

# B

**Baby Act.** A plea of infancy, interposed for the purpose of defeating an action upon a contract made while the person was a minor, is vulgarly called "pleading the baby act". By extension, the term is applied to a plea of the statute of limitations.

**Bachelor.** One who has taken the first undergraduate degree (baccalaureate) in a college or university.

An unmarried man. A kind of inferior knight; an esquire.

**Back, v.** To indorse; to sign on the back; to sign generally by way of acceptance or approval; to substantiate; to countersign; to assume financial responsibility for. In old English law where a warrant issued in one county was presented to a magistrate of another county and he signed it for the purpose of making it executory in his county, he was said to "back" it.

**Back, adv.** To the rear; backward; in a reverse direction. Also, in arrear.

**Backadation.** See Backwardation.

**Backbencher.** A junior member of Parliament or other legislative body who sits in the rear benches, leaving the front benches for leaders of the assembly or other dignitaries.

**Backberend** (also Backberende) /bækberænd/. Sax. Bearing upon the back or about the person. Applied to a thief taken with the stolen property in his immediate possession. Used with *handhabend*, having in the hand.

**Backbond.** A bond of indemnification given to a surety.

**Back carry.** In forest law, the crime of having, on the back, game unlawfully killed. See Backberend.

**Backdating.** Predating a document or instrument prior to the date it was actually drawn. The negotiability of an instrument is not affected by the fact that it is backdated. U.C.C. § 3-114.

**Backhaul.** In freight transportation, to carry a shipment back over a segment of a route already covered.

**Backing.** Indorsement.

**Backing a warrant.** See Back.

**Back lands.** A term of no very definite import, but generally signifying lands lying back from (not contiguous to) a highway or a water course.

**Backlog.** Accumulation of unfilled orders.

**Back order.** An unfilled customer order or commitment, normally occurring because inventory is not sufficient to fill the order upon receipt from the customer.

**Back pay award.** Difference between wages already paid an employee and higher wages granted retroactively. A determination by a judicial or quasi judicial body that an employee is entitled to accrued but uncollected salary, wages or fringe benefits. Such may be awarded in employment discrimination cases.

**Back-seat driver.** A highly nervous passenger whether sitting in rear or by driver, who by unwarranted advice and warnings interferes in careful operation of motor vehicle.

**Backside.** In English law, a term formerly used in conveyances and also in pleading; it imports a yard at the back part of or behind a house, and belonging thereto.

**Backspread.** Less than normal price difference in arbitrage.

**Back taxes.** Those assessed for a previous year or years and remaining due and unpaid from the original tax debtor.

**Back title letter.** Letter given by title insurance company to an attorney advising of condition of title as of a certain date. Attorney then starts examination of title as of that date.

**Back to work agreement.** Agreement between union and employer covering terms and conditions upon which employees will return to work following settlement of strike.

**Backwardation** (also called Backadation) /bæk-wærdéyshən/. In the language of the stock exchange, this term signifies a consideration paid for delay in the delivery of stock contracted for, when the price is lower for time than for cash.

**Backwards.** In a policy of marine insurance, the phrase "forwards and backwards at sea" means from port to port in the course of the voyage, and not merely from one terminus to the other and back.

**Backwater.** Water in a stream which, in consequence of some dam or obstruction below, is detained or checked in its course, or flows back.

**Bacon-Davis Act.** Federal law (1931) granting Secretary of Labor power to set wage rates on public construction work to meet wages in private sector. 40 U.S.C.A. § 276a.

**Baculus** /bæk(y)ələs/. A rod, staff, or wand, used in old English practice in making livery of seisin where no building stood on the land. A stick or wand, by the erection of which on the land involved in a real action the defendant was summoned to put in his appearance; this was called "*baculus nuntiatorius*." 3 Bl.Comm. 279.

**Bad.** Vicious, evil, wanting in good qualities; the opposite of good. Defective, faulty, inferior, or imperfect. *Kniffley v. Reid*, 287 Ky. 212, 152 S.W.2d 615, 616.

**Bad character.** Absence of moral virtue; the predominance of evil habits in a person. In law of evidence, such character may be shown to affect credibility of witness by introduction of record of convictions for crimes or by reputation. Fed.Evid.R. 608, 609.

**Bad check.** A check which is dishonored on presentation for payment because of no, or insufficient, funds or closed bank account. Writing or passing of bad checks is a misdemeanor in most states. Model Penal Code § 224.5. See also Check kiting; Worthless (*Worthless check*).

**Bad debt.** A debt which is uncollectible; a permissible deduction for tax purposes in arriving at taxable income. I.R.C. § 166. Different tax treatment is afforded business and non-business bad debts. A business debt is defined by the Internal Revenue Code as a debt created or acquired in connection with a trade or business of the taxpayer, or a debt which becomes worthless in the taxpayer's trade or business. Loans between related parties (family members) generally are classified as non-business.

A deduction is permitted if a business account receivable subsequently becomes worthless providing the income arising from the debt was previously included in income. The deduction is allowed only in the year of worthlessness.

**Bad-debt loss ratio.** The proportion of the total receivables volume that is never collected by a business.

**Bad debt reserve.** An account used in bookkeeping to reflect the true worth of receivables in the balance sheet by estimating those debts which may not be collected and which ultimately will be written off as bad debts and claimed as a deduction for tax purposes. See also Reserve.

**Bad faith.** The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Term "bad faith" is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will. *Stath v. Williams, Ind. App.*, 367 N.E.2d 1120, 1124. An intentional tort which results from breach of duty imposed as consequence of

relationship established by contract. *Davis v. Allstate Ins. Co.*, 101 Wis.2d 1, 303 N.W.2d 596, 599.

**Insurance.** "Bad faith" on part of insurer is any frivolous or unfounded refusal to pay proceeds of policy; it is not necessary that such refusal be fraudulent. *State Farm General Ins. Co. v. Clifton*, 86 N.M. 757, 527 P.2d 798, 800. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith. *Blue Cross and Blue Shield of Alabama v. Granger, Ala.*, 461 So.2d 1320, 1327.

**Badge.** A mark or cognizance worn to show the relation of the wearer to any person or thing; the token of anything; a distinctive mark of office or service.

**Badger.** To harass, pester, or bedevil persistently especially in a manner likely or designed to confuse, annoy or wear down. *Eaton v. Klopman Mills, Inc.*, 2 N.C.App. 363, 163 S.E.2d 17, 18. See also Harassment.

In old English law, one who made a practice of buying corn or victuals in one place, and carrying them to another to sell and make profit by them.

**Badges of fraud.** A circumstance or other fact accompanying a transfer of property that the courts recognize as an especially reliable indicator of the transferor's actual intention to hinder, delay, or defraud creditors in making the transfer. It is defined as a fact tending to throw suspicion upon a transaction, and calling for an explanation. It is a suspicious circumstance that overhangs a transaction, or appears on the face of the papers. A circumstance which does not alone prove fraud, but which warrants inference of fraud, especially where there is a concurrence of many such badges. *Brennecke v. Riemann, Mo.*, 102 S.W.2d 874, 877. Recognized "badges of fraud" include fictitious consideration, false statements as to consideration, transactions different from usual course of doing business, transfer of all of a debtor's property, insolvency, confidential relationship of parties, and transfers in anticipation of suit or execution. *Hendrix v. Goldman, Mo.*, 92 S.W.2d 733, 736.

**Badges of servitude.** Congressional power to eliminate all vestiges of involuntary servitude pursuant to Thirteenth Amendment to U.S.Const.; Civil Rights Act of 1866. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189.

**Bad motive.** Intentionally doing a wrongful act knowing at the time that it is wrongful. *Davis v. Nash Central Motors, Mo.App.*, 332 S.W.2d 475, 480. See Bad faith.

**Bad title.** One which conveys no property to the purchaser of the estate. One which is so radically defective that it is not marketable, and hence such that a purchaser cannot be legally compelled to accept it. Compare Marketable title.

**Baga** /bægə/. In old English law, a bag or purse. Thus there was the petty-bag-office in the common-law jurisdiction of the court of chancery, because all original

writs relating to the business of the crown were formerly kept in a little sack or bag, *in parvâ bagâ*.

**Bagavel.** In old English law, the citizens of Exeter had granted to them by charter from Edward I the collection of a certain tribute or toll upon all manner of wares brought to that city to be sold, toward the paving of the streets, repairing of the walls, and maintenance of the city, which was commonly called bagavel, bethugavel and chippinggavel.

**Bail, v.** To procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within jurisdiction of court. *Manning v. State ex rel. Williams*, 190 Okl. 65, 120 P.2d 980, 981. To deliver the defendant to persons who, in the manner prescribed by law, become security for his appearance in court. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming. *See also* Release on own recognizance.

The object of "bail" in civil cases is either directly or indirectly to secure payment of a debt or performance of other civil duties, while in criminal cases object is to secure appearance of principal before the court when his presence is needed. *Johnson v. Shaffer*, 64 Ohio App. 236, 28 N.E.2d 765, 767. In its more ancient signification, the word includes the delivery of property, real or personal, by one person to another.

*See also* Civil bail; Excessive bail; Jump bail.

**Bail, n.** Monetary amount for or condition of pretrial release from custody, normally set by a judge at the initial appearance. The purpose of bail is to ensure the return of the accused at subsequent proceedings. If the accused is unable to make bail, or otherwise unable to be released on his or her own recognizance, he or she is detained in custody. The Eighth Amendment (U.S. Const.) provides that excessive bail shall not be required.

The surety or sureties who procure the release of a person under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court.

**Bail absolute.** Sureties whose liability is conditioned upon the failure of the principal to duly account for money coming to his hands as administrator, guardian, etc.

**Bail bond.** A three-party contract which involves state, accused and surety and under which surety guarantees state that accused will appear at subsequent proceedings. *Accredited Surety & Cas. Co., Inc. v. State, for Use and Benefit of Hillsborough County, Fla.App.*, 383 So.2d 308.

A written undertaking, executed by the defendant or one or more sureties, that the defendant designated in such instrument will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in

satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event he fails to do so, the signers of the bond will pay to the court (*i.e.* forfeit) the amount of money specified in the order fixing bail. *Fed.R.Crim.P.* 46; 18 U.S.C.A. § 3141 et seq. *See also* Release on own recognizance.

**Cash bail bond.** A sum of money, in the amount designated in an order fixing bail, posted by a defendant or by another person on his behalf (surety) with a court or other authorized public officer upon condition that such money will be forfeited if the defendant does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved and does not otherwise render himself amenable to the orders and processes of the court.

**Unsecured bail bond.** A bail bond for which the defendant is fully liable upon failure to appear in court when ordered to do so or upon breach of a material condition of release, but which is not secured by any deposit of or lien upon property. *See* Release on own recognizance.

**Bail common.** At common law a fictitious proceeding, intended only to express the appearance of a defendant, in cases where special bail is not required. It is put in in the same form as special bail, but the sureties are merely nominal or imaginary persons, as John Doe and Richard Roe. 3 Bl.Comm. 287.

**Bail court.** In old English law and practice, an auxiliary court of the court of queen's bench at Westminster, wherein points connected more particularly with pleading and practice are argued and determined. It has been abolished.

**Bail dock.** Formerly at the Old Bailey, in London, a small room taken from one of the corners of the court, and left open at the top, in which certain malefactors were placed during trial.

**Bail in error.** That given by a defendant who intends to bring a writ of error on the judgment and desires a stay of execution in the meantime.

**Bail piece.** A formal entry or memorandum of the recognizance or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. 3 Bl.Comm. 291.

**Bail point scale.** System whereby a predetermined number of points are given for all positive aspects of the defendant's background. The total number of points determine whether the defendant will be released on his own recognizance or the amount of bail to be set for his release.

**Bail to the action or bail above.** *See* Special bail, below.

**Bail to the sheriff or bail below.** Persons who undertake that a defendant arrested upon mesne process in a civil action shall duly appear to answer the plaintiff; such undertaking being in the form of a bond given to the sheriff, termed a "bail bond" (*q.v.*). 3 Bl.Comm. 290.

Sureties who bind themselves to the sheriff to secure the defendant's appearance, or his putting in bail to the action on the return-day of the writ.

*Civil bail.* See that title.

*Common bail.* Fictitious sureties formally entered in the proper office of the court. See *Bail common, above.*

*Special bail.* Responsible sureties who undertake as bail above. Persons who undertake jointly and severally in behalf of a defendant arrested on mesne process in a civil action that, if he be condemned in the action, he shall pay the costs and condemnation (that is, the amount which may be recovered against him), or render himself a prisoner, or that they will pay it for him. 3 Bl.Comm. 291. See *Bail to the sheriff or bail below, above.*

*Straw bail.* Nominal or worthless bail. In English law, irresponsible persons, or men of no property, who make a practice of posting bail for any one who will pay them a fee therefor, and who originally, as a mark of their purpose, wore straw in their shoes.

**Bailable.** Capable of being bailed; admitting of bail; authorizing or requiring bail.

**Bailable action.** One in which the defendant is entitled to be discharged from arrest only upon giving bond to answer.

**Bailable offense.** One for which the prisoner may be admitted to bail.

**Bailable process.** Such as requires the officer to take bail, after arresting the defendant. That under which the sheriff is directed to arrest the defendant and is required by law to discharge him upon his tendering suitable bail as security for his appearance.

**Bail bond.** See *Bail.*

**Bailee.** In the law of contracts, one to whom goods are bailed; one to whom goods are entrusted by a bailor; the party to whom personal property is delivered under a contract of bailment. A species of agent to whom something movable is committed in trust for another. *Smith v. State*, 78 Okl.Cr. 343, 148 P.2d 206, 208. Under U.C.C., a person who by warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them. The transferee of goods under a bailment, including a warehouseperson or a carrier. U.C.C. § 7-102. See *Gratuitous bailee.*

**Bailee for hire.** A person to whom possession of personal property is transferred and who is compensated for caring for such property; e.g. a mechanic to whom an automobile is entrusted for repairs is a bailee for hire. See also *Bailment (Bailment for mutual benefit).*

**Bailee policies.** Floating insurance policies which cover goods while in possession of bailee without particular description in the policy. *Gillespie v. Federal Compress & Warehouse Co.*, 37 Tenn.App. 476, 265 S.W.2d 21, 27.

**Bailee's lien.** Bailee's right (usually statutory) to retain bailed goods for payment of services.

**Bailiff.** A court officer or attendant who has charge of a court session in the matter of keeping order, custody of the jury, and custody of prisoners while in the court. One to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or intrusted. One who is deputed or appointed to take charge of another's affairs; an overseer or superintendent; a keeper, protector, or guardian; a steward.

A person acting in a ministerial capacity who has by delivery the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof.

*Bailiff-errant.* A bailiff's deputy.

*Bailiffs of franchises.* In old English law, officers who performed the duties of sheriffs within liberties or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff.

*Bailiffs of hundreds.* In old English law, officers appointed over hundreds, by the sheriffs, to collect fines therein, and summon juries; to attend the judges and justices at the assises and quarter sessions; and also to execute writs and process in the several hundreds. 1 Bl.Comm. 345.

*Bailiffs of manors.* In old English law, stewards or agents appointed by the lord (generally by an authority under seal) to superintend the manor, collect fines, and quit rents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils, and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest.

*High bailiff.* An officer formerly attached to an English county court. His duties were to attend the court when sitting; to serve summonses; and to execute orders, warrants, writs, etc. He also had similar duties under the bankruptcy jurisdiction of the county courts.

*Special bailiff.* A deputy sheriff, appointed at the request of a party to a suit, for the special purpose of serving or executing some writ or process in such suit.

**Bailivia** /beyliviyə/. In old law, a bailiff's jurisdiction, a bailiwick; the same as *bailium*. See *Bailiwick*.

In old English law, a liberty, or exclusive jurisdiction, which was exempted from the sheriff of the county, and over which the lord of the liberty appointed a bailiff with such powers within his precinct as an under-sheriff exercised under the sheriff of the county.

**Bailiwick** /béyləwɪk/. A territorial segment over which a bailiff or sheriff has jurisdiction; not unlike a county in today's governmental divisions.

**Bailment.** A delivery of goods or personal property, by one person (bailor) to another (bailee), in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied, to perform the trust and carry out such object, and thereupon either to redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust.

The bailee is responsible for exercising due care toward the goods.

Delivery of personalty for some particular use, or on mere deposit, upon a contract, express or implied, that after purpose has been fulfilled it shall be redelivered to the person who delivered it, or otherwise dealt with according to his directions, or kept until he reclaims it, as the case may be. *Simpkins v. Ritter*, 189 Neb. 644, 204 N.W.2d 383, 385.

Generally, no fiduciary relationship is created by a bailment and hence it is not accurate to refer to the transfer as "in trust", because no trustee-beneficiary relationship is created.

*See also* Pawn; Pledge.

**Actual bailment.** One which exists where there is either: (a) an "actual delivery," consisting in giving to the bailee or his agent the real possession of the chattel, or (b) a "constructive delivery," consisting of any of those acts which, although not truly comprising real possession of the goods transferred, have been held by legal construction equivalent to acts of real delivery.

**Bailment for hire.** A contract in which the bailor agrees to compensate the bailee. *See also* Bailee for hire, *supra*; and *Bailment for mutual benefit, below*.

**Bailment for mutual benefit.** One in which the parties contemplate some price or compensation in return for benefits flowing from the bailment, necessarily involving an express or implied agreement or undertaking to that effect. For example, delivery of automobile to one who, for a consideration, undertakes to repair it.

**Bailment lease.** A legal method by which one desiring to purchase an article but unable to pay therefor at the time, may secure possession thereof with the right to use and enjoy it as long as he pays stipulated rentals and becomes absolute owner after completing such installment payments, on payment of an additional sum which may be nominal. This right or option is common in auto lease agreements.

**Constructive bailment.** One arising where the person having possession of a chattel holds it under such circumstances that the law imposes upon him the obligation to deliver it to another. *Wentworth v. Riggs*, 159 App.Div. 899, 143 N.Y.S. 955, 956. *See also* *Involuntary bailment, below*.

**Gratuitous bailment.** Another name for a depositum or naked bailment, which is made only for the benefit of the bailor and is not a source of profit to the bailee.

**Involuntary bailment.** One arising by the accidental leaving of personal property in the possession of any person without negligence on the part of its owner. *See* *Constructive bailment, above*.

**Lucrative bailment.** One which is undertaken upon a consideration and for which a payment or recompense is to be made to the bailee, or from which he is to derive some advantage. *See* *Bailment for hire, above*.

**Special bailment.** In general, a bailment in which by law a bailee is given greater duties and liabilities than

those imposed on an ordinary bailee. Innkeepers and common carrier bailees are examples.

**Bailor.** The party who *bails* or delivers goods to another (bailee) in the contract of bailment. The transferor of goods under a bailment.

**Bailout.** Various procedures whereby the owners of an entity can obtain its profits with favorable tax consequences. With corporations, for example, the bail-out of corporate profits without dividend consequences might be the desired objective. The alternative of distributing the profits to the shareholders as dividends generally is less attractive, since dividend income is taxed as ordinary income. *See* Preferred stock (*Preferred stock bail-out*).

Acquisition of a corporation for the principal purpose of favorable tax consequences by securing benefits of deduction, credit or other allowance which the acquiring corporation would not otherwise enjoy. I.R.C. § 269.

**Bailout stock.** When preferred stock is issued as a stock dividend and is non-taxable, it is called bailout stock. I.R.C. § 305.

**Bait and switch.** A deceptive sales practice. Such tactic usually involves advertising a low-priced product to lure customers to a store, then inducing them to buy higher-priced models by failing to stock sufficient quantities of the lower-priced item to satisfy demand, or by disparaging the less-expensive product. Such practices are prohibited by statute in most states. *See* Model Penal Code § 224.7(5). *Tashof v. F. T. C.*, 437 F.2d 707, 709.

**Balance.** The difference between the sum of debit entries minus the sum of credit entries in an account. If positive, the difference is called a debit balance; if negative, a credit balance.

Often used in the sense of residue or remainder, and, in a general sense, may be defined as what remains or is left over.

*See also* Average daily balance.

**Balance of payments.** The difference between all payments made by one nation to all other nations in the world and the payments made to that nation by all other nations. An official accounting record that follows double-entry bookkeeping practices and records all of a country's foreign transactions. The country's exports are recorded as credits and imports as debits.

**Balance of power.** In international law, a distribution and an opposition of forces, forming one system, so that no nation or country shall be in a position, either alone or united with others, to impose its will on any other nation or country or interfere with its independence. *See also* Separation of powers.

**Balance of trade.** Part of the balance of payments. It shows the net figure for the value of all the goods imported and exported by one nation. An excess of imports over exports constitutes a trade deficit.

**Balance sheet.** A statement of financial position of any economic unit, disclosing as at a given moment of time,

the value of its assets, liabilities, and equity of the owners in conformity with generally accepted accounting principles. *See also* Profit and loss statement.

*Consolidated balance sheet.* A statement of financial position which combines the assets, liabilities, and stockholders equity of a parent corporation and its subsidiary.

*Net balance.* In commercial usage, the balance of the proceeds, as from a sale of stock, after deducting the expenses incident to the sale.

**Balancing of interests.** Constitutional doctrine invoked when court is examining interplay between state action involving intrastate commerce and federal laws regarding interstate commerce. If there is legitimate state interest and if there is no clear congressional intent to preempt the field, state action will be upheld. *Southern Pacific Co. v. State of Arizona ex rel.*, 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1915.

**Balancing test.** A constitutional doctrine in which the court weighs the right of an individual to certain rights guaranteed by the Constitution with the rights of a state to protect its citizens from the invasion of their rights; used in cases involving freedom of speech and equal protection.

**Balancing the equities.** Doctrine commonly invoked in cases involving, for example, encroachment of building on another's land in which court will deny equitable relief to offended party in favor of money damages if the encroachment was made innocently and by mistake (not intentionally) and if encroachment is slight as compared with injury to offending party if he is required to remove. *Adamec v. McCray*, 63 Wash.2d 217, 386 P.2d 427, 428.

**Baliva** /bə'lyvə/. (Spelled also *Balliva*; equivalent to *Balivatus*, *Balivia*). L. Lat. In old English law, a bailiwick; the jurisdiction of a sheriff; the whole district within which the trust of the sheriff was to be executed. 3 Bl.Comm. 283.

**Balivo amovendo.** *See* Ballivo amovendo.

**Ballastage.** A toll paid for the privilege of taking up ballast from the bottom of a port or harbor. This arises from the property in the soil.

**Ballistics** /bə'listəks/. The science of gun examination frequently used in criminal cases, especially cases of homicide, to determine the firing capacity of a weapon, its fireability, and whether a given bullet was fired from a particular gun.

**Ballium** /bə'y(l)iyəm/. A fortress or bulwark; also bail.

**Ballivo amovendo** /bə'lyvow ə'mowvəndow/. An ancient writ to remove a bailiff from his office for want of sufficient land in the bailiwick.

**Balloon mortgage.** A mortgage providing for specific payments at stated regular intervals, with the final payment considerably more than any of the periodic payments.

**Balloon note.** A form of promissory note which commonly calls for minimum payments of principal, if any,

and the payment of interest at regular intervals, but which requires a substantial payment of principal at the end of the term; the final payment frequently representing essentially all the principal.

**Balloon payment.** The final payment of principal under a balloon note; commonly representing essentially the entire principal. *See* Balloon mortgage; Balloon note.

**Ballot.** Derived from ballotta, a round bullet, used for casting a vote. Process or means of voting, usually in secret, by written or printed tickets or slips of paper, or voting machine. Piece of paper or levers on voting machine on which the voter gives expression to his choice. *Sawyer Stores v. Mitchell*, 103 Mont. 148, 62 P.2d 342, 348. A means, or instrumentality, by which a voter secretly indicates his will or choice so that it may be recorded as being in favor of a certain candidate or for or against a certain proposition or measure. *Porter v. Oklahoma City, Okl.*, 446 P.2d 384, 391.

The whole amount of votes cast. Also, list of candidates running for office.

*Australian ballot.* *See* Australian ballot.

*Joint ballot.* In parliamentary practice, an election or vote by ballot participated in by the members of both houses of a legislative assembly sitting together as one body, the result being determined by a majority of the votes cast by the joint assembly thus constituted, instead of by concurrent majorities of the two houses.

*Massachusetts ballot.* *See* that title.

*Mutilated ballot.* One from which the name of the candidate is cut out. One which is destitute or deprived of some essential or valuable part; greatly shortened.

*Office block ballot.* A ballot form on which the names of all candidates for a particular office are listed under the office title. Listings are made under various titles regardless of the various party affiliations of the candidates.

*Official ballot.* Depending on its use in local statutes, this term has a varied meaning. It may refer to a ballot which has been furnished by the clerk; or it may contemplate that a ballot must have been printed under the supervision of a designated member of the electoral board, sealed by the board, and by resolution declared to be one of the official ballots for the election to be held.

*Party column ballot.* Ballot form on which the names of all candidates of each political party are placed in separate columns under party names and symbols, regardless of the offices sought by the candidates.

*Secret ballot.* The expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

**Ballot-box.** A locked box wherein ballots are deposited.

**Balnearii** /bælniériyay/. In the Roman law, those who stole the clothes of bathers in the public baths. 4 Bl.Comm. 239.

**Ban.** In old English and civil law, a proclamation; a public notice; the announcement of an intended marriage. An excommunication; a curse, publicly pronounced. A proclamation of silence made by a crier in court before the meeting of champions in combat. A statute, edict, or command; a fine, or penalty. An expanse; an extent of space or territory; a space inclosed within certain limits; the limits or bounds themselves. An open field; the outskirts of a village. A privileged space or territory around a town, monastery, or other place.

**Banc** /bæŋk/báŋk/. Bench; the place where a court permanently or regularly sits; the seat of judgment; as, *banc le roy*, the king's bench; *banc le common pleas*, the bench of common pleas.

The full bench, full court. A "sitting *en banc*" is a meeting of all the judges of a court as distinguished from the sitting of a single judge or panel of judges.

**Banci narratores** /bænsay nãrãtóriyz/. In old English law, advocates; countors; serjeants. Applied to advocates in the common pleas courts. 1 Bl.Comm. 24.

**Banco** /bæŋkow/. Ital. A seat or bench of justice; also, in commerce, a word of Italian origin signifying a bank. Also a small tract of land on opposite side of river from country to which it belongs, and so existing by virtue of an avulsive change in the river. *San Lorenzo Title & Improvement Co. v. City Mortgage Co.*, Tex.Civ.App., 48 S.W.2d 310, 314. *See also* Banc.

**Bancus** /bæŋkəs/. A high seat, or seat of distinction; a seat of judgment, or tribunal for the administration of justice. Often used for the court itself; thus, the English court of common pleas was formerly called *Bancus*.

**Bancus reginæ** /bæŋkəs rãjãyniy/. The queen's bench. *See* Queen's bench.

**Bancus regis** /bæŋkəs riyjəs/. The king's bench; the supreme tribunal of the king after parliament. 3 Bl. Comm. 41.

**Bancus superior** /bæŋkəs sãpíriyər/. The upper bench. The king's bench was so called during the Protectorate.

**Bandit.** An outlaw; a man *banned*, or put under a ban; a brigand or robber. *Banditti*, a band of robbers.

**Banditry.** Organized robbery; brigandage; form of crime practiced by outlaws and plunderers.

**Bane.** A malefactor. Also a public denunciation of a malefactor; the same with what was called "*hutesium*," hue and cry.

**Baneret, or banneret** /bænãrãt/. In old English law, a knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made were accounted so honorable that they were allowed to display their arms in the royal army, as barons did, and could bear arms with supporters. They were sometimes called "*vexillarii*."

A degree of honor next after a baron's, when conferred by the king; otherwise, it ranks after a baronet. 1 Bl.Comm. 403.

**Bani** /béynay/. Deodands (*q.v.*).

**Banishment.** A punishment inflicted upon criminals, by compelling them to leave a country for a specified period of time, or for life. Synonymous with exilement or deportation, importing a compulsory loss of one's country. *See also* Deportation.

**Bank.** A bank is an institution, usually incorporated, whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, known as bank notes. U.C.C. § 1-201(4). American commercial banks fall into two main categories: state chartered banks and federally chartered national banks. *See also* Banking.

A bench or seat; the bench of justice; the bench or tribunal occupied by the judges; the seat of judgment; a court. The full bench, or full court; the assembly of all the judges of a court. *See* Banc.

An acclivity; an elevation or mound of earth, especially that which borders the sides of a water course. The land adjacent to a river. That part of a stream which retains the water. The elevation of land which confines the waters of a stream in their natural channel when they rise the highest and do not overflow the banks. A water-washed and relatively permanent elevation or acclivity at the outer line of a river bed which separates the bed from the adjacent upland, and serves to confine the waters within the bed and to preserve the course of the river. The land lying between the edge of the water of a stream at its ordinary low stage and the line which the edge of the water reaches in its ordinary high stage. An elevation of land which confines the waters of a stream when they rise out of the bed. Neither the line of ordinary high-water mark, nor of ordinary low-water mark, nor of a middle stage of water can be assumed as the line dividing the bed from the banks. Banks are fast land, on which vegetation appropriate to such land in the particular locality grows wherever the bank is not too steep to permit such growth, and bed is soil of a different character, and having no vegetation, or only such as exists, when commonly submerged in water. On the borders of navigable streams, where there are levees established according to law, the levees form the "banks of the river."

**Advising bank.** A bank which gives notification of the issuance of a credit by another bank. U.C.C. § 5-103(e).

**Bank acceptance.** Draft drawn on and accepted by bank.

**Bank-account.** A sum of money placed with a bank or banker, on deposit, by a customer, and subject to be drawn out on the latter's check. The statement or computation of the several sums deposited and those drawn out by the customer on checks, entered on the books of the bank and the depositor's passbook. Any account with a bank, including a checking, time, interest

or savings account. U.C.C. § 4-104(a). *See also* Joint bank account.

*Bank bill.* *See* Bank note, below.

*Bank book.* A book kept by a customer of a bank, showing the state of his account with it. *See* Pass-book.

*Bank call.* Demand made on bank by state or federal supervisory personnel for examination of balance sheets.

*Bank charter.* Document issued by appropriate federal or state authority which permits corporation to commence business as a bank.

*Bank credit.* A credit with a bank by which, on proper credit rating or proper security given to the bank, a person receives liberty to draw to a certain extent agreed upon.

*Bank debit.* Total of checks and other commercial paper charged to deposit accounts.

*Bank deposit.* Cash, checks, or drafts placed with bank for credit to depositor's account. Placement of money in bank thereby creating contract between bank and depositor. U.C.C. § 4-103.

*Demand deposit.* Right to withdraw deposit at any time.

*Time deposit.* Deposit which is subject to notice (e.g. thirty days) before withdrawal.

*Bank depositor.* One who delivers to or leaves with a bank a sum of money subject to his order. *Wharton v. Poughkeepsie Sav. Bank*, 262 App.Div. 598, 31 N.Y.S.2d 311, 313.

*Bank draft.* A check, draft, or other order for payment of money, drawn by an authorized officer of a bank upon either his own bank or some other bank in which funds of his bank are deposited. *Perry v. West*, 110 N.H. 351, 266 A.2d 849, 852. An order to pay that is similar to a check, except that it is not payable on demand. Instead, a bank draft is payable when the issuing firm accepts it.

*Bank note.* A promissory note issued by a bank or banker authorized to do so, payable to bearer on demand, and intended to circulate as money. *See* Federal reserve notes.

*Bank of circulation.* One which issues bank notes payable to bearer. *See* Bank of issue, below.

*Bank of deposit.* A savings bank or any other bank which receives money on deposit.

*Bank of discount.* One which lends money on collateral or by means of discounts of commercial paper.

*Bank of issue.* Bank with authority to issue notes intended to circulate as currency.

*Bank rate.* Interest rate charged customers on loans. *See* Interest; Legal interest.

*Bank statement.* Financial statement showing financial condition of bank at a given time. Federal (national banks) and state laws require that such statements be published several times a year.

*Bank stock.* Shares in the capital of a bank; shares in the property of a bank.

*Bank teller.* *See* Teller.

*Branch banking.* *See* Branch bank.

*Central banks.* Federal Reserve banks.

*Collecting bank.* Any bank handling the item for collection except the payor bank. U.C.C. § 4-105(d). *See also* Collecting bank.

*Commercial bank.* *See* Commercial bank.

*Confirming bank.* A bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank. U.C.C. § 5-103(f). *See also* Confirming bank.

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

*Custodian bank.* Any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation. U.C.C. § 8-102(4).

*Depository bank.* The first bank to which an item is transferred for collection even though it is also the payor bank. U.C.C. § 4-105(a).

*Export-import bank.* *See* Export-Import Bank.

*Federal land bank.* *See* Federal Land Banks.

*Federal reserve bank.* *See* Federal Reserve System.

*Intermediary bank.* Any bank to which an item is transferred in course of collection except the depository or payor bank. U.C.C. § 4-105(c). *See also* Intermediary bank.

*Land bank.* *See* Land bank.

*Member bank.* *See* Member bank.

*Mutual savings bank.* *See* Mutual savings bank.

*National bank.* *See* National bank.

*Non-member bank.* Bank that is not a member of the Federal Reserve Board and, as such, is only governed by laws of state where chartered.

*Payor bank.* A bank by which an item is payable as drawn or accepted. U.C.C. § 4-105(b).

*Presenting bank.* Any bank presenting an item except a payor bank. U.C.C. § 4-105(e).

*Remitting bank.* Any payor or intermediary bank remitting for an item. U.C.C. § 4-105(f).

*Savings and loan bank.* *See* Mutual savings bank; Savings and loan association.

*Savings bank.* Type of bank that receives deposits, and pays interest thereon, and makes certain types of loans (e.g. home financing loans), but does not provide checking services. *See* Mutual savings bank; Savings and loan association. *Compare* Commercial bank.

*World bank.* *See* that title.



**Bankable paper.** Notes, checks, bank bills, drafts and other securities for money, received as cash by banks.

**Bank bill.** *See* Bank (*Bank note*).

**Bank clearings.** *See* Clearinghouse.

**Banker.** In general sense, person that engages in business of banking. In narrower meaning, a private person who keeps a bank; one who is engaged in the business of banking without being incorporated. One who carries on the business of banking by receiving money on deposit with or without interest, by buying and selling bills of exchange, promissory notes, bonds or stock, or other securities, and by loaning money without being incorporated.

Under some statutes, an individual banker, as distinguished from a "private banker" (*q.v.*), is a person who, having complied with the statutory requirements, has received authority from the state to engage in the business of banking, while a private banker is a person engaged in banking without having any special privileges or authority from the state.

*See also* Investment banker.

Person who holds stake in gambling game or wager.

**Bankerout.** Eng. Bankrupt; insolvent; indebted beyond the means of payment.

**Banker's acceptance.** A draft accepted by a bank usually for the purpose of financing a sale of goods to or by the bank's customer. A bill of exchange draft payable at maturity that is drawn by a creditor against his or her debtor. Banker's acceptances are short-term credit instruments most commonly used by persons or firms engaged in international trade. They are comparable to short-term government securities (for example, Treasury Bills) and may be sold on the open market at a discount.

**Banker's lien.** A lien which a banker has by virtue of which he can appropriate any money or property in his possession belonging to a customer to the extinguishment of any matured debt of such customer to the bank, provided such property or money has not been charged, with the knowledge of the bank, with the subservience of a special burden or purpose, or does not constitute a trust fund of which the banker has notice.

**Banker's note.** A commercial instrument resembling a bank note in every particular except that it is given by a private banker or unincorporated banking institution.

**Bank holding company.** Any company which has control over any bank or over any company that is or becomes a bank holding company. A company is considered to have control if it directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of the bank or company; the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or, it is determined that the company directly or indirectly exercises a controlling influence over the management or

policies of the bank or company. 12 U.S.C.A. §§ 1841-1850.

**Bank Holding Company Act.** Federal law which governs any company which directly or indirectly owns or controls, with power to vote, more than 25% of voting shares of each of two or more banks. *See* 12 U.S.C.A. § 184 et seq.

**Bank holiday of 1933.** Presidential Proclamations No. 2039, issued March 6, 1933, and No. 2040, issued March 9, 1933, temporarily suspended banking transactions by member banks of the Federal Reserve System. Normal banking functions were resumed on March 13, subject to certain restrictions. The first proclamation, it was held, had no authority in law until the passage on March 9, 1933, of a ratifying act (12 U.S.C.A. § 95b). The present law forbids member banks of the Federal Reserve System to transact banking business, except under regulations of the Secretary of the Treasury, during an emergency proclaimed by the President. 12 U.S.C.A. § 95.

**Banking.** The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. *Mercantile Bank v. New York*, 121 U.S. 138, 156, 7 S.Ct. 826, 30 L.Ed. 895; *In re Prudence Co.*, D.C.N.Y., 10 F.Supp. 33, 36.

*Investment banking.* Business of underwriting or distributing bond, stock or other securities issues.

**Banking Act of 1933.** *See* Glass-Steagall Act.

**Banking a deal.** Means making to one who wishes to consummate a deal a loan of money on collateral for a consideration which may consist of interest, a fee, or a part of the securities or property involved in the deal. *Cray, McFawn & Co. v. Hegarty, Conroy & Co.*, D.C.N.Y., 27 F.Supp. 93, 99.

**Banking commission.** State regulatory body charged with supervision of banking institutions. *See also* Federal Reserve Board of Governors with respect to regulation of national banks.

**Banking day.** That part of any day on which a bank is open to the public for carrying on substantially all of its banking functions. U.C.C. § 4-104(c).

**Banking game.** Gambling game at which money is bet or hazarded.

**Banking hours.** A term which, in addition to the regular hours, includes time to allow presentment, after closing, to the bank returning a check, if such presentment is necessary in fact. *Columbia-Knickerbocker Trust Co. v. Miller*, 156 A.D. 810, 142 N.Y.S. 440, 445.

**Bank night.** A device by which a theater provides a registration book which any person over eighteen years of age, whether a patron of the theater or not, may sign.

The book is placed in the lobby or outside the doors of the theater and no charge is made for registration nor need one who does so buy a ticket to the theater. A number is given to each name. On stated occasions, the numbers representing all the names registered are placed in a container on the stage of the theater and one number is drawn. The name of the person having that registration number is announced both inside and outside the theater and on coming forward within a certain time, he receives a sum of money which the theater provides from its own funds. If the person whose number is drawn is outside the theater, he is permitted to enter and claim the award without paying the admission. If he does not come forward within the time set, the money is added to the sum to be awarded on the next bank night. Under the plan, various safeguards are imposed on the operation to insure fairness in the allotment of the money. If not a *lottery*, a bank night is at least a *gift enterprise*. But it is generally considered to be a *lottery*. *Furst v. A. & G. Amusement Co.*, 128 N.J.L. 311, 25 A.2d 892, 893; *Commonwealth v. Lund*, 142 Pa.Super. 208, 15 A.2d 839, 846.

**Bankrupt.** The state or condition of a person (individual, partnership, corporation, municipality) who is unable to pay its debts as they are, or become, due. The condition of one whose circumstances are such that he is entitled to take the benefit of the federal bankruptcy laws. The term includes a person against whom an involuntary petition has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt. The word "bankrupt" is not used in the federal Bankruptcy Code. "Debtor" is now the term used. See Code § 101.

See Arrangement with creditors; Bankruptcy Code; Bankruptcy proceedings; Composition with creditors; Contemplation of bankruptcy; Insolvency.

**Bankruptcy Code.** A federal law (11 U.S.C.A.) for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. The Bankruptcy Code of 1978 substantially revised and replaced the Bankruptcy Act of 1898. Straight bankruptcy is in the nature of a liquidation proceeding and involves the collection and distribution to creditors of all the bankrupt's non-exempt property by the trustee in the manner provided by the Code (Chapter 7). The debtor rehabilitation provisions of the Code (Chapters 11, 12 and 13) differ, however, from the straight bankruptcy in that the debtor looks to rehabilitation and reorganization, rather than liquidation, and the creditor looks to future earnings of the bankrupt, rather than property held by the bankrupt to satisfy their claims; see, e.g., Bankruptcy proceedings (*Business reorganizations, Wage earner's plan*).

**Bankruptcy proceedings.** General term for the various types of proceedings under the Bankruptcy Code (11 U.S.C.A.) that are initiated either by an insolvent individual or business (termed a voluntary bankruptcy) or by creditors (termed an involuntary bankruptcy) seeking to either have the debtor's remaining assets distributed

among the creditors and to thereby discharge the debtor from any further obligation or to restructure and reorganize the insolvent's debt structure. See Bankruptcy Code, *supra*, and various types of bankruptcy *below*. See also Adequate protection; Automatic stay; Composition with creditors; Core proceeding; Cram down; Debtor in possession; Workout.

**Adjudication of bankruptcy.** The judgment or decree of the bankruptcy court that a person against whom a petition in bankruptcy has been filed, or who has filed his voluntary petition, be ordered and adjudged to be a bankrupt. See *Bankruptcy discharge, below*.

**Bankruptcy courts.** Federal courts which are concerned exclusively with the administration of bankruptcy proceedings and presided over by a bankruptcy judge. Legal bankruptcy is declared by such courts. 28 U.S.C.A. § 151. Bankruptcy courts exercise jurisdiction as generally provided in 28 U.S.C.A. § 1334. See also 11 U.S.C.A. § 105.

**Bankruptcy discharge.** Order of Bankruptcy Court which discharges debtor from all dischargeable obligations and debts. For effect of, and exceptions to, discharge, see Bankruptcy Code §§ 523, 524, 727.

**Bankruptcy distribution.** After payment of administration, priority and other debts and expenses of bankrupt estate, trustee in bankruptcy makes pro rata distribution to creditors. See Bankruptcy Code § 726.

**Bankruptcy estate.** The "bankruptcy estate" is comprised of all legal and equitable interests in property of debtors as of filing of bankruptcy petition. *Matter of Madden, Bkrcty.N.J.*, 18 B.R. 18, 19. 11 U.S.C.A. § 541 et seq.

**Bankruptcy forms.** Official forms used in Bankruptcy Court for most matters (e.g. petitions, schedules).

**Bankruptcy rules.** Rules governing proceedings in bankruptcy courts; many of which make the Federal Rules of Civil Procedure and Evidence applicable in adversary proceedings.

**Bankruptcy schedules.** Official forms for listing of debtor's assets, liabilities, and all unsecured creditors.

**Bankruptcy trustee.** Person appointed by Bankruptcy Court to take charge of debtor estate, to collect assets, to bring suit on debtor's claims, to defend actions against it, and otherwise administer debtor's estate; he has power to examine debtor, to initiate actions to set aside preferences, etc. 11 U.S.C.A. § 321 et seq., 704; 28 U.S.C.A. § 581 et seq.

**Business reorganizations (Chapter 11).** When a debtor business entity realizes that it will become insolvent or will be unable to pay its debts as they mature, it can petition for reorganization under Chapter 11 of the Bankruptcy Code. The debtor business normally is permitted to continue its operations under court supervision until some plan of reorganization is approved by two-thirds of the creditors. If the business is insolvent at the time a petition for reorganization is filed, a majority of the shareholders must also approve the plan.

If agreement cannot be reached, then the court will supervise liquidation proceedings for the business as in any other situation of bankruptcy. *See also Family Farmer Bankruptcy, below.*

*Family farmer bankruptcy (Chapter 12).* Chapter 12 of the Bankruptcy Code provides special debt repayment relief for a "family farmer with regular income" whose annual income is sufficiently stable and regular to enable such farmer to make payments under a plan as provided under this Chapter.

*Involuntary proceedings.* Creditors of an insolvent debtor may initiate proceedings under the Bankruptcy Code, thereby in effect forcing the debtor into bankruptcy. *See Straight bankruptcy, below.*

*Straight bankruptcy (Chapter 7).* A proceeding designed to liquidate the debtor's property, pay off his or her creditors, and discharge the debtor from his or her other debts. It can be either voluntary (started by the debtor himself or herself) or involuntary (started by the debtor's creditors). *Compare Business reorganizations (Chapter 11); Wage earner's plan (Chapter 13, this topic, which are rehabilitative proceedings.*

*Voluntary proceedings.* A proceeding under the Bankruptcy Code by which a debtor initiates action either to rehabilitate his business (e.g., Chapter 11 reorganization) or to liquidate (e.g., Chapter 7 liquidation).

*Wage earner's plan (Chapter 13).* Under Chapter 13 of the Bankruptcy Code, any insolvent debtor who is a wage earner (earns wages, salary, or commission) can formulate and file a plan with the court that provides the debtor with additional time to pay off unsecured creditors. The debtor's plan must provide that future earnings will be subject to the supervision and control of the trustee until these debts are satisfied. A plan made in good faith and acceptable to the unsecured creditors will be confirmed by the court. Should the wage earner ultimately be unable to pay the debts, Chapter 7 liquidation is still an available alternative.

**Bank Secrecy Act.** Enacted in 1970, this statute authorizes the Secretary of the Treasury to prescribe by regulation certain recordkeeping and reporting requirements for banks and other financial institutions in the United States. The purpose of the Act is to require the maintenance of records, and the making of certain reports which are highly useful in criminal, tax, or regulatory investigations or proceedings.

Title I of the Act, and the implementing regulations, require financial institutions to maintain records of the identities of their customers, to make microfilm copies of certain checks drawn on them, and to keep records of certain other items. Title II of the Act and its implementing regulations require reports of certain domestic and foreign currency transactions. California Bankers Assn. v. Shultz, 1974, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812. 12 U.S.C.A. §§ 1730d, 1829b, 1951-1959, and 31 U.S.C.A. §§ 1051-1062, 1081-1083, 1101-1105, 1121-1122.

**Banleuca** /bæn(y)úwka/. (Same as the French *banlieue*). An old law term, signifying a space or tract of country around a city, town, or monastery, distinguished and protected by peculiar privileges.

**Banni** /bénay/ or **bannitus** /bænədəs/. In old law, one under a ban (*q.v.*); an outlaw or banished man.

**Banni nuptiarum** /bénay nəpshiyərəm/. L. Lat. In old English law, the banns of matrimony.

**Bannitio** /bənish(iy)ow/. Banishment; expulsion by a ban or public proclamation.

**Bannitus** /bənətəs/. *See* Banni.

**Banns of matrimony.** Public notice or proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract. Such announcement is required by certain religions to be made in a church or chapel, during service, on three consecutive Sundays before the marriage is celebrated. The object is to afford an opportunity for any person to interpose an objection if he knows of any impediment or other just cause why the marriage should not take place.

**Bar.** The court, in its strictest sense, sitting in full term. The presence, actual or constructive, of the court. Thus a trial *at bar* is one had before the full court, distinguished from a trial had before a single judge at *nisi prius*. So the "case at bar" is the case now before the court and under its consideration; the case being tried or argued.

In another sense, the whole body of attorneys and counsellors, or the members of the legal profession, collectively, who are figuratively called the "bar". They are thus distinguished from the "bench," which term denotes the whole body of judges. Bar associations of attorneys may be either national, state, or local. *See* Bar association. *Compare* Bench.

In the practice of legislative bodies, the outer boundary of the house; therefore, all persons, not being members, who wish to address the house, or are summoned to it, appear *at the bar* for that purpose.

In the law of contracts, an impediment, obstacle, or preventive barrier. Thus, relationship within the prohibited degrees is a *bar to marriage*. In this sense also we speak of the "bar of the statute of limitations."

That which defeats, annuls, cuts off, or puts an end to. Thus, a provision "in bar of dower" is one which has the effect of defeating or cutting off the dower-rights which the wife would otherwise become entitled to in the particular land.

In pleading, a special plea, constituting a sufficient answer to an action at law; so called because it *barred*, i.e., prevented, the plaintiff from further prosecuting it with effect, and, if established by proof, defeated and destroyed the action altogether. Called a special "plea in bar." It may be further described as a plea or peremptory exception of a defendant to destroy the plaintiff's action. Under Fed.Rules Civ.Proc., pleas in bar are abolished in favor of affirmative pleading of defenses in answer. Rule 8(c). *See* Plea (*Plea in bar*).

With respect to claim preclusion, a valid and final personal judgment on the merits against a claimant precludes (bars) a later suit on the same claim or cause of action. It is the principle that a party may not relitigate a cause of action which has been determined previously. *In re Johnson, Bkrtcy.Minn.*, 13 B.R. 342, 346.

A judgment rendered in a case is a "bar" to further action in the state in which it was rendered and in all other jurisdictions if the court which rendered it has required jurisdiction and if the subsequent action is brought by a party to first action or his privy. *See* Collateral estoppel doctrine; Double jeopardy; Issue preclusion; *Res judicata*.

A particular part of the court-room; for example, the place where prisoners stand at their trial, hence the expression "prisoner at the bar."

In England, a partition or railing running across a court-room, intended to separate the general public from the space occupied by the judges, counsel, jury, and others concerned in the trial of a cause. In the English courts it is the partition behind which all outer-barristers and every member of the public must stand. Solicitors being officers of the court, are admitted within it; as are also queen's counsel, barristers with patents of precedence, and serjeants, in virtue of their ranks. Parties who appear in person also are placed within the bar on the floor of the court.

**Bar admission.** Act by which one is licensed to practice before courts of a particular state or jurisdiction after satisfying requirements such as bar examination, period of residency or admission on grounds of reciprocity after period of years as member of bar of another jurisdiction.

**Baragaria.** Span. A concubine, whom a man keeps alone in his house, unconnected with any other woman.

**Bar association.** An association of members of the legal profession. Such associations have been organized on the national (American Bar Association; Federal Bar Association), state, county, and even on city levels (*e.g.*, New York City Bar Ass'n). The first was established in Mississippi in 1825, but it is not known to have had a continued existence. An association of Grafton and Coos counties in New Hampshire had an existence before 1800, and probably a more or less continuous life since then, having finally merged into a state association. Membership may be either compulsory (integrated bar) or voluntary.

*Bar integration.* *See* Integrated bar.

**Barat.** *See* Berat.

**Baratriam committit qui propter pecuniam justitiam baractat** /bərətriyəm kəmitət kwáy próptər pək(y)úwniyəm jəstishiyəm bərəktət/. He is guilty of barratry who for money sells justice. (This maxim, however, is one pertaining more to the meaning of "barratry" as used in Scotch law than to its common-law meaning.) *See* Barratry.

**Barbiturate** /barbityərət/. A general term denoting a derivative of barbituric acid formed by the substitution

of an aliphatic or aromatic group on a carbon or nitrogen atom in the acid; used in medicine as hypnotic and sedative drugs.

**Bareboat charter.** A document under which one who charters or leases a boat becomes for the period of the charter the owner for all practical purposes. *Reed v. The Yaka*, 373 U.S. 410, 83 S.Ct. 1349, 10 L.Ed.2d 448. Lease of vessel without a crew. *Gillentine v. McKeand*, C.A.Mass., 426 F.2d 717, 719. One whereby charterer assumes full possession and control of the vessel and constitutes the only form of charter that purports to invest temporary powers of ownership in the charterer. *Baker v. Raymond Intern., Inc.*, C.A.La., 656 F.2d 173, 182.

**Bare or mere licensee.** One whose presence on premises is merely tolerated; while a "licensee" or "invitee" is one who is on the premises by invitation, express or implied. *Chicago, R. I. & P. Ry. Co. v. McCleary*, 175 Okl. 347, 53 P.2d 555, 557.

**Bare patent license.** A grant of authority to make, use or vend patented product throughout the United States or in a given part thereof, with no right of exclusion.

**Baret.** L. Fr. A wrangling suit.

**Bare trustee.** One whose trust is to convey, and the time has arrived for a conveyance by him. Trustee of a dry trust; or a trustee to whose office no duties were originally attached, or who, although such duties were originally attached to his office, would, on the requisition of his *cestuis que trust*, be compellable in equity to convey the estate to them or by their direction.

**Bar fee.** In old English law, a fee taken by the sheriff, time out of mind, for every prisoner who is acquitted. "Extortion." Abolished by St. 14 Geo. III, c. 26; 55 Geo. III, c. 50; 8 & 9 Vict., c. 114.

**Bargain.** A mutual undertaking, contract, or agreement. A contract or agreement between two parties, the one to sell or exchange goods or lands, and the other to buy or exchange them. To negotiate over the terms of a purchase or contract. To come to terms. A bargain is an agreement to exchange promises or to exchange a promise for a performance or to exchange performances. *Restatement, Second, Contracts*, § 3.

**Bargain money.** These words in a contract for the sale of land have much the same significance as earnest money.

**Catching bargain.** A bargain by which money is loaned, at an extortionate or extravagant rate, to an heir or any one who has an estate in reversion or expectancy, to be repaid on the vesting of his interest; or a similar unconscionable bargain with such person for the purchase outright of his expectancy. That kind of fraud often perpetrated upon young, inexperienced, or ignorant people. *See* Unconscionable bargain.

**Bargain and sale.** In conveyancing, the transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. A contract or bargain by the owner of land, in consideration of money

or its equivalent paid, to sell land to another person, called the "bargainee," whereupon a use arises in favor of the latter, to whom the seisin is transferred by force of the statute of uses. The expression "bargain and sale" is also applied to transfers of personalty, in cases where there is first an executory agreement for the sale (the bargain), and then an actual and completed sale.

**Bargain and sale deed.** A deed that has a recitation of consideration coupled with words of conveyance of real property. It is a form of deed of conveyance without any covenants; a bare conveyance to grantee of whatever interest grantor has at time of the conveyance. *Borough of Wildwood Crest v. Smith*, 210 N.J.Super. 127, 509 A.2d 252, 259. *See also* Deed.

**Bargainee.** The grantee of an estate in a deed of a bargain and sale. The party to a bargain to whom the subject-matter of the bargain or thing bargained for is to go.

**Bargaining agent.** Union recognized and certified as such by NLRB as the exclusive representative of employees in a bargaining unit.

**Bargaining for plea.** Commonly referred to as plea bargaining in which defendant seeks a lesser sentence in return for plea of guilty; or an attempt to plead guilty to lesser included offense which carries a less severe penalty. *See* Plea bargaining.

**Bargaining unit.** Labor union or group of jobs authorized to carry on collective bargaining in behalf of employees. A particular group of employees with a similar community of interest appropriate for bargaining.

**Bargain money.** *See* Earnest money.

**Bargainor.** The person who makes a bargain. The party to a bargain who is to receive the consideration and perform the contract by delivery of the subject matter.

**Bargain or contract in restraint of trade.** Any bargain or contract which purports to limit in any way right of either party to work or to do business.

**Bargain sale or purchase.** A sale of property for less than the fair market value of such property. The difference between the sale or purchase price and the fair market value of the property is required to be accounted for in terms of its tax consequences. Bargain sales and purchases among members of the same family may lead to gift tax consequences. *See* Dividend (*Constructive dividend*).

**Bark.** Term is sometimes figuratively used to denote the mere words or letter of an instrument, or outer covering of the ideas sought to be expressed, as distinguished from its inner substance or essential meaning.

**Barnard's inn.** An inn of chancery. *See* Inns of Chancery.

**Baro** /bárow/. In old law, a man, whether slave or free. In later usage, a freeman or freedman; a strong man; a good soldier; a hired soldier; a vassal; a baron; a feudal tenant or client. A man of dignity and rank; a knight.

A magnate in the church. A judge in the exchequer (*baro scaccarii*). The first-born child. A husband.

**Baron** /báran/. A lord or nobleman; the most general title of nobility in England. 1 Bl.Comm. 398, 399. A particular degree or title of nobility, next to a viscount. The lowest title in Great Britain. A judge of the court of exchequer. 3 Bl.Comm. 44. A freeman. Also a vassal holding directly from the king. A husband; occurring in this sense in the phrase "*baron et feme*," husband and wife. The term has essentially the same meanings as *baro* (*q.v.*).

**Baronage.** In English law, the collective body of the barons, or of the nobility at large.

**Baron court.** *See* Court-baron.

**Barones scaccarii.** *See* Barons of the exchequer.

**Baronet.** An English name or hereditary title of dignity or rank (but not a title of nobility, being next below that of baron), established in 1611 by James I. It is created by letters patent, and descends to the male heir.

**Baron et feme** /báran ey fém/. Man and woman; husband and wife. A wife being under the protection and influence of her *baron*, lord, or husband, is styled a "*feme-covert*" (*fæmina viro cooperta*), and her state of marriage is called her "coverture."

**Barons of the Exchequer.** The six judges of the Court of Exchequer in England, of whom one is styled the "Chief Baron;" answering to the justices and chief justice of other courts. Its jurisdiction was transferred to the Exchequer Division of High Court of Justice in 1873; the barons becoming justices of the High Court.

**Barony.** The dignity of a baron; a species of tenure; the territory or lands held by a baron.

**Barony of land.** In England, a quantity of land amounting to 15 acres. In Ireland, a subdivision of a county.

**Barra, or barre.** In old practice, a plea in bar. The bar of the court. A barrister.

**Barrator** /bárətar/. One who commits barratry. *See* Barretor.

**Barratrous** /bárətrəs/. Fraudulent; having the character of barratry.

**Barratry** /bárətriy/. Also spelled "Barretry." The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. *State v. Batson*, 220 N.C. 411, 17 S.E.2d 511, 512, 513.

In maritime law, an act committed by master or mariners of a vessel for some fraudulent or unlawful purpose contrary to their duty to owner and resulting in injury to owner. *Isbell Enterprises, Inc. v. Citizens Cas. Co. of New York, D.C.Tex.*, 303 F.Supp. 549, 552.

*See also* Barretor; Champerty.

**Barred.** Obstructed by a bar. Subject to hindrance or obstruction by a bar or barrier which, if interposed, will prevent legal redress or recovery; as, when it is said that a claim or cause of action is "barred by the statute of limitations."

**Barrel.** A measure of capacity, equal (in England) to 36 imperial gallons. The standard United States measure, except as to barrels of petroleum, equals 31½ gallons.

In agricultural and mercantile parlance, as also in the inspection laws, the term means, *prima facie*, not merely a certain quantity, but, further, a certain state of the article; namely, that it is in a cask.

**Barren money.** In the civil law, a debt which bears no interest.

**Barrenness.** Sterility; the incapacity to bear children.

**Barretor** /bárətər/. A common mover, exciter, or maintainer of suits and quarrels either in courts or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors.

One who frequently excites and stirs up groundless suits and quarrels, either at law or otherwise. *State v. Batson*, 220 N.C. 411, 17 S.E.2d 511, 512, 513.

**Barrister.** In England, an advocate; a counsellor learned in the law who has been admitted to plead at the bar, and who is engaged in conducting the trial or argument of causes. A person called to the bar by the benchers of Inns of Court, giving exclusive right of audience in the Supreme Court.

**Barter.** The exchange of goods and productive services for other goods and productive services, without the use of money. *Rosenberg v. State*, 12 Md.App. 20, 276 A.2d 708, 711. *See also* Exchange.

**Bas.** Fr. Low; inferior; subordinate.

**Bas chevaliers** /béys shevəlírz/bá shəvalyéy/. In old English law, low, or inferior knights, by tenure of a base military fee, as distinguished from *barons* and *bannerets*, who were the chief or superior knights.

**Base, adj.** Low in place or position; inferior; servile; of subordinate degree; impure, adulterated, or alloyed.

*Base animal.* *See* Animal.

*Base bullion.* Base silver bullion is silver in bars mixed to a greater or less extent with alloys or base materials.

*Base coin.* Debased, adulterated, or alloyed coin (*e.g.* copper, nickel) as distinguished from silver or gold.

*Base court.* In old English law, an inferior court, that is, not of record, as the court baron.

*Base estate.* The estate which "base tenants" (*q.v.*) have in their land.

*Base fee.* One that may last forever if the contingency does not happen, but debased because its duration depends upon collateral circumstances which qualify it; sometimes called a conditional, determinable, or qualified fee.

In old English law, an estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. *Scobey v. Beckman*, 111 Ind.App. 574, 41 N.E.2d 847, 850.

*Base services.* In feudal law, such services as were unworthy to be performed by the nobler men, and were performed by the peasants and those of servile rank. 2 Bl.Comm. 62.

*Base tenants.* Tenants who performed to their lords services in villenage; tenants who held at the will of the lord, as distinguished from *frank* tenants, or freeholders.

*Base tenure.* A tenure by villenage, or other customary service, as distinguished from tenure by military service; or from tenure by free service.

**Base, n.** Bottom, foundation, groundwork, that on which a thing rests. The locality on which a military or naval force relies for supplies or from which it initiates operations; *e.g.* air base; military base; marine base; naval base; submarine base.

**Base line.** Survey line used in the government survey to establish township lines. Horizontal elevation line used as centerline in a highway survey.

**Base pay.** Wages, exclusive of overtime, bonuses, etc.

**Basic crops.** Crops usually subject to government price supports, such as wheat, corn, oats, rice, and similar crops.

**Basic or pioneer patent.** One discovered in new field and recognized by scientific world or industry as startling, unexpected, and unprophesied. *Northwest Engineering Corporation v. Keystone Driller Co.*, C.C.A. Wis., 70 F.2d 13, 16.

**Basileus** /bæsəlyúws/. A Greek word, meaning "king." A title assumed by the emperors of the Eastern Roman Empire. It is used by Justinian in some of the Novels; and is said to have been applied to the English kings before the Conquest. 1 Bl.Comm. 242.

**Basilica** /bəsíləkə/. The name given to a compilation of Roman and Greek law, prepared about A.D. 880 by the Emperor Basilus, and published by his successor, Leo the Philosopher. It was written in Greek, was mainly an abridgment of Justinian's *Corpus Juris*, and comprised sixty books, only a portion of which are extant. It remained the law of the Eastern Empire until the fall of Constantinople, in 1453.

**Basils.** In old English law, a kind of money or coin abolished by Henry II.

**Basin.** When speaking of a large river, ordinarily means or includes the entire area drained by the main stream and its tributaries. *City of Tulsa v. Peacock*, 181 Okl. 383, 74 P.2d 359, 360.

In admiralty law and marine insurance, a part of the sea inclosed in rocks.

**Basis.** Fundamental principle; groundwork; support; the foundation or groundwork of anything; that upon which anything may rest or the principal component parts of a thing.

*Accounting.* Term used in accounting, especially in tax accounting, to describe the value assigned to an asset for the purpose of determining gain (or loss) on the sale or

transfer or in determining value in the hands of a donee.

Acquisition cost, or some substitute therefor, of an asset used in computing gain or loss on disposition or retirement. The amount assigned to an asset for income tax purposes. For assets acquired by purchase, the basis would be cost [I.R.C. § 1012]. Special rules govern the basis of property received by virtue of another's death [I.R.C. § 1014] or by gift [§ 1015], the basis of stock received on a transfer of property to a controlled corporation [§ 358], the basis of the property transferred to the corporation [§ 362], and the basis of property received upon the liquidation of a corporation [§§ 334 and 338].

*Adjusted basis.* The cost of property acquired, increased for any capital improvements and decreased by the amount of depreciation allowed or allowable. I.R.C. § 1011.

*Carryover basis.* The basis of property acquired from a decedent dying after December 1979 is the basis of the property in the hands of the decedent immediately preceding death. The basis is further adjusted for transfers of appreciated property, personal items, and exceptions for small estates. I.R.C. § 1023.

*Stepped-up basis.* In tax accounting, value placed on property which is acquired in a taxable transaction or purchase. I.R.C. § 1012.

The basis of property acquired through inheritance, bequest, or devise from a decedent, is the fair market value of the property on the date of death or the fair market value on the alternate valuation date—six months from the date of death. The value is often higher than in the hands of the decedent, resulting in a stepped-up basis. I.R.C. § 1014.

The basis of assets acquired by gift is the donors basis increased either by the amount of the gift tax paid (for gifts received before 1977) or the portion of the gift tax paid which is due to the increase in the value of the gift (for gifts received after 1976). I.R.C. § 1015.

*Substituted basis.* In tax accounting, the basis of property acquired in an exchange in which a gain or loss is not recognized, is the basis of the property transferred, except where the property acquired is subject to a lien. I.R.C. § 1031.

See also Accrual basis.

**Basis of bargain.** That on which any affirmation of fact or promise relating to goods sold is predicated, creating an express warranty. U.C.C. § 2-313(1)(a). See Essence of the contract.

**Bastard.** An illegitimate child; a child born before the lawful marriage of its parents; *i.e.* born out of lawful wedlock. See also Illegitimate child.

*Bastard eigné.* In old English law, bastard elder. If a child was born of an illicit connection, and afterwards the parents intermarried and had another son, the elder was called bastard eigné, or, as it is now spelled, ainé, and the second son was called puisné, or since born, or

sometimes he was called mulier puisné. 2 Bl.Comm. 248.

**Bastardize.** To declare one a bastard, as a court does. To give evidence to prove one a bastard. A mother (married) cannot bastardize her child.

**Bastardus non potest habere hæredem nisi de corpore suo legitime procreatum** /bæstârdəs nɒn pɔwtəst hæbəriy hæriydiy nâysay diy kɔrpəriy s(y)úwɔw læjítæmiy prɔwkriyéytəm/. A bastard can have no heir unless it be one lawfully begotten of his own body.

**Bastardus nullius est filius, aut filius populi** /bæstârdəs nələyəs èst fīliyəs ət fīliyəs pɔpyəlay/. A bastard is nobody's son, or the son of the people.

**Bastardy (paternity) proceedings.** Court proceeding in which the paternity of a child is determined. The method provided by statute of proceeding against the putative father to secure a proper maintenance of his child born out of wedlock. See Paternity suit.

**Bastille** /bæstiyl/. A prison, citadel, fortress. Prison constructed in Paris in 1369 and destroyed in 1789.

**Baston** /bæstən/bətɒn/. In old English law, a baton, club, or staff. A term applied to officers of the wardens of the prison called the "Fleet," because of the staff carried by them. See Trail-baston.

**Batable-ground.** Land that is in controversy, or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union.

**Bataille** /bætáy/. In old English law, battel; the trial by combat or *duellum*.

**Batiment** /bætəmón/. In French marine law, a vessel or ship.

**Batonnier** /bætɔnyéy/. The chief of the French bar in its various centres, who presides in the council of discipline.

**Battel** /bætəl/. Trial by combat; wager of battel. See Wager of battel.

**Battered child.** A child who is suffering serious physical or emotional injury resulting from abuse inflicted upon him including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth. See also Child abuse.

**Battered Child Syndrome.** A medicolegal term which describes diagnosis of medical expert based on scientific studies that when child suffers certain types of continuing injuries that injuries were not caused by accidental means. Upon such finding, it is logical to presume that someone "caring" for the child was responsible for injuries. State v. Byrd, 309 N.C. 132, 305 S.E.2d 724, 729.

**Battery.** Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching. Mason v. Cohn, 108 Misc.2d 674, 438 N.Y.S.2d 462, 464. Criminal battery, defined as the unlawful application of force to the person of another, may be divided into its three basic

elements: (1) the defendant's conduct (act or omission); (2) his "mental state," which may be an intent to kill or injure, or criminal negligence, or perhaps the doing of an unlawful act; and (3) the harmful result to the victim, which may be either a bodily injury or an offensive touching. What might otherwise be a battery may be justified; and the consent of the victim may under some circumstances constitute a defense. *Com. v. Hill*, 237 Pa.Super. 543, 353 A.2d 870. The consummation of an unlawful assault.

The actual offer to use force to the injury of another person is *assault*; the use of it is *battery*, which always includes an assault; hence the two terms are commonly combined in the term "assault and battery."

An actor is subject to liability to another for battery if: (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) an offensive contact with the person of the other directly or indirectly results. *Restatement, Second, Torts* § 18.

*See also Assault and battery.*

**Aggravated battery.** An unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of deadly weapon, great disparity between the ages and physical conditions of the parties, or the purposeful infliction of shame and disgrace.

**Simple battery.** One not accompanied by circumstances of aggravation, or not resulting in grievous bodily injury.

**Technical battery.** A technical battery occurs when a physician or dentist, in the course of treatment, exceeds the consent given by a patient. Although no wrongful intent is present, and in fact there may be a sincere purpose to aid the patient, recovery is permitted unless there is an emergency. However, if the patient benefits from the battery only nominal damages may be recovered.

**Battle of the forms.** In commercial law, term used to describe effect of multitude of forms used by buyers and sellers to accept and to confirm terms expressed in other forms. *U.C.C.* § 2-207.

**Batture** /bətýúr/. A marine term, used to denote a bottom of sand, stone, or rock, mixed together, and rising towards the surface of the water; as a technical word and also in common parlance, an elevation of the bed of a river, under the surface of the water. The term is, however, sometimes used to denote the same elevation of the bank, when it has risen above the surface of the water, or is as high as the land on the outside of the bank. *Conkey v. Knudsen*, 143 Neb. 5, 8 N.W.2d 538, 541. In this latter sense it is synonymous with "alluvion." It means, in common-law language, land formed by accretion. The term is used in Louisiana, and is applied principally to certain portions of the bed of the Mississippi river which are uncovered at time of low water but are covered annually at time of ordinary high water.

**Bawd** /bód/. One who procures opportunities for persons of opposite sexes to cohabit in an illicit manner; who may be, while exercising the trade of a bawd, perfectly innocent of committing in his or her own proper person the crime either of adultery or of fornication. A madam.

**Bawdy-house.** A house of ill fame; a house of prostitution; a brothel. A house or dwelling maintained for the convenience and resort of persons desiring unlawful sexual connection. A place for convenience of people of both sexes in resorting to lewdness, a place many may frequent for immoral purposes or a house where one may go for immoral purposes without invitation. *Riley v. U. S.*, D.C.App., 298 A.2d 228, 231.

**Bay.** A pond-head made of a great height to keep in water for the supply of a mill, etc., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate. (This is generally called a forebay.)

A bending or curving of the shore of the sea or of a lake, so as to form a more or less inclosed body of water. An opening into the land, or an arm of the sea, where the water is shut in on all sides except at the entrance.

**Baygall.** A low-lying wet land matter with vegetable fibres and often with gallberry and other thick-growing bushes.

**Bayley** /béyliy/. In old English law, bailiff. This term was used in the laws of the colony of New Plymouth, Mass., A.D. 1670, 1671.

**Bayou** /báyuw/báyow/. A species of creek or stream common in Louisiana and Texas. An outlet from a swamp, pond, or lagoon, to a river, or the sea.

**B.C.** An abbreviation for "before Christ," "bail court," "bankruptcy cases," and "British Columbia."

**B.E.** An abbreviation for "Baron of the Court of Exchequer."

**Beach.** This term, in its ordinary signification, when applied to a place on tide waters means the space between ordinary high and low water mark; or the space over which the tide usually ebbs and flows. It is a term not more significant of a sea margin than "shore." In common parlance designates that portion of shore consisting generally of sand and pebbles, resulting usually from the action of water, as distinct from the upland, to which it often extends above normal high-water mark. Beach is synonymous with "shore," "strand," or "flats." The term may also include the sandy shore above mean high water which is washed by storms and exceptionally high tides.

To "beach" a ship is to run it upon the beach or shore; this is frequently found necessary in case of a fire, leak, etc.

*See Foreshore; Seashore.*

**Public beach.** Beach dedicated by governmental body to the common use of the public, which the unorganized public and each of its members have a right to use while it remains such.



**Beacon.** A light-house, or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now used for the guidance of ships at sea, by night, as well as by day.

**Beaconage.** Money paid for the maintenance of a beacon or signal-light.

**Beadle.** In English ecclesiastical law, an inferior parish officer, who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables. *See* Bedel.

**Beams and balance.** Instruments for weighing goods and merchandise.

**Bear.** To support, sustain, or carry. To give rise to, or to produce, something else as an incident or auxiliary. To render, to manage, or direct, or to conduct; to carry on, or maintain. To produce as yield; *e.g.* "bear" interest. One who believes stock prices will decline; opposite of a "bull."

**Bear arms.** The Second Amendment, U.S. Constitution, provides that the "right of the people to bear arms, shall not be infringed." This right has been restricted however by state and federal laws regulating the transportation, sale, use, and possession of weapons.

**Bearer.** The person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank. U.C.C. § 1-201(5). When a check, note, draft, etc., is payable to "bearer," it imports that such shall be payable to any person who may present the instrument for payment. *See also* Payable to bearer.

**Bearer bond.** Bonds payable to the person having possession of them. Such bonds do not require endorsement to transfer ownership but only the transfer of possession.

**Bearer document.** A document that runs to bearer upon issuance or after a blank indorsement, and that is negotiated by delivery alone. U.C.C. §§ 7-501(1) & (2)(a). Anyone in possession of a bearer document is a holder of it. U.C.C. § 1-201(20).

**Bearer instrument.** An instrument is payable to bearer when by its terms it is payable to (a) bearer or the order of bearer; or (b) a specified person or bearer; or (c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee. U.C.C. §§ 3-111, 3-204(2).

**Bearer paper.** Commercial paper payable to bearer; *i.e.* to the person having possession of such. *See* Bearer document; Bearer instrument.

**Bearer security.** A security whose owner is not registered on the books of the issuer. Such security is payable to the holder. *See e.g.*, Bearer bond.

**Bearing date.** Disclosing a date on its face; having a certain date. Words frequently used in pleading and conveyancing to introduce the date which has been put upon an instrument.

**Bear interest.** To yield, generate, or produce interest on the principal.

**Bear market.** A market in which prices are falling or are expected to fall.

**Beat, v.** To strike or hit repeatedly, as with blows. In the criminal law and the law of torts, with reference to assault and battery, the term includes any unlawful physical violence offered to another. *See* Battery.

**Beat, n.** In some of the southern states (as Alabama, Mississippi, South Carolina) the principal legal subdivision of a county, corresponding to towns or townships in other states; or a voting precinct.

**Beating.** The infliction of extreme force to another. *See* Battery; Corporal punishment.

**Beating of the bounds.** An ancient custom in England by which, once a year, the minister, etc., of a parish walked about its boundaries to preserve a recollection of them.

**Beaupleader** /bòwpliydər/. (L. Fr. fair pleading). A writ of prohibition directed to the sheriff or another, directing him not to take a fine for beaupleader. There was anciently a fine imposed called a fine for beaupleader, which is explained by Coke to have been originally imposed for bad pleading.

**Bed.** The hollow or channel of a water course; the depression between the banks worn by the regular and usual flow of the water. The land that is covered by the water in its ordinary low stage. Area extending between the opposing banks measured from the foot of the banks from the top of the water at its ordinary stage, including sand bars which may exist between the foot of said banks as thus defined. *Town of Refugio v. Heard*, Tex.Civ.App., 95 S.W.2d 1008, 1010. It includes the lands below ordinary high water mark. *United States v. Chicago, M., St. P. & P. R. Co.*, 312 U.S. 592, 313 U.S. 543, 61 S.Ct. 772, 775, 85 L.Ed. 1064.

Also, the right of cohabitation or marital intercourse; as in the phrase "divorce from bed and board," or a *mensa et thoro*.

**Bed and board.** Divorce a mensa et thoro. *See* Divorce.

**Bedel** /bìydəl/. In English law, a crier or messenger of court, who summons men to appear and answer therein. A herald to make public proclamations. An inferior officer of a parish or liberty, to give notice of vestry meetings, etc.

An officer of the forest, similar to a sheriff's special bailiff. A collector of rents for the king.

**Bedelary** /bìydəlèry/. The jurisdiction of a bedel, as a bailiwick is the jurisdiction of a bailiff.

**Bederepe** /bìydriyp/. A service which certain tenants were anciently bound to perform, as to reap their landlord's corn at harvest.

**Before.** Prior to; preceding; in front of; at the disposal of; in a higher position. In the presence of; under the official purview of; as in a magistrate's jurat, "before me personally appeared," etc.

When used as a preposition, does not indicate a period of time as do the prepositions "for," "during," and "throughout," but merely an event or act preceding in time, or earlier than, or previously to, the time mentioned. *First Nat. Corp. v. Perrine*, 99 Mont. 454, 43 P.2d 1073, 1077.

**Beg.** To solicit alms or charitable aid.

**Beget.** To procreate as the father.

**Beggar.** One who lives by begging charity, or who has no other means of support than solicited alms.

**Begin.** To originate; to come into existence; to start; to institute; to initiate; to commence. *People ex rel. Northchester Corporation v. Miller*, 263 App.Div. 83, 31 N.Y.S.2d 586, 587.

**Behalf.** Benefit, support, defence, or advantage.

**Behavior.** Manner of having, holding, or keeping one's self; manner of behaving, whether good or bad; conduct; manners; carriage of one's self, with respect to propriety and morals; deportment. *Schneiderman v. United States*, 320 U.S. 118, 63 S.Ct. 1333, 1340, 87 L.Ed. 1796. *See also* Character; Reputation.

**Behetria** /bèyeytriya/. In Spanish law, lands situated in districts and manors in which the inhabitants had the right to select their own lords.

**Behoof.** Use; benefit; profit; service; advantage. It occurs in conveyances, *e.g.*, "to his and their use and behoof."

**Being struck.** Collision, or striking together of two objects, one of which may be stationary. Condition of a person who has been traumatized. Business closed or affected by labor strike. *See also* Strike.

**Belief.** A conviction of the truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion, or proof addressed to the judgment. *Latrobe v. J. H. Cross Co.*, D.C.Pa., 29 F.2d 210, 212. A conclusion arrived at from external sources after weighing probability. Conviction of the mind, arising not from actual perception or knowledge, but by way of inference, or from evidence received or information derived from others.

Knowledge is an assurance of a fact or proposition founded on perception by the senses, or intuition; while "belief" is an assurance gained by evidence, and from other persons. "Suspicion" is weaker than "belief," since suspicion requires no real foundation for its existence, while "belief" is necessarily based on at least assumed facts. *Cook v. Singer Sewing Mach. Co.*, 138 Cal.App. 418, 32 P.2d 430, 431.

**Belief-action distinction.** The distinction noted in analysis of cases under First Amendment, U.S. Constitution—freedom of speech and religion—to the effect that one is guaranteed the right to any belief he chooses, but when that belief is translated into action, the state also has rights under its police power to protect others from such actions. *Reynolds v. U. S.*, 98 U.S. 145, 164.

**Belligerency** /bəlījərənsiy/. In international law, the status of *de facto* statehood attributed to a body of insurgents, by which their hostilities are legalized. The international status assumed by a state (*i.e.* nation) which wages war against another state. Quality of being belligerent; status of a belligerent; act or state of waging war; warfare.

**Belligerent** /bəlījərənt/. In international law, as an adjective, it means engaged in lawful war. As a noun, it designates either of two nations which are actually in a state of war with each other, as well as their allies actively co-operating, as distinguished from a nation which takes no part in the war and maintains a strict indifference as between the contending parties, called a "neutral."

As a personality trait, refers to one who is overly assertive, hostile or combative.

**Belligerents.** A body of insurgents who by reason of their temporary organized government are regarded as conducting lawful hostilities. Also, militia, corps of volunteers, and others, who although not part of the regular army of the state, are regarded as lawful combatants provided they observe the laws of war. *See also* Belligerency; Belligerent.

**Bellum** /béləm/. Lat. In public law, war. An armed contest between nations; the state of those who forcibly contend with each other. *Jus belli*, the law of war.

**Belong.** To appertain to; to be the property of; to be a member of; to be appropriate; to own.

**Belonging.** That which is connected with a principal or greater thing; an appendage, an appurtenance; also, ownership. *Church of the Holy Faith v. State Tax Commission*, 39 N.M. 403, 48 P.2d 777, 779.

**Belongings.** That which belongs to one; property; possessions; a term properly used to express ownership. *Ford's Adm'r v. Wade's Adm'r*, 242 Ky. 18, 45 S.W.2d 818, 820. *See* Personal effects.

**Below.** Inferior; of inferior jurisdiction, or jurisdiction in the first instance. The court from which a cause is removed for review is called the "court below." Preliminary; auxiliary or instrumental.

Bail to the sheriff has been called "bail below," as being preliminary to and intended to secure the putting in of bail above, or special bail. *See* Bail.

**Below par.** *See* Par value.

**Ben Avon doctrine.** Due process requires opportunity for judicial determination of reasonableness of rates for public utilities set by a Public Service Commission. *Ohio Valley Water Co. v. Ben Avon Borough et al.*, 253 U.S. 287, 40 S.Ct. 527, 64 L.Ed. 405.

**Bench.** A seat of judgment or tribunal for the administration of justice. The seat occupied by judges in courts. Also, the court itself, or the aggregate of the judges composing a court, as in the phrase "before the full bench." *Compare* Bar.

The judges taken collectively, as distinguished from counsellors and advocates, who are called the bar.

The term, indicating originally the seat of the judges, came to denote the body of judges taken collectively, and also the tribunal itself, as the King's Bench.

**Bench and bar.** Term refers to judges collectively and attorneys as a whole.

**Bench blotter.** Record of arrests and other happenings kept by police. *See also* Arrest record; Booking.

**Bench conference.** A meeting at the judge's bench prior to, during or after a trial or hearing between counsel and the judge to discuss a matter pertaining to such proceeding. Commonly called to discuss questions of evidence out of hearing of jury; it may or may not be made part of the written record of the proceeding.

**Benchers.** In England, principal officers of each inn of court, in whom the government of such is vested. *See* Inns of Court.

**Bench legislation.** *See* Judge-made law.

**Bench mark.** A mark on a fixed and enduring object, indicating a particular elevation and used as a reference in topographical surveys and tidal observations. *Ace Const. Co. v. U. S.*, 185 Ct.Cl. 487, 401 F.2d 816, 820. Standard unit for basis of comparison.

**Bench trial.** Trial held before judge sitting without a jury; jury waived trial.

**Bench warrant.** Process issued by the court itself, or "from the bench," for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who fails to obey a subpoena.

**Bene** /bɛyniy/. Lat. Well; in proper form; legally; sufficiently.

**Benedicta est expositio quando res redimitur a destructione** /benədiktə èst èkspəzish(i)yow kwóndow riyz rədímə̀ər èy dèstrèkshiyówniy/. Blessed is the exposition when anything is saved from destruction. It is a laudable interpretation which gives effect to the instrument, and does not allow its purpose to be frustrated.

**Benefice** /bénéfəs/. In ecclesiastical law, in its technical sense, this term includes ecclesiastical preferments to which rank or public office is attached, otherwise described as ecclesiastical dignities or offices, such as bishoprics, deaneries, and the like; but in popular acceptation, it is almost invariably appropriated to rectories, vicarages, perpetual curacies, district churches, and endowed chapelries. A term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feudal tenure. 4 Bl.Comm. 107. *See* English Patronage (Benefices) Measure Act, 1986. The modern term designates an office with care for souls but not an office as vicar or in a church.

**Bénéfice** /bèynefɪys/. Fr. In French law, a benefit or advantage, and particularly a privilege given by the law rather than by the agreement of the parties.

**Bénéfice de discussion.** Benefit of discussion. The right of a guarantor to require that the creditor should

exhaust his recourse against the principal debtor before having recourse to the guarantor himself.

**Bénéfice de division.** Benefit of division; right of contribution as between co-sureties.

**Bénéfice d'inventaire.** A term which corresponds to the *beneficium inventarii* of Roman law, and substantially to the English law doctrine that the executor properly accounting is only liable to the extent of the assets received by him.

**Bénéficiaire** /bèynefɪysyer/. The person in whose favor a promissory note or bill of exchange is payable; or any person in whose favor a contract of any description is executed.

**Beneficial.** Tending to the benefit of a person; yielding a profit, advantage, or benefit; enjoying or entitled to a benefit or profit. This term is applied both to estates (as a "beneficial interest") and to persons (as "the beneficial owner").

**Beneficial enjoyment.** The enjoyment which a man has of an estate in his own right and for his own benefit, and not as trustee for another.

**Beneficial estate.** An estate in expectancy is one where the right to the possession is postponed to a future period, and is "beneficial" where the devisee takes solely for his own use or benefit, and not as the mere holder of the title for the use of another.

**Beneficial holders of securities.** In securities law, persons who have the equitable or legal title to shares but who have not registered the shares in their names on the records of the corporation.

**Beneficial interest.** Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another.

In trust law, refers to interest of the beneficiary in right to income or principle of trust funds, in contrast to trustee who holds legal title.

**Beneficial owner.** Term applied most commonly to cestui que trust who enjoys ownership of the trust or estate in equity, but not legal title which remains in trustee or personal representative. Equitable as contrasted with legal owner.

One who does not have title to property but has rights in the property which are the normal incident of owning the property. The persons for whom a trustee holds title to property are the beneficial owners of the property, and the trustee has a fiduciary responsibility to them.

**Beneficial power.** A power which has for its object the donee of the power, and which is to be executed solely for his benefit; as distinguished from a trust power, which has for its object a person other than the donee, and is to be executed solely for the benefit of such person.

**Beneficial use.** The right to use and enjoy property according to one's own liking or so as to derive a profit or benefit from it, including all that makes it desirable or habitable, as light, air, and access; as distinguished from a mere right of occupancy or possession. Such right to enjoyment of property where legal title is in one person while right to such use or interest is in another. *Christiansen v. Department of Social Security*, 15 Wash.2d 465, 131 P.2d 189, 191.

**Beneficiary** /benəfish(iy)əri/. One who benefits from act of another. A party who will benefit from a transfer of property or other arrangement. Examples include the beneficiary of a trust, the beneficiary of a life insurance policy, and the beneficiary of an estate. *See also* Creditor beneficiary; Primary beneficiary; Third party beneficiary.

**Credit.** A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment. U.C.C. § 5-103(d). *See also* Creditor beneficiary.

**Incidental.** A person who may derive benefit from performance on contract, though he is neither the promisee nor the one to whom performance is to be rendered. *Salzman v. Holiday Inns, Inc.*, 48 A.D.2d 258, 369 N.Y.S.2d 238, 242. *See also* Incidental beneficiary.

**Insurance.** The person entitled to take proceeds on death of insured.

**Letter of credit.** In a letter of credit transaction, the "person who is entitled under its terms [i.e., the terms of the credit] to draw or demand payment." U.C.C. § 5-103(l)(d).

**Taxation.** One who is assessed as the real owner. *See also* Income beneficiary.

**Trust.** As it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust. Uniform Probate Code, § 1-201. A person named in a trust account as one for whom a party to the account is named as trustee. Uniform Probate Code, § 6-101. Person for whose benefit property is held in trust. Restatement, Second, Trusts § 3.

**Will.** Person named in will to receive specified property.

**Beneficiary association.** *See* Benevolent associations.

**Beneficiary heir.** In the law of Louisiana, one who has accepted the succession under the benefit of an inventory regularly made. Civ.Code La. art. 883. Also, one who may accept the succession with benefit of inventory.

**Beneficio prima, or primo [ecclesiastico habendo]** /benəfish(iy)ow práymow (əkliyziyəstəkow həbэндow)/. In English law, an ancient writ, which was addressed by the king to the lord chancellor, to bestow the benefice that should first fall in the royal gift, above or under a specified value, upon a person named therein.

**Beneficium** /benəfish(iy)əm/. In feudal law, a benefice; a permanent stipendiary estate; the same with what was afterwards called a "fief," "feud," or "fee." It originally meant a "benefaction" from the king, usually to a noble.

In the civil law, a benefit or favor; any particular privilege. A general term applied to ecclesiastical livings. 4 Bl.Comm. 107.

**Beneficium abstinendi** /benəfish(iy)əm əbstənénday/. In Roman law, the power of an heir to abstain from accepting the inheritance.

**Beneficium cedendarum actionum** /benəfish(iy)əm sədendərəm əkshiyównəm/. In Roman law, the privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them.

**Beneficium clericale** /benəfish(iy)əm klərəkéyli/. Benefit of clergy (*q.v.*).

**Beneficium competentiæ** /benəfish(iy)əm kəmpəténshiyi/. In Scotch law, the privilege of competency. A privilege which the grantor of a gratuitous obligation was entitled to, by which he might retain sufficient for his subsistence, if, before fulfilling the obligation, he was reduced to indigence. In the civil law, the right which an insolvent debtor had, among the Romans, on making cession of his property for the benefit of his creditors, to retain what was required for him to live honestly according to his condition.

A defendant's privilege of being condemned only in an amount which he could pay without being reduced to a state of destitution.

**Beneficium divisionis** /benəfish(iy)əm dəviz(hiyównəs/. In civil and Scotch law, the privilege of one of several co-sureties (cautioners) to insist upon paying only his *pro rata* share of the debt. La.Civ.Code, arts. 3045-3051.

**Beneficium inventarili** /benəfish(iy)əm inventəriyay/. *See* Benefit of inventory.

**Beneficium ordinis** /benəfish(iy)əm órdənəs/. In civil and Scotch law, the privilege of order. The privilege of a surety to require that the creditor should first proceed against the principal and exhaust his remedy against him, before resorting to the surety.

**Beneficium separationis** /benəfish(iy)əm səpərəyshiyównəs/. In the civil law, the right to have the goods of an heir separated from those of the testator in favor of creditors.

**Beneficium invito non datur** /benəfish(iy)əm inváytow nòn déytər/. A privilege or benefit is not granted against one's will.

**Beneficium non datum nisi propter officium** /benəfish(iy)əm nòn déytəm naysay próptər əfishiyəm/. A remuneration [is] not given, unless on account of a duty performed.

**Beneficium non datur nisi officii causa** /benəfish(iy)əm nòn déytər náysay əfishiyay kózə/. A

benefice is not granted except on account or in consideration of duty.

**Beneficium principis debet esse mansurum** /benefish(i)yəm prinsəpəs débət ésiy mæns(y)úrəm/. The benefaction of a prince ought to be lasting.

**Benefit.** Advantage; profit; fruit; privilege; gain; interest. The receiving as the exchange for promise some performance or forbearance which promisor was not previously entitled to receive. *Graphic Arts Finishers, Inc. v. Boston Redevelopment Authority*, 357 Mass. 40, 255 N.E.2d 793, 795. Benefits are something to advantage of, or profit to, recipient. *Cheltenham Tp. v. Cheltenham Tp. Police Dept.*, 11 Pa.Cmwth. 348, 312 A.2d 835, 838.

Financial assistance received in time of sickness, disability, unemployment, etc. either from insurance or public programs such as social security.

**Contracts.** When it is said that a valuable consideration for a promise may consist of a benefit to the promisor, "benefit" means that the promisor has, in return for his promise, acquired some legal right to which he would not otherwise have been entitled. *Woolum v. Sizemore*, 267 Ky. 384, 102 S.W.2d 323, 324. "Benefits" of contract are advantages which result to either party from performance by other. *DeCarlo v. Gerryco, Inc.*, 46 N.C. App. 15, 264 S.E.2d 370, 375.

**Eminent domain.** It is a rule that, in assessing damages for private property taken or injured for public use, "special benefits" may be set off against the amount of damage found, but not "general benefits." Within the meaning of this rule, general benefits are such as accrue to the community at large, to the vicinage, or to all property similarly situated with reference to the work or improvement in question; while special benefits are such as accrue directly and solely to the owner of the land in question and not to others.

As respects eminent domain law, "general benefits" are those which arise from the fulfillment of the public object which justified taking, while "special benefits" are those which arise from the particular relation of the land in question to the public improvement. *Morehead v. State Dept. of Roads*, 195 Neb. 31, 236 N.W.2d 623, 627.

**Benefit association.** See Benefit societies.

**Benefit building society.** The original name for what is now more commonly called a "building society" (*q.v.*).

**Benefit certificate.** A written obligation to pay the person therein named the amount specified upon the conditions therein stipulated. Also a term usually applied to policies issued by fraternal and beneficiary societies. *Chandler v. New York Life Ins. Co.*, 194 Ark. 6, 104 S.W.2d 1060, 1061.

**Benefit-cost ratio.** Such ratio is basically a comparison of anticipated benefits derived from particular public works project with anticipated costs over estimated life span of the project. *Sierra Club v. Froehlke, D.C.Tex.*, 359 F.Supp. 1289, 1360.

**Benefit of bargain rule.** Under such rule a defrauded purchaser may recover the difference between the real and the represented value of the property purchased. *Auffenberg v. Hafley*, Mo.App., 457 S.W.2d 929, 337. This rule of damages gives damaged party equivalent of what the party would have received if the representations relied upon had been true. *Asleson v. West Branch Land Co., N.D.*, 311 N.W.2d 533, 543.

In an action for fraud, plaintiff's recovery is limited to that measured by "out-of-pocket" rule, by which damages are measured by difference between purchase price of property and fair market value of same property on date of sale, unless actionable misrepresentation was warranty of value, in which case plaintiff may recover under "benefit-of-the-bargain" rule by which damages are determined by difference between actual value of property received and its value had representations as made been true. *Galego v. Knudsen*, 573 P.2d 313, 318, 281 Or. 43.

**Benefit of cession.** In the civil law, the release of a debtor from future imprisonment for his debts, which the law operates in his favor upon the surrender of his property for the benefit of his creditors.

**Benefit of clergy.** In its original sense, the phrase denoted the exemption which was accorded to clergymen from the jurisdiction of the secular courts, or from arrest or attachment on criminal process issuing from those courts in certain particular cases. Afterwards, it meant a privilege of exemption from the punishment of death accorded to such persons as were *clerks*, or who could read. This privilege of exemption from capital punishment was anciently allowed to clergymen only, but afterwards to all who were connected with the church, even to its most subordinate officers, and at a still later time to all persons who could read (then called "clerks"), whether ecclesiastics or laymen. It does not appear to have been extended to cases of high treason, nor did it apply to mere misdemeanors. The privilege was claimed after the person's conviction, by a species of motion in arrest of judgment, technically called "praying his clergy." As a means of testing his clerical character, he was given a psalm to read (usually, or always, the fifty-first), and, upon his reading it correctly, he was turned over to the ecclesiastical courts, to be tried by the bishop or a jury of twelve clerks. These heard him on oath, with his witnesses and compurgators, who attested their belief in his innocence. This privilege operated greatly to mitigate the extreme rigor of the criminal laws, but was found to involve such gross abuses that parliament began to enact that certain crimes should be felonies "without benefit of clergy," and finally, by the Criminal Law Act of 1827, it was altogether abolished. The act of congress of April 30, 1790, c. 9, § 31, 1 Stat. 119, provided that there should be no benefit of clergy for any capital crime against the United States, and, if this privilege formed a part of the common law of the several states before the Revolution, it no longer exists.

Sometimes used in negative sense, "without benefit of clergy", to describe status of man and woman who live together though not married to each other.

**Benefit of counsel.** See Assistance of counsel; Counsel, right to.

**Benefit of discussion.** In the civil law, the right which a surety has to cause the property of the principal debtor to be applied in satisfaction of the obligation in the first instance. Civ.Code La. arts. 3045-3051.

**Benefit of division.** Same as *beneficium divisionis* (q.v.).

**Benefit of inventory.** In the civil law, the privilege which the heir obtains of being liable for the charges and debts of the succession, only to the value of the effects of the succession, by causing an inventory of these effects within the time and manner prescribed by law. Civil Code La. art. 1032.

**Benefit of order.** See *Beneficium (Beneficium ordinis)*.

**Benefit societies.** Under this and several similar names, in various states, corporations which exist to receive periodical payments from members, and hold them as a fund to be loaned or given to members needing pecuniary relief.

**Benefits rule.** This rule provides that where a benefit, as well as a harm, is conferred by a tort-feasor, the benefits must be weighed against the elements of claimed damage. *Clapham v. Yanga*, 102 Mich.App. 47, 300 N.W.2d 727, 734.

**Benerth.** A feudal service rendered by the tenant to his lord with plow and cart.

**Benevolence.** The doing of a kind or helpful action towards another, under no obligation except an ethical one.

The love of humanity; the desire to promote its prosperity or happiness. The term includes acts of well-wishing towards others, for the promotion of general happiness, and plans actuated by love of others and a desire for their well-being. In re *Peabody's Estate*, 124 Misc. 338, 208 N.Y.S. 664, 671. Also beneficent; doing well.

It is a broader term than "charity" which it includes, and with which it is frequently used synonymously. "Charity" in its legal sense implies giving without consideration or expectation of return, and "benevolence" applies to any act which is prompted by or has for its object the well-being of others. *State v. Texas Mut. Life Ins. Co. of Texas*, Tex.Civ.App., 51 S.W.2d 405, 410.

See also Benevolent; Charitable; Charity.

**Benevolent** /bənəvələnt/. Philanthropic; humane; having a desire or purpose to do good to men; intended for the conferring of benefits, rather than for gain or profit; loving others and actively desirous of their well being. In re *Altman's Estate*, 87 Misc. 255, 149 N.Y.S. 601, 605.

This word, as applied to objects or purposes, may refer to those which are in their nature charitable, and may also have a broader meaning and include objects and

purposes not charitable in the legal sense of that word. Acts of kindness, friendship, forethought, or good-will might properly be described as benevolent. It has therefore been held that gifts to trustees to be applied for "benevolent purposes" at their discretion, or to such benevolent purposes as they could agree upon, do not create a public charity. But where the word is used in connection with other words explanatory of its meaning, and indicating the intent of the donor to limit it to purposes strictly charitable, it has been held to be synonymous with, or equivalent to, "charitable."

See also Charitable; Charity.

**Benevolent associations.** Those having a philanthropic or charitable purpose, as distinguished from such as are conducted for profit; specifically, "benefit associations" or "beneficial associations." Another name for a "benefit society," "benevolent society," and "fraternal" or "friendly society." *State v. Texas Mut. Life Ins. Co. of Texas*, Tex.Civ.App., 51 S.W.2d 405, 410. See also Benevolent corporation; Charitable corporation.

**Benevolent corporation.** A nonprofit corporation; created for charitable rather than for business purposes. One that ministers to all; the purpose may be anything that promotes the mental, physical, or spiritual welfare of man. The term may include a corporation to which a bequest is made to be used in the improvement of the social, physical, and economic condition of the employees of a business corporation. In re *Altman's Estate*, 87 Misc. 255, 149 N.Y.S. 601. See also Charitable corporation.

**Benevolentia regis habenda** /benəvələnsh(i)yə ríjəshəbéndə/. The form in ancient fines and submissions to purchase the king's pardon and favor in order to be restored to place, title or estate.

**Benevolent society.** See Benevolent associations; Benevolent corporation.

**Benigne faciendæ sunt interpretationes chartarum, ut res magis valeat quam pereat; et quæ libet concessio fortissime contra donatorem interpretanda est** /bənígniy fəshiyéndiy sənt intərpətəyshiyówniyz kartəram, ət riyz méyʃəs vəliyət kwəm péhriyət; ət kwíyləbət kənsəsh(i)yow fortisəmiy kóntrə dównətórəm intərpətəndə est/. Liberal interpretations are to be made of deeds, so that the purpose may rather stand than fall; and every grant is to be taken most strongly against the grantor.

**Benigne faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni, non e contra, debent inseruire** /bənígniy fəshiyéndiy sənt intərpətəyshiyówniyz, pɒptər simplisətétəm ləykórəm, ət riyz méyʃəs vəliyət kwəm péhriyət; ət vórbə intənshiyównay, nón èy kóntrə, débət insərváyriy/. Constructions [of written instruments] are to be made liberally, on account of the simplicity of the laity [or common people], in order that the thing [or subject-matter] may rather have effect than perish [or become void]; and words must be subject to the intention, not the intention to the words. 2 Bl.Comm. 379.

**Benignior sententia in verbis generalibus seu dubiis, est præferenda** /bənign(i)ɔr sentəns(i)ə in vɔrbəs jənərəyləbəs syūw dyūwbiyəs ɛst prɛfərəndə/. The more favorable construction is to be placed on general or doubtful expressions.

**Benignius leges interpretandæ sunt quo voluntas earum conservetur** /bənign(i)ɔs liyjiyɪz intɛrprətəndi sɑnt kwɔw vɔləntəs iyérəm kɔnsərvétər/. Laws are to be more liberally interpreted, in order that their intent may be preserved.

**Bequeath** /bəkwiyð/. To give personal property by will to another. It therefore is distinguishable from "devise," which is properly used of realty. But if the context clearly shows the intention of the testator to use the word "bequeath" as synonymous with "devise," it may be held to pass real property. *See* Bequest.

**Bequest** /bəkwest/. A gift (transfer) by will of personal property; a legacy. Disposition of realty in will is termed "devise." *See also* Charitable bequest; Demonstrative bequest; Devise; General bequest; Legacy.

**Conditional bequest.** One the taking effect or continuing of which depends upon the happening or non-occurrence of a particular event.

**Executory bequest.** The bequest of a future, deferred, or contingent interest in personalty.

**Residuary bequest.** A gift of all the remainder of the testator's personal estate, after payment of debts and legacies, etc.

**Specific bequest.** One whereby the testator gives to the legatee all his property of a certain class or kind; as all his pure personalty.

**Berat.** Also *barat*. A warrant or patent of dignity or privilege given by an Oriental monarch.

**Berbiage** /bərbijəj/. A rent paid for the pasturing of sheep.

**Bernet.** In Saxon law, burning; the crime of house burning, now called "arson."

**Bernstein test.** Form of blood test used in determining child's paternity and predicated on 4 blood types.

**Berry, or bury.** A villa or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

**Bertillon system** /bɛrtiɔwn sistəm/. A method of anthropometry (*q.v.*), once used for the identification of criminals and other persons, consisting of the taking and recording of a system of numerous, minute, and uniform measurements of various parts of the human body, absolutely and in relation to each other, the facial, cranial, and other angles, and of any eccentricities or abnormalities noticed in the individual. *See* DNA identification.

**Bes.** Lat. In the Roman law, a division of the *as*, or pound, consisting of eight *uncia*, or duodecimal parts, and amounting to two-thirds of the *as*. 2 Bl.Comm. 462 note *m*. Two-thirds of an inheritance. Eight per cent. interest.

**Besaile, besayle** /bèséyl/. The great-grandfather, *proavus*. 1 Bl.Comm. 186.

**Besayel, besaiel, besayle** /bèséyl/. In old English law, a writ which lay where a great-grandfather died seised of lands and tenements in fee-simple, and on the day of his death a stranger abated, or entered and kept out the heir. 3 Bl.Comm. 186.

**Beseech.** To entreat; to implore.

**Besides.** In addition to; moreover; also; likewise.

**Besoin** /bəsóyn/bəswán/. Fr. Need.

**Besot** /bəsót/. To stupefy, to make dull or senseless, to make to dote; and "to dote" is to be delirious, silly, or insane.

**Best.** Of the highest quality; of the greatest usefulness for the purpose intended. Most desirable, suitable, useful, or satisfactory. For example: the "best bid" of interest by a prospective depository of school funds would not necessarily be the highest bid, but, looking to the solvency of the bidder, the bond tendered, and all the circumstances surrounding the transaction, the safety and preservation of the school fund, the "best bid" might be the lowest bid.

**Best-effort basis.** With respect to a new securities issue, a commitment by the investment banker or group handling the new issue to sell the securities as an agent of the issuing party, rather than as an underwriting of the entire issue.

**Best evidence.** Primary evidence, as distinguished from secondary; original, as distinguished from substitutionary; the best and highest evidence of which the nature of the case is susceptible, not the highest or strongest evidence which the nature of the thing to be proved admits of. The original of a written instrument is itself always regarded as the primary or best possible evidence of its existence and contents; a copy, or the recollection of a witness, would be secondary evidence. "Best evidence" or "primary evidence" includes the best evidence which is available to a party and procurable under the existing situation, and all evidence falling short of such standard, and which in its nature suggests there is better evidence of the same fact, is "secondary evidence." *See* Best evidence rule; Original document rule; Primary evidence.

**Best evidence rule.** Rule which requires that best evidence available be presented in lieu of less satisfactory evidence. *People v. Banks*, Colo.App., 655 P.2d 1384, 1387. This rule prohibits the introduction into evidence of secondary evidence unless it is shown that original document has been lost or destroyed or is beyond jurisdiction of court without fault of the offering party; if original document is lost, then secondary evidence is properly admissible. *State v. Stephens*, Mo.App., 556 S.W.2d 722, 723. Fed.R.Evid. 1002 states the basic rule as follows: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress." As to what constitutes an "original writing", *see* Original.

**Bestiality.** A sexual connection between a human being and an animal. *State v. Poole*, 59 Ariz. 44, 122 P.2d 415, 416. At common law the term "crime against nature" embraced both "sodomy" and "bestiality". *See Sodomy.*

**Bestow.** To give, grant, confer, or impart; not necessarily limited in meaning to "devise."

**Best use.** In eminent domain, the value of property considering its optimum use at a given time and hence the money which should be awarded for such governmental taking; used commonly as "highest and best use". (*q.v.*)

**Bet.** An agreement between two or more persons that a sum of money or other valuable thing, to which all jointly contribute, shall become the sole property of one or some of them on the happening in the future of an event at present uncertain, or according as a question disputed between them is settled in one way or the other. A contract by which two or more parties agree that a sum of money, or other thing, shall be paid or delivered to one of them on the happening or not happening of an uncertain event. *See Wager*; a term generally synonymous with bet. *See also Betting book*; *Betting slips.*

**Betray.** Act of delivering up to an enemy something of value. To divulge a matter in breach of a confidence. To deceive, seduce or lead astray. A "betrayal," as of a professional secret on the part of a physician, signifies a wrongful disclosure in violation of the trust imposed by the patient. *See Treason.*

**Betrothed** /bətrowðd/. One who has exchanged promises to marry. The term may be synonymous with "intended wife." *See also Engagement.*

**Betrothment, betrothal.** Mutual promise of marriage; the plighting of troth; a mutual promise or contract between a man and woman competent to make it, to marry at a future time.

**Better Business Bureau.** Local, business-supported organizations that promote good business practices, receive complaints about specific businesses, and provide consumers with information about specific firms. The local bureaus are loosely affiliated with a national bureau.

**Better equity.** *See Equity.*

**Betterment.** An improvement put upon a property which enhances its value more than mere replacement, maintenance, or repairs. The improvement may be either temporary or permanent. Also applied to denote the additional value which a property acquires in consequence of some public improvement, as laying out or widening a street, etc. *See also Improvement.*

**Betterment acts.** Statutes which provide that a bona fide occupant of real estate making lasting improvements in good faith shall have a lien upon the estate recovered by the real owner to the extent that his improvements have increased the value of the land. Also called "occupying claimant acts."

**Betting.** Act of placing a bet or wager. *See Bet*; *Gambling*; *Pari-mutuel betting*; *Wager.*

**Betting book.** A book kept for registering bets on the result of a race as operated on race track. In a broader sense, the "betting book" is that book which enables the professional bettor to carry on his business, and to promote a race, and it includes the book, the making book and the bookmaker.

**Betting slips.** Part of gambling paraphernalia consisting of papers on which numbers or names of dogs or horses to be bet are written and which constitutes evidence for prosecution of illegal gaming.

**Between.** A space which separates. Strictly applicable only with reference to two things, but this may be understood as including cases in which a number of things are discriminated collectively as two wholes, or as taken in pairs, or where one thing is set off against a number of others. In *re McShane's Will*, 158 Misc. 777, 286 N.Y.S. 680, 682. Sometimes used synonymously with "among". In *re Moore's Estate*, 157 Pa.Super. 296, 43 A.2d 359. As a measure or indication of distance, this word has the effect of excluding the two termini. If an act is to be done "between" two certain days, it must be performed before the commencement of the latter day. In computing the time in such a case, both the days named are to be excluded.

**Bewared.** Eng. Expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares.

**Beyond a reasonable doubt.** In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty; and phrase is the equivalent of the words clear, precise and indubitable. In criminal case, the accused's guilt must be established "beyond a reasonable doubt," which means that facts proven must, by virtue of their probative force, establish guilt. *See also Reasonable doubt.*

**Beyond control.** Anything or any person who, in relationship to another person is out of reach of the latter, either physically, legally or morally; for example, a child who has reached his majority is beyond the legal control of his parents. *See also Act of God.*

**Beyond the seas.** Beyond the limits of the United States. In England, an expression to indicate that a person was outside the United Kingdom. The Limitation Act of 1939 abolished the old procedure whereby a defendant's absence beyond the seas suspended the operation of the Statutes of Limitations.

**B.F.** An abbreviation for *bonum factum*, a good or proper act, deed, or decree; signifies "approved."

**BFOQ.** Bona Fide Occupational Qualification. *See Bona fide.*

**BI.** Bodily injury.

**BIA.** Bureau of Indian Affairs.

**Biannually.** Twice a year; semi-annually.



**Bias** /báyəs/. Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. To incline to one side. Condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case. As used in law regarding disqualification of judge, refers to mental attitude or disposition of the judge toward a party to the litigation, and not to any views that he may entertain regarding the subject matter involved. State ex rel. Mitchell v. Sage Stores Co., 157 Kan. 622, 143 P.2d 652, 655.

*Actual bias* consists in the existence of a state of mind on the part of the juror which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issues impartially and without prejudice to the substantial rights of the party challenging.

See also Average man test; Discrimination; Prejudice.

**Bible.** See Family Bible.

**Bicameral system** /bàykámərəl sistəm/. A term applied by Jeremy Bentham to the division of a legislative body into two chambers, as in the United States government (Senate and House).

**Bid.** An offer by an intending purchaser to pay a designated price for property which is about to be sold at auction. An offer to perform a contract for work and labor or supplying materials or goods at a specified price. Public contracts are frequently awarded on basis of submitted, competitive bids. See also Firm bid; Invitation to bid; Let; Lowest responsible bidder; Open bid; Sealed bid.

Term may also refer to application for another job by an employee.

*Best bid.* One that is not necessarily the lowest, but rather fits the best interests of the issuer of the bid; taken into consideration is the solvency of the bidder, quality of his work, reputation, etc.

*Bidder.* One who makes a bid. One who offers to pay a specified price for an article offered for sale at a public auction or to perform a certain contract for a specified price. As to Responsible bidder see that title.

*Biddings.* Offers of a designated price for goods or other property put up for sale at auction.

*Bidding up.* Raising the price for an item being sold at an auction by a series of bids, each higher than the other. If such successive bids are made collusively by persons with an interest in raising the final bid, such practice is unlawful.

*Bid in.* Property sold at auction is said to be "bid in" by the owner or an incumbrancer or some one else who is interested in it, when he attends the sale and makes the successful bid. This is done so that property is not sold below actual value.

*Bid off.* One is said to "bid off" a thing when he bids for it at an auction sale, and it is knocked down to him in immediate succession to the bid and as a consequence of it.

*By-bidding.* In the law relating to sales by auction, this term is equivalent to "puffing." The practice consists in making fictitious bids for the property, under a secret arrangement with the owner or auctioneer, for the purpose of misleading and stimulating other persons who are bidding in good faith.

*Competitive bidding.* Bids which are submitted as the result of public notice and advertising of an intended sale or purchase.

*Letting or awarding of bids.* See Let.

*Open bid.* Offer to perform a contract together with the price, but with right to reduce the price to meet price quoted by others for same job.

*Sealed bid.* One submitted under seal, and which is not to be opened until a specified time at which all bids are to be opened and compared. Commonly required on construction contracts, to assure independence of bidding.

*Upset bid.* A bid made after a judicial sale, but before the successful bid at the sale has been confirmed, larger or better than such successful bid, and made for the purpose of upsetting the sale and securing to the "upset bidder" the privilege of taking the property at his bid or competing at a new sale.

**Bid and asked.** Price quotation for securities that are not frequently traded or are traded on the over-the-counter market. The bid quotation is the highest price a prospective buyer is willing to pay at a particular time; the asked quotation is the lowest price the seller is willing to sell for. Together, the two prices constitute a quotation; the difference between the two prices is the "spread."

**Bid bond.** Type of bond required in public construction projects which must be filed at the time of the bid and which protects the public agency in the event that the bidder refuses to enter into a contract after the award to him or withdraws his bid before the award. A type of indemnity bond.

**Bidder.** See Bid.

**Bid price.** In market exchanges, the price a buyer is willing to pay, as contrasted with the price at which a seller is willing to sell; called the "ask price". Also, the amount specified in a bid as the amount for which the bidder will perform the work or buy the property.

**Bid quote.** Price at which one (usually a broker or dealer) is willing to purchase a security (or commodity).

**Bid shopping.** The use of the low bid already received by general contractor to pressure other subcontractors into submitting even lower bids. Southern California Acoustics Co. v. C.V. Holder, Inc., 71 C.2d 719, 79 Cal. Rptr. 319, 325, 456 P.2d 975.

**Bienes** /biyénes/. In Spanish law, goods; property of every description, including real as well as personal property; all things (not being persons) which may serve for the uses of man.

*Bienes comunes.* Common property; those things which, not being the private property of any person, are open to the use of all, such as the air, rain, water, the sea and its beaches.

*Bienes gananciales.* A species of community in property enjoyed by husband and wife, the property being divisible equally between them on the dissolution of the marriage; does not include what they held as their separate property at the time of contracting the marriage.

*Bienes publicos.* Those things which, as to property, pertain to the people or nation, and, as to their use, to the individuals of the territory or district, such as rivers, shores, ports, and public roads.

**Biennial** /bàyé(n)iyəl/. Occurring every two years.

**Biennial session.** The regular session of most State legislatures, usually held in odd-numbered years; gradually being supplanted by annual sessions.

**Biennium** /bàyéniyəm/. A two-year period; the period for which appropriations are made in many State legislatures.

**Biens** /bíynz/byén(z)/. In old English law, property of every description, except estates of freehold and inheritance.

In French law, this term includes all kinds of property, real and personal. *Biens* are divided into *biens meubles*, movable property; and *biens immeubles*, immovable property. The distinction between movable and immovable property is recognized by the continental jurists, and gives rise, in the civil as well as in the common law, to many important distinctions as to rights and remedies.

**Bifurcated trial** /báyfòrkèytəd tráy(ə)l/. Trial of issues separately, e.g. guilt and punishment, or guilt and sanity, in criminal trial.

The trial of the liability issue in a personal injury or wrongful death case separate from and prior to trial of the damages question. The advantage of so doing is that if the liability issue is determined in defendant's favor there is no need to try the damages question, which can be an involved one entailing expensive expert witnesses and other proof.

*Compare* Severance of actions.

**Bigamus** /bigəməs/. In the civil law, a man who was twice married; one who at different times and successively has married two wives. One who has two wives living. One who marries a widow.

Used in ecclesiastical matters as a reason for denying benefit of the clergy.

**Bigamus seu trigamus, etc., est qui diversis temporibus et successivè duas seu tres uxores habuit** /bigəməs syùw trígəməs èst kwày dāvərsəs tèmپórábəs èt sàksesáyviy d(y)úwəs syùw tréz àksóriyз háb(y)uwət/. A bigamus or trigamus, etc., is one who at different times and successively has married two or three wives.

**Bigamy** /bigəmiy/. The criminal offense of willfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved. The state of a man who has two wives, or of a woman who has two husbands, living at the same time.

A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage: (a) the actor believes that the prior spouse is dead; or (b) the actor and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known by the actor to be alive; or (c) a Court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or (d) the actor reasonably believes that he is legally eligible to remarry. Model Penal Code, § 230.1.

In the canon law, the term denoted the offense committed by an ecclesiastic who married two wives successively. It might be committed either by marrying a second wife after the death of a first or by marrying a widow.

*See also* Polygamy.

**Big board.** A popular term referring to the board showing the current prices of securities listed on the New York Stock Exchange.

**Big eight.** A term which refers to the eight largest certified public accounting (CPA) firms in the United States. The ranking of the firms consider such factors as gross receipts, number of staff, etc.

**Bigot.** A prejudiced person; or one that is wedded to an opinion in matters of religion, race, etc.

**Bilagines** /bàyléyjəniyз/. By-laws of towns; municipal laws.

**Bilan.** A term used in Louisiana, derived from the French. A book in which bankers, merchants, and traders write a statement of all they owe and all that is due them; a balance-sheet.

**Bilanciis deferendis** /bələnshiyəs defərəndəs/. In English law, an obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation.

**Bilateral contract** /bàylə̀tə̀rəl kóntrə̀kt/. A term, used originally in the civil law, but now generally adopted, denoting a contract in which both the contracting parties are bound to fulfill obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it. A contract executory on both sides, and one which includes both rights and duties on each side. Contract formed by the exchange of promises in which the promise of one party is consideration supporting the promise of the other as contrasted with a unilateral contract which is formed by the exchange of a promise for an act. *Antonucci v. Stevens Dodge, Inc.*, 73 Misc.2d

173, 340 N.Y.S.2d 979, 982. *See* Contract. *Compare* Unilateral contract.

**Bilboes.** A device used for punishment at sea, similar to the stocks (*q.v.*) on land.

**Biline.** A word used by Briton in the sense of "collateral." *En line biline*, in the collateral line.

**Bilinguis** /baylingwəs/. Of a double language or tongue; that can speak two languages. A term formerly applied to a jury composed partly of Englishmen and partly of foreigners, which, by the English law, an alien party to a suit was, in certain cases, entitled to; more commonly called a "jury *de medietate linguæ*." 3 Bl.Comm. 360.

**Bill.** As a legal term, this word has many meanings and applications, the most important of which are set forth below:

**Bill of rights.** A formal and emphatic legislative assertion and declaration of popular rights and liberties usually promulgated upon a change of government; *e.g.* the famous Bill of Rights of 1688 in English history. Also the summary of the rights and liberties of the people, or of the principles of constitutional law deemed essential and fundamental, contained in many of the American state constitutions. *Hamill v. Hawks*, C.C.A. Okl., 58 F.2d 41, 47. That portion of Constitution guaranteeing rights and privileges to the individual; *i.e.* first ten Amendments of U.S. Constitution.

**Commercial law.** A written statement of the terms of a contract, or specification of the items of a transaction or of a demand. Also, a general name for any item of indebtedness, whether receivable or payable; an account for goods sold, services rendered, or work done. As a verb, as generally and customarily used in commercial transactions, "bill" is synonymous with "charge" or "invoice." *George M. Jones Co. v. Canadian Nat. R. Co.*, D.C.Mich., 14 F.2d 852, 855. *See also* Commercial paper; Maritime law, below.

**Bill-book.** A book in which an account of bills of exchange and promissory notes, whether payable or receivable, is stated.

**Bill-head.** A printed form on which merchants and traders make out their bills and render accounts to their customers.

**Bill of lading.** *See* Bill of lading, *infra*.

**Bill of parcels.** A statement sent to the buyer of goods, along with the goods, exhibiting in detail the items composing the parcel and their several prices, to enable him to detect any mistake or omission; an invoice (*q.v.*).

**Bill of sale.** In contracts, a written agreement, formerly limited to one under seal, by which one person assigns or transfers his right to or interest in goods and personal chattels to another. Legal document which conveys title from seller to buyer.

**Bill payable.** In a merchant's accounts, all bills which he has accepted, and promissory notes which he has made, are called "bills payable," and are entered in a ledger account under that name, and recorded in a

book bearing the same title. *See* Account (*Account payable*).

**Bill receivable.** In a merchant's accounts, all notes, drafts, checks, etc., payable to him, or of which he is to receive the proceeds at a future date, are called "bills receivable," and are entered in a ledger-account under that name, and also noted in a book bearing the same title. *See* Account (*Account receivable*).

**Bill rendered.** A bill of items rendered by a creditor to his debtor; an "account rendered," as distinguished from "an account stated."

**Grand bill of sale.** In old English law, the name of an instrument used for the transfer of a ship while she is at sea. An expression which is understood to refer to the instrument whereby a ship was originally transferred from the builder to the owner, or first purchaser.

**Commercial paper.** A promissory obligation for the payment of money.

**Bill broker.** Middleman who negotiates purchase or sale of commercial paper.

**Bill of credit.** A bill or promissory note issued by the government, upon its faith and credit, designed to circulate in the community as money. *See* Federal reserve notes; Treasury bill.

In mercantile law, a license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad. *See also* Letter of credit.

**Bill of exchange.** An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money. A three party instrument in which first party draws an order for the payment of a sum certain on a second party for payment to a third party at a definite future time. Same as "draft" under U.C.C. A check is a demand bill of exchange. *See also* Advance bill; Banker's acceptance; Blank bill; Clean bill; Draft; Time (*Time bill*).

**Foreign bill of exchange.** A bill of exchange drawn in one country upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. A bill of exchange drawn in one of the United States upon a person residing in another state is a foreign bill.

**Common law pleading and practice.**

**Bill in equity.** The first written pleading in a proceeding in equity. The complaint in a suit in equity.

**Bill of costs.** A certified, itemized statement of the amount of costs in an action or suit.

**Bill of evidence.** Stenographer's transcript of testimony heard at trial which may be considered on appeal as bill of exceptions. *Spencer v. Commonwealth*, 250 Ky. 370, 63 S.W.2d 288.

**Bill of exceptions.** A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruc-

tions of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed by the judge; the object being to put the controverted rulings or decisions upon the record for the information of the appellate court. Bills of exceptions have been eliminated in civil appeals in jurisdictions which have adopted Rules of Civil Procedure tracking Fed.Rules of Civil Proc. in favor of a straight appeal with no need to claim exception after making objection at trial; *e.g.* Mass.R.Civ. Proc. 46.

*Bill of particulars.* A written statement or specification of the particulars of the demand for which an action at law is brought, or of a defendant's set-off against such demand (including dates, sums, and items in detail), furnished by one of the parties to the other, either voluntarily or in compliance with a judge's order for that purpose. It is designed to aid the defendant in interposing the proper answer and in preparing for trial, by giving him detailed information regarding the cause of action stated in the complaint. See *e.g.* New York CPLR § 3041 et seq. In jurisdictions which have adopted Rules of Civil Procedure, the bill of particulars has been replaced by various discovery devices (Fed.R. Civil P. 26 et seq.) and by motion for more definite statement (Fed.R. Civil P. 12(e)). See however *Criminal law, below*, with respect to bill of particulars in criminal cases.

*Contracts.* An obligation; a deed, whereby the obligor acknowledges himself to owe to the obligee a certain sum of money or some other thing.

*Bill obligatory.* A bond absolute for the payment of money. It is called also a "single bill," and differs from a promissory note only in having a seal. See *Bill penal, below*.

*Bill of debt.* An ancient term including promissory notes and bonds for the payment of money.

*Bill penal.* A written obligation by which a debtor acknowledges himself indebted in a certain sum, and binds himself for the payment thereof, in a larger sum, called a "penalty." Bonds with conditions have superseded such bills in modern practice. They are sometimes called bills obligatory, and are properly so called; but every bill obligatory is not a bill penal.

*Bill single.* A written promise to pay to a person or persons named a stated sum at a stated time, without any condition. When under seal, it is sometimes called a "bill obligatory" (*q.v.*). It differs from a "bill penal" (*q.v.*) in that it expresses no penalty.

#### *Criminal law.*

*Bill of attainder.* Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial. United States v. Brown, 381 U.S. 437, 448-49, 85 S.Ct. 1707, 1715, 14 L.Ed. 484, 492; United States v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 1079, 90 L.Ed. 1252. An act is a "bill of attainder" when the punishment is death and a "bill of pains and penalties" when

the punishment is less severe; both kinds of punishment fall within the scope of the constitutional prohibition. U.S.Const. Art. I, Sec. 9, Cl. 3 (as to Congress); Art. I, Sec. 10 (as to state legislatures).

*Bill of indemnity.* See Bill of indemnity, *infra*.

*Bill of indictment.* A formal written document accusing a person or persons named of having committed a felony or misdemeanor, lawfully laid before a grand jury (usually by prosecutor) for their action upon it. See Indictment; Presentment.

*Bill of pains and penalties.* See Bill of attainder, *above*.

*Bill of particulars.* Form or means of discovery in which the prosecution sets forth the time, place, manner and means of the commission of the crime as alleged in complaint or indictment. It is one method available to defendant to secure default of charge against him. Fed.R.Crim.P. 7. The purpose of a "bill of particulars" is to give notice to the accused of the offenses charged in the bill of indictment so that he may prepare a defense, avoid surprise, or intelligently raise pleas of double jeopardy and the bar of the statute of limitations. Com. v. Mervin, 230 Pa.Super. 552, 326 A.2d 602, 605.

*Equity pleading and practice.* The initial pleading of plaintiff or petitioner in equity action in contrast to declaration (complaint) in law actions. Under Rules of Civil Procedure, however, bill has been replaced by complaint for both equitable and legal actions because of merger of law and equity. Fed.R. Civil P. 2.

In England, in the ancient practice of the court of king's bench, the usual and orderly method of beginning an action was by a *bill*, or original bill, or *plaint*. This was a written statement of the plaintiff's cause of action, like a declaration or complaint, and always alleged a trespass as the ground of it, in order to give the court jurisdiction. 3 Bl.Comm. 43.

*Bill for a new trial.* A bill in equity in which the specific relief asked is an injunction against the execution of a judgment rendered at law, and a new trial in the action on account of some fact which would render it inequitable to enforce the judgment, but which was not available to the party on the trial at law, or which he was prevented from presenting by fraud or accident, without concurrent fraud or negligence on his own part. Superseded by motion for new trial in jurisdictions with Rules of Civil Procedure (Rule 59).

*Bill for foreclosure.* One which is filed by a mortgagee against the mortgagor, for the purpose of having the estate sold, thereby to obtain the sum mortgaged on the premises, with interest and costs.

*Bill in aid of execution.* A bill to set aside encumbrances or conveyances therein specified as fraudulent. Pape v. Pareti, 315 Ill.App. 1, 42 N.E.2d 361, 364.

*Bill in nature of a bill of review.* A bill in equity, to obtain a re-examination and reversal of a decree, filed by one who was not a party to the original suit, nor bound by the decree.

*Bill in nature of a bill of revivor.* Where, on the abatement of a suit, there is such a transmission of the interest of the incapacitated party that the title to it, as well as the person entitled, may be the subject of litigation in a court of chancery, the suit cannot be continued by a mere bill of revivor, but an original bill upon which the title may be litigated must be filed. This is called a "bill in the nature of a bill of revivor." It is founded on privity of estate or title by the act of the party. And the nature and operation of the whole act by which the privity is created is open to controversy.

*Bill in nature of a supplemental bill.* A bill filed when new parties, with new interests, arising from events happening since the suit was commenced, are brought before the court; such differs from a supplemental bill, which is properly applicable to those cases only where the same parties or the same interests remain before the court.

*Bill in nature of interpleader.* See *Bill of interpleader*, below.

*Bill of certiorari.* A bill, the object of which is to remove a suit in equity from some inferior court to the court of chancery, or some other superior court of equity, on account of some alleged incompetency of the inferior court, or some injustice in its proceedings. As an appellate vehicle, it has been replaced by appeal in jurisdictions which have adopted Rules of Appellate Procedure in civil cases. See *Certiorari*.

*Bill of conformity.* One filed by an executor or administrator, who finds the affairs of the deceased so much involved that he cannot safely administer the estate except under the direction of a court of chancery. This bill is filed against the creditors, generally, for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the assets.

*Bill of discovery.* A proceeding by a party against an adversary for discovery of facts within adversary's knowledge, or discovery of documents, writings, or other things within his possession or power, to be used either offensively or defensively in a pending or contemplated action. In aid of action at law is equitable remedy to enable litigant to obtain, prior to trial, such information as is in exclusive possession of adverse party and is necessary to establishment of complainant's case. Superseded by discovery rules in jurisdictions that have adopted Fed.Rules of Civil Proc. (Rules 26-37).

*Bill of information.* In England, where a suit is instituted on behalf of the crown or government, or of those of whom it has the custody by virtue of its prerogative, or whose rights are under its particular protection, the matter of complaint is offered to the court by way of information by the attorney or solicitor general, instead of by petition. Where a suit immediately concerns the crown or government alone, the proceeding is purely by way of information, but, where it does not do so immediately, a relator is appointed, who is answerable for costs, etc., and, if he is interested in the matter in connection with the crown or government, the pro-

ceeding is by information and bill. Informations differ from bills in little more than name and form, and the same rules are substantially applicable to both. 3 Bl.Comm. 261.

*Bill of interpleader.* The name of a bill in equity to obtain a settlement of a question of right to money or other property adversely claimed, in which the party filing the bill has no interest, although it may be in his hands, by compelling such adverse claimants to litigate the right or title between themselves, and relieve him from liability or litigation. Superseded by Rule 22, "Interpleader," in those jurisdictions that have adopted Rules of Civil Procedure. See *Interpleader*.

*Bill of peace.* One which is filed when a person has a right which may be controverted by various persons, at different times, and by different actions.

*Bill of review.* Proceeding in equity brought for purpose of reversing or correcting prior judgment of trial court after such judgment has become final and is no longer appealable or subject to motion for new trial. *Rogers v. Searle*, Tex.Civ.App., 533 S.W.2d 433, 437. It is in the nature of a writ of error. A "bill of review," or a bill in the nature of a bill of review, are of three classes; those for error appearing on the face of the record, those for newly discovered evidence, and those for fraud impeaching the original transaction. Such bills are peculiar to courts of equity. In states where Rules of Civil Procedure are applicable, such bill is replaced by motion for relief from judgment or order (Rule 60).

*Bill of revivor.* One which is brought to continue a suit which has abated before its final consummation as, for example, by death, or marriage of a female plaintiff.

*Bill of revivor and supplement.* One which is a compound of a supplemental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill arising from subsequent events, so as to entitle the party to relief on the whole merits of his case.

*Bill quia timet.* A bill invoking the aid of equity "because he fears," that is, because the complainant apprehends an injury to his property rights or interests, from the fault or neglect of another. Such bills are entertained to guard against possible or prospective injuries, and to preserve the means by which existing rights may be protected from future or contingent violations; differing from injunctions, in that the latter correct past and present or imminent and certain injuries. *De Carli v. O'Brien*, 150 Or. 35, 41 P.2d 411, 416.

*Bill to carry a decree into execution.* One which is filed when, from the neglect of parties or some other cause, it may become impossible to carry a decree into execution without the further decree of the court.

*Bill to perpetuate testimony.* A bill in equity filed in order to procure the testimony of witnesses to be taken as to some matter not at the time before the courts, but which is likely at some future time to be in litigation. Superseded by Rule of Civil Procedure 27.

*Bill to quiet possession and title.* Also called a bill to remove a cloud on title (*q.v.*), and though sometimes classed with bills *quia timet* or for the cancellation of void instruments, they may be resorted to in other cases when the complainant's title is clear and there is a cloud to be removed.

*Bill to suspend a decree.* One brought to avoid or suspend a decree under special circumstances.

*Bill to take testimony de bene esse.* One which is brought to take the testimony of witnesses to a fact material to the prosecution of a suit at law which is actually commenced, where there is good cause to fear that the testimony may otherwise be lost before the time of trial. Superseded by Rule of Civil Procedure 27.

*Cross-bill.* One which is brought by a defendant in a suit against a plaintiff in or against other defendants in the same suit, or against both, touching the matters in question in the original bill. It is a bill brought by a defendant against a plaintiff, or other parties in a former bill depending, touching the matter in question in that bill. It is usually brought either to obtain a necessary discovery of facts in aid of the defense to the original bill, or to obtain full relief to all parties in reference to the matters of the original bill. It is to be treated as a mere auxiliary suit. A species of pleading, used for the purpose of obtaining a discovery necessary to the defense, or to obtain some relief founded on the collateral claims of the party defendant to the original suit. Such bill has been superseded by a cross-claim under Fed.R. Civil P. 13. Also, if a bill of exchange or promissory note be given in consideration of another bill or notice, it is called a "cross" or "counter" bill or note.

*Supplemental bill.* A bill to bring before the court matters arising after the filing of the original bill or not then known to complainant. The function of this bill has been replaced by supplemental pleadings permitted under Fed.R. Civil P. 15. *See Bill in nature of a supplemental bill, above.*

*Legislation.* The draft of a proposed law from the time of its introduction in a legislative body through all the various stages in both houses. Once introduced, a federal bill may be considered in any session of a Congress, but it dies at the end of a session, and it must be reintroduced as a new bill if a succeeding Congress is to consider it. The form of a proposed law before it is enacted into law by vote of the legislative body. An "Act" is the appropriate term for it after it has been acted on by, and passed by, the legislature. *See also* Marking up; Omnibus bill.

*Appropriations bill.* Bill covering raising and expenditure of public funds. Federal appropriations bills must originate in the House of Representatives. Art. I, Sec. 7, U.S. Const. *See also* Appropriation bill.

*Authorization bill.* Bill authorizing expenditure of public funds.

*Clean bill.* Bill coming out of legislative committee in amended or redrafted form, making it essentially a new bill.

*Engrossed bill.* Bill in final form, ready to be voted on by legislature.

*Enrolled bill.* Bill that has been passed and forwarded to President or Governor for signature or veto.

*Private bill.* One dealing only with a matter of private personal or local interest. All legislative bills which have for their object some particular or private interest are so termed, as distinguished from such as are for the benefit of the whole community, which are termed "public bills."

*Revenue bill.* *See Appropriations bill, above.*

*Maritime law.*

*Bill of adventure.* A written certificate by a merchant or the master or owner of a ship, to the effect that the property and risk in goods shipped on the vessel in his own name belong to another person, to whom he is accountable for the proceeds alone.

*Bill of entry.* Detailed statement by the importer of the nature and value of goods entered at the customhouse. Form filled out by importer for use of customs officer; describes goods, their value, etc. Permits goods to be unloaded from ship.

*Bill of health.* An official certificate, given by the authorities of a port from which a vessel clears, to the master of the ship, showing the state of the port, as respects the public health, at the time of sailing, and exhibited to the authorities of the port which the vessel next makes, in token that she does not bring disease. If the bill alleges that no contagious or infectious disease existed, it is called a "clean" bill; if it admits that one was suspected or anticipated, or that one actually prevailed, it is called a "touched" or a "foul" bill.

*Bill of sight.* Customhouse document, allowing a cosignee to see the goods before paying duties.

*Negotiable instruments.* *See Commercial paper, above.*

*Billa* /bilə/. L. Lat. A bill; an original bill.

*Billa cassetur, or quod billa cassetur* /('kwòd) bilə kəsiytər/. (That the bill be quashed.) The form of the judgment rendered for a defendant on a plea in abatement, where the proceeding is *by bill*; that is, where the suit is commenced by *capias*, and not by original writ.

*Billa excambii* /bilə ekskəmbiyay/. A bill of exchange.

*Billa exonerationis* /bilə egzònərəyšiyównəs/. A bill of lading.

*Billa vera* /bilə vírə/. (A true bill.) The indorsement anciently made on a bill of indictment by a grand jury, when they found it sufficiently sustained by evidence. *See* Indictment.

*Billet.* A soldier's quarters in a civilian's house; or the ticket which authorizes him to occupy them.

*Billeta* /bilətə/. In old English law, a bill or petition exhibited in parliament.

**Billing cycle.** Period of time in which creditors regularly submit bills to customers or debtors; *e.g.* 30 days.

**Bill of address.** *See* Address.

**Bill of attainder.** *See* Attainder; Bill (*Criminal law*).

**Bill of indemnity.** A law under which a public official is protected from liability in performance of his official acts including his failure to take his official oath. An initial pleading by which the plaintiff seeks to require another (*e.g.*, insurance company) to discharge his liability to a third person.

In English law, an act of parliament, passed every session until 1869, but discontinued in and after that year, as having been rendered unnecessary by the passing of the promissory oaths act, 1868, for the relief of those who had unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices.

**Bill of lading.** Document evidencing receipt of goods for shipment issued by person engaged in business of transporting or forwarding goods and it includes airbill. U.C.C. § 1-201(6). An instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. It is receipt for goods, contract for their carriage, and is documentary evidence of title to goods. *Schwab v. Erie R. Co.*, 161 Misc. 743, 293 N.Y.S. 842, 846.

**Bills in a set.** A series of bills of lading each bearing a number and providing that a certain bill is valid only if goods have not been delivered against another bill. U.C.C. § 7-304.

**Clean bill.** One which contains nothing in the margin qualifying the words of the bill of lading itself. *Bank of America Nat. Trust & Sav. Ass'n v. Liberty Nat. Bank & Trust Co. of Oklahoma City, D.C.Ok.*, 116 F.Supp. 233, 238, 239.

**Common law.** In common law, the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. A written memorandum, given by the person in command of a merchant vessel, acknowledging the receipt on board the ship of certain specified goods, in good order or "apparent good order," which he undertakes, in consideration of the payment of freight, to deliver in like good order (dangers of the sea excepted) at a designated place to the consignee therein named or to his assigns.

**Foul bill.** Bill of lading containing notation that goods received by carrier were defective.

**Negotiable bill.** One which by its terms calls for goods to be delivered to bearer or to order of named persons, or where recognized in overseas trade, if it runs to named persons or assigns. U.C.C. § 7-104(1)(a)(b).

**Non-negotiable bill.** Document of title in which goods are consigned to named persons. U.C.C. § 7-104(2).

**Ocean bill.** A negotiable bill of lading used in shipment by water.

**On board bill.** Bill of lading which shows that loading has been completed.

**Order bill.** One in which it is stated that goods are consigned to order of any person named therein. *See Negotiable bill, above*; also, Order bill of lading.

**Overseas bill.** Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment. U.C.C. § 2-323(1).

**Straight bill.** A nonnegotiable bill of lading that specifies a consignee to whom the goods are to be delivered—the carrier is contractually obligated to deliver the goods to that person only.

**Through bill.** One by which a railroad contracts to transport over its own line for a certain distance carloads of merchandise or stock, there to deliver the same to its connecting lines to be transported to the place of destination at a fixed rate per carload for the whole distance. Embodies undertaking to be performed in part by persons acting as agents for issuer. U.C.C. § 7-302.

**Bill of lading acts.** The principal acts governing bills of lading are Article 7 of the Uniform Commercial Code, the Federal Bills of Lading Act (49 U.S.C.A. §§ 81-124), and the Carmack Amendment to the Interstate Commerce Act (49 U.S.C.A. § 20(11)). *See also* Harter Act.

**Bill of mortality.** A written statement or account of the number of deaths which have occurred in a certain district within a given time.

**Bill of pains and penalties.** Statutory provision for punishment without judicial determination of guilt similar to bill of attainder except that punishment is less severe. Prohibited by U.S.Const., Art. I, § 9, cl. 3 (Congress), § 10 (States).

**Bill of rights.** First ten Amendments to U.S. Constitution providing for individual rights, freedoms, and protections (*see* Appendix, *infra*). *See also* Bill; Patient's Bill of Rights.

**Bill quia timet** /bil kwáyə tímət/. *See* Quia timet.

**Bi-metallic.** Pertaining to, or consisting of, two metals used as money at a fixed relative value.

**Bi-metallism.** The legalized use of two metals in the currency of a country at a fixed relative value *e.g.* copper and silver.

**Bind.** To obligate; to bring or place under definite duties or legal obligations, particularly by a bond or covenant. To affect one in a constraining or compulsory manner with a contract or a judgment. So long as a contract, an adjudication, or a legal relation remains in force and virtue, and continues to impose duties or obligations, it is said to be "binding." A man is *bound*

by his contract or promise, by a judgment or decree against him, by his bond or covenant, by an estoppel, etc.

**Binder.** A written memorandum of the important terms of contract of insurance which gives temporary protection to insured pending investigation of risk by insurance company or until a formal policy is issued. *Turner v. Worth Ins. Co.*, 106 Ariz. 132, 472 P.2d 1, 2. A receipt for earnest money or a deposit paid to secure the right to purchase real estate at terms that have been agreed upon by both buyer and seller. *See also* Binding receipt; Cover note.

**Binding agreement.** A contract which is enforceable such as an offer to buy or sell when person to whom it is made accepts it and communicates his acceptance. *McAden v. Craig*, 222 N.C. 497, 24 S.E.2d 1, 3. *See* Contract.

**Binding authority.** Sources of law that must be taken into account by a judge in deciding a case; for example, statutes or decisions by a higher court of the same state on point. *See* Precedent.

**Binding jury instruction.** One in which jury is told that if they find certain conditions to be true, they should find for plaintiff or defendant, as case might be. *Scott-Burr Stores Corporation v. Foster*, 197 Ark. 232, 122 S.W.2d 165, 169. *See* Jury instructions (*Mandatory instruction*).

**Binding over.** The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc. Also describes act of lower court in transferring case to higher court or to grand jury after a finding of probable cause to believe that defendant committed crime.

**Binding receipt or slip.** Term refers to a limited acceptance of an application for insurance given by an authorized agent pending the ascertainment of the company's willingness to assume the burden of the proposed risk, the effect of which is to protect the applicant until the company acts upon the application, and, if it declines to accept the burden, the binding effect of the slip ceases eo instante. *See* Binder.

**Bind out.** To place one under a legal obligation to serve another; as to *bind out* an apprentice.

**Bind over.** *See* Binding over.

**Bipartite** /bàypàrtay/. Consisting of, or divisible into, two parts. A term in conveyancing descriptive of an instrument in two parts, and executed by both parties.

**Birretum** /bàrétam/ **birretus** /bàrétàs/. A cap or coif used formerly in England by judges and serjeants at law.

**Birth.** The act of being born or wholly brought into separate existence.

**Birth certificate.** A formal document which certifies as to the date and place of one's birth and a recitation of his or her parentage, as issued by an official in charge of

such records. Furnishing of such is often required to prove one's age. *See* Birth record.

**Birth control.** Prevention of conception. Term which embraces all forms of contraception.

**Birth record.** Official statistical data concerning dates and places of persons' birth, as well as parentage, kept by local government officials. *See* Birth certificate.

**Bis** /bis/. Lat. Twice.

**Bisaile** (also **besaile**, **besayel**, **besaiel**, **besayle**) /biséyl/. The father of one's grandfather or grandmother.

**Bi-scot.** In old English law, a fine imposed for not repairing banks, ditches, and causeways.

**Bis dat qui cito dat** /bis dàt kwáy sáyto w dàt/. He pays twice who pays promptly.

**Bishop.** An ecclesiastical dignitary, being the chief of the clergy within his diocese, subject to the archbishop of the province in which his diocese is situated.

**Bishopric** /bìshəprìk/. In ecclesiastical law, the diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. 1 Bl.Comm. 377-382.

**Bishop's court.** In English law, an ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and, if the diocese be large, he has his commissaries in remote parts, who hold consistory courts, for matters limited to them by their commission.

**Bis idem exigi bona fides non patitur; et in satisfactionibus non permittitur amplius fieri quam semel factum est** /bis áydəm égzəjay bównə fáydiz nòn páetətər; èt in sàtəs fákshiyównəbəs nòn pəritətər əmpliyəs fáyrày kwəm séməl fáktəm èst/. Good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once.

**Bissextile** /bàysékstəyl/. The day which is added every fourth year (leap-year) to the month of February, in order to make the year agree with the course of the sun.

**Biting rule.** When first taker of conveyed property under writing submitted for construction is initially conveyed a fee title, it is then incompetent and invalid to modify, qualify, or reduce thereafter the apparent fee title of the first taker so as to reduce it to a life estate, and any gift over after death of first taker is void.

**Bivens action.** Name for type of action (derived from *Bivens v. Six Unknown Named Defendants*, 403 U.S. 388, 91 S.Ct. 1999) for damages to vindicate constitutional right when federal government official has violated such right. Action is available if no equally effective remedy is available, no explicit congressional declaration precludes recovery, and no "special factors counsel hesitation." *Rauschenberg v. Williamson*, C.A.Ga., 785 F.2d 985, 987.

**Black acre and white acre.** Fictitious names used by the old writers to distinguish one parcel of land from



another, to avoid ambiguity, as well as the inconvenience of a fuller description.

**Black Act.** The English statute 9 Geo. I, c. 22, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham, in Essex, and destroyed the deer there, and committed other offenses. Repealed by 7 & 8 Geo. IV, c. 27.

**Black Book of the Admiralty.** An English book of the highest authority in admiralty matters, generally supposed to have been compiled during the reign of Edward III. with additions of a later date. It contains the laws of Oleron, a view of crimes and offenses cognizable in the admiralty, and many other matters.

**Black Book of the Exchequer.** The name of an ancient book kept in the English exchequer, containing a collection of treaties, conventions, charters, etc.

**Black cap.** In England, the head-dress worn by the judge in pronouncing the sentence of death. It is part of the judicial full dress, and is worn by the judges on occasions of especial state.

**Black code.** A name given collectively to the body of laws, statutes, and rules in force in various southern states prior to 1865, which regulated the institution of slavery, and particularly those forbidding their reception at public inns and on public conveyances. Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835.

**Blackjack.** A short bludgeon consisting of a heavy head, as of metal, on an elastic shaft or with a flexible handle; a bludgeon-like weapon consisting of a lead slug attached to a leather thong; a small leather-covered club or billy weighted at the head and having an elastic shaft.

As a card game, another name for *vingt-et-un* (twenty-one); also, a variety of hearts in which the jack of spades counts as ten hearts.

**Blackleg.** A person who makes his living by frequenting race-courses and places where games of chance are played, getting the best odds, and giving the least he can, but not necessarily cheating.

**Black letter law.** An informal term indicating the basic principles of law generally accepted by the courts and/or embodied in the statutes of a particular jurisdiction.

**Blacklist.** A list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades-union "blacklists" workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association. Such practices are prohibited by statute in most states.

**Black Lung Benefits Act.** Federal statute benefitting coal miners who are stricken with pneumoconiosis, a chronic dust disease of the lung. 30 U.S.C.A. § 902. Benefits under the Act are administered by the Department of Labor.

**Blackmail.** Unlawful demand of money or property under threat to do bodily harm, to injure property, to accuse of crime, or to expose disgraceful defects. This crime is commonly included under extortion or criminal coercion statutes. See Model Penal Code § 212.5. See also Extortion; Shakedown.

In one of its original meanings, this term denoted a tribute paid by English dwellers along the Scottish border to influential chieftains of Scotland, as a condition of securing immunity from raids of marauders and border thieves. Also, rents payable in cattle, grain, work, and the like. Such rents were called "blackmail" (*reditus nigri*), in distinction from white rents (*blanche firmes*), which were rents paid in silver. See Black rents.

**Black maria.** A closed vehicle or van in which prisoners are carried to and from the jail, or between the court and the jail.

**Black market.** Illegal trading; buying and selling goods which are subject to government rationing or control, including goods which are contraband. See also Gray market goods.

**Black Muslim.** An organization of American Negroes, founded in Detroit in 1930 by an American Negro calling himself Mohammad Elijah. To the traditional Koran the founders added the doctrine of Black Supremacy and proclaimed the desirability of maintaining (or regaining) the purity of the black race.

**Black rents.** In old English law, rents reserved in work, grain, provisions, or baser money than silver, in contradistinction to those which were reserved in *white* money or silver, which were termed "white rents" (*reditus albi*), or blanch farms. See Blackmail.

**Black-Rod, Gentleman Usher of.** In England, the title of a chief officer of the king, deriving his name from the *Black Rod* of office, on the top of which reposes a golden lion, which he carries. During the session of Parliament he attends on the peers, summons the Commons to the House of Lords; and to his custody all peers impeached for any crime or contempt are first committed.

**Black ward.** A subvassal, who held ward of the king's vassal.

**Blada** /bléydə/. In old English law, growing crops of grain of any kind; all manner of annual grain; harvested grain.

**Bladarius** /blədériyəs/. In old English law, a cornmonger; meal-man or corn-chandler; a bladier, or engrosser of corn or grain.

**Blanche firme.** White rent; a rent reserved, payable in silver.

**Blanc sign.** In Louisiana, a paper signed at the bottom by him who intends to bind himself, give acquittance, or compromise, at the discretion of the person whom he intrusts with such *blanc sign*, giving him power to fill it with what he may think proper, according to agreement.

**Blank.** A space left unfilled in a written document, in which one or more words or marks are to be inserted to complete the sense. Also a skeleton or printed form for

any legal document, in which the necessary and invariable words are printed in their proper order, with blank spaces left for the insertion of such names, dates, figures, additional clauses, etc., as may be necessary to adapt the instrument to the particular case and to the design of the party using it.

**Blank acceptance.** An acceptance of a bill of exchange written on the paper before the bill is made, and delivered by the acceptor.

**Blank bar.** Also called the "common bar." The name of a plea in bar which in an action of trespass was put in to oblige the plaintiff to assign the certain place where the trespass was committed. It was most in practice in the common bench.

**Blank bill.** Bill of exchange with payee's name left blank.

**Blanket bond.** Generic term which may describe a bond covering a number of projects on which performance bonds are required or a bond to dissolve more than one attachment. Any bond used for multiple purposes.

**Blanket insurance.** See Insurance.

**Blanket mortgage.** Covers two or more assets or properties which are pledged to support the given debt.

A bond issue that is backed by all of the firm's real property.

**Blanket policy.** See Insurance.

**Blanket rate.** Insurance rate applied when there is more than one property or subject of insurance.

**Blanket search warrant.** A single warrant authorizing the search of more than one area or the seizure of everything found at a given location without specific authorization in the warrant, the latter being in violation of the requirements of the Fourth Amendment to U.S. Const. *Marcus v. Search Warrants etc.*, 367 U.S. 717, 81 S.Ct. 1708, 6 L.Ed.2d 1127.

**Blank indorsement.** The indorsement of a bill of exchange or promissory note, by merely writing the name of the indorser, without mentioning any person to whom the bill or note is to be paid; called "blank," because a blank or space is left *over* it for the insertion of the name of the indorsee, or of any subsequent holder. Otherwise called an indorsement "in blank." Such indorsement causes an instrument, otherwise payable to order, to become payable to bearer and negotiable by delivery alone. U.C.C. § 3-204(2). With respect to a document of title, the signature of a person to whom the document runs in which the signer specifies no particular person to whom the goods should be delivered. See U.C.C. § 7-501(1).

**Blanks.** A kind of white money (value 8d.), coined by Henry V in those parts of France which were then subject to England; forbidden to be current in that realm by 2 Hen. VI, c. 9.

**Blank shares.** "Series shares" which may vary in the relative rights and preferences as between different series but which may be fixed in articles of incorporation.

**Blasphemy** /blæsfəmi/. Any oral or written reproach maliciously cast upon God, His name, attributes, or religion. In general, blasphemy may be described as consisting in speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God. It is purposely using words concerning God calculated and designed to impair and destroy the reverence, respect, and confidence due to Him as the intelligent creator, governor, and judge of the world. It embraces the idea of detraction, when used towards the Supreme Being, as "calumny" usually carries the same idea when applied to an individual. It is a willful and malicious attempt to lessen men's reverence of God by denying His existence, or His attributes as an intelligent creator, governor, and judge of men, and to prevent their having confidence in Him as such. While blasphemy statutes still exist in certain states, such seldom, if ever, are enforced.

In English law, blasphemy is the offense of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the church by law established, or to promote immorality.

**Blended fund.** In England, where a testator directs his real and personal estate to be sold, and disposes of the proceeds as forming one aggregate, this is called a "blended fund."

**Blended price.** As applied to milk, a price paid to producers based upon a pool average weighted by the volume of milk disposed of, according to different types of utilization. *Queensboro Farm Products v. State*, 175 Misc. 574, 24 N.Y.S.2d 413, 417.

**Blind alley.** Literally, a way from which exit is possible only by retracing the path of entry; a dead end; fig., a no-win position, a dilemma.

**Blind corner.** Used to describe the configuration of buildings or other structures which prevent a driver approaching an intersection from being able to observe traffic coming in the direction of the intersecting way.

**Blindcraft.** A natural descriptive term identifying in a broad sense work of the blind, conveying the idea of the blind performing deftly at any of the various skills or trades to which their talents are applied or leaving the suggestion of dexterity and skill of the blind as well as their handiwork itself. *San Francisco Ass'n for Blind v. Industrial Aid for Blind*, D.C.Mo., 58 F.Supp. 995, 1001.

**Blindness.** Condition of one who is without sight either wholly or partially. Degrees are recognized for purpose of workers' compensation and social security benefits.

**Blind selling.** Selling goods without giving buyer opportunity to examine such.

**Blind tiger.** A place where intoxicants are sold on the sly, and contrary to the law. A "tippling-house."

**Blind trust.** See Trust.

**Block.** A square or portion of a city or town inclosed by streets, whether partially or wholly occupied by build-

ings or containing only vacant lots. Also used synonymously with "square." The platted portion of a city surrounded by streets. The term need not, however, be limited to blocks platted as such, but may mean an area bounded on all sides by streets or avenues. *St. Louis-San Francisco R. Co. v. City of Tulsa, Okl., C.C.A.Okla., 15 F.2d 960, 963.* It must be surrounded on at least three sides by streets, which must be marked on the ground, and not simply indicated as such on a plat. *See also Lot.*

Large amount of stock or bonds sold as a unit in a single trade.

**Blockade.** Action taken against enemy nation so as to isolate, obstruct and prevent communications, commerce, supplies, and persons from entering into or leaving such nation. Such blockades may be by sea, or land, or both.

**Blockage.** Recognition in the field of taxation of fact that in some instances a large block of stock cannot be marketed and turned into cash as readily as a few shares. *Citizens Fidelity Bank & Trust Co. v. Reeves, Ky., 259 S.W.2d 432, 433.* The discount at which a large block of stock sells below the price of a smaller block is blockage. It is generally a phenomenon of shares which do not represent the controlling interest in a corporation. *See Blockage rule.*

**Blockage rule.** Process of determining value of large blocks of corporate stock for gift and estate tax purposes, based on the postulate that a large block of stock cannot be marketed as readily and as advantageously in price as can a few shares. *Montclair Trust Co. v. Zink, Prerog., 141 N.J.Eq. 401, 57 A.2d 372, 376, 380.* Application of this rule generally justifies a discount in the fair market value since the disposition of a large amount of stock at any one time may well depress the value of such shares in the market place.

**Block-booking.** The practice of licensing or offering for license one motion picture feature or group of features on condition that exhibitor will also license another feature or group of features released by distributor during a given period. *U. S. v. Paramount Pictures, N. Y., 334 U.S. 131, 68 S.Ct. 915, 928, 92 L.Ed. 1260.*

**Block book system.** An abstract of property assessed for taxes and also of property unrendered and of which owners were unknown, together with maps and plats. *Southern Surety Co. v. Lafferty, Tex.Civ.App., 43 S.W.2d 460, 463.*

**Blockburger test.** This doctrine (derived from *Blockburger v. U.S., 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306*) provides that where same act constitutes a violation of two distinct statutory provisions, act will nevertheless be treated as one offense unless each provision requires proof of fact that the other does not. *U.S. v. Allen, D.C.Cal., 539 F.Supp. 296, 304.* It is a rule of statutory construction giving rise to a presumption against multiple punishment where its application results in a determination that the conduct is one offense. *U.S. v. Woodward, C.A.Cal., 726 F.2d 1320, 1325.*

**Blockbusting.** As used in connection with statute prohibiting such practice, is the practice of inducing owners of property to sell because of actual or rumored advent into the neighborhood of a member of a racial, religious or ethnic group. *State v. Wagner, 15 Md.App. 413, 291 A.2d 161, 164.*

**Blocked account.** Governmental restrictions on a bank account; usually with reference to transfers to foreign countries.

**Blocked currency.** Restrictions on use of currency and bank deposits (normally with respect to transfer to other countries) by the government where the currency or deposits are located.

**Blocked income.** Income earned by foreign taxpayer which is not subject to tax in U.S. because taxpayer is precluded in foreign country from making conversion of foreign earned income to dollars.

**Block of surveys.** In Pennsylvania land law, any considerable body of contiguous tracts surveyed in the name of the same warrantee, without regard to the manner in which they were originally located; a body of contiguous tracts located by exterior lines, but not separated from each other by interior lines.

**Block policy.** Insurance policy covering all the property of the insured against most perils.

**Block to block rule.** The "block to block rule" for assessing the benefits for the opening of a new street is the assessment against the lots in each block of the cost of acquiring the lands in that block. *In re St. Raymona Ave. in City of New York, 175 App.Div. 518, 162 N.Y.S. 185, 188.*

**Blood alcohol count.** Refers to the standard measure for legal intoxication under state DWI laws. In most states, a person can be charged with "driving while intoxicated" with a blood alcohol level of .10 percent or higher. *See Breathalyzer test; Driving while intoxicated (DWI).*

**Blood feud.** Avenging the killing of kin on the person who killed him, or on his family.

**Blood grouping test.** Test used in paternity and illegitimacy cases to determine whether one *could be* father of child. The test does not affirmatively establish paternity but it eliminates one who cannot be adjudicated father. *See also Blood test evidence; DNA identification.*

**Bloodhounds.** Dogs remarkable for their sense of smell and ability to follow a scent or track a human being.

**Blood money.** A wergild, or pecuniary mulct paid by a slayer to the relatives of his victim. Also used, in a popular sense, as descriptive of money paid by way of reward for the apprehension and conviction of a person charged with a capital crime.

**Blood relations.** Kindred; consanguinity; family relationship; relation by descent from a common blood ancestor. A person may be said to be "of the blood" of another who has any, however small a portion, of the blood derived from a common ancestor, thus including half blood as well as whole blood. All persons are of the

blood of an ancestor who may, in the absence of other and nearer heirs, take by descent from that ancestor. *See also* Relation.

**Half-blood.** A term denoting the degree of relationship which exists between those who have the same father or the same mother, but not both parents in common.

**Mixed blood.** A person is "of mixed blood" who is descended from ancestors of different races or nationalities; but particularly, in the United States, the term denotes a person one of whose parents (or more remote ancestors) was a negro. *U. S. v. First Nat. Bank of Detroit, Minn.*, 234 U.S. 245, 34 S.Ct. 846, 848, 58 L.Ed. 1298.

**Whole blood.** Kinship by descent from the same father and mother; as distinguished from *half* blood, which is the relationship of those who have one parent in common, but not both.

**Blood test evidence.** Blood may be extracted against will of person without offense to Fifth Amendment, U.S. Constitution when arrested for driving while intoxicated. *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908. *See also* Blood alcohol count; Blood grouping test; DNA identification.

**Bloodwit.** An amercement for bloodshed. The privilege of taking such amercements. A privilege or exemption from paying a fine or amercement assessed for bloodshed.

**Bloody hand.** In forest law, evidence of bloody hands or other parts of the body was one of the four kinds of circumstantial evidence of his having illegally killed deer, although he was not found in the act of chasing or hunting.

**Blotter.** *See* Bench blotter.

**BLS.** Bachelor of Library Science; Bureau of Labor Statistics.

**Bludgeon.** A heavy club or stick used as a weapon, commonly weighted in one end by metal. As a verb, used to inflict injury by use of it. *State v. Witcher*, 58 N.J.Super. 464, 156 A.2d 709, 713.

**Blue chip investment.** Highest quality stock or bond of company with long record of profit growth, minimum risk and satisfactory income or yield; commonly required by trust managers.

**Blue laws.** Statutes regulating entertainment activities, work, and commerce on Sundays. Such laws have their origin in colonial New England.

**Blue list.** Daily listing (on blue paper) of municipal bond offerings.

**Blue notes.** Notes accepted by a life insurance company for the amount of premiums on the policy, which provide for the continuance of the policy in force until the due date of the notes.

**Blue Pencil Doctrine.** This doctrine holds that if courts can render an unreasonable restraint reasonable by scratching out the offensive portions of the covenant, they should do so and then enforce the remainder.

Traditionally, the doctrine is applicable only if the covenant in question is applicable, so that the unreasonable portions may be separated. *E.P.I. of Cleveland, Inc. v. Basler*, 12 Ohio App.2d 16, 230 N.E.2d 552, 556.

**Blue ribbon jury.** Jury consisting of highly qualified persons.

**Blue sky laws.** A popular name for state statutes providing for the regulation and supervision of securities offerings and sales, for the protection of citizen-investors from investing in fraudulent companies. Most blue sky laws require the registration of new issues of securities with a state agency that reviews selling documents for accuracy and completeness. Blue sky laws also often regulate securities brokers and salesmen.

A statute called a "Blue Sky Law" because it pertains to speculative schemes which have no more basis than so many feet of blue sky. *State v. Cushing*, 137 Me. 112, 15 A.2d 740.

**Bluff.** A high, steep bank, as by a river, the sea, a ravine, or a plain, or a bank or headland with a broad, steep face. To deceive by pretense or appearance of strength.

**Blumba.** A certifying metal tag attached to kosher meat. *People on Complaint of Waller v. Jacob Branfman & Son*, 147 Misc. 290, 263 N.Y.S. 629, 632.

**Blunder.** As applied in cases of ordinary negligence is the want of or absence of ordinary care, a failure to do what should have been done or the doing of that which should not have been done, resulting in the happening of an event or injury which could have and should have been foreseen and avoided by use of such care as a reasonably prudent person would have exercised under the same or similar circumstances. *Loyd v. Pierce*, Tex.Civ.App., 89 S.W.2d 1035, 1038.

**Blunderbuss.** A firearm intended to shoot objects at close quarters, without exact aim.

**Board.** An official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions. *Commissioners of State Ins. Fund v. Dinowitz*, 179 Misc. 278, 39 N.Y.S.2d 34, 38.

A committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of a magisterial, representative, or fiduciary character. Thus, "board of aldermen," "board of health," "board of directors," "board of works."

Group of persons with managerial, supervisory, or investigatory functions and power. *See* types of such boards, *infra*.

Lodging, food, and entertainment, furnished to a guest at an inn or boarding house. As a verb, means to receive food for a reasonable compensation, either with or without lodging. *Jackson v. Engert*, 453 S.W.2d 615, 618.

When used with reference to prisoners, as a basis for the sheriff's fee, board may be equivalent to "necessary food."

**Boarder.** One that is provided with regular meals, with or without lodging, usually under an express contract. *Jackson v. Engert*, 453 S.W.2d 615, 618.

**Board lot.** Unit of trade on a stock exchange.

**Board of adjustment.** Public and quasi judicial agency charged with duty to hear and determine zoning appeals. Also called "Board of Zoning Appeals" in certain cities.

**Board of aldermen.** The governing body of a municipal corporation. *See* Aldermen.

**Board of appeals.** A non-judicial, administrative tribunal which reviews the decision made by the hearing officer or by the head of the agency. *See also* Board of review.

**Board of audit.** A tribunal provided by statute in some states, to adjust and settle the accounts of municipal corporations.

**Board of bar overseers.** State board which governs licensing and discipline of attorneys.

**Board of directors.** The governing body of a corporation elected by the stockholders; usually made-up of officers of the corporation and outside (non-company) directors. The board is empowered to elect and appoint officers and agents to act on behalf of the corporation, declare dividends, and act on other major matters affecting the corporation. *See e.g.* Rev.Model Bus.Corp.Act, § 8.01 et seq. *See also* Directors; Outside director.

*Staggered board.* A corporation's board of directors in which a fraction of the board is elected each year. In staggered boards, members serve two or three years, depending on whether the board is classified into two or three groups.

**Board of education.** A state or local agency or board organized for government and management of schools in state or municipality. The agency to which state delegates power and duty of controlling schools in school district. *See also* School (*School board or committee*).

**Board of equalization.** *See* Equalization.

**Board of examiners.** A state agency or board appointed to examine the qualifications of applicants for license to practice a trade or profession.

**Board of fire underwriters.** Unincorporated voluntary associations composed exclusively of persons engaged in business of fire insurance, for consolidation and co-operation in matters affecting the business.

**Board of Governors of Federal Reserve System.** Seven member board, with fourteen year terms, which governs the twelve Federal Reserve Banks and branches. The Board of Governors determines general monetary, credit, and operating policies for the System as a whole and formulates the rules and regulations necessary to carry out the purposes of the Federal Reserve Act. The Board's principal duties consist of exerting an

influence over credit conditions and supervising the Federal Reserve Banks and member banks.

**Board of health.** A municipal or state board or commission with certain powers and duties relative to preservation and improvement of the public health.

**Board of Immigration Appeals.** Quasi-judicial agency within the Department of Justice (accountable to Attorney General) which hears appeals from certain decisions of the Immigration and Naturalization Service and reviews actions of the Commissioner of Immigration and Naturalization in deporting and excluding aliens. Most appeals to the Board are from immigration judges' decisions on deportation and exclusion.

**Board of pardons.** State board, of which the governor is usually a member, authorized to review and grant pardons and clemency to convicted prisoners.

**Board of Parole.** *See* Parole board.

**Board of Patent Appeals and Interferences.** Formerly known as the Board of Patent Appeals; consists of Commissioner of Patents, the Deputy Commissioner, the Assistant Commissioners, and the examiners-in-chief whose responsibility is to review adverse decisions of examiners upon applications for patents and to determine priority and patentability of invention in interferences. 35 U.S.C.A. § 7.

**Board of regents.** A body of officials appointed to direct and supervise an educational institution or, in some states, the educational system of a State.

**Board of registration.** State boards governing licensing and discipline of professions and quasi-professions in state.

**Board of review.** Board authorized to review administrative agency decisions and rulings. Body authorized to review alleged improper valuation and assessment of property. In some cities, a board charged with responsibility to review alleged police brutality or excessive force. *See also* Board of appeals.

**Board of supervisors.** An organized committee, or body of officials, constituting part of the county government, with special charge of the county revenues.

**Board of Tax Appeals.** The Board of Tax Appeals was a trial court that considered Federal tax matters. This Court is now designated as the U.S. Tax Court.

**Board of trade.** An organization of merchants, manufacturers, etc., for furthering its commercial interests, advancing its prosperity, etc. Also an organization for the advancement and protection of a particular trade or line of commerce.

An exchange or association engaged in the business of buying or selling commodities; *e.g.* Chicago Board of Trade.

**Boatable.** A term applied in some states to minor rivers and streams capable of being navigated in small boats, skiffs, or launches, though not by steam or sailing vessels. *See also* Navigable.

**Boatswain** /bówsən/. A seaman who superintends the work of the crew. The foreman of sailors.

**Bobbies.** English name for policemen.

**Bobtail driver.** A person collecting and delivering laundry without being subject to complete control of employer. *Ring v. City Dry Cleaners*, 152 Fla. 622, 12 So.2d 593, 594.

**Bobtails.** Persons who conduct stores or establishments of their own where patrons may bring articles to be laundered. *Schwartz v. Laundry & Linen Supply Drivers' Union, Local 187*, 339 Pa. 353, 14 A.2d 438, 439.

**Boc** /búk/. In Saxon law, a book or writing; a deed or charter. *Boc land*, deed or charter land. *Land boc*, a writing for conveying land; a deed or charter; a land-book. The *land bocs*, or evidences of title, corresponding to modern deeds, were destroyed by William the Conqueror.

**Boceras.** Sax. A scribe, notary, or chancellor among the Saxons.

**Boc horde** /búk-hörd/. A place where books, writings, or evidences were kept, generally in monasteries.

**Boc land.** In Saxon law, allodial lands held by deed or other written evidence of title.

**Bodily.** Pertaining to or concerning the body; of or belonging to the body or the physical constitution; not mental but corporeal. *Provident Life & Accident Ins. Co. v. Campbell*, 18 Tenn.App. 452, 79 S.W.2d 296.

*Bodily condition.* Status of human body at a given point in time as contrasted with state of mind.

*Bodily exhibition.* Public or semi public showing of private parts of body's anatomy; used in statutes covering obscenity and crimes against public decency; *e.g.* indecent exposure.

*Bodily harm.* See *Bodily injury*, below.

*Bodily heirs.* Heirs begotten or borne by the person referred to; lineal descendants. Progeny or issue, including children, grandchildren, and other lineal descendants. See *Heir of the body*.

*Bodily infirmity.* A settled disease or ailment that would probably result to some degree in general impairment of physical health and vigor. *Travelers' Ins. Co. of Hartford, Conn., v. Byers*, 123 Cal.App. 473, 11 P.2d 444, 446. An ailment or disorder of an established and settled character. Something that amounts to inroad on physical health or impairment of bodily or mental powers. See also *Disability*.

*Bodily injury.* Generally refers only to injury to the body, or to sickness or disease contracted by the injured as a result of injury; including illness caused by nervous shock or injury resulting from rape or attempted rape. See also *Disability*; *Injury*; *Serious bodily injury*.

**Body.** A person. Used of a natural body, or of an artificial one created by law, as a corporation. Body in the broad sense is the main central or principal part of

anything as distinguished from subordinate parts. *Walberg v. Probst, Cust. & Pat.App.*, 474 F.2d 683, 687.

The main part of the human body; the trunk. The term however has also been held to embrace all members of the person, including the head and limbs.

Also the main part of an instrument. In deeds it is spoken of as distinguished from the recitals and other introductory parts and signatures; in affidavits, from the title and jurat.

A collection of laws; that is, the embodiment of the laws in one connected statement or collection, called a "body of laws" (*q.v.*).

See also *Corpus*.

**Body corporate.** A public or private corporation.

**Body execution.** Seizure of person by order of court to *e.g.* enforce judgment for payment of money. See *Capias* (*Capias ad satisfaciendum*).

**Body heirs.** See *Bodily* (*Bodily heirs*); *Heir of the body*.

**Body of a county.** A county at large, as distinguished from any particular place within it. A county considered as a territorial whole. *State v. Arthur*, 39 Iowa 631; *People v. Dunn*, 31 App.Div. 139, 52 N.Y.S. 968.

**Body of an instrument.** The main and operative part; the substantive provisions, as distinguished from the recitals, title, jurat, etc.

**Body of laws.** An organized and systematic collection or codification of laws; *e.g.* United States Code; California Code.

**Body of the offense (or crime).** When applied to any particular offense, means that the particular crime charged has actually been committed by some one. *Barrett v. State*, 57 Okl.Cr. 259, 47 P.2d 613, 617. The *corpus delicti* (*q.v.*).

**Body politic or corporate.** A social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. *Uricich v. Kolesar*, 54 Ohio App. 309, 7 N.E.2d 413, 414. Also a term applied to a municipal corporation, school district, county or city. State or nation or public associations. *Utah State Building Commission, for Use and Benefit of Mountain States Supply Co., v. Great American Indemnity Co.*, 105 Utah 11, 140 P.2d 763, 767.

**Bogus** /bówgas/. Counterfeit; sham; imitation; as *e.g.* bogus money.

**Bogus check.** A check given by person upon bank in which he has no funds and which he has no reason to suppose will be honored. *State v. Culver*, 103 Ariz. 505, 446 P.2d 234, 236. Such act is a misdemeanor in most states. See also *Bad check*; *Check kiting*.

**Boilerplate.** Language which is used commonly in documents having a definite meaning in the same context without variation; used to describe standard language in a legal document that is identical in instruments of a like nature. In *re Pfaff's Estate*, 41 Wis.2d 159, 163 N.W.2d 140. See also *Adhesion contract*.

**Boiler-room transaction.** High-pressure selling of stocks, precious metals, commodities, and other investments of doubtful value, usually over the telephone. Sometimes associated with sales of "hot-issue" securities.

**Bolita tickets.** Form of ticket used in game of Bolita which is a type of lottery, the winning number of which is determined by an event unconnected with the actual lottery such as a horse race. *U. S. v. Robertson, C.A. Fla., 504 F.2d 289.*

**Bolito.** A form of "lottery" which is a scheme for distribution of prizes by lot or chance. *Robb v. State, Ind., 239 N.E.2d 154, 157.*

**Bolstering.** In evidence law, occurs when one item of evidence is improperly used by a party to add credence or weight to some earlier unimpeached piece of evidence offered by the same party. *Sledge v. State, Tex.Cr.App., 686 S.W.2d 127, 129.*

**Bolting.** In English practice, a term formerly used in the English inns of court, but more particularly at Gray's Inn, signifying the private arguing of cases, as distinguished from *mooting*, which was a more formal and public mode of argument.

**Bon.** The name of a clause (*bon pour* \_\_\_\_\_, good for so much) added to a cedula or promise, where it is not in the handwriting of the signer, containing the amount of the sum which he obliges himself to pay.

**Bona, n. /bównə/. Lat.** Goods; property; possessions. In the Roman law, this term was used to designate all species of property, real, personal, and mixed, but was more strictly applied to real estate. In civil law, it includes both personal property (technically so called) and chattels real, thus corresponding to the French *biens (q.v.)*. In the common law, its use was confined to the description of movable goods.

*Bona confiscata /bównə kɔnfəskéytə/. Goods confiscated or forfeited to the imperial fisc or treasury. 1 Bl.Comm. 299.*

*Bona et catalla /bównə èt kətálə/. Goods and chattles; movable property. This expression includes all personal things that belong to a man.*

*Bona felonum /bównə fəlɔwnəm/. In English law, goods of felons; the goods of one convicted of felony.*

*Bona forisfacta /bównə fɔrəsfæktə/. Goods forfeited.*

*Bona fugitivorum /bównə fyúwjtəvórəm/. In English law, goods of fugitives; the proper goods of him who flies for felony.*

*Bona immobilia /bównə iməbilyə/. Lands.*

*Bona mobilia /bównə məbilyə/. Movables; those things which move themselves or can be transported from one place to another, and not permanently attached to a farm, heritage, or building.*

*Bona notabilia /bównə nɔwtəbilyə/. Notable goods; property worthy of notice, or of sufficient value to be accounted for. 2 Bl.Comm. 509.*

*Bona paraphernalia /bównə pərəfərnéyl(i)yə/. In the civil law, the separate property of a married woman other than that which is included in her dowry; more particularly, her clothing, jewels, and ornaments. *Whiton v. Snyder, 88 N.Y. 303.**

*Bona peritura /bównə pèhrət(y)úra/. Goods of a perishable nature; such goods as an executor or trustee must use diligence in disposing of and converting them into money.*

*Bona utlagatorum /bównə àtleygátórəm/. Goods of outlaws; goods belonging to persons outlawed.*

*Bona vacantia /bównə vəkəns(i)yə/. Vacant, unclaimed, or stray goods. Those things in which nobody claims a property, and which belonged, under the common law, to the finder, except in certain instances, when they were the property of the king. 1 Bl.Comm. 298.*

*Bona waviata /bównə wèyviyéytə/. In English law, waived goods; goods stolen and *waved*, that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 1 Bl.Comm. 296.*

**Bona, adj. /bównə/. Lat.** Good. Used in numerous legal phrases of which the following are examples:

*Bona fides /bównə fáydiyz/. Good faith; integrity of dealing; honesty; sincerity; the opposite of *mala fides* and of *dolus malus*. See Bona fide.*

*Bona gestura /bównə jest(y)úra/. Good abearance or behavior.*

*Bona gratia /bównə gréysh(i)yə/. In the Roman law, by mutual consent; voluntarily. A term applied to a species of divorce where the parties separated by mutual consent; or where the parties renounced their marital engagements without assigning any cause, or upon mere pretexts.*

*Bona memoria /bównə məmór(i)yə/. Good memory. Generally used in the phrase *sanæ mentis et bonæ memoriæ*, of sound mind and good memory, as descriptive of the mental capacity of a testator.*

**Bonæ fidei /bówniy fáydiyay/. In the civil law, of good faith; in good faith.**

**Bonæ fidei contracts /bówniy fáydiyay kóntrækts/. In civil and Scotch law, those contracts in which equity may interpose to correct inequalities, and to adjust all matters according to the plain intention of the parties.**

**Bonæ fidei emptor /bówniy fáydiyay émtər/. A purchaser in good faith. One who either was ignorant that the thing he bought belonged to another or supposed that the seller had a right to sell it.**

**Bonæ fidei non congruit de apicibus juris disputare /bówniy fáydiyay nɔŋ kəŋgrúwət diy eypisəbəs júrəs dispuywtériy/. It is unbecoming to (or incompatible with good faith to) discuss (insist upon) the extreme subtleties of the law. A maxim which may be more freely rendered as meaning, "To insist on extreme subtleties of law is an encouragement to fraud."**

**Bona fidei possessor** /bówniy fáydiyay pázésær/. A possessor in good faith. One who believes that no other person has a better right to the possession than himself.

**Bona fidei possessor in id tantum quod sese pervenerit tenetur** /bówniy fáydiyay pázésær in id tántəm kwód siysi pàrvənist təniytər/. A possessor in good faith is liable only for that which he himself has obtained (or that which has come to him).

**Bona fide** /bównə fáydiy/bównə fayd/. In or with good faith; honestly, openly, and sincerely; without deceit or fraud. *Merrill v. Dept. of Motor Vehicles*, 71 Cal.2d 907, 80 Cal.Rptr. 89, 458 P.2d 33. Truly; actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned. *Bridgeport Mortgage & Realty Corporation v. Whitlock*, 128 Conn. 57, 20 A.2d 414, 416. See also Good faith.

**Bona fide business purpose**. In tax law, this term is often used in determining whether a real business purpose in fact existed for carrying out a particular transaction. See also Business (*Business purpose*).

**Bona fide error**. Mistake made unintentionally; inadvertently; in good faith. Within meaning of Truth in Lending Act's exemption from liability for bona fide errors, "bona fide error" is error made in course of good-faith attempt at compliance with Act's requirements. *Mirabal v. General Motors Acceptance Corp.*, C.A.Ill., 537 F.2d 871, 878.

**Bona fide holder for value**. An innocent or "bona fide holder for value" of negotiable paper is one who has taken it in good faith for a valuable consideration in the ordinary course of business and when it was not overdue. One who receives negotiable paper in payment of antecedent obligations without notice of prior equities. Under U.C.C. § 3-302, the requirements for a holder in due course are different from a mere bona fide holder for value. See Holder in due course.

**Bona fide judgment creditor**. One who in good faith, without fraud or collusion, recovers a judgment for money honestly due him.

**Bona fide mortgage**. Essential elements of status are good faith, valuable consideration, and absence of notice. *Companaro v. Gondolfo*, C.C.A.N.J., 60 F.2d 451, 452. To constitute "bona fide mortgagee" there must be an absence of notice and payment of, or fixed liability for the consideration. *Cambridge Production Credit Ass'n v. Patrick*, 140 Ohio St. 521, 45 N.E.2d 751, 755.

**Bona fide occupational qualification (BFOQ)**. Employment in particular jobs may not be limited to persons of a particular sex, religion, or national origin unless the employer can show that sex, religion, or national origin is an actual qualification for performing the job. The qualification is called a bona fide occupational qualification.

**Bona fide operators**. Substantial, as distinguished from incidental, sporadic, or infrequent service. *Gonez v. Interstate Commerce Commission*, D.C.Mass., 48 F.Supp. 286, 288.

**Bona fide possessor**. One who not only supposes himself to be the true proprietor of the land, but who is ignorant that his title is contested by some other person claiming a better right to it.

**Bona fide purchaser**. One who has purchased property for value without any notice of any defects in the title of the seller. *Walters v. Calderon*, 25 Cal.App.3d 863, 102 Cal.Rptr. 89, 97. One who pays valuable consideration, has no notice of outstanding rights of others, and acts in good faith. *J. C. Equipment, Inc. v. Sky Aviation, Inc.*, Mo.App., 498 S.W.2d 73, 75.

Bona fide purchaser for value is one who, without notice of another's claim of right to, or equity in, property prior to his acquisition of title, has paid vendor a valuable consideration. *Snuffin v. Mayo*, 6 Wash.App. 525, 494 P.2d 497.

One who buys property or to whom a negotiable document of title is transferred in good faith and without notice of any defense or claim to the property or document. U.C.C. § 7-501. One who takes trust property for value and without notice of breach of trust and who is not knowingly part of an illegal transaction. *Restatement, Second, Trusts § 284; Uniform Probate Code § 2-202(3)*.

**Bulk transfer**. Purchaser from transferee of bulk transfer who takes for value in good faith and without notice of any defect of non-compliance with law. U.C.C. § 6-110.

**Investment securities**. A purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. U.C.C. § 8-302.

**Bona fide residence**. Residence with domiciliary intent, i.e., a home in which the party actually lives. *Alburger v. Alburger*, 138 Pa.Super. 339, 10 A.2d 888, 890.

**Bona fide sale**. A completed transaction in which seller makes sale in good faith, for a valuable consideration without notice of any reason against the sale.

**Bona fides exigit ut quod convenit fiat** /bównə fáydiy əgzəjt ət kwód kəviynət fáyt/. Good faith demands that what is agreed upon shall be done.

**Bona fides non patitur ut bis idem exigatur** /bównə fáydiy nòn péytətər ət bis áydəm əgzəgéytər/. Good faith does not allow us to demand twice the payment of the same thing.

**Bona notabilia** /bównə nɔwtəbiliyə/. Lat. Notable goods. Goods which must be accounted for in estate of decedent. *Neal v. Boykin*, 132 Ga. 400, 64 S.E. 480, 482. Includes almost every kind of property, tangible and intangible, if it has appreciable value. *In re Rowley's Estate*, 178 Wash. 460, 35 P.2d 34.

**Bona vacantia** /bównə vəkəns(i)yə/. Lat. Vacant goods; unclaimed property. Generally, personal property which escheats to state because no owner, heir or next of kin claims it. Now includes real as well as personal property and passes to state as an incident of



sovereignty. *Boswell v. Citronelle-Mobile Gathering Inc.*, 292 Ala. 344, 294 So.2d 428, 432.

**Bond.** A certificate or evidence of a debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. A long-term debt instrument that promises to pay the lender a series of periodic interest payments in addition to returning the principal at maturity. In every case a bond represents debt—its holder is a creditor of the corporation and not a part owner as is the shareholder. Commonly, bonds are secured by a mortgage.

The word "bond" is sometimes used more broadly to refer also to unsecured debt instruments, *i.e.*, debentures. Income bonds are hybrid instruments that take the form of a bond, but the interest obligation is limited or tied to the corporate earnings for the year. Participating bonds are another type of hybrid instruments that take the form of a typical debt instrument but the interest obligation is not fixed so that holders are entitled to receive additional amounts from excess earnings or from excess distributions, depending on the terms of the participating bond.

A written obligation, made by owner of real property, to repay a loan under specific terms, usually accompanied by a mortgage placed on land as security.

*See also* Debenture.

Specific types of bonds as relating to finance, surety, guaranty, appeals, performance, etc. are set forth below:

**Adjustment bond.** Bonds issued upon reorganization of corporation.

**Annuity bond.** *See* Annuity (*Annuity bond*).

**Appeal bond.** Bond required to cover costs of appeal in civil cases. *See e.g.* Fed.R.App.P. 7.

**Appearance bond.** Type of bail bond required to insure presence of defendant in criminal case. *See* Bail (*Bail bond*).

**Arbitrage bond.** Bond posted to secure performance of arbitrage agreement; a bond which is the subject of arbitrage. *See* Arbitrage.

**Attachment bond.** *See* that title.

**Bail bond.** *See* Bail (*Bail bond*).

**Bearer bond.** *See* that title.

**Bid bond.** *See* that title.

**Blanket bond.** *See* that title.

**Bond and mortgage.** A species of security, consisting of a bond conditioned for the repayment of a loan of money, and a mortgage of realty to secure the performance of the stipulations of the bond.

**Bond coupon.** Part of bond which is cut and surrendered for payment of one of successive payments of interest. *See* Coupon bond, *below*.

**Bond creditor.** A creditor whose debt is secured by a bond.

**Bond discount.** The difference between the face amount or obligation of the bond and the current market price of such bond, if selling price is lower than market price. *Claussen's Inc. v. U. S.*, C.A.Ga., 469 F.2d 340, 345.

**Bond dividend.** *See* Dividend.

**Bond for deed.** *See* Bond for title, *below*.

**Bond for title.** An agreement to make title in the future on an executory or incomplete sale. *Ingram v. Smith*, 62 Ga.App. 335, 7 S.E.2d 922, 926. It is not a conveyance of legal title but only a contract to convey and may ripen into an equitable title upon payment of the consideration.

**Bond issue.** The totality of bonds issued at a given time (for sale to investors). Delivery of instruments as covered by term. *Vans Agnew v. Fort Myers Drainage Dist.*, C.C.A.Fla., 69 F.2d 244, 245.

**Bond of state or local government.** *See* Municipal bond, *below*.

**Bond premium.** The difference between the face amount or obligation of the bond and the selling price of such bond if the selling price is greater than the face amount.

**Bottomry bond.** Bond secured by mortgage of ships.

**Callable bond.** *See* Callable bonds.

**Chattel mortgage bond.** Bonds secured by mortgage on chattels of business.

**Closed-end mortgage bond.** Debt security with provisions which prohibit the firm from issuing additional bonds with the priority of claim against assets.

**Collateral trust bond.** A bond secured by collateral deposited with a trustee. The collateral is often the stocks or bonds of companies controlled by the issuing company but may be other securities.

Type of chattel mortgages that are normally secured by common stock and/or bonds issued by subsidiaries of the issuing firm.

**Common defeasance bond.** One in which the obligor agrees to pay a stipulated amount called a penalty, subject to a condition of defeasance that voids the covenant to pay the specified amount if the condition occurs, and the only covenant or promise to pay by the obligor in such bond is to pay the penalty if the condition is not fulfilled; also known as penalty bond. *United Mail Order, Warehouse & Retail Emp. Union, Local 20 v. Montgomery Ward & Co.*, 9 Ill.2d 101, 137 N.E.2d 47, 51.

**Common law bond.** That which provides coverage in excess of the minimum statutory requirements with respect to a public works project. *Florida Keys Community College v. Insurance Co. of North America*, Fla.App. 3 Dist., 456 So.2d 1250, 1251. *See* Performance bond, *below*.

**Completion bond.** A form of surety or guaranty agreement which contains the promise of a third party, usually a bonding company, to complete or pay for the cost of completion of a construction contract if the construction

contractor defaults. Bond given to insure public authority that contract once awarded will be completed as awarded within fixed period of time. *Extruded Louver Corp. v. McNulty*, 34 Misc.2d 566, 226 N.Y.S.2d 220, 224. See *Common law bond*; *Contract bond*; *Performance bond*; also, Miller Act.

*Consolidated bond.* Bond which is sufficiently large in face amount to retire two or more outstanding issues of bonds or securities.

*Contract bond.* A guarantee of the faithful performance of a construction contract and the payment of all material and labor costs incident thereto. A contract bond covering faithful performance is known as a "performance bond," and one covering payment of labor and materials, a "payment bond." See also *Completion bond above*; *Performance bond, below*.

*Convertible bond.* Bond that can, at the option of the holder, be converted into (*i.e.* exchanged for) stock.

*Corporate bonds.* See that title.

*Cost bond.* See *Appeal bond, above*.

*County bonds.* See that title.

*Coupon bond.* Bond with interest coupons attached. The coupons are clipped as they come due and are presented by the holder for payment of interest.

*Debenture bond.* Bonds secured by general credit of government or corporation rather than by any specific property; *i.e.* bond which is not secured with collateral.

*Deferred bonds.* See that title.

*Discharging bond.* Same as a delivery bond except that not only does it permit defendant to regain possession of attached property, it also effects a release of the property from the lien of attachment. Another name for this bond is "dissolution bond."

*Discount bond.* See *Bond discount*.

*Executor's bond.* A bond that an executor of an estate must furnish in order to serve as the administrator of an estate.

*Fidelity bond.* Bond covering employer-business for loss due to embezzlement, larceny, or gross negligence by employees.

*Fiduciary bond.* See *Fiduciary*.

*First mortgage bond.* Long-term security that has first claim on specified assets.

*Foreign bond.* An international bond which is denominated in the currency of the country in which it is issued.

*General average bond.* See that title.

*General mortgage bond.* A bond which is secured by a blanket mortgage on the company's property, but which may be subordinate to one or more other mortgages.

*General obligation bond.* A bond secured by the "full faith and credit" of the issuing government and backed by revenues from its taxing power.

*Gold bond.* Formerly, bond containing a clause which required payment of the bonded indebtedness in gold; such clause has since been prohibited. *Norman v. Baltimore & Ohio R. R. Co.*, 294 U.S. 240, 55 S.Ct. 407, 79 L.Ed. 885. Now bonds are dischargeable by payment in legal tender or money.

*Government bond.* Evidence of indebtedness issued by the government to finance its operations. Such bonds are backed solely by the credit of the government.

*Guaranteed bond.* A bond which has interest or principal, or both, guaranteed by a company other than the issuer.

*Guaranty bond.* Type of bond which combines the features of both the fidelity and surety bond and which is given to secure payment and performance.

*Improvement bond.* Type of bonds issued by a city, town or special authority to finance improvements within the district, with payment to be made only from the improvement fund.

*Income bond.* Bonds on which interest is payable only when earned and after payment of interest upon prior mortgages. In some cases unpaid interest on an income bond may accumulate as a claim against the corporation when the bond becomes due. An income bond may also be issued in lieu of preferred stock.

*Indemnity bond.* See that title.

*Indeterminate bond.* Callable bond with no set maturity date.

*Industrial development bonds.* Such bonds are issued by a municipality as a means of attracting private businesses. The bonds are marketed by the municipality and the proceeds used to build the private business facility. Commonly, the business leases the facility from the municipality for a total rent equal to the amount necessary to pay the interest and amortize the principal on the bonds.

*Industrial revenue bonds.* A specific type of revenue bond whose proceeds are used to finance the purchase or construction of facilities or equipment to be leased to a private corporation. The bonds are backed by the credit of the corporation.

*Interest bond.* Bond paid in lieu of interest due on other bonds.

*Investment grade bonds.* Any bond with a rating of BBB or better by the leading bond rating services.

*Joint and several bond.* A bond the principal and interest of which is guaranteed by two or more persons.

*Joint bond.* Bond executed by two or more obligors who must be joined in any action on such, as opposed to joint and several bond, on which any or all of obligors may be sued at the option of the obligee.

*Judicial bonds.* See that title.

*Junior bond.* Bonds which are subordinate in priority, in principal or interest to another issue.

*Junk bond.* High yield, high risk bonds of two types: those which were investment-grade when originally issued, but which have subsequently been downgraded and those originally issued as low-grade bonds. The latter group includes bonds issued by low-rated companies to finance operations as well as those issued in connection with corporate takeovers.

*Leasehold mortgage bond.* A bond secured by a building constructed on leased real estate. This bond is subject to the compliance by the lessee (who issues the bond) with the terms of the lease; upon default in the terms of the lease the lessor of the leased real estate has priority over the holders of the leasehold bonds.

*Liability bond.* One which is intended to protect the assured from liability for damages or to protect the persons damaged by injuries occasioned by the assured as specified, when such liability should accrue, and be imposed by law, as by a court, as distinguished from an indemnity bond, whose purpose is only to indemnify the assured against actual loss by way of reimbursement for moneys paid or which must be paid.

*License bond.* The term "License Bond" is used interchangeably with "Permit Bond" to describe bonds required by state law, municipal ordinance, or by regulation as a condition precedent to the granting of a license to engage in a specified business or the grant of a permit to exercise a certain privilege.

Such bonds provide payment to the obligee for the loss or damage resulting from the operations permitted by law, ordinance or regulation, under which the bond is required and for violations by the licensee of the duties and obligations imposed upon him.

*Maintenance bond.* Bond guaranteeing against defects in workmanship or materials for period of time following completion of work contracted for.

*Mortgage bond.* A bond secured by a mortgage on a property. The value of the property may or may not equal the value of the so-called mortgage bonds issued against it. *See also Leasehold mortgage bond, above.*

*Municipal bond.* A bond issued by a state or a political subdivision, such as county, city, town or village. The term also designates bonds issued by state agencies and authorities. In general, interest paid on municipal bonds is exempt from federal income taxes and state and local income taxes within the state of issue. *See also Industrial development bonds; Industrial revenue bonds, above.*

*Noncallable bond.* Bonds which are neither refundable nor redeemable. *Lucas v. Florida Power & Light Co., C.A.Fla., 765 F.2d 1039, 1041.* Bonds that cannot be redeemed at the option of the issuer.

*Obligation bond.* Device used by states and municipalities to obtain funds to support projects. *City of Spokane v. Taxpayers of City of Spokane et al., 111 Wash.2d 91, 758 P.2d 480, 484.* The sale of general obligation bonds is the commitment of the state to a debtor relationship with those who purchase the bonds. *Thomas v. Rosen,*

*Alaska, 569 P.2d 793, 796. See General obligation bond, above.*

*Official bond.* A bond given by a public officer, conditioned that he shall well and faithfully perform all the duties of the office. The term is sometimes made to include the bonds of executors, guardians, trustees, etc.

*Passive bond.* Bond which bears no interest.

*Payment bond.* *See Miller Act.*

*Peace bond.* *See that title.*

*Penal bond.* *See that title.*

*Performance bond.* Type of contract bond which protects against loss due to the inability or refusal of a contractor to perform his contract. Such are normally required on public construction projects. *See Common law bond; Completion bond; Contract bond, above; also, Miller Act.*

*Perpetual bond.* A bond that has no maturity date.

*Personal bond.* A written document in which the obligor formally recognizes an obligation to pay money or to do a specific act; e.g. surrender a lost bank book when it is found.

*Premium bond.* Bond with selling price above face or redemption value. *See, also, Bond premium, above.*

*Put bond.* Bond that gives holder right to redeem at specified times before maturity for full face value.

*Railroad aid bonds.* Bonds issued by municipal corporations to aid in the construction of railways.

*Redeemable bond.* *See that title.*

*Redelivery bond.* A statutory bond given by a person in whose possession attached property is found in order to regain possession of the property.

*Refunding bond.* *See that title.*

*Registered bond.* A bond which is registered on the books of the issuing company in the name of the owner. It can be transferred only when endorsed by the registered owner.

*Removal bond.* *See that title.*

*Reorganization bond.* *See Adjustment bond, above.*

*Replevin bond.* *Replevin (Replevin bond).*

*Revenue bond.* Bonds issued by a public agency, municipal corporation, or state for purpose of raising revenue. Debt securities issued by municipalities in which the payments must be generated by the project supported by the proceeds from the bonds issued. (e.g. earnings of municipal sports complex.)

*School bonds.* Bonds issued by a city, town or school district for purpose of school construction.

*Serial bond.* Bond issue consisting of a number of bonds with different maturity dates. Bonds are issued at the same time as distinguished from series bonds which are issued at different times.

**Series bonds.** Groups of bonds normally issued at different times but under same indenture.

**Silver bond.** Bonds which require payment in silver; not used in U.S. since payment may be made in legal tender.

**Simple bond.** At common law, a bond without penalty; a bond for the payment of a definite sum of money to a named obligee on demand or on a day certain.

**Single bond.** A deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to the obligee at a day named, without terms of defeasance.

**Special tax or assessment bonds.** Bonds secured by special levies on taxpayers, usually those in the area immediately benefiting from the project or improvement.

**State bond.** Bond issued by state, obligating state to make payment.

**Straw bond.** A bond upon which is used either the names of fictitious persons or those unable to pay the sum guaranteed; generally applied to insufficient bail bonds, improperly taken.

**Submission bond.** See that title.

**Subordinated bonds or debentures.** See that title.

**Supersedeas bond.** See that title.

**Suretyship bond.** A contractual arrangement between the surety, the principal and the obligee whereby the surety agrees to protect the obligee if the principal defaults in performing the principal's contractual obligations. The bond is the instrument which binds the surety. See *e.g.*, Bail (*Bail bond*).

**Tax exempt bond.** A bond, the receipt of income from which is not taxable, *e.g.* municipal bond (*q.v.*).

**Treasury bonds.** Bonds reacquired or unsold by corporation. Bonds issued by U.S. Treasury (*e.g.* U.S. Savings bonds). See also Treasury bond.

**U.S. Savings bonds.** An obligation of the United States designed to afford persons the opportunity to create savings by purchasing the bond at a reduced sum and requiring the purchaser to wait a period of time to redeem at face value.

**Zero coupon bond.** Treasury bond that has had the interest coupon clipped by the purchaser of the bond. This purchaser sells the remaining bond at a discount from its face value. The deep discount reflects the many years, usually fifteen to thirty, that remain until the bond may be redeemed at face value. The advantage of these long-term investments is the security afforded by United States Government backing. *U.S. v. Parker*, C.A.Fla., 839 F.2d 1473, 1475.

**Bondage.** Slavery; involuntary personal servitude; captivity. In old English law, villenage, villein tenure. Such is prohibited by 13th Amendment to U.S. Constitution.

**Bond conversion.** The act of exchanging convertible bonds for preferred or common stock.

**Bond discount.** Sale of bonds on the market at a price less than the face amount of such. *Claussen's, Inc. v. U. S.*, C.A.Ga., 469 F.2d 340, 345.

From the standpoint of the issuer of a bond at the issue date, is the excess of the par value of a bond over its initial sales price; at later dates the excess of par over the sum of (initial) issue price plus the portion of discount already amortized. From the standpoint of a bondholder, is the difference between par value and selling price when the bond sells below par.

**Bonded debt.** The indebtedness of a business or government which is represented by bonds payable. Indebtedness lawfully contracted for governmental purposes, payable from taxes on all property within municipality.

**Bonded warehouse.** See Warehouse system.

**Bondholders.** Creditors of a business, whose evidence of debt is a bond issued by the business.

**Bond indenture.** The contract between an issuer of bonds and the bondholders. An instrument of secured indebtedness issued by a corporation. See Indenture.

**Bond premium.** The excess of the price of bonds over their face value, and generally reflects the difference between the nominal interest rate borne by such bonds and the actual or effective rate of return determined by the current market. *Grace v. New York State Tax Commission*, 37 N.Y.2d 193, 371 N.Y.S.2d 715, 332 N.E.2d 886.

**Bond rating.** System of evaluating, appraising and rating the investment value of individual bond issues (*i.e.* a bond's probability of default). Triple A (AAA) bonds have the highest rating. There are several major bond rating companies or services that make such evaluations.

**Bond redemption.** Retirement of bonds upon payment. See Redemption.

**Bond refunding.** A situation that occurs when a firm redeems a callable bond issue and sells a generally lower interest cost issue to take its place. A bond is refunded when a municipality or state calls in an existing bond, usually when interest rates have dropped, to replace it with lower-cost financing.

**Bondsman.** A surety; one who has entered into a bond to give surety for another; *e.g.*, bail bondsman. See Bail (*Bail bond*).

**Bond yield.** See Yield.

**Bones gents** /bòvn jénts/. L. Fr. In old English law, good men (of the jury).

**Bonification.** The remission of a tax, particularly on goods intended for export, having the same effect as a bonus or drawback. A device enabling a commodity to be exported and sold in the foreign market as if it had not been taxed. *U. S. v. Passavant*, 169 U.S. 16, 18 S.Ct. 219, 42 L.Ed. 644.

**Boni homines** /bównay hóməniyz/. In old European law, good men; a name given in early European jurisprudence to the tenants of the lord, who judged each other in the lord's courts. 3 Bl.Comm. 349.

**Boni iudicis est ampliare jurisdictionem** /bównay júwdəsəs èst àmpliyériy júràdikshiyównəm/. It is the part of a good judge to enlarge (or use liberally) his remedial authority or jurisdiction.

**Boni iudicis est ampliare iustitiam** /bównay júwdəsəs èst àmpliyériy jəstishiyəm/. It is the duty of a good judge to enlarge or extend justice.

**Boni iudicis est iudicium sine dilatione mandare executioni** /bównay júwdəsəs èst júwdishiyəm sáyniy däləyshiyówniy mändériy ègzəkyùwshiyównay/. It is the duty of a good judge to cause judgment to be executed without delay.

**Boni iudicis est lites dirimere, ne lis ex lite oritur, et interest reipublicæ ut sint fines litium** /bównay júwdəsəs èst láytiy dəríməriy, niy láys èks láytiy órətər, èt intərəst riyaypəbləsiy èt sint fáyniy lish(iy)əm/. It is the duty of a good judge to prevent litigations, that suit may not grow out of suit, and it concerns the welfare of a state that an end be put to litigation.

**Bonis cedere** /bównəs siydəriy/. In the civil law, to make a transfer or surrender of property, as a debtor did to his creditors.

**Bonis non amovendis** /bównəs nòn èyməvəndəs/. A writ addressed to the sheriff, when a writ of error has been brought, commanding that the person against whom judgment has been obtained be not suffered to remove his goods till the error be tried and determined.

**Bonitarian ownership** /bownətériyən ównərship/. In Roman law, a species of equitable title to things, as distinguished from a title acquired according to the strict forms of the municipal law; the property of a Roman citizen in a subject capable of quiritary property, acquired by a title not known to the civil law, but introduced by the prætor, and protected by his *imperium* or supreme executive power, e.g., where *res mancipi* had been transferred by mere tradition.

**Bono et malo** /bównow èt məlow/. A special writ of jail delivery, which formerly issued of course for each particular prisoner. 4 Bl.Comm. 270.

**Bonum defendentis ex integra causa; malum ex quolibet defectu** /bównəm dəfəndəntəs èks intəgrə kózá məlam èks kwódləbət dəfəkt(y)uw/. The success of a defendant depends on a perfect case; his loss arises from some defect.

**Bonum necessarium extra terminos necessitatis non est bonum** /bównəm nəsəsəriyəm èkstrə tərmanəws nəsəsətéytəs nòn est bównəm/. A good thing required by necessity is not good beyond the limits of such necessity.

**Bonus**. A consideration or premium paid in addition to what is strictly due. A gratuity to which the recipient has no right to make a demand. *Walling v. Plymouth Mfg. Corporation*, C.C.A.Ind., 139 F.2d 178, 182. A

premium or extra or irregular remuneration in consideration of offices performed or to encourage their performance. *Willkie v. Commissioner of Internal Revenue*, C.C.A.6, 127 F.2d 953, 956. A premium paid to a grantor or vendor. An advance royalty. *Sneed v. Commissioner of Internal Revenue*, C.C.A.Tex., 119 F.2d 767, 770. An extra consideration given for what is received, or something given in addition to what is ordinarily received by, or strictly due, the recipient. *La Juett v. Coty Mach. Co.*, 153 Misc. 410, 275 N.Y.S. 822. An addition to salary or wages normally paid for extraordinary work. An inducement to employees to procure efficient and faithful service. *Duffy Bros. v. Bing & Bing*, 217 App.Div. 10, 215 N.Y.S. 755, 758. Consideration or down payment for mineral lease or transfer of oil lands. *State Nat. Bank of Corpus Christi v. Morgan*, Tex.Civ.App., 123 S.W.2d 1036, 1038; *In re Levy*, 185 Okl. 477, 94 P.2d 537, 539. Gift in recognition of officer's past successful direction of corporate affairs. *Thomas v. Commissioner of Internal Revenue*, C.C.A.La., 135 F.2d 378, 379. Compensation paid to professional athlete in addition to salary for signing with particular team or for specific performance levels. *See also* Bonus stock; Premium.

**Bonus iudex secundum æquum et bonum iudicat, et æquitatem stricto juri præfert** /bównəs júwdeks səkándəm íykwəm èt bównəm júwdəkət, èd èkwətéytəm stríktow júray priyfərt/. A good judge decides according to what is just and good, and prefers equity to strict law.

**Bonus share**. *See* Bonus stock, *infra*.

**Bonus stock**. Stock given as premium in connection with (to encourage) the sale of another class of securities; e.g. stock issued to the purchasers of bonds as an inducement to them to purchase bonds or loan money.

Par value shares issued without consideration, usually in connection with the issuance of preferred or senior securities, or debt instruments. Bonus shares are considered a species of watered shares and may impose a liability on the recipient equal to the amount of par value.

**Booby trap**. A concealed or camouflaged device designed to be triggered by an unsuspecting victim; loosely, any device which catches a person off-guard.

**Boodle**. Term used to designate the money held to be paid or paid as a bribe for corrupt official action.

**Boodling**. In the slang of the day, corrupt legislative practices and corrupt influences affecting legislation.

**Book**. An assembly or concourse of ideas expressed in words. *U. S. v. One Obscene Book Entitled "Married Love"*, D.C.N.Y., 48 F.2d 821, 823. A literary composition which is printed; a printed composition bound in a volume. The largest subdivisions of a treatise or other literary composition.

A bound volume consisting of sheets of paper, not normally printed, containing manuscript entries; such as a merchant's account-books, dockets of courts, etc. *See* various types below.

To register or make reservation for transportation, lodging, etc. To set date and time for engagement or appointment.

**Book account.** A detailed statement, in the nature of debits and credits between entities; an account or record of debits and credits kept in a book. A book in which a detailed history of business transactions is entered; a record of goods sold or services rendered; a statement in detail of the transactions between parties.

**Book entry.** A notation, generally of figures or numbers, made in an accounting journal, consisting, in double entry bookkeeping, of debits and credits.

**Bookland.** In old English law, land, also called "charterland," which was held by deed under certain rents and free services, and differed in nothing from free socage land. 2 Bl.Comm. 90.

**Book of original entry.** A book maintained to record the day to day transactions of an entity, including the sale and delivery of goods. A book in which a detailed history of business transactions are entered. *Nicola v. U.S., C.C.A.Pa., 72 F.2d 780, 783.*

**Books of account.** Books in which merchants, traders, and businessmen generally keep their accounts; including journals, ledgers, and other accounting records. Entries made in the regular course of business. *Nicola v. U.S., C.C.A.Pa., 72 F.2d 780, 783.* Serial, continuous, and permanent memorials of business affairs.

**Book value.** The value at which an asset is carried on the balance sheet. Book value is the cost less accumulated depreciation or the valuation allowance. Book value is based on the historical cost of an asset and may vary significantly from the fair market value. The net amount of an asset after reduction by a related reserve. The book value of accounts receivable, for example, would be the amount of the receivables less the reserve for bad debts.

**Corporate books.** Whatever is kept as written evidence of official doings and business transactions. *First Nat. Bank of Colorado Springs v. Holt, Mo.App., 158 S.W.2d 229, 231.*

**Criminal proceedings.** See *Booking.*

**Office book.** See *Office.*

**Booked.** Engaged, destined, bound to promise or pledge oneself to make an engagement. To have travel, lodging, etc. reservations. To enter charges against accused in police register or blotter. See *Booking.*

**Booking.** Administrative step taken after an arrested person is brought to the police station, which involves entry of the person's name, the crime for which the arrest was made, and other relevant facts on the police "blotter," and which may also include photographing, fingerprinting, and the like.

A form of gambling commonly associated with number pools horse and dog racing when engaged in away from the track. See *Bookmaker; Bookmaking.*

**Booking contract.** A contract made by agents who procure contracts for appearance of acts and actors.

**Bookkeeping.** The art or science of recording business accounts and transactions. See also *Accounting; Book.*

**Double entry bookkeeping.** Accounting system which requires that in every entry there be a debit and a credit; e.g. on cash sale of merchandise, a debit to cash and a credit to sales.

**Bookmaker.** A gambler who makes book (i.e., partakes in bookmaking) on uncertain future events. One who collects and records bets of others. One who establishes odds on events which are the subject of gambling. In slang, such person is known as "bookie."

**Bookmaking.** Formerly the collection of sheets of paper or other substances on which entries could be made, either written or printed. The term now commonly denotes the taking and recording or registering of bets or wagers on any trial or contest of speed, skill or power of endurance or selling pools. An operation which involves both the placing of bets and the paying off or collection of debts. *State v. Gould, 123 N.J.Super. 444, 303 A.2d 591, 592.*

**Books and papers.** Generic term used to describe all forms of records which are sought in a summons duces tecum, or subject to discovery under Fed.R.Civil P. 26(b)(1), 34, 45, or Fed.R.Crim.P. 16. See also *Business records exception; Record; Shop-book rule; Subpoena duces tecum.*

**Book value.** See *Book.*

**Boomage.** A charge on logs for use of a boom in collecting, storing, or rafting them. A right of entry on riparian lands to fasten booms and boom sticks.

**Boon days.** In old English law, certain days in the year (sometimes called "due days") on which tenants in copyhold were obliged to perform corporal services for the lord.

**Boosted fire.** A fire wherein some inflammable substance other than that of which the building was constructed or which it contained contributed to its burning and spreading. *State v. Lytle, 214 Minn. 171, 7 N.W.2d 305, 309.* See *Arson.*

**Boot.** Term used in tax accounting to describe cash or property other than property qualifying as such for nonrecognition in an exchange of like kind of property under I.R.C. § 1031. As used in connection with reorganization, includes anything received other than stock or securities of a controlled corporation. I.R.C. §§ 355, 356(b).

Cash or property of a type not included in the definition of a nontaxable exchange. The receipt of boot will cause an otherwise taxfree transfer to become taxable to the extent of the lesser of the fair market value of such boot or the realized gain on the transfer.

Cash or other consideration used to balance an otherwise unequal exchange of two properties; e.g. machine worth \$500 plus \$500 for machine worth \$1000.

An old Saxon word, equivalent to "estovers".

**Boothage.** See Bothagium.

**Bootlegger.** One who sells, or keeps for sale, alcoholic beverages in violation of law.

**Bootlegging.** Illegal manufacture or sale of liquor, cigarettes, records, and the like to evade taxing, licensing, copyright, etc. laws. See also Contraband; Gray market goods.

**Bootstrap doctrine.** The decision of a court on a special as well as a general appearance that it has jurisdiction is not subject of collateral attack but is *res judicata*. *Peri v. Groves*, 183 Misc. 579, 50 N.Y.S.2d 300, 308.

**Bootstrap sale.** A means by which the cash or other assets of a business are utilized by the purchaser in acquiring ownership of such business.

An arrangement resulting in tax savings by which a seller converts ordinary income from a business into capital gain from sale of corporate stock. *Commissioner of Internal Revenue v. Brown*, 380 U.S. 563, 85 S.Ct. 1162, 14 L.Ed.2d 75.

**Booty.** Property captured from the enemy in war, on land.

**Bord.** An old Saxon word, signifying a cottage; a house; a table.

**Bordage.** In old English law, a species of base tenure, by which certain "bord lands" were anciently held in England; the service was that of keeping the lord in small provisions.

**Bordaria** /bordériya/. A cottage.

**Bordarii** /bordériyay/ or **bordimanni** /bòrdəmáney/. In old English law, tenants of a less servile condition than the *villani*, who had a bord or cottage, with a small parcel of land, on condition they should supply the lord with small provisions.

**Bord-brigch** /bòrd-briych/. In Saxon law, a breach or violation of suretyship; pledge-breach, or breach of mutual fidelity.

**Border.** Within rules applicable to border searches includes not only actual border crossing points but also reasonable extended geographic area in immediate vicinity of crossing point. *U.S. v. Warner*, C.A.Tex., 441 F.2d 821, 832.

**Bordereau** /bòrd(ə)rów/. In insurance, summary of transactions between agent and company.

**Border search.** Search conducted by immigration or customs officials at borders of the country to prevent and to detect illegal entry. Immigration and Nationality Act, 8 U.S.C.A. § 1357. *Almeida-Sanchez v. U. S.*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596. Any person or thing coming into the United States is subject to search by that fact alone, whether or not there be any suspicion of illegality directed to the particular person or thing to be searched. *United States v. Odland*, 502 F.2d 148; *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930. To qualify as a "border search," a search must occur at the border or at the

functional equivalent of the border. *U.S. v. Lonabaugh*, C.A.Tex., 494 F.2d 1257, 1260. See also Border.

**Border warrant.** Process issued for search at borders of the country for search and for arrest of illegal immigrants; no warrant necessary for preliminary stop for questioning. *U. S. v. Brignoni*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607.

**Bord-halfpenny** /bòrd-héypniy/. In old English law, a customary small toll paid to the lord of a town for setting up boards, tables, booths, etc., in fairs or markets.

**Bordlands.** In feudal law, the demesnes which the lords kept in their hands for the maintenance of their board or table. Also lands held in bordage. Lands which the lord gave to tenants on condition of supplying him with small provisions, etc.

**Bordlode** /bòrdlowd/. A service anciently required of tenants to carry timber out of the woods of the lord to his house; or it is said to be the quantity of food or provision which the *bordarii* or bordmen paid for their bordlands.

**Bordservice.** A tenure of bordlands.

**Borg** /bórg/. In Saxon law, a pledge, pledge giver, or surety. The name given among the Saxons to the head of each family composing a tithing or decennary, each being the pledge for the good conduct of the others. Also the contract or engagement of suretyship; and the pledge given.

**Borgbriche** /bórgbriych/. A breach or violation of suretyship, or of mutual fidelity.

**Borgesmon** /bórgəsmən/. In Saxon law, the name given to the head of each family composing a tithing.

**Born.** Act of being delivered or expelled from mother's body, whether or not placenta has been separated or cord cut.

**Born alive.** Refers to product of conception after complete expulsion or extraction from mother, irrespective of the duration of the pregnancy, which breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Each product of such birth is considered live born and fully recognized as a human person. *Maine Rev.Stat. Ann., Tit. 22, § 1595*. See also Viable child.

**Born out of wedlock.** Children whose parents are not, and have not been, married to each other regardless of marital status of either parent with respect to another. *State v. Coliton*, 73 N.D. 582, 17 N.W.2d 546, 549, 552. See Illegitimate.

**Borough** /bərə/bərow/. A town or township with a municipal charter. *E.g.* one of the five political divisions of New York City.

In old English law, a fortified town; a town of importance. In latter law, a city or town that sent members

(burgesses) to Parliament. The status of many boroughs was affected by the Local Government Act of 1972.

**Borough courts.** In English law, private and limited tribunals, held by prescription, charter, or act of parliament, in particular districts for the convenience of the inhabitants, that they may prosecute small suits and receive justice at home. Most such courts were abolished by the Local Government Act of 1972.

**Borough English.** A custom prevalent in some parts of England, by which the youngest son inherits the estate in preference to his older brothers. Abolished as respects enfranchised land by the Law of Property Act (1922); and generally in regard to land by the Administration of Estates Act of 1925.

**Borough fund.** In English law, the revenues of a municipal borough from rents and produce of its land, houses, and stocks and supplemented where necessary by a borough rate.

**Borough sessions.** Courts of limited criminal jurisdiction, established in English boroughs under the municipal corporations act.

**Borrasca** /bərə'skæ/. Absence of profit, or not enough profit to pay the cost of operation, of a placer mine. *Ballagh v. Williams*, 50 Cal.App.2d 10, 122 P.2d 343, 344.

**Borrow.** To solicit and receive from another any article of property, money or thing of value with the intention and promise to repay or return it or its equivalent. If the item borrowed is money, there normally exists an agreement to pay interest for its use. In a broad sense the term means a contract for the use of money. The term may be used to express the idea of receiving something from another for one's own use. The word "loan" is the correlative of "borrow."

**Borrowed capital.** Term denoting various transactions between corporation and stockholders, but commonly referring to cash dividends declared by corporation and retained by it pursuant to agreement with stockholders for operating business successfully. *Southport Mill v. Commissioner of Internal Revenue*, C.C.A.La., 26 F.2d 17. Moneys due by corporation to another corporation used as its capital.

**Borrowed employee.** Before person may be considered "borrowed servant," his services must be loaned with his acquiescence or consent and he must become wholly subject to control and direction of second employer, and free during the temporary period from the control of the original employer. *Foster v. Englewood Hospital Ass'n*, 19 Ill.App.3d 1055, 313 N.E.2d 255, 259. Under the "borrowed employee" doctrine, if one to whom an employee is lent is master of servant at very time negligent act occurs, it is upon him, as a special employer, that liability rests, but if one lending employee is his master at very time of injury, then he, as general employer incurs liability. *Skornia v. Highway Pavers, Inc.*, Wis., 39 Wis.2d 293, 159 N.W.2d 76, 79.

**Borrowed servant.** See Borrowed employee.

**Borrowed statutes.** Laws of one state or jurisdiction used by another state in deciding conflicts question involved in choice of law; e.g. statute of limitation of state where claim accrued as contrasted with statute of limitation of forum state. *Reinhard v. Textron, Inc.*, Okl., 516 P.2d 1325.

**Borrower.** He to whom a thing or money is lent at his request. "Borrower," within automobile liability policy covering borrower of vehicle during loading and unloading, may be defined as someone who has, with permission of owner, temporary possession and use of property of another for his own purposes. *Liberty Mut. Ins. Co. v. American Emp. Ins. Co.*, Tex., 556 S.W.2d 242, 244.

**Borrowings.** Generic term to describe all manners of loans from standpoint of debtor.

**Borsholder** /bórs-hòwldər/. In Saxon law, the borough's ealder, or headborough.

**Boston interest.** Interest computed by using a 30 day month rather than the exact number of days in the month.

**Bote, bot** /bówt/. In old English law, a recompense or compensation, or profit or advantage. Also reparation or amends for any damage done. Necessaries for the maintenance and carrying on of husbandry. An allowance; the ancient name for estovers.

*House-bote.* A sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed "fire-bote;" *plow-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges, or fences. The word also signifies reparation for any damage or injury done, as *man-bote*, which was a compensation or amends for a man slain, etc.

**Boteless** /bówtləs/. In old English law, without amends; without the privilege of making satisfaction for a crime by a pecuniary payment; without relief or remedy.

**Both.** The one and the other; the two without the exception of either. The term likewise has a meaning which excludes more than two mentioned subject matters. In *re Turner's Estate*, 171 Misc. 78, 11 N.Y.S.2d 800, 802. "Either," may mean "both." *Kibler v. Parker*, 191 Ark. 475, 86 S.W.2d 925, 926.

**Bothagium** /bowthéyjiəm/ or **boothage** /búwθəj/. In feudal law, customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets.

**Botiler of the king.** In old English law, an officer who provided the king's wines. By virtue of his office, he might choose, out of every ship laden with wines, one cask before the mast, and one behind.

**Bottle club.** A place where no intoxicating liquors are sold but in which a member may keep his liquor for consumption on the premises and in which mixes or so-called "set ups" are provided by the club. *Mutchall v. City of Kalamazoo*, 323 Mich. 215, 35 N.W.2d 245.



**Bottomage.** L. Fr. Bottomry.

**Bottom hole contract.** A form of agreement used in drilling for oil or gas and which requires a payment by owners of well to lessee of well upon the drilling to a specified depth.

**Bottom land.** As used in a contract to convey, means low land formed by alluvial deposits along the river, low-lying ground, a dale, valley, or intervalle.

**Bottom line.** A term used in accounting to describe the net income or loss after income taxes.

**Bottomry** /bótamriy/. In maritime law, a contract by which the owner of a ship borrows for the use, equipment, or repair of the vessel, and for a definite term, and pledges the ship (or the keel or *bottom* of the ship, *pars pro toto*) as security; it being stipulated that if the ship be lost in the specified voyage, or during the limited time, by any of the perils enumerated, the lender shall lose his money.

A contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period. The contract usually in form a bond. When the loan is not made on the ship, but on the goods on board, and which are to be sold or exchanged in the course of the voyage, the borrower's personal *responsibility* is deemed the principal security for the performance of the contract, which is therefore called "*responsientia*."

**Bottomry bond.** The instrument embodying the contract or agreement of bottomry. Bond with mortgage of ship as security.

**Botulism** /bótyəlízəm/. Food poisoning caused by a toxin which is produced by *Clostridium* (*bacillus*) *botulinum*.

**Bouche** /búwsh/búch/. Fr. The mouth. An allowance of provision. *Avoir bouche à court*; to have an allowance at court; to be in ordinary at court; to have meat and drink scotfree there.

**Bouche of court, or budge of court.** A certain allowance of provision from the king to his knights and servants, who attended him on any military expedition.

**Bough of a tree.** In feudal law, a symbol which gave seisin of land, to hold of the donor *in capite*.

**Bought.** Implies a completed transaction, a vesting of the right of title to and possession of the property sold, and also imports a valuable consideration.

**Bought and sold notes.** A note of the sale by a broker employed to buy and sell goods is called a "sold note," and a like note to the seller is called a "bought note."

**Boulevard** /búlvárd/. The word originally indicated a bulwark or rampart, and afterwards applied to a public walk or road on the site of a demolished fortification. Term now generally refers to a street or highway with park-like appearance; or one specially designed for pleasure walking or driving; often landscaped. A wide street, or a street encircling a town, with sides or center

for shade trees, etc. State ex rel. Copland v. City of Toledo, 75 Ohio App. 378, 62 N.E.2d 256, 258.

**Boulevard rule.** "Boulevard rule" commands that a driver upon approaching a "through highway" from an unfavored road must stop and yield right-of-way to all traffic already in or which may enter the intersection during the entire time the unfavored driver encroaches upon the right-of-way and that duty continues as long as he is in the intersection and until he becomes a part of the flow of favored travellers or successfully traverses the boulevard. Creaser v. Owens, 267 Md. 238, 297 A.2d 235, 236.

**Boulvareism.** A bargaining tactic in labor negotiations by which employer chooses a middle ground that both employer and union know will be the probable outcome before the beginning of the bargaining. N. L. R. B. v. General Elec. Co., C.A.N.Y., 418 F.2d 736, 740.

**Bouncer.** A term used to designate persons employed to preserve the peace in establishments such as night clubs and other places of amusement where people indulge in dancing, drinking and in gambling. Moore v. Blanchard, La.App., 35 So.2d 667, 669.

**Bound.** As an *adjective*, denotes the condition of being constrained by the obligations of a bond, contract, covenant, or other moral or legal obligation. See Duty; Obligation.

In the law of shipping, "bound to" or "bound for" denotes that the vessel spoken of is intended or designed to make a voyage to the place named.

As a *noun*, denotes a limit or boundary, or a line inclosing or marking off a tract of land. In the phrase "metes and bounds," denotes the natural or artificial marks which indicate their beginning and ending. "Bound" may signify the limit itself, and "boundary" designate a visible mark which indicates the limit. See Boundary.

**Boundary.** Every separation, natural or artificial, which marks the confines or line of division of two contiguous properties. Limits or marks of enclosures if possession be without title, or the boundaries or limits stated in title deed if possession be under a title. See also Land boundaries; Metes and bounds; Plat map.

**Natural boundary.** Any formation or product of nature which may serve to define and fix one or more of the lines inclosing an estate or piece of property.

**Private boundary.** An artificial boundary set up to mark the beginning or direction of a boundary line.

**Public boundary.** A natural boundary; a natural object or landmark used as a boundary or as a beginning point for a boundary line.

**Bound bailiffs.** In English law, sheriffs' officers are so called, from their being usually *bound* to the sheriff in an obligation with sureties, for the due execution of their office.

**Bounded tree.** A tree marking or standing at the corner of a field or estate.

**Bounders.** Visible marks or objects at the ends of the lines drawn in surveys of land, showing the courses and distances. *See* Landmark.

**Bound over.** *See* Binding over.

**Bounds.** The external or limiting lines, either real or imaginary, of any object or space; that which limits or circumscribes.

**Bounty.** A gratuity, or an unusual or additional benefit conferred upon, or compensation paid to, a class of persons. A premium given or offered to enlisted men to induce enlistment into public service. Bounty is the appropriate term where services or action of many persons are desired, and each who acts upon the offer may entitle himself to the promised gratuity (*e.g.* killing of dangerous animals). Reward is more proper in the case of a single service, which can be only once performed, and therefore will be earned only by the person or co-operative persons who succeed while others fail (*e.g.* capture of fugitive). *See also* Reward.

**Bounty lands.** Portions of the public domain given or donated as a bounty for services rendered, chiefly for military service.

**Bourg** /búrg/. In old French law, an assemblage of houses surrounded with walls; a fortified town or village. In old English law, a borough, a village.

**Bourgeois** /búrzhwó/. The inhabitant of a *bourg*. A person entitled to the privileges of a municipal corporation; a burgess. A member of the middle classes.

**Bourse** /búrs/. Fr. An exchange; a stock exchange.

**Bourse de commerce** /búrs də komérs/. In the French law, an aggregation, sanctioned by government, of merchants, captains of vessels, exchange agents, and courtiers, the two latter being nominated by the government, in each city which has a *bourse*.

**Bovata terræ** /bowvéytə téhriy/. In old English law, as much land as one ox can cultivate. Said by some to be thirteen, by others eighteen, acres in extent. *See* Carucata.

**Bow-bearer.** In old English law, an under-officer of the forest, whose duty it was to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented, without any concealment, in the next court of attachment, etc.

**Boxed weight basis.** According to weight at time of packing and after wrapping. *Swift & Co. v. Wallace*, C.C.A.7, 105 F.2d 848, 861.

**Boycott** /bóykot/. Concerted refusal to do business with particular person or business in order to obtain concessions or to express displeasure with certain acts or practices of person or business. *Barry v. St. Paul Fire & Marine Ins. Co.*, 555 F.2d 3, 7.

A conspiracy or confederation to prevent the carrying on of business, or to injure the business of any one by preventing potential customers from doing business with

him or employing the representatives of said business, by threats, intimidation, coercion, etc. Such acts are prohibited by the Sherman Antitrust Act.

**Consumer boycott.** Practice whereby consumers (*i.e.* customers) refrain from purchasing a particular product in protest of excessive price, offensive actions of manufacturer or producer, etc., or refrain from trading with particular business for similar reasons.

**Group boycott.** Concerted refusal to deal among traders with the intent or foreseeable effect of exclusion from the market of direct competitors of some of the conspirators; or, concerted refusal to deal with the intent or foreseeable effect of coercion of the trade practices of third parties. Such group boycotts are per se illegal under the Sherman Antitrust Act. *Jones Knitting Corp. v. Morgan*, D.C.Pa., 244 F.Supp. 235, 238.

**Primary boycott.** *See* that title.

**Secondary boycott.** A combination to exercise coercive pressure on customers, actual or prospective, to cause them to withhold or withdraw their patronage of a certain business or product. *See also* Secondary boycott.

**Boyd rule.** In a corporate reorganization, no junior security may be given participation without providing a new consideration therefor, unless all securities senior to it have received full equivalent of their rights against the estate. *Phelan v. Middle States Oil Corp.*, D.C.N.Y., 124 F.Supp. 728, 781.

**Bozero** /bowsérow/. In Spanish law, an advocate; one who pleads the causes of others, or his own, before courts of justice, either as plaintiff or defendant. Called also *abogado*.

**B.R.** An abbreviation for *Bancus Regis* (King's Bench), or *Bancus Reginæ* (Queen's Bench). It is frequently found in the old books as a designation of that court. In more recent usage, the initial letters of the English names are ordinarily employed, *i.e.*, K.B. or Q.B.

**Brabant** /brábánt/. A variety of the old coin known as a crocard.

**Brabanter** /brábántər/. A mercenary soldier or bandit who figured in the Anglo-French wars of the 11th and 13th centuries, and who came from the old duchy of Brabant, now partly comprised in the provinces of Brabant in Belgium and of North Brabant in the Netherlands.

**Bracery** /bréysəri/. The English statute of 32 Hen. VIII, c. 9, to prevent the buying and selling of pretended rights or titles, is commonly called "the Bill of Bracery and buying of titles."

**Brachium maris** /bréykiyəm mārəs/. An arm of the sea.

**Bracket creep.** The process by which inflation pushes individuals into higher tax brackets.

**Brady material.** "Brady material" is exculpatory information, material to a defendant's guilt or punishment, which government knew about but failed to disclose to defendant in time for trial. Defendant is denied due

process if Government suppresses such material. *U.S. v. Endicott*, C.A.Wash., 803 F.2d 506, 514. Name is derived from *Brady v. U.S.*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215. See *Fed.R.Crim.P.* 16, 26.2.

**Brain death.** Numerous states have enacted statutory definitions of death which include brain-related criteria. For example, many states have adopted the Uniform Determination of Death Act. See *Death*.

Characteristics of brain death consist of: (1) unresponsiveness and unresponsiveness to externally applied stimuli and internal needs; (2) no spontaneous movements or breathing; (3) no reflex activity; and (4) a flat electroencephalograph reading after 24 hour period of observation. *Com. v. Golston*, 373 Mass. 249, 252, 366 N.E.2d 744. A number of states have adopted this so-called "Harvard" definition of brain death, either by statute or court decision.

See also *Death (Natural Death Acts)*.

**Braking distance.** Total distance required to stop a motor vehicle from time driver recognizes need to stop until vehicle is standing still. Factors which control are speed of vehicle, weather, road conditions, tires, condition of brakes, etc. Sometimes referred to as stopping distance.

**Branch.** An offshoot, lateral extension, or subdivision. Any member or part of a body (e.g. executive branch of government), or system; a department. Division, office, or other unit of business located at a different location from main office or headquarters.

A branch of a family stock is a group of persons related by descent from a common ancestor, and related to the main stock by the fact that that common ancestor descends from the original founder or progenitor.

**Branch bank.** An office of a bank physically separated from its main office, with common services and functions, and corporately part of the bank. Under the National Bank Act, term at very least includes any place for receiving deposits or paying checks or lending money apart from chartered premises. *Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank*, C.A. Neb., 530 F.2d 755, 764.

"Branch banking" is the operation of one banking institution as the instrumentality of another, in which the relationship between them is such that they operate as a single unit. In *Re Cleveland Trust Co. of Lake County*, 38 Ohio St.2d 183, 311 N.E.2d 854, 859. Branch banking is not permitted in certain states.

"Branch office" of a bank or savings bank includes an office, unit, station, facility, terminal, space or receptacle at a fixed location other than a principal office, however designated, at which any business that may be conducted in a principal office of a bank or savings bank may be transacted. Included in this definition are off-premises electronic bank facilities.

Under Uniform Commercial Code, branch bank includes a separately incorporated foreign branch of bank. § 1-201.

**Branch of the sea.** This term, as used at common law, included rivers in which the tide ebbed and flowed.

**Branch railroad.** A lateral extension of a main line; a road connected with or issuing from a main line. Feeder lines.

**Brand.** A word, mark, symbol, design, term, or a combination of these, both visual and oral, used for the purpose of identification of some product or service. See also *Trade name*.

**Brandeis brief.** Form of appellate brief in which economic and social surveys and studies are included along with legal principles and citations and which takes its name from Louis D. Brandeis, former Associate Justice of Supreme Court, who used such brief while practicing law.

**Branding.** An ancient mode of punishment by inflicting a mark on an offender with a hot iron. A recognized punishment for some military offenses. Marking of cattle for the purpose of identification.

**Branks.** An instrument formerly used in some parts of England for the correction of scolds; a scolding bridle.

**Brassage.** Government charge for coining metals; covering only the actual cost. Any profit is termed "Seignorage."

**Brass knuckles or knucks.** A weapon worn on the hand for the purposes of offense or defense, so made that in hitting with the fist considerable damage is inflicted. It is called "brass knuckles" because it was originally made of brass. The term is now used as the name of the weapon without reference to the metal of which it is made.

**Brawl.** A clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace.

In English law, specifically, a noisy quarrel or other uproarious conduct creating a disturbance in a church or churchyard. 4 Bl.Comm. 146.

**Breach.** The breaking or violating of a law, right, obligation, engagement, or duty, either by commission or omission. Exists where one party to contract fails to carry out term, promise, or condition of the contract.

**Breach of close.** The unlawful or unwarrantable entry on another person's soil, land, or close.

**Breach of contract.** Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. Unequivocal, distinct and absolute refusal to perform agreement.

*Anticipatory breach.* See *Anticipatory breach of contract*.

*Breach of warranty.* See *Breach of warranty*.

*Constructive breach.* Such breach takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes,

that he will not perform. *The Adamello*, D.C.Va., 19 F.2d 388, 389. *See also* Anticipatory breach of contract.

**Continuing breach.** Such breach occurs where the state of affairs, or the specific act, constituting the breach, endures for a considerable period of time, or is repeated at short intervals.

**Efficient breach.** Modern contract theory which holds that it may be economically efficient to breach a contract and pay damages. *Seibel v. Liberty Homes, Inc.*, 305 Or. 362, 752 P.2d 291, 294. Occurs when the breaching party will still profit after compensating the other party for its "expectation interest." *Thyssen, Inc. v. S.S. Fortune Star, C.A.N.Y.*, 777 F.2d 57, 63. *See also* *Patton v. Mid-Continent Systems, Inc.*, C.A.Ill., 841 F.2d 742, 750. This theory is not well accepted.

**Material breach.** Violation of contract which is substantial and significant and which usually excuses the aggrieved party from further performance under the contract and affords a right to sue for damages.

**Partial breach.** A violation of a contract as to one part only or to a less significant degree than a material breach and which gives the aggrieved party a right to damages but generally does not excuse his performance.

**Rights and remedies.** Parts 6 and 7 of U.C.C. Article 2 cover rights and remedies of both buyer and seller on breach of contract by either. *See also* Damages; Performance (*Specific performance*).

**Tort action.** A tort action may exist for bad faith breach of contract as based on breach of the implied covenant of good faith and fair dealing. Such actions commonly involve insurance contracts.

**Breach of covenant.** The nonperformance of any covenant agreed to be performed, or the doing of any act covenanted not to be done.

**Breach of duty.** In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness, is a breach of duty. *See* Non-support.

**Breach of pound.** The breaking any pound or place where cattle or goods distrained are deposited, in order to take them back. 3 Bl.Comm. 146.

**Breach of prison.** Unauthorized departure of a prisoner from legal custody accomplished by the use of force. *U. S. ex rel. Manzella v. Zimmerman*, D.C.Pa., 71 F.Supp. 534. *See* Escape.

**Breach of privilege.** An act or default in violation of the privilege of either house of parliament, of congress, or of a state legislature.

**Breach of promise.** Violation of a promise; used *e.g.* as an elliptical expression for "breach of promise of marriage."

**Breach of the peace.** A violation or disturbance of the public tranquillity and order. *State v. Boles*, 5 Conn. Cir. 22, 240 A.2d 920, 927. The offense of breaking or disturbing the public peace by any riotous, forcible, or unlawful proceeding. Breach of the peace is a generic term, and includes all violations of public peace or order and acts tending to a disturbance thereof. *State v. Poinsett*, 250 S.C. 293, 157 S.E.2d 570, 571, 572. One who commits a breach of the peace is guilty of disorderly conduct, but not all disorderly conduct is necessarily a "breach of the peace." *City of Seattle v. Franklin*, 191 Wash. 297, 70 P.2d 1049, 1051.

Term signifies disorderly, dangerous conduct disruptive of public peace. *Great Atlantic & Pac. Tea Co. v. Paul*, 256 Md. 643, 261 A.2d 731, 739.

*See also* Peace; Peace bond.

**Breach of trust.** Any act done by a trustee contrary to the terms of his trust, or in excess of his authority and to the detriment of the trust; or the wrongful omission by a trustee of any act required of him by the terms of the trust. Also the wrongful misappropriation by a trustee of any fund or property which had been lawfully committed to him in a fiduciary character. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence, or arising through mere oversight and forgetfulness, is a "breach of trust." The term, therefore, includes every omission and commission in carrying out the trust according to its terms, of care and diligence in protecting and investing the trust property, and of using perfect good faith. A violation by the trustee of any duty which he owes to the beneficiary. *Bruun v. Hanson*, C.C.A.Idaho, 103 F.2d 685, 699.

**Breach of trust with fraudulent intent.** Larceny after trust. *State v. Owings*, 205 S.C. 314, 31 S.E.2d 906, 907.

**Breach of warranty.** In real property law and the law of insurance, the failure or falsehood of an affirmative promise or statement, or the nonperformance of an executory stipulation. As used in the law of sales, breach of warranty, unlike fraud, does not involve guilty knowledge, and rests on contract. Under Uniform Commercial Code consists of a violation of either an express or implied warranty relating to title, quality, content or condition of goods sold for which an action in contract will lie. U.C.C. § 2-312 et seq. *See* Warranty.

**Breakage.** Allowance given by manufacturer to buyer for breakage damage caused while in transit or storage. Also, fractional amounts (*e.g.* pennies) due either party as for example in computing interest on loan or deposits.

**Breaking.** Forcibly separating, parting, disintegrating, or piercing any solid substance. In the criminal law as to housebreaking and burglary, it means the tearing away or removal of any part of a house or of the locks, latches, or other fastenings intended to secure it, or otherwise exerting force to gain an entrance, with criminal intent; or violently or forcibly breaking out of a house, after having unlawfully entered it, in the attempt to escape. Actual "breaking" involves application of some force, though the slightest force is sufficient; *e.g.*

an actual "breaking" may be made by unloosening, removing or displacing any covering or fastening of the premises, such as lifting a latch, drawing a bolt, raising an unfastened window, or pushing open a door kept closed by its own weight. *Sparkman v. State*, 3 Md.App. 527, 240 A.2d 328, 331. Even the opening of a closed and unlocked door or window is sufficient to constitute a "breaking" within terms of statute, so long as it is done with a burglarious intent. *State v. Sanderson*, Mo.App., 528 S.W.2d 527, 531. *See* Burglary.

**Breaking a case.** The expression by the judges of a court, to one another, of their views of a case, in order to ascertain how far they are agreed, and as preliminary to the formal delivery of their opinions. Sometimes used by crime investigators to announce the solution of a crime with the apprehension of the principal suspect.

**Breaking a close.** Unlawful entry upon land of another (common law trespass).

**Breaking and entry.** Term used to describe the necessary elements of common law burglary which consisted of breaking and entering dwelling of another in nighttime with intent to commit a felony therein. Statutory forms of burglary consist in variations of the common law crime, e.g. entering without breaking with intent to commit misdemeanor. *See* Breaking; Burglary.

**Breaking bail.** Historically, crime committed by bailee who broke open a package (bale) though no crime was committed if he converted the whole package without breaking the bulk. *See* Breaking bulk.

**Breaking bulk.** The offense committed by a bailee (particularly a carrier) in opening or unpacking the chest, parcel, or case containing goods intrusted to his care, and removing the goods and converting them to his own use. *See also* Breaking bail.

**Breaking doors.** Forcibly removing the fastenings of a house, so that a person may enter. *See* Breaking.

**Breaking into.** Breaking with burglarious intent. *State v. Hefflin*, 338 Mo. 236, 89 S.W.2d 938, 946. *See* Breaking.

**Breaking jail.** The act of a prisoner in effecting his escape from a place of lawful confinement. *See* Breach of prison.

**Breast of the court.** A metaphorical expression signifying the conscience, discretion, or recollection of the judge.

**Breathalyzer test.** Test to determine content of alcohol in one arrested for operating motor vehicle under influence of liquor. The results of such test, if properly administered, are admissible evidence. *See, e.g., People v. Donaldson*, 36 A.D.2d 37, 319 N.Y.S.2d 172. *See* Consent (*Implied consent*). *See also* Blood test evidence; Field sobriety tests; Intoxilyzer; Intoximeter.

**Breath specimen.** Sample of one's breath used in testing for alcoholic content. *See* Breathalyzer test.

**Bredwite** /brédwæt/. In Saxon and old English law, a fine, penalty, or amercement imposed for defaults in the assise of bread.

**Breed.** Produce (offspring) by hatching or gestation; to hatch. *Miller Hatcheries v. Boyer*, C.C.A.Iowa, 131 F.2d 283, 287. Number of persons of the same stock.

**Brehon** /briyən/. In old Irish law, a judge. 1 Bl.Comm. 100. Brehons (*breitheamhuin*), judges.

**Brehon law** /briyən ló/. The name given to the ancient system of law of Ireland as it existed at the time of its conquest by Henry II.

**Brenagium** /brænējijəm/. A payment in bran, which tenants anciently made to feed their lords' hounds.

**Brephotrophi** /brəfətrófway/. In the civil law, persons appointed to take care of houses destined to receive foundlings.

**Brethren.** Plural of brother; though this word, in a will, may include sisters, as well as brothers, of the person indicated; it is not necessarily limited to the masculine gender.

**Brethren of Trinity House.** *See* Elder brethren.

**Bretts and Scotts, Laws of the.** A code or system of laws in use among the Celtic tribes of Scotland down to the beginning of the fourteenth century, and then abolished by Edward I. of England.

**Breve** /briyvi/. L. Lat. A writ. An original writ. A writ or precept of the king issuing out of his courts. A writ by which a person was summoned or attached to answer an action, complaint, etc., or whereby anything was commanded to be done in the courts, in order to justice, etc.

**Breve de recto** /briyv(iy) diy réktow/. A writ of right, or license for a person ejected out of an estate, to sue for the possession of it.

**Breve innominatum** /briyv(iy) ənómánéytəm/. A writ making only a general complaint, without the details or particulars of the cause of action.

**Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat** /briyriy áytə dístər kwáyə rém diy kwéy éjətər, ed intənsiyównəm pətentəs, pósəs vərbəs brévətər enə̀rət/. A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.

**Breve judiciale debet sequi suum originale, et accessorium suum principale** /briyviy juwdishiyéyliy débət sékway s(y)úwəm əhrijəniyeliy, èd əksəsóriyəm s(y)úwəm prinsəpéyliy/. A judicial writ ought to follow its original, and an accessory its principal.

**Breve judiciale non cadit pro defectu formæ** /briyv(iy) jədishiyéyliy nòn kádət prów dəfəkt(y)uw fórmiy/. A judicial writ fails not through defect of form.

**Breve nominatum** /brív(iy) no(w)mánéytəm/. A named writ. A writ stating the circumstances or details of the

cause of action, with the time, place, and demand, very particularly.

**Breve originale** /bríyv(iy) əriʒnéyliy/. An original writ; a writ which gave *origin* and commencement to a suit.

**Breve perquirere** /bríyv(iy) pərkwáyrəriy/. To purchase a writ or license of trial in the king's courts by the plaintiff.

**Brevet** /brévət/brəvét/. In military law, a commission by which an officer is promoted to the next higher rank, but without conferring a right to a corresponding increase of pay.

In French law, a privilege or warrant granted by the government to a private person, authorizing him to take a special benefit or exercise an exclusive privilege. Thus a *brevet d'invention* is a patent for an invention.

**Breve testatum** /briyv(iy) testéytəm/. A written memorandum introduced to perpetuate the tenor of the conveyance and investiture of lands. 2 Bl.Comm. 307.

**Brevia** /bríyviyə/. Lat. The plural of *breve*.

**Brevia adversaria** /bríyviyə ədvərsəriyə/. Adversary writs; writs brought by an adversary to recover land.

**Brevia amabilia** /bríyviyə əməkəbilyə/. Amicable or friendly writs; writs brought by agreement or consent of the parties.

**Brevia anticipantia** /bríyviyə əntisəpəns(iy)ə/. At common law, anticipating or preventive writs. Six were included in this category, viz.: Writ of *mesne*; *warrantia chartæ*; *monstraverunt*; *audita querela*; *curia claudenda*; and *ne injuste vexes*.

**Brevia de cursu** /bríyviyə diy kársywu/. Writs of course. Formal writs issuing as of course.

**Brevia formata** /bríyviyə forméytə/. Certain writs of approved and established form which were granted of course in actions to which they were applicable, and which could not be changed but by consent of the great council of the realm.

**Brevia judicialia** /bríyviyə juwdishiyéyliyə/. Judicial writs. Auxiliary writs issued from the court during the progress of an action, or in aid of the judgment.

**Brevia magistralia** /bríyviyə məjəstréyliyə/. Writs occasionally issued by the *masters* or clerks of chancery, the form of which was varied to suit the circumstances of each case.

**Breviarium alaricianum** /bríyviyérəm ələrish(iy)éynəm/. A compilation of Roman law made by order of Alaric II., king of the Visigoths, in Spain, and published for the use of his Roman subjects in the year 506. It is also known as *Lex Romana Visigothorum*. It became the principal, if not the only, representative of Roman law among the Franks.

**Breviarium aniani** /bríyviyérəm əniyéynay/. Another name for the *Breviarium Alaricianum*, (*q.v.*) Anian was the referendary or chancellor of Alaric, and was com-

manded by the latter to authenticate, by his signature, the copies of the breviary sent to the *comites*.

**Brevia selecta** /bríyviyə səlékta/. Choice or selected writs or processes. Often abbreviated to *Brev. Sel.*

**Brevia, tam originalia quam judicialia, patiuntur anglica nomina** /bríyviyə təm əriʒnéyliyə kwəm juwdishiyéyliyə pəshiyéntər əngləkə nó(w)mənə/. Writs, as well original as judicial, bear English names.

**Breviate** /bríyviyət/. A brief; brief statement, epitome, or abstract. A short statement of contents, accompanying a bill in parliament. The name is usually applied to the famous brief of Mr. Murray (afterwards Lord Mansfield) for the complainant in the case of *Penn v. Lord Baltimore*, 1 Ves. 444.

**Brevia testata** /bríyviyə testéytə/. The name of the short memoranda early used to show grants of lands out of which the deeds now in use have grown.

**Brevibus et rotulis liberandis** /bríyvəbəs et rótyələs libərəndəs/. A writ or mandate to a sheriff to deliver to his successor, the county, and appurtenances, with the rolls, briefs, remembrance, and all other things belonging to his office.

**Brewer**. One who manufactures fermented liquors, for sale, from malt, wholly or in part, or from any substitute therefor.

**Bribe**. Any money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity. See *e.g.* Calif. Penal Code § 7. A gift, not necessarily of pecuniary value, bestowed to influence the conduct of the receiver. See also *Bribery*; *Kickback*; *Solicitation of bribe*.

**Bribery**. The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties. *Allen v. State*, 63 Okl. Cr. 16, 72 P.2d 516, 519. The corrupt tendering or receiving of a price for official action. *State v. London*, 194 Wash. 458, 78 P.2d 548, 554. The receiving or offering any undue reward by or to any person concerned in the administration of public justice or a public officer to influence his behavior in office. Any gift, advantage, or emolument offered, given, or promised to, or asked or accepted by, any public officer to influence his behavior in office. Model Penal Code § 240.1. The federal statute includes any "officer or employee or person acting for or on behalf of the United States, or any department or agency or branch of government thereof, . . . in any official function". 18 U.S.C.A. § 201.

Any direct or indirect action to give, promise or offer anything of value to a public official or witness, or an official's or witness' solicitation of something of value is prohibited as a bribe or illegal gratuity. 18 U.S.C. § 201.

At common law, the gist of the offense was the tendency to pervert justice; the offering, giving, receiving or

soliciting of anything of value to influence action as a public official; corrupt agreement induced by offer of reward. The term now, however, extends to many classes of officers and is not confined to judicial officers; it applies both to the actor and receiver, and extends to voters, legislators, sheriffs, and other classes. All persons whose official conduct is connected with the administration of the government are subjects; including persons acting under color of title to office. *State v. London*, 194 Wash. 458, 78 P.2d 548.

I.R.C. § 162 denies a deduction for bribes or kickbacks.

**Commercial bribery.** Commercial bribery, as related to unfair trade practices, is the advantage which one competitor secures over his fellow competitors by his secret and corrupt dealing with employees or agents of prospective purchasers. *American Distilling Co. v. Wisconsin Liquor Co.*, C.C.A.Wis., 104 F.2d 582.

**Bribery at elections.** The offense committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or abstained from voting. See 18 U.S.C.A. § 597.

**Bribeur** /bráybər/. One that pilfers other men's goods; a thief.

**Bridewell.** In England, a house of corrections.

**Bridge loan.** A loan which is for short duration until more permanent financing is arranged; *e.g.*, person might obtain a bridge loan to purchase real estate and build house before final mortgage financing or the sale of presently held assets can be accomplished; or, firm might utilize bridge loans to finance merger or leveraged buyout until bonds can be issued or other long-term financing secured.

**Bridge securities.** Type of security issued to finance bridges; usually secured by a lien thereon.

**Brief.** A written document; a letter; a writing in the form of a letter. A summary, abstract, or epitome. A condensed statement or epitome of some larger document, or of a series of papers, facts and circumstances, or propositions.

A written statement prepared by the counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting counsel's position. A summary of a published opinion of a case prepared by law student. *See also* Legal brief.

**Appellate brief.** Written arguments by counsel required to be filed with appellate court on why the trial court acted correctly (appellee's brief) or incorrectly (appellant's brief). While the contents and form of such briefs are normally prescribed by rule of court, commonly such contain: statement of issues presented for review, statement of the case, an argument (with authorities), a conclusion stating the precise relief sought. *See e.g.* Fed.Rule App.Proc. 28.

**Trial brief.** Document prepared for and used by attorney at trial which contains, among other things, issues to be tried, synopsis of evidence and witnesses to be presented, and case and statutory authority for the position of counsel at trial. Frequently, copies of the trial briefs are required to be furnished to the trial judge.

**Brigandage** /brígəndəj/. Robbery and banditry as perpetrated by a band of robbers or brigands; plundering and outlawry.

**Bring.** To convey to the place where the speaker is or is to be; to bear from a more distant to a nearer place; to make to come, procure, produce, draw to; to convey, carry or conduct, move. To cause to be, act, or move in a special way. The doing of something effectual. The bringing of someone to account, or the accomplishment of some definite purpose.

**Bring about.** To procure; implies completion. *Jackson v. Thompson*, Tex.Civ.App., 74 S.W.2d 1055, 1057.

**Bringing money into court.** The act of depositing money in the custody of a court or of its clerk or marshal, for the purpose of satisfying a debt or duty, or to await the result of an interpleader. *See e.g.* Fed.R. Civil P. 67.

**Bring into.** To import; to introduce.

**Bring suit.** To "bring" an action or suit has a settled customary meaning at law, and refers to the initiation of legal proceedings in a suit. *Lake & Co. v. King County*, 4 Wash.2d 651, 104 P.2d 599, 601. A suit is "brought" at the time it is commenced. *Goldenberg v. Murphy*, 108 U.S. 162, 2 S.Ct. 388, 27 L.Ed. 686. "Brought" and "commenced" in statutes of limitations are commonly deemed to be synonymous. Under the Federal Rules of Civil Procedure, and also most state courts, a civil action is commenced by filing a complaint with the court. Rule 3. *See also* Commence.

Under Fed. Rules of Civil Proc., term "suit" has been replaced by "action". *See* Rule 2.

**Bring up.** Nurse, rear, and educate child until full age. *In re Bamber's Estate*, 147 Misc. 712, 265 N.Y.S. 798.

**Bristol bargain.** In English law, a contract by which A. lends B. £1,000 on good security, and it is agreed that £500, together with interest, shall be paid at a time stated; and, as to the other £500, that B., in consideration thereof, shall pay to A. £100 *per annum* for seven years.

**British subject.** The status conferred upon persons who are citizens of the United Kingdom and Commonwealth of Canada, Australia, New Zealand, India, etc. under the British Nationality Act, 1981, § 51(1)(6).

**British thermal unit (B.T.U.).** The amount of heat required to raise a pound of water one degree Fahrenheit.

**Broad interpretation.** That interpretation of Constitution or statute which, brushing aside minor objections and trivial technicalities, effectuates intent of act. *In re* Senate Resolution No. 2 Concerning Constitutionality of

House Bill No. 6, 94 Colo. 101, 31 P.2d 325, 332. A meaning given to a constitutional provision or statute which is designed to effectuate the intent of the law as contrasted with a "narrow" interpretation which may fail to do so. Giving to a law a meaning which is not necessarily included in a literal application of the words of the law.

**Broadside objection.** A general objection interposed without specifying grounds thereof.

**Brocage** /brówkəj/. The wages, commission, or pay of a broker (also called "brokerage"). Also the avocation or business of a broker.

**Brocard** /brówkərd/. In old English law, a legal maxim. "Brocardica Juris," the title of a small book of legal maxims, published at Paris, 1508.

**Brocarium, brocator** /browkériyəs/browkéytər/. In old English and Scotch law, a broker; a middleman between buyer and seller; the agent of both transacting parties.

**Broken.** Impoverishment. *Walsh v. Kennedy*, 115 Mont. 551, 147 P.2d 425, 430. *See Indigent.*

**Broken lot.** Odd lot; less than the usual unit of measurement or unit of sale; *e.g.* less than 100 shares of stock.

**Broken stowage.** In maritime law, that space in a ship which is not filled by her cargo.

**Broker.** An agent employed to make bargains and contracts for a compensation. A dealer in securities issued by others. *White v. Financial Guarantee Corporation*, 13 Cal.App.2d 93, 56 P.2d 550, 553. A middleman or negotiator between parties. A person dealing with another for sale of property. A person whose business it is to bring buyer and seller together. One who is engaged for others, on a commission, to negotiate contracts relative to property. *North Carolina Real Estate Licensing Board v. Aikens*, 31 N.C.App. 8, 228 S.E.2d 493, 496. An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis. The term extends to almost every branch of business, to realty as well as personalty.

Ordinarily, the term is applied to one acting for others but is also applicable to one in business of negotiating purchases or sales for himself.

For distinction between "commission merchant" and "broker," *see* Commission merchant. For "Factor" and "broker" as synonymous or distinguishable, *see* Factor. *See also* Commercial broker; Commission broker; Customs broker; Exchange broker; Pawnbroker.

**Broker-agent.** One licensed to act both as broker and agent.

**Broker-dealer.** A securities brokerage firm, usually registered with the S.E.C. and with the state in which it does business, engaging in the business of buying and selling securities to or for customers.

**Institutional broker.** Brokers who trade (buy and sell) securities for institutional clients—mutual funds, banks, pension funds, insurance companies.

**Insurance broker.** Person who obtains insurance for individuals or companies from insurance companies or their agents. Differs from an insurance agent in that he does not represent any particular company.

**Merchandise brokers.** Buyers and sellers of goods and negotiators between buyer and seller, but without having the custody of the property.

**Money broker.** A money-changer; a scrivener or jobber; one who lends or raises money to or for others.

**Note broker.** Negotiators of the discount or sale of commercial paper.

**Real estate broker.** Persons who procure the purchase or sale of land, acting as intermediary between vendor and purchaser, and who negotiate loans on real-estate security, manage and lease estates, etc. *Latta v. Kilbourn*, 150 U.S. 524, 14 S.Ct. 201, 37 L.Ed. 1169. A broker employed in negotiating the sale, purchase, lease, or exchange of lands on a commission contingent on success. A person engaged in business to such an extent that it is his vocation or partial vocation. *See* Listing.

**Securities broker.** Brokers employed to buy and sell for their principals stocks, bonds, government securities, etc. Any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank. Securities Exchange Act of 1934, § 3. A person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned, acts for, or buys a security from or sells a security to a customer. U.C.C. § 8-303.

A person who acts as an agent for a buyer or seller, or an intermediary between a buyer and seller, usually charging a commission. A broker who specializes in shares, bonds, commodities or options must be registered with the exchange where the specific securities are traded. A broker should be distinguished from a securities dealer who, unlike the broker, is in the business of buying or selling for his own account. *See also* Broker-dealer, above.

**Brokerage.** The wages or commissions of a broker; also, his business or occupation.

**Brokerage contract.** A contract of agency, whereby broker is employed to make contracts of kind agreed upon in name and on behalf of his principal, and for which he is paid an agreed commission. A unilateral contract wherein the principal makes an offer which is interpreted as promise to pay broker a commission in consideration of his producing a buyer ready, able, and willing to buy the property on the principal's terms. *In re Cowan's Estate, Sur.*, 13 N.Y.S.2d 374, 376. *See also* Brokerage listing, *infra*.

**Brokerage listing.** An offer of a unilateral contract, the act requested being the procuring by the broker of a purchaser ready, able and willing to buy upon the terms stated in the offer. *Buckaloo v. Johnson*, 14 Cal.3d 815, 122 Cal.Rptr. 745, 753, 537 P.2d 865. *See also* Brokerage contract; Listing.



**Brossus** /brósəs/. Bruised, or injured with blows, wounds, or other casualty.

**Brothel** /bróθəl/. A bawdy-house; a house of ill fame; a common habitation of prostitutes.

**Brother.** One person is a brother "of the whole blood" to another, the former being a male, when both are born from the same father and mother. He is a brother "of the half blood" to that other (or half-brother) when the two are born to the same father by different mothers or by the same mother to different fathers.

In the civil law, the following distinctions are observed: Two brothers who descend from the same father, but by different mothers, are called "consanguine" brothers. If they have the same mother, but are begotten by different fathers, they are called "uterine" brothers. If they have both the same father and mother, they are denominated brothers "germane."

**Brother-in-law.** The brother of one's spouse; the husband of one's sister; the husband of one's spouse's sister.

**Brother-sister corporation.** More than one corporation owned by the same shareholders. If, for example, C and D each owned one-half of the stock in X Corporation and Y Corporation, X and Y are brother-sister corporations.

Two or more corporations owned and effectively controlled by one or more individuals, and where these corporations are involved, earnings can be transferred between them only through common shareholder or shareholders, who will be subject to progressive individual income tax. *Inland Terminals, Inc. v. U. S., C.A. Md., 477 F.2d 836, 840.*

**Brought.** Taken; carried. Past tense of "bring." See *Bring suit, supra.*

**Brought in question upon the record.** The constitutionality of an act is "brought in question upon the record" when it is clearly questioned by the allegation of any pleading, or by any other formal objection filed in the case. *Brosco v. Frost, 63 R.I. 1, 6 A.2d 705, 706.*

**Brought to the attention of.** Equivalent to the expression "made known to."

**Brown decision.** Supreme Court decision which declared racial segregation in public schools to be in violation of equal protection clause of Fourteenth Amendment. *Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.* See also *Separate but equal doctrine.*

**Brown decree.** A decree which terminates marriage without specifying in whose favor issue as to grounds for divorce was decided. *Spector v. Spector, 94 Ariz. 175, 382 P.2d 659.*

**Bruton error.** Type of error that arises in joint trial by admission of confession of codefendant implicating defendant, where codefendant did not testify and defendant maintained his innocence. *Cochran v. State, 177 Ga.App. 471, 339 S.E.2d 749, 750.* Name is derived from *Bruton v. U.S., 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476.*

**Brutum fulmen** /brúwtəm fálmon/. An empty noise; an empty threat. A judgment void upon its face which is in legal effect no judgment at all, and by which no rights are divested, and from which none can be obtained, and neither binds nor bars anyone. *Dollert v. Pratt-Hewitt Oil Corporation, Tex.Civ.App., 179 S.W.2d 346, 348.*

**B.S.** *Bancus Superior*, that is, upper bench. Bachelor of Science, a collegiate degree.

**B.T.A.** See Board of Tax Appeals.

**B.T.U.** British Thermal Unit (*q.v.*).

**Bubble.** An extravagant or unsubstantial project for extensive operations in business or commerce, generally founded on a fictitious or exaggerated prospectus, to ensnare unwary investors. Companies formed on such a basis or for such purposes are called "bubble companies". The term is chiefly used in England.

**Bubble Act.** English Act (1720-1825) drafted to prevent incorporation of English businesses. See also *Bubble.*

**Bucketing.** Receipt of orders to purchase and sell stock without intention of actually executing such orders.

**Bucket shop.** An office or place (other than a regularly incorporated or licensed exchange) where persons engage in pretended buying and selling of securities or commodities; *e.g.* broker accepts orders to buy or sell but never actually executes such.

**Budget.** A statement of estimated revenues and expenses for a specified period of time, generally a year. A balanced budget is one in which revenues equals or exceeds expenditures. Also, sum of money allocated to a particular purpose or project, or for a specified period of time. See also *Capital (Capital budget); Cash budget; Operating budget.*

**Budget system.** A system by which income and expenditures are balanced for a definite period of time.

**Buffer-zone.** Term used in zoning and land use law to describe area separating two different types of zones or classes of areas to make each blend more easily with each other; *e.g.* strip of land between industrial and residential areas.

**Buggery.** A carnal copulation against nature; a man or a woman with a brute beast, a man with a man, or man unnaturally with a woman. This term is often used interchangeably with "sodomy."

**Bugging.** Form of electronic surveillance by which conversations may be overheard and recorded; regulated strictly by federal and state statute for use by law enforcement officers. See also *Eavesdropping; Wiretapping.*

**Builder.** One whose occupation is the building or erection of structures, the controlling and directing of construction, or the planning, constructing, remodeling and adapting to particular uses buildings and other structures. One who puts, or contracts to put, a structure into permanent form.

**Building.** Structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education, and the like. A structure or edifice inclosing a

space within its walls, and usually, but not necessarily, covered with a roof. *Netter v. Scholtz*, 282 Ky. 493, 138 S.W.2d 951, 953.

**Building and loan association.** An organization for the purpose of accumulating a fund by subscriptions and savings of its members to assist them in building or purchasing for themselves dwellings or real estate by the loan to them of the requisite money. Quasi public corporations chartered to encourage thrift and promote ownership of homes. *Hopkins Federal Savings & Loan Ass'n v. Cleary*, Wis., 296 U.S. 315, 56 S.Ct. 235, 237, 241, 80 L.Ed. 251. Such associations are not commercial banks, nor, in most states, are such classified as savings banks or savings institutions; though in many states such is a special type or variety of savings and loan association. *See also* Savings and loan association.

**Building code.** Laws, ordinances, or government regulations concerning fitness for habitation setting forth standards and requirements for the construction, maintenance, operation, occupancy, use or appearance of buildings, premises, and dwelling units. While many codes are local in nature and scope, many states have uniform codes which all local municipalities must adhere to. In addition, FHA financed real estate must meet certain building code requirements.

**Building is covered.** Phrase in a binder or contract of temporary insurance meaning that the property shall be insured in the standard form of insurance from that instant for a reasonable time until either the policy or policies can be written out, or their issuance approved or disapproved or some other temporary impediment to the complete formal contract of insurance can be removed. *Shumway v. Home Fire & Marine Ins. Co. of California*, 301 Mass. 391, 17 N.E.2d 212, 214.

**Building lien.** The statutory lien of a materialman or contractor for the erection of a building. *See* Mechanic's lien.

**Building line.** A line established by municipal authority, to secure uniformity of appearance in the streets of the city, drawn at a certain uniform distance from the curb or from the edge of the sidewalk, and parallel thereto, upon which the fronts of all buildings on that street must be placed, or beyond which they are not allowed to project. Often referred to as the "set-back" requirement.

**Building loan agreement.** An agreement by which one undertakes to advance to another money to be used primarily in erection of buildings. Such funds are normally used by the borrower to pay the contractor, subcontractors and materialmen; and such funds are commonly advanced in installments as the structure is completed. The lender's security is normally the structure being erected. Also called interim or construction financing. *See* Bridge loan.

**Building permit.** Authorization required by local governmental bodies for new building, or major alteration or expansion of existing structures. Building plans, estimated costs, etc., and a fee, are usually required

before such is issued. Such permit is normally required to be displayed on the construction site.

**Building restrictions.** Regulations or restrictions (commonly in zoning ordinances) upon the type of structure that can be constructed on one's property. Such restrictions may also be created in the form of restrictive covenants in deeds. *See* Building code.

**Building society.** An association in which the subscriptions of the members form a capital stock or fund out of which advances may be made to members desiring them, on mortgage security. *See* Building and loan association.

**Bul.** In the ancient Hebrew chronology, the eighth month of the ecclesiastical, and the second of the civil year. It has since been called "*Marshevan*," and answers to our October.

**Bulk.** Unbroken packages. Merchandise which is neither counted, weighed, nor measured. The aggregate that forms a body or unit. When used in relation to sale of goods by sample, "bulk" means the whole quantity of goods sold, which is supposed to be fairly represented by the sample.

**Bulk mortgage.** A mortgage on property in bulk. May describe creation of security interest in several items as a whole or in bulk, or a mortgage of more than one parcel of real estate, though a bulk transfer is not a security interest subject to Art. 9 of U.C.C., § 9-111.

**Bulk sale.** Any transfer in bulk, and not in the ordinary course of the transferor's business, of a major part of the materials, supplies, merchandise or other inventory of an enterprise. U.C.C. § 6-102(1). Such transfers are regulated by U.C.C. Article 6 to protect creditors of the transferor. *See* Bulk Sales Acts, *infra*.

A sale of substantially all the inventory of a trade or business to one person in one transaction. Under certain conditions, corporations making a bulk sale pursuant to a complete liquidation will recognize neither gain nor loss on such sale. I.R.C. § 337(b)(2).

**Bulk Sales Acts.** A class of statutes designed to prevent the defrauding of creditors by secret sale in bulk of all or substantially all of a merchant's stock of goods. Individual state bulk sales acts have been superseded by Art. 6 of U.C.C., "Bulk Transfers".

**Bulk transfers.** *See* Bulk sale; Bulk Sales Acts, *supra*.

**Bull.** In ecclesiastical law, an instrument granted by the Pope of Rome, and sealed with a seal of lead, containing some decree, commandment, or other public act, emanating from the pontiff. Bull, in this sense, corresponds with edict or letters patent from other governments.

There are three kinds of apostolical rescripts—the *brief*, the *signature*, and the *bull*; which last is most commonly used in legal matters.

Also, the slang term for an investor who anticipates that the stock market will rise; as contrasted with a "bear" who believes it will fall.

**Bulla** /búlə/. A seal used by the Roman emperors, during the lower empire; it was of four kinds,—gold, silver, wax, and lead.

**Bullet**. Synonymous with "shot," meaning a projectile particularly a solid ball or bullet that is not intended to fit the bore of a piece.

**Bulletin**. An officially published notice or announcement concerning the progress of matters of public importance and interest. A brief news item of immediate publication. The publication (organ) of an institution or association.

**Bulletin des lois** /bulɛtɛn dɛy lwá/. In France, the official sheet which publishes the laws and decrees; this publication constitutes the promulgation of the law or decree.

**Bull-headed**. Headstrong, obstinate, unreasonably stubborn.

**Bullion**. Gold and silver intended to be coined.

"Bullion" encompasses, at the very least, any solid mass of uncoined gold or silver whatever its shape so long as its shape does not enhance its value. *U. S. Smelting Refining & Mining Co. v. Aetna Cas. & Sur. Co.*, D.C.N.Y., 372 F.Supp. 489, 494.

**Bullion fund**. A fund of public money maintained in connection with the mints, for the purpose of purchasing precious metals for coinage, and also of enabling the mint to make returns of coins to private depositors of bullion without waiting until such bullion is actually coined.

**Bull market**. Securities term for a market in which prices are rising or are expected to rise.

**Bull pen**. A certain place of close confinement at a penitentiary.

**Bum-bailiff**. A person employed to dun one for a debt; a bailiff employed to arrest a debtor. Probably a vulgar corruption of "bound-bailiff" (*q.v.*).

**Bumping**. Displacement of a junior employee's position by a senior employee; commonly occurring during periods of layoff. The practice of failing to board ticketed passengers due to oversale of the scheduled flight. *Mason v. Belieu*, C.A.D.C., 543 F.2d 215, 219.

**Bunco game** /bɛŋkɔw géym/. Any trick, artifice, or cunning calculated to win confidence and to deceive, whether by conversation, conduct, or suggestion. A swindling game or scheme.

**Bunda** /bánda/. In old English law, a bound, boundary, border, or limit (*terminus, limes*).

**Bunkhouse rule**. This rule means that an injury suffered while the employee is reasonably using the employer's housing is within the course of employment even if the injury occurs during off-duty hours. *D.E.S. Youth Conservation Corps v. Industrial Commission of Arizona*, App., 129 Ariz. 235, 630 P.2d 58, 60.

**Buoy** /bóy/búwiy/. A floating object intended as a guide and warning to mariners, by marking a spot where the

water is shallow, or where there is a reef or other danger to navigation, or to mark the course of a channel. Buoys are regulated by federal statutes.

**Burden**. Capacity for carrying cargo. Something that is carried. Something oppressive or worrisome. A burden, as on interstate commerce, means anything that imposes either a restrictive or onerous load upon such commerce.

**Burden of going forward**. The onus on a party to a case to refute or to explain as in the case of one who is charged with possession of stolen goods after the government has introduced evidence of the defendant's recent possession of such goods, the inference being that the defendant knew the goods to have been stolen. *Barnes v. U. S.*, 412 U.S. 837, 846, n. 11, 93 S.Ct. 2357, 2363, 37 L.Ed.2d 380.

**Burden of persuasion**. The onus on the party with the burden of proof to convince the trier of fact of all elements of his case. In criminal case the burden of the government to produce evidence of all the necessary elements of the crime beyond a reasonable doubt. In *re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368. *See also* Burden of proof.

**Burden of producing evidence**. The obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue. *Calif.Evid.Code*. Such burden is met when one with the burden of proof has introduced sufficient evidence to make out a prima facie case, though the cogency of the evidence may fall short of convincing the trier of fact to find for him. The burden of introducing some evidence on all the required elements of the crime or tort or contract to avoid the direction of a verdict against the party with the burden of proof. *Stuart v. D. N. Kelley & Son*, 331 Mass. 76, 117 N.E.2d 160.

**Burden of proof**. (*Lat. onus probandi*.) In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

Burden of proof is a term which describes two different concepts; first, the "burden of persuasion", which under traditional view never shifts from one party to the other at any stage of the proceeding, and second, the "burden of going forward with the evidence", which may shift back and forth between the parties as the trial progresses. *Ambrose v. Wheatley*, D.C.Del., 321 F.Supp. 1220, 1222.

The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. *Calif.Evid.Code*, § 115.

In a criminal case, all the elements of the crime must be proved by the government beyond a reasonable doubt.

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368.

Except in cases of tax fraud, the burden of proof in a tax case generally is on the taxpayer.

Term has been used to mean either the necessity of establishing a fact, that is, the burden of persuasion, or the necessity of making a prima facie showing, that is, the burden of going forward. *State Farm Life Ins. Co. v. Smith*, 29 Ill.App.3d 942, 331 N.E.2d 275, 278.

"Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence. U.C.C. § 1-201(8).

See also Beyond a reasonable doubt; Clear and convincing proof; Preponderance of evidence; Reasonable doubt; Shifting the burden of proof.

**Bureau** /byúrow/. An office for the transaction of business. A name given to the several departments of the executive or administrative branch of government, or their divisions. A specialized administrative unit. Business establishment for exchanging information, making contacts, coordinating activities, etc.

**Bureaucracy** /byurókrəsiy/. An organization, such as an administrative agency or the army, with the following general traits: a chain of command with fewer people at the top than at the bottom; well defined positions and responsibilities; fairly inflexible rules and procedures; "red tape"; many forms to be filled out; and delegation of authority downward from level to level.

**Bureau of Customs.** Federal agency charged with responsibility of collecting importing duties for the Government. It was redesignated as the United States Customs Service in 1973. See Customs Service.

**Bureau of Land Management.** The Bureau of Land Management was established July 16, 1946, by the consolidation of the General Land Office (created in 1812) and the Grazing Service (formed in 1934). The Bureau manages the national resource lands (some 450 million acres) and their resources. It also administers the mineral resources connected with acquired lands and the submerged lands of the Outer Continental Shelf (OCS). It is within the U.S. Dept. of Interior. See 35 U.S.C.A. § 1731 et seq.

**Burford doctrine.** Under "Burford Doctrine" of abstention, federal courts have refrained from interfering with complex state regulatory schemes. *Clutchette v. Procnier*, D.C.Cal., 328 F.Supp. 767, 772.

**Burgage** /bórgəj/. A name anciently given to a dwelling-house in a borough town.

**Burgage-tenure.** In English law, one of the three species of free socage holdings; a tenure whereby houses and lands which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of Borough English. Such tenures have been abolished.

**Burgator** /bərgéytər/. One who breaks into houses or inclosed places, as distinguished from one who committed robbery in the open country.

**Burbote** /bərbòwt/. In old English law, a term applied to a contribution towards the repair of castles or walls of defense, or of a borough.

**Burgenses** /bərbənsiəz/. In old English law, inhabitants of a *burgus* or borough; burgesses.

**Burgeristh** /bərgərisθ/. A word used in Domesday, signifying a breach of the peace in a town.

**Burgess** /bərbəs/. In English law, an inhabitant or free-man of a borough or town; a person duly and legally admitted a member of a municipal corporation. A magistrate of a borough. An elector or voter; a person legally qualified to vote at elections. The word in this sense is particularly defined by the statute 5 & 6 Wm. IV, c. 76, §§ 9, 13. A representative of a borough or town, in parliament. The term now has no local government significance.

**Burgess roll.** A roll, required by the St. 5 & 6 Wm. IV, c. 76, to be kept in corporate towns or boroughs, of the names of burgesses entitled to certain new rights conferred by that act.

**Burgh-breche** /bərg-briəç/. A fine imposed on the community of a town, for a breach of the peace, etc.

**Burgh English** /bərg ɪŋgləʃ/. See Borough English.

**Burgh Engloys** /bərg ɪŋglɔɪz/. Borough English (*q.v.*).

**Burghmote** /bərgmòwt/. In Saxon law, a court of justice held semi-annually by the bishop or lord in a *burg*, which the thanes were bound to attend without summons.

**Burglar.** One who commits burglary.

**Burglarious.** Of, involving, or related to burglary. The adverb "burglariously" was formerly a pleading requirement in common law burglary indictments. *Candler v. State*, 266 Ind. 440, 363 N.E.2d 1233, 1237.

**Burglariously** /bərgləriəsli/. See Burglarious; Burglariter.

**Burglariter** /bərglérədər/. L. Lat. (Burglariously). In old criminal pleading, a necessary word in indictments for burglary.

**Burglary.** At common law, the crime of burglary consisted of a breaking and entering of a dwelling house of another in the nighttime with the intent to commit a felony therein. The modern statutory definitions of the crime are much less restrictive. For example, they commonly require no breaking and encompass entry at all times of all kinds of structures. In addition, certain state statutes classify the crime into first, second, and even third, degree burglary.

A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time, open to the public or the actor is licensed or privileged to enter. It is an

affirmative defense to prosecution for burglary that the building or structure was abandoned. Model Penal Code, § 221.1.

See also Breaking.

**Burglary tools.** Any implement which may be used to commit burglary though, of itself, it is designed for legitimate use, and possession of which is a crime if accompanied by the intent to use for such illegal purpose and the knowledge of its illegal use.

**Burgomaster** /bǝrgǝmǝstǝr/. The title given in Germany to the chief executive officer of a borough, town, or city; corresponding to our "mayor."

**Burgundian law** /bǝrgǝndiyǝn lǝ/. See Lex Burgundionum.

**Burgwhar.** A burgess (*q.v.*)

**Burial.** Act or process of burying a deceased person; sepulture, interment, act of depositing a dead body in the earth, in a tomb or vault, or in the water. The act of interring the human dead.

**Burial insurance.** A contract based on legal consideration whereby obligor undertakes to furnish obligee or one of latter's relatives at death burial reasonably worth fixed sum.

**Burial place.** A portion of ground set apart for or occupied by grave, or as a grave or graveyard.

**Burial purposes.** Continuing care, preservation, and ornamentation of the place of interment as included in term. *People v. Rosehill Cemetery Co.*, 371 Ill. 510, 21 N.E.2d 766, 770.

**Buried facts doctrine.** Under this doctrine, disclosure in proxy statement is inadequate only if there is some conceivable danger that reasonable shareholder would fail to realize correlation and overall import of various facts interspersed throughout proxy. *Kas v. Financial General Bankshares, Inc., C.A.*, 796 F.2d 508, 516, 254 U.S.App.D.C. 217.

**Burking, burkism.** Murder committed with the object of selling the cadaver for purposes of dissection, particularly and originally, by suffocating or strangling the victim.

**Burning in the hand.** In old English criminal law, laymen, upon being accorded the benefit of clergy, were burned with a hot iron in the brawn of the left thumb, in order that, being thus marked, they could not again claim their clergy. 4 Bl.Comm. 367. This practice was finally abolished by Stat. 19 Geo. III, c. 74; though before that time the burning was often done with a cold iron.

**Bursar.** A treasurer of a college.

**Bursaria** /bǝrsǝriyǝ/ or **bursary** /bǝrsǝriy/. The treasurer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also, monetary grant to a needy student.

**Burying-ground.** A place set apart for the interment of the dead; a cemetery.

**Buscarl** /bǝskǝrl/. In Saxon and old English law, seamen or marines.

**Bushel.** A dry measure, containing four pecks, eight gallons, or thirty-two quarts. But the dimensions of a bushel, and the weight of a bushel of grain, etc., vary in the different states in consequence of statutory enactments.

**Bushido** /bu(w)shiydow/. *Jap.* The unwritten code of conduct of the *Samurai* demanding loyalty to superiors only, simplicity of living and military valor. Treachery and brutality against one's enemies, and self-sacrifice, blind loyalty and unquestioning obedience to one's superiors are cardinal characteristics of the code.

**Business.** Employment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. *Union League Club v. Johnson*, 18 Cal.2d 275, 108 P.2d 487, 490. Enterprise in which person engaged shows willingness to invest time and capital on future outcome. *Doggett v. Burnet*, 62 App.D.C. 103, 65 F.2d 191, 194. That which habitually busies or occupies or engages the time, attention, labor, and effort of persons as a principal serious concern or interest or for livelihood or profit.

See also Association; Company; Corporation; Doing business; Joint enterprise; Partnership; Place of business; Trade.

**Business agent.** Agent having some general supervision over general affairs. Person employed by union members to represent them in relations with business-employer.

**Business bad debt.** See Business bad debts.

**Business corporation.** A corporation organized for the purpose of carrying on a business for profit. *City of St. Louis v. Smith*, 325 Mo. 471, 30 S.W.2d 729, 731. See Corporation.

**Business done in state.** Business begun and completed or ended in state. *Clark v. Atlantic Pipe Line Co.*, Tex.Civ.App., 134 S.W.2d 322, 328.

**Business enterprise.** Investment of capital, labor and management in an undertaking for profit; one of the recognized attributes is centralized management and control. *Helvering v. Jewel Mining Co.*, C.C.A.8, 126 F.2d 1011, 1015.

**Business expense.** An expense incurred in connection with carrying on a trade or business, the purpose of which is the production of income. Such expenses are deductible in arriving at taxable income. I.R.C. § 162.

**Business gains.** Gains from the sale, exchange, or other disposition of property used in a trade or business. *Fackler v. Commissioner of Internal Revenue*, C.C.A.6, 133 F.2d 509, 512.

**Business guest.** One invited to business establishment as a guest and to whom a duty of care is owed generally greater than to a social guest, though such distinctions are becoming less acceptable in the area of torts; see *e.g.*

*Mounsey v. Ellard*, 363 Mass. 693, 297 N.E.2d 43. See *Guest*.

**Business hours.** In general those hours during which persons in the community generally keep their places open for the transaction of business. *Casaldue v. Diaz*, C.C.A.Puerto Rico, 117 F.2d 915, 916.

**Business invitee.** One who is impliedly invited to premises for transacting business and to whom a duty of due care is owed. One who goes on another's premises at express or implied invitation of owner or occupant for benefit of invitor or for mutual benefit and advantage of both invitor and invitee. *Campbell Sixty-Six Exp., Inc. v. Adventure Line Mfg. Co.*, 209 Kan. 357, 496 P.2d 1351, 1355. See *Invitee*, and *Business visitor*, below.

**Business league.** An association is a business league if persons thereof have some common business interest. *Underwriters' Laboratories v. Commissioner of Internal Revenue*, C.C.A.7, 135 F.2d 371, 374.

**Business losses.** Losses from sale, exchange, or other disposition of property used in trade or business. *Fackler v. Commissioner of Internal Revenue*, C.C.A.6, 133 F.2d 509, 512. See also *Business bad debts*.

**Business of peddling.** Business of one relying on present solicitation of chance patrons for purchases of uncertain quantities and making concurring deliveries.

**Business of public character.** Business wherein person engaged expressly or impliedly holds himself out as engaged in business of supplying his product or service to public as a class or to limited portion of public.

**Business purpose.** Term used on occasion to describe the use to which property may be put or not, as in a deed's restrictive covenant. A justifiable business reason for carrying out a transaction. It has long been established that mere tax avoidance is not a business purpose. The presence of a business purpose is of crucial importance in the area of corporate readjustments and certain liquidations.

**Business records.** Journals, books of account and other records which may be ordered produced as part of discovery in trial or preparation of case and generally given broad interpretation for such purposes; see e.g. *Fed.R.Civ.Proc. Rules 26(b)(1), 45(b)*. See also *Business entry rule*; *Business records exception*.

**Business risk.** In finance, the risk of default or variability of return arising from the type of business conducted.

**Business situs.** A situs acquired for tax purposes by one who has carried on a business in the state more or less permanent in its nature. A situs arising when notes, mortgages, tax sale certificates and the like are brought into the state for something more than a temporary purpose, and are devoted to some business use there and thus become incorporated with the property of the state for revenue purposes. A situs arising where possession and control of property right has been localized in some independent business or investment away from owner's domicile so that its substantial use and value primarily

attach to and become an asset of the outside business. *State v. Atlantic Oil Producing Co.*, 174 Okl. 61, 49 P.2d 534, 538.

**Business trust.** As distinguished from a joint-stock company, a pure "business trust" is one in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. *Morriss v. Finkelstein*, Mo.App., 127 S.W.2d 46, 49. A "Massachusetts trust" or "common law trust." See *Massachusetts trust*; *Real estate investment trust (REIT)*.

**Business usage.** See *Business purpose*, above.

**Business use of home.** Expenses incurred in connection with the use of a taxpayers residence for the purpose of carrying on a trade or business are deductible if the residence is used exclusively and regularly as the taxpayers principal place of business and the place where the taxpayers meet with customers. I.R.C. § 280A.

**Business visitor.** One who is invited or permitted to enter or remain upon the premises of another for a purpose directly or indirectly connected with the business dealings between them. *Lemon v. Busey*, 461 P.2d 145, 149. One who comes on premises at occupant's instance for purposes connected with purpose, business, or otherwise, for which occupant uses premises. See also *Guest*; *Invitee*, and *Business guest*; *Business invitee*, above.

**Course of business.** See *Course of dealing*; *Doing business*.

**Farming business.** See *Farming purposes*.

**Private business.** One in which capital, time, attention, labor, and intelligence have been invested for gain and profit for private benefit, purposes and use.

**Public business.** An element is that the business by its nature must be such that the public must use the same, or the commodities bought and sold in such manner as to affect the community at large as to supply, price, etc. See *Corporation*.

**Business bad debts.** An obligation obtained in connection with a trade or business which becomes partially or totally worthless. Business bad debts are fully deductible in arriving at taxable income, in contrast with non-business bad debts which are considered casualty losses and limitations apply. See also *Bad debt*.

**Business entry.** A writing or memorandum of a fact or event made in the regular course of business whose regular course is to make the writing or memorandum at the time of the fact or event or within a reasonable time thereafter. *U.S. v. Chong*, ACMR, 8 M.J. 592, 594.

**Business entry rule.** Exception to hearsay rule which allows introduction of entries made in usual course of business into evidence though person who made such entry is not in court. *Fed.Rules Evid., Rule 803(6)*; 28 U.S.C.A. § 1732. See also *Business records exception*.

**Business judgment rule.** This rule immunizes management from liability in corporate transaction undertaken within both power of corporation and authority of management where there is reasonable basis to indicate that transaction was made with due care and in good faith. *Nursing Home Bldg. Corp. v. DeHart*, 13 Wash. App. 489, 535 P.2d 137, 144.

**Business pursuit.** Within the meaning of homeowners insurance policy exclusion, term denotes continued or regular activity for purpose of earning a livelihood such as a trade, profession, or occupation, or a commercial activity. *Industrial Indem. Co. v. Goettl*, App., 138 Ariz. 315, 674 P.2d 869, 872.

**Business records exception.** An exception to the hearsay exclusion rule that allows original, routine records (whether or not part of a "business") to be used as evidence in a trial even though they are hearsay. Under this exception to hearsay rule, documentary evidence is admissible if identified by its entrant, or one under whose supervision it is kept and shown to be original or first permanent entry, made in routine course of business, at or near time of recorded transaction, by one having both duty to so record and personal knowledge of transaction represented by entry. *Simmons v. State*, 175 Ind.App. 333, 371 N.E.2d 1316, 1320. *See also* Business entry rule.

**Business tort.** A noncontractual breach of a legal duty by a business directly resulting in damages or injury to another.

**Busones comitatus** /byuwsówniyz kò(w)mtéyts/. In old English law, the barons of a county.

**But.** Except, except that, on the contrary, or, and also, yet, still.

**"But for" test.** Test used in determining tort liability by applying the causative criterion as to whether the plaintiff would not have suffered the wrong "but for" the action of the defendant. Today, largely discredited as a test because of the many modifications necessary in applying it.

**Butler's ordinance.** In old English law, a law for the heir to punish waste in the life of the ancestor.

**Butt.** A measure of liquid capacity, equal to one hundred and eight gallons; also a measure of land.

**Buttals** /bétalz/. The bounding lines of land at the end; abuttals, which see.

**Butted and bounded.** A phrase sometimes used in conveyancing, to introduce the boundaries of lands. *See* Butts and bounds.

**Butts.** In old English law, short pieces of land left unplowed at the *ends* of fields, where the plow was turned about (otherwise called "headlands") as sidelines were similarly unplowed pieces on the sides. Also a place where bowmen meet to shoot at a mark.

**Butts and bounds.** A phrase used in conveyancing, to describe the end lines or circumscribing lines of a cer-

tain piece of land. The phrase "metes and bounds" has the same meaning.

The angles or points where these lines change their direction. *See* Abuttals; Metes and bounds.

**Buy.** To acquire the ownership of property by giving an accepted price or consideration therefor; or by agreeing to do so; to acquire by the payment of a price or value; to purchase. To obtain something for a price, usually money. *See also* Purchase.

**Buy American acts.** Federal and state statutes which require a preference for American made goods over foreign made goods in government contracts. The purpose of such acts is to protect domestic industry, goods and labor. *See* 41 U.S.C.A. § 10.

**Buy and sell agreement.** An arrangement, particularly appropriate in the case of a closely-held corporation or a partnership, whereby the surviving owners (*i.e.* shareholders or partners) or the entity (*i.e.*, corporation or partnership) agree to purchase the interest of a withdrawing or deceased owner (*i.e.*, shareholder or partner). The buy and sell agreement provides for an orderly disposition of an interest in a business and is beneficial in setting the value of such interest for death tax purposes.

An agreement between or among part-owners of a business that under stated conditions (usually severance of employment, disability, or death), the person withdrawing or his heirs are legally obligated to sell their interest to the remaining part-owners, and the remaining part-owners are legally obligated to sell at a price fixed in the agreement either on a dollar basis or on a formula for computing the dollar value to be paid.

**Entity buy and sell agreement.** A buy and sell agreement whereby the entity is to purchase the withdrawing or deceased owner's interest. When the entity is a corporation, the agreement generally involves a stock redemption on the part of the withdrawing shareholder.

**Buy-down.** Money that is paid by or on behalf of a homeowner at the time of purchase to reduce the mortgage interest rate and thereby lower monthly payments. Home builders frequently offer buy-downs.

**Buyer.** One who buys; a purchaser, particularly of chattels. A person who buys or contracts to buy goods. U.C.C. § 2-103(1)(a). *See also* Purchaser.

**Buyer in ordinary course of business.** A person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt. U.C.C. § 1-201(9).

**Buyer's market.** Situation where supply is greater than demand.

**Buy in.** See Buying in.

**Buying dormant titles.** The purchase of the rights or claims to real estate of a person who is not in possession of the land or is deceased. Such purchases were declared void by English statute (1541); and are similarly void in most states. See also Bracery.

**Buying in.** Buying of property at auction or tax or mortgage foreclosure sale by original owner or by one with interest in property.

**Buying long.** Purchase of stocks now with the expectation of selling them for a profit in the future.

**Buying on margin.** Purchase of security with payment part in cash and part by a loan. Normally, the loan is made by the broker. See also Margin account.

**Buyout.** The purchase of a controlling percentage of a company's shares. A buyout can be accomplished through negotiation, through a tender offer, or through a merger. See also Leveraged buyout.

**By.** Before a certain time; beside; close to; in close proximity; in consequence of; not later than a certain time; on or before a certain time; in conformity with; with the witness or sanction of; into the vicinity of and beyond. Through the means, act, agency or instrumentality of.

**By-bidder.** One employed by the seller or his agent to bid on property with no purpose to become a purchaser, so that bidding thereon may be stimulated in others who are bidding in good faith.

**By-bidding.** See Bid.

**By bill, by bill without writ.** In old English law, terms anciently used to designate actions commenced by original *bill*, as distinguished from those commenced by original *writ*, and applied in modern practice to suits commenced by *capias ad respondendum*. 3 Bl.Comm. 285, 286. The usual course of commencing an action in the King's Bench was by a bill of Middlesex. In an action commenced by *bill* it is not necessary to notice the form or nature of the action.

**By color of office.** Acts done "by color of office" are where they are of such a nature that office gives no authority to do them. *State v. National Surety Co.*, 162 Tenn. 547, 39 S.W.2d 581, 583. See Color of law; Color of office.

**Bye-bil-wuffa.** In Hindu law, a deed of mortgage or conditional sale.

**By estimation.** In conveyancing, a term used to indicate that the quantity of land as stated is estimated only, not exactly measured; it has the same meaning and effect as the phrase "more or less."

**By God and my country.** In old English criminal practice, the established formula of reply by a prisoner, when arraigned at the bar, to the question, "Culprit, how wilt thou be tried?"

**By-law men.** In old English law, the chief men of a town, representing the inhabitants. In an ancient deed, certain parties were described as "yeomen and *by-law men*." They appear to have been men appointed for some purpose of limited authority by the other inhabitants, under by-laws of the corporation appointing.

**Bylaws.** Regulations, ordinances, rules or laws adopted by an association or corporation or the like for its internal governance. Bylaws define the rights and obligations of various officers, persons or groups within the corporate structure and provide rules for routine matters such as calling meetings and the like. Most state corporation statutes contemplate that every corporation will adopt bylaws.

The word is also sometimes used to designate the local laws or municipal statutes of a city or town, though, more commonly the tendency is to employ the word "ordinance" exclusively for this class of enactments, reserving "by-law" for the rules adopted by corporations.

**By operation of law.** Effected by some positive legal rule or amendment. *Terminals & Transportation Corporation v. State*, 169 Misc. 703, 8 N.Y.S.2d 282, 284.

**By reason of.** Because of. By means, acts, or instrumentality of.

**Byrnes Act.** Federal law prohibiting interstate transportation of strike breakers. 18 U.S.C.A. § 1231.

**Byroad.** An obscure or neighborhood road, not used to any great extent by the public, yet so far a public road that the public have of right free access to it at all times. A byway.

**Bystander.** One who stands near; a chance looker-on; hence one who has no concern with the business being transacted. One present but not taking part, looker-on, spectator, beholder, observer.

**By the by (also Bye).** Incidentally; without new process. A term used in former English practice to denote the method of filing a declaration against a defendant who was already in the custody of the court at the suit of a different plaintiff or of the same plaintiff in another cause. It is no longer allowed.

**By virtue of.** By force of, by authority of, by reason of. *Phillips v. Houston Nat. Bank*, Houston, Tex., C.C.A. Tex., 108 F.2d 934, 936. Because of, through, or in pursuance of. For example, money received by an officer by virtue of his office is money which that officer received under the law of his office, and not in violation thereof.