few, but the fear of it affect all. A maxim in criminal law, expressive of one of the principal objects of human punishment. 4 Bl.Comm. 11.

**Ut res magis valeat quam pereat** /æt ríyz méyjas væliyat kwæm péhriyat/. That the thing may rather have effect than be destroyed. Charitable bequests are also governed by this maxim. *King v. Richardson*, C.C.A.N.C., 136 F.2d 849, 858.

**Utrubi** /átrúbay/. In the civil law, the name of a species of interdict for retaining a thing, granted for the purpose of protecting the possession of a movable thing, as the *uti possidetis* was granted for an immovable.



**Utrumque nostrum** /yuvtrámkwiy nóstram/. Both of us. Words used formerly in bonds.

**Ut summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit** /æt sámiy pòwdastéydás riyjás èst pòsiy kwóntám viylət, sík mægnæt(y)úwdanás èst véliy kwóntám pòsət/. As the highest power of a king is to be able to do all he wishes, so the highest greatness of him is to wish all he is able to do.

**Utter, v.** To put or send (as a forged check) into circulation; to publish or put forth; to offer. To utter and publish an instrument, as a counterfeit note, is to declare or assert, directly or indirectly, by words or actions, that it is good; uttering it is a declaration that it is good, with an intention or offer to pass it. To utter, as used in a statute against forgery and counterfeiting, means to offer, whether accepted or not, a forged instrument, with the representation, by words or actions, that the same is genuine.

The phrase "utters or publishes as true", as used in federal forgery statute, means to make or attempt any use of a written or printed instrument or document, such as an attempt to place a check in circulation, whereby, or in connection with which, some assertion, representation or claim is made to another in some way or manner, directly or indirectly, expressly or impliedly, or by words or conduct, that the check or document is genuine. *Carr v. United States*, C.A.Tenn., 278 F.2d 702; *United States v. Maybury*, C.A.N.Y., 274 F.2d 899; *French v. United States*, C.A.La., 232 F.2d 736, cert. denied 352 U.S. 851, 77 S.Ct. 73, 1 L.Ed.2d 62; *United States v. Rader*, W.D. Ark., 185 F.Supp. 224, aff'd 288 F.2d 452.

**Utter, adj.** Entire; complete; absolute; total.

**Utterance.** See *Excited utterance*; *Spontaneous declarations*.

**Utter bar.** In English law, the bar at which those barristers, usually junior men, practice who have not yet been raised to the dignity of king's counsel. These junior barristers are said to plead without the bar; while those of the higher rank are admitted to seats within the bar, and address the court or a jury from a place reserved for them, and divided off by a bar. Also called "outer bar."

**Utter barrister.** In English law, those barristers who plead without the bar, and are distinguished from benchers, or those who have been readers, and who are allowed to plead within the bar, as the king's counsel are.

**Uxor /áksor/.** Lat. In the civil law, a wife; a woman lawfully married.

*Et uxor.* And his wife. A term used in indexing, abstracting, and describing conveyances made by a man and his wife as grantors, or to a man and his wife as grantees. Often abbreviated "*et ux.*" Thus, "John Doe *et ux.* to Richard Roe."

*Jure uxoris.* In right of his wife. A term used of a husband who joins in a deed, is seised of an estate, brings a suit, etc., in the right or on the behalf of his wife. 3 Bl.Comm. 210.

**Uxor et filius sunt nomina naturæ** /áksor èt filiyás sànt nómænə nətyúriy/. Wife and son are names of nature.

**Uxoricide** /æi.sórasəyd/. The killing of a wife by her husband; one who murders his wife. Not a technical term of the law.

**Uxor non est sui juris, sed sub potestate viri** /áksor nón èst s(y)úway júras, séd sàb pòwdastéydiy víray/. A wife is not her own mistress, but is under the power of her husband.

**Uxor sequitur domicilium viri** /áksor sékwədər dóməsíl(i)yəm víray/. A wife follows the domicile of her husband.