

BLACK'S  
LAW  
DICTIONARY

EIGHTH EDITION

BRYAN A. GARNER  
EDITOR IN CHIEF

**A.**

a.1. (usu. cap. & often ital.) A hypothetical person <A deeds Blackacre to B>.2. [Latin] From; by; in; on; of; at. 3.[Law Latin] With. 4.[Law French] Of; at; to; for; in; with. 5.Securities. A letter used in a newspaper stock-transaction table to indicate that cash was paid during the year in addition to regular dividends. 6.Securities. A letter used in a newspaper mutual-fund transaction table to indicate a yield that may include capital gains and losses as well as current interest. 7. (cap.) Securities. A letter used in a newspaper corporate earnings report to identify the American Stock Exchange as the primary market of a firm's common stock. 8. (cap.) Securities. An above-average grade given to a debt obligation by a rating agency. • The grades, as ranked by Standard & Poor's, range from AAA (highest) down to CCC. The equivalent standards from Moody's are Aaa, Aa, A, Baa, and so on down to C. 9.Marine insurance. A rating assigned in Lloyd's Register of Shipping to ships considered to be in first-class condition. 10.abbr.ADVERSUS. 11.(cap.) Hist. A scarlet letter worn as punishment by a person convicted of adultery. 12.Roman law. An abbreviation for absolvo written on wooden tablets by criminal-court judges to indicate a vote for acquittal. 13.Roman law. An abbreviation for antiquo (“for the old law”) written on wooden tablets by the participants in a popular assembly to indicate a vote against a proposed bill.

## A

A.abbr.ATLANTIC REPORTER.

## A. 2D

A.2d.abbr.See ATLANTIC REPORTER.

## AAA

AAA.abbr.1.AMERICAN ARBITRATION ASSOCIATION. 2.AMERICAN ACCOUNTING ASSOCIATION . 3.AMERICAN ACADEMY OF ACTUARIES. 4.AGRICULTURAL ADJUSTMENT ACT . 5. See accumu-lated-adjustments account under ACCOUNT.

## AAC

AAC.abbr.ANNO ANTE CHRISTUM.

## AACN

AACN.abbr.ANNO ANTE CHRISTUM NATUM.

## AALS

AALS.abbr.ASSOCIATION OF AMERICAN LAW SCHOOLS.

## AARCC

AARCC.abbr. ALTERNATIVE AGRICULTURAL RESEARCH AND

## COMMERCIALIZATION CORPO-RATION .

## AAU

AAU.abbr. Amendment to allege use. See TRADEMARK-APPLICATION AMENDMENT.

## A AVER ET TENER

a aver et tener (ay ay-v<<schwa>>r [or ah ah-v<<schwa>>r] et ten-<<schwa>>r). [Law French] To have and to hold. See HABENDUM CLAUSE.

## AB

AB.abbr.See able-bodied seaman under SEAMAN.

ab,prep. [Latin] From; by; of.

## ABA

ABA.abbr.1.AMERICAN BAR ASSOCIATION. 2.AMERICAN BANKERS ASSOCIATION.

## ABACINATE

abacinate (<<schwa>>-bas-<<schwa>>-nayt), vb. To blind (a person) by placing a red-hot iron or metal plate in front of the eyes.

## ABACTION

abaction (ab-ak-sh<<schwa>>n). See ABIGEATUS.

## AB ACTIS

ab actis (ab ak-tis), n.[Latin “in relation to proceedings”] Roman law. An officer responsible for public records (acta), registers, journals, or minutes; a court clerk; a notary.

## ABACTOR

abactor (ab-ak-t<<schwa>>r or -tor). See ABIGEUS.

## AB AGENDO

ab agendo (ab <<schwa>>-jen-doh), adj.[Latin] Unable to act; incapacitated for business or transactions of any kind.

## ABALIENATION

abalienation (ab-ayl-y<<schwa>>-nay-sh<<schwa>>n), n.[fr. Latin abalienare “to alienate”] Civil law. The transfer of an interest in or title to property; ALIENATION(2). • In Roman law, the term was abalienatio (“a perfect conveyance from one Roman citizen to another”), which was anglicized to abalienation. — abalienate,vb.

## ABAMITA

abamita (<<schwa>>-bam-<<schwa>>-t<<schwa>>). [Latin] Civil law. A great-great-great-aunt.

#### ABANDONED APPLICATION

abandoned application. Patents & trademarks. An application removed from the U.S. Patent and Trademark Office docket of pending applications because the applicant (or the applicant's attorney or agent of record) filed an express notice of abandonment, failed to take appropriate action at some stage in the prosecution of a nonprovisional application within the time specified by the PTO rules (or because the statutory period expired for a provisional application), or failed to pay the issue fee. • Abandonment of a patent or trademark application does not automatically result in abandonment of the invention or the mark. Cf. ABANDONED INVENTION; ABANDONED MARK.

#### ABANDONED EXPERIMENT

abandoned experiment. Patents. An unsuccessful attempt to reduce an invention to practice. • Unless it is publicly known, an abandoned experiment does not qualify as prior art under § 102 of the Patent Act, so it does not bar future patents.

#### ABANDONED INVENTION

abandoned invention. See INVENTION.

#### ABANDONED MARK

abandoned mark. See abandoned trademark under TRADEMARK.

#### ABANDONED PROPERTY

abandoned property. See PROPERTY.

#### ABANDONED, SUPPRESSED, OR CONCEALED

abandoned, suppressed, or concealed, adj. Patents. Intentionally or accidentally hidden from public notice, not reduced to practice, or not patented. • Another person's earlier invention will not be considered prior art if the first inventor abandoned the field to others or is held to have lost the right to patent by suppressing or concealing the invention. But if the suppression or concealment occurred after the art became known to the public, then it still qualifies as prior art. See MPEP § 2138.03. [Cases: Patents 82. C.J.S. Patents §§ 114–118.]

#### ABANDONED TRADEMARK

abandoned trademark. See TRADEMARK.

#### ABANDONEE

abandonee (<<schwa>>-ban-d<<schwa>>-nee). One to whom property rights are relinquished; one to whom something is formally or legally abandoned.

#### ABANDONMENT

abandonment, n. 1. The relinquishing of a right or interest with the intention of never again claiming it. • In the context of contracts for the sale of land, courts sometimes use the term abandonment as if it were synonymous with rescission, but the two should be distinguished. An abandonment is merely one party's acceptance of the situation that a nonperforming party has caused. 2. Family law. The act of leaving a spouse or child willfully and without an intent to return. • Child abandonment is grounds for termination of parental rights. Spousal abandonment is grounds for divorce. Cf. DESERTION. [Cases: Divorce 37; Infants 157. C.J.S. Divorce §§ 20, 41.]

“The lines of distinction between abandonment and the many forms of child neglect are often not very clear so that failure to support or to care for a child may sometimes be characterized as abandonment and sometimes as neglect.” Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 20.6, at 895 (1988).

abandonment of minor children. See NONSUPPORT.

constructive abandonment. See constructive desertion under DESERTION.

malicious abandonment. 1. The desertion of a spouse without just cause. See criminal desertion under DESERTION. [Cases: Divorce 37. C.J.S. Divorce §§ 20, 41.] 2. See voluntary abandonment.

voluntary abandonment. 1. As a ground for divorce, a final departure without the consent of the other spouse, without sufficient reason, and without the intention to return. [Cases: Divorce 37. C.J.S. Divorce §§ 20, 41.] 2. In the law of adoption, a natural parent's willful act or course of conduct that implies a conscious disregard of or indifference to a child, as if no parental obligation existed. — Also termed malicious abandonment. [Cases: Adoption 7.4.]

3. Criminal law. RENUNCIATION(3). 4. Bankruptcy. A trustee's court-approved release of property that is burdensome or of inconsequential value to the estate, or the trustee's release of nonadministered property to the debtor when the case is closed. [Cases: Bankruptcy 3131–3137. C.J.S. Bankruptcy §§ 188–189.] 5. Contracts. RESCISSION(2). 6. Insurance. An insured's relinquishing of damaged or lost property to the insurer as a constructive total loss. Cf. SALVAGE(2). [Cases: Insurance 2236. C.J.S. Abatement and Revival §§ 135, 146, 148, 151–154.] 7. Trademarks. A mark owner's failure to maintain the mark's proper use in commerce or failure to maintain its distinctive character. • Abandonment is an affirmative defense to an action for trademark infringement. — Also termed nonuse. [Cases: Trade Regulation 70. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 217–218.] 8. Copyright. Hist. An affirmative defense to a copyright-infringement claim governed by pre-1989 law, based on the author's general publication of the work without a copyright notice. [Cases: Copyrights and Intellectual Property 50.1(4).] 9. Intellectual Property. The loss of an intellectual-property right, as by disuse, neglect of formalities, or failure to pay a required fee.

abandonment by operation of law. See constructive abandonment.

actual abandonment. 1. Patents. Intentional relinquishment of the right to patent protection, evidenced, for example, by more than mere inactivity or delay in filing the application. • Actual

abandonment may be express or implied, but every reasonable doubt about intent will be resolved in the inventor's favor. [Cases: Patents 82. C.J.S. Patents §§ 114–118.] 2.Trademarks. Intentional loss of trademark protection by discontinuing commercial use of the mark with the intention of not using it again. [Cases: Trade Regulation 70. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 217–218.]

constructive abandonment. 1.Patents. The closing of a patent-application prosecution by the U.S. Patent and Trademark Office when an applicant fails to respond to an office action within the time allowed, usu. six months, or fails to pay an issue fee. • If the delay was unintentional or unavoidable, the application may be revived. [Cases: Patents 107. C.J.S. Patents §§ 157–158.] 2.Patents. Abandonment of an invention by operation of law regardless of the inventor's intention, such as when the inventor forfeits the right to patent by selling or offering to sell the invention or by describing it in a publication more than a year before seeking patent protection. 35 USCA § 102. [Cases: Patents 80. C.J.S. Patents §§ 105–106, 108–111.] 3.Trademarks. An owner's loss of trademark protection, regardless of whether the mark is registered, by allowing the mark to lose its distinctiveness, such as by letting the name become a generic term for that type of goods, or by otherwise failing to maintain the mark's distinctive character. • For example, licensing the use of the mark without retaining control over how it is used would result in constructive abandonment. — Also termed abandonment by operation of law. [Cases: Trade Regulation 76. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 222–224.]

express abandonment.Patents. An applicant's intentional and clear termination of a patent prosecution. • An express abandonment must be made in a signed writing and received by the U.S. Patent and Trademark Office in time for the Office to act before the patent issues. Once an application is expressly abandoned, it cannot be revived, and the applicant cannot preclude the public from freely availing itself of the invention's benefits. Abandonment of a patent application does not result in abandonment of the invention. — Also termed formal abandonment. [Cases: Patents 107. C.J.S. Patents §§ 157–158.]

formal abandonment.See express abandonment.

implied abandonment.Patents. An inventor's failure to take steps to protect an invention, such as by failing to claim the invention when disclosed in a patent application or by permitting an application to be abandoned, esp. by failing to file an answer to an office action within the time allowed. [Cases: Patents 107. C.J.S. Patents §§ 157–158.]

#### ABANDONMENT OF CONTEST

abandonment of contest.Patents. The withdrawal by a party from an interference contest. • The abandonment of contest must be in writing. The contest is dissolved as to the abandoning party. [Cases: Patents 106(5).C.J.S. Patents § 166.]

#### ABANDUM

abandum (<<schwa>>-ban-d<<schwa>>m), n.[Law Latin] Hist. A thing that has been forfeited. — Also spelled abandun; abandonum.

## AB ANTE&lt;TT&gt;

ab ante (ab an-tee), adv.[Latin] Hist. Before; beforehand; in advance. — Also termed ab antecedente.

## AB ANTIQUO

ab antiquo (ab an-tI-kwoh), adv.[Law Latin] Hist. From ancient times; of old. — Also termed ab antiqua.

## ABARNARE

abarnare (ab-ahr-nair-ee), vb.[Law Latin] Hist. To detect or disclose a secret crime; to bring to judgment.

## ABATABLE NUISANCE

abatable nuisance. See NUISANCE.

## ABATAMENTUM

abatamentum (<<schwa>>-bay-t<<schwa>>-men-t<<schwa>>m), n.[Law Latin] Hist. See ABATEMENT(5).

## ABATARE

abatare (ab-<<schwa>>-tair-ee), vb.[Law Latin] Hist. To abate.

## ABATEMENT

abatement (<<schwa>>-bayt-m<<schwa>>nt), n.1. The act of eliminating or nullifying <abatement of a nuis-ance> <abatement of a writ>. [C.J.S. Nuisances §§ 86–89.] 2. The suspension or defeat of a pending action for a reason unrelated to the merits of the claim <the defendant sought abatement of the suit because of misnomer>. See plea in abatement under PLEA. [Cases: Abatement and Revival 58.]

“Although the term ‘abatement’ is sometimes used loosely as a substitute for ‘stay of proceedings,’ the two may be distinguished on several grounds. For example, when grounds for abatement of an action exist, the abatement of the action is a matter of right, but a stay is granted in the court's discretion. And in proper circumstances a court may stay a proceeding pending the outcome of another proceeding although a strict plea in abatement could not be sustained.” 1 Am. Jur. 2d Abatement, Survival, and Revival § 3 (1994).

3. The act of lessening or moderating; diminution in amount or degree < abatement of the debt>.4.Wills & estates. The reduction of a legacy, general or specific, as a result of the estate's being insufficient to pay all debts and legacies <the abatement of legacies resulted from the estate's insolvency>. Cf. ADEPTION. [Cases: Wills 804–818.] 5.Archaic. The act of thrusting oneself tortiously into real estate after the owner dies and before the legal heir enters <abatement of freehold>. — Also termed (in sense 5) abatamentum. — abate,vb. — abat-able,adj.

## ABATEMENT CLAUSE

abatement clause. A lease provision that releases the tenant from the rent obligation when an act of God precludes occupancy.

#### ABATER

abater (<<schwa>>-bay-t<<schwa>>r or -tor). 1. One who abates something. 2. A plea in abatement. See plea in abatement under PLEA.

#### ABATOR

abator (<<schwa>>-bay-t<<schwa>>r or -tor). 1. A person who eliminates a nuisance. See ABATEMENT(1). [Cases: Nuisance 20, 74.] 2. Hist. A person who tortiously intrudes on an heir's freehold before the heir takes possession. See ABATEMENT(5).

#### ABATUDA

abatuda (ab-<<schwa>>-t[y]oo-d<<schwa>>), n. [fr. Law Latin abatudus "debased"] Hist. A thing diminished, such as money reduced in value by clipping (moneta abatuda).

#### ABAVIA

abavia (<<schwa>>-bay-vee-<<schwa>>), n. [Latin] Civil law. A great-great-great-grandmother.

#### ABAVUNCULUS

abavunculus (ab-<<schwa>>-v<<schwa>>ng-ky<<schwa>>-l<<schwa>>s), n. [Latin] Civil law. A great-great-great-uncle. — Also termed avunculus maximus.

#### ABAVUS

abavus (ab-<<schwa>>-v<<schwa>>s), n. [Latin] Civil law. A great-great-grandfather.

#### ABBACY

abbacy (ab-<<schwa>>-see). Eccles. law. An abbot's jurisdiction or term of tenure.

#### ABBESS

abbess (ab-is). Eccles. law. A female spiritual superior of a convent. Cf. ABBOT.

#### ABBEY

abbey (ab-ee). Eccles. law. A monastery governed by an abbot, or a convent governed by an abbess.

#### ABBEY LAND

abbey land. (usu pl.) Hist. Real property held by an abbey in mortmain and therefore exempt from tithes. See MORTMAIN.

#### ABBOT

abbot (ab-<<schwa>>t). Eccles. law. A superior or governor of an abbey. Cf. ABBESS.



## ABBREVIATED TERM SHEET

abbreviated term sheet. See TERM SHEET.

## ABBREVIATIO PLACITORUM

Abbreviatio Placitorum (<<schwa>>-bree-vee-ay-shee-oh plas-i-tor-<<schwa>>m), n. [Law Latin “summary of the pleas”] Hist. An abstract of pleadings culled from the rolls of the Curia Regis, Parliament, and common-law courts from the 12th to 14th centuries, compiled in the 17th century, printed in 1811, and attributed variously to Arthur Agarde, Deputy Chamberlain of the Exchequer, and to other keepers of the records. Cf. YEAR BOOKS.

## ABBREVIATOR

abbreviator. 1. One who abbreviates, abridges, or shortens. 2. Eccles. law. An officer in the court of Rome appointed as assistant to the vice-chancellor for drawing up the Pope's briefs and reducing petitions, when granted, into proper form to be converted into papal bulls.

## ABBROACHMENT

abbroachment (<<schwa>>-brohch-m<<schwa>>nt), n. Hist. The act of forestalling the market by buying wholesale merchandise to sell at retail as the only vendor. — Also spelled abbrochment; abbrochement. — ab-broach, vb.

## ABC TEST

ABC test. The rule that an employee is not entitled to unemployment insurance benefits if the employee (A) is free from the control of the employer, (B) works away from the employer's place of business, and (C) is engaged in an established trade. • The name derives from the A, B, and C commonly used in designating the three parts of the test. [Cases: Social Security and Public Welfare 293, 351, 385. C.J.S. Social Security and Public Welfare §§ 166–169, 186, 214–215.]

## ABC TRANSACTION

ABC transaction. Oil & gas. A sale of a working interest from an owner (A) to an operator (B) in return for a cash payment and the right to another (usu. larger) payment when the well produces, followed by A's sale of the right to the production payment to a corporation (C), which pays A in cash borrowed from a lender on C's pledge of the production payment. • Thus A receives cash taxed at capital-gains rates, and B pays part of the purchase price with nontaxable production income. The tax advantages of this transaction were eliminated by the Tax Reform Act of 1969.

## ABDICATION

abdication (ab-di-kay-sh<<schwa>>n), n. The act of renouncing or abandoning privileges or duties, esp. those connected with high office <Edward VIII's abdication of the Crown in 1936> <the court's abdication of its judicial responsibility>. — abdicate (ab-di-kayt), vb. — abdicable (ab-di-k<<schwa>>-b<<schwa>>l), adj. — abdicator (ab-di-kay-t<<schwa>>r), n.

## ABDITORY

abditory (ab-di-tor-ee), n.[Law Latin abditorium “box, receptacle”] A repository used to hide and preserve goods or money. — Also termed abditorium (ab-di-tor-ee-<<schwa>>m).

#### ABDUCTION

abduction (ab-d<<schwa>>k-sh<<schwa>>n), n.1. The act of leading someone away by force or fraudulent persuasion. • Some jurisdictions have added various elements to this basic definition, such as that the abductor must have the intent to marry or defile the person, that the abductee must be a child, or that the abductor must intend to subject the abductee to concubinage or prostitution. 2.Archaic. The crime of taking away a female person, esp. one who is below a certain age (such as 16 or 18), without her consent by use of persuasion, fraud, or violence, for the purpose of marriage, prostitution, or illicit sex. [Cases: Criminal Law 45.10. C.J.S. Kidnapping §§ 5–6.] 3. Loosely, KIDNAPPING. See ENTICEMENT OF A CHILD. — abduct,vb. — abductor,n. — abductee,n.

“Abduction seems not to have been a crime at early common law, but found its way thereinto through an old English statute which defined the crime substantially as the taking of a woman against her will for lucre, and afterwards marrying her, or causing her to be married to another, or defiling her, or causing her to be defiled.” Justin Miller, Handbook of Criminal Law § 104, at 319 (1934).

#### ABEARANCE

abearance (<<schwa>>-bair-<<schwa>>nts), n. Archaic. Behavior; conduct.

“The other species of recognizance, with sureties, is for the good abearance, or good behaviour. This includes security for the peace ...” 4 William Blackstone, Commentaries on the Laws of England 253 (1769).

#### AB EPISTOLIS

ab epistolis (ab ee-pis-t<<schwa>>-lis), n.[Latin] Hist. An officer who maintained the correspondence (epistolae) for a superior; a secretary.

#### ABERCROMBIE<TT> CLASSIFICATION

Abercrombie classification.Trademarks. One of the four types of trade designation — whether by mark, name, or dress — as generic, descriptive, suggestive, and arbitrary or fanciful, in increasing order of distinctiveness. *Ab-ercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976). [Cases: Trade Regulation 12.]

#### ABERRANT BEHAVIOR

aberrant behavior (a-ber-<<schwa>>nt). A single act of unplanned or thoughtless criminal behavior. • Many courts have held that aberrant behavior justifies a downward departure — that is, a more lenient sentence — under the federal sentencing guidelines, based on a comment in the introduction to the Guidelines Manual to the effect that the guidelines do not deal with single acts of aberrant behavior. U.S. Sentencing Guidelines Manual ch. 1, pt. A, ¶ 4.

## ABESSE

abesse (ab-es-ee), vb.[Law Latin] Roman & civil law. To be absent; to be away from a place where one is supposed to be (as before a court). Cf. ADESSE.

## ABET

abet (<<schwa>>-bet), vb.1. To aid, encourage, or assist (someone), esp. in the commission of a crime <abet a known felon>.2. To support (a crime) by active assistance <abet a burglary>. See AID AND ABET. Cf. INCITE. [Cases: Criminal Law 59(5). C.J.S. Criminal Law §§ 133, 135, 998–999.] — abetment,n.

## ABETTATOR

abettator (ab-<<schwa>>-tay-t<<schwa>>r), n.[Law Latin] Archaic. See ABETTOR.

## ABETTOR

abettor. A person who aids, encourages, or assists in the commission of a crime. — Also spelled abetter. — Also termed (archaically) abettator. See principal in the second degree under PRINCIPAL; [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.]

## AB EXTRA

ab extra (ab ek-str<<schwa>>), adv.[Latin] From outside; extra; beyond.

## ABEYANCE

abeyance (<<schwa>>-bay-<<schwa>>nts), n.1. Temporary inactivity; suspension. 2.Property. A lapse in suc-cession during which no person is vested with title. — abeyant,adj.

“Abeyance, from the French bayer, to expect, is that which is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee simple in somebody, or else it is in abeyance; that is, though for the present it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land.” 1 Richard Burn, A New Law Dictionary 4 (1792).

## ABIATICUS

abiaticus (ab-ee-ay-t<<schwa>>-k<<schwa>>s), n.[Law Latin “descended from a grandfather”] Hist. A grandson in the male line; a son's son. — Also spelled aviaticus.

## ABIDE

abide,vb.1. To tolerate or withstand <the widow found it difficult to abide the pain of losing her husband>.2. To obey <try to abide the doctor's order to quit smoking>.3. To await <the death-row prisoners abide execution>.4. To perform or execute (an order or judgment) <the trial court abided the appellate court's order>.5. To stay or dwell <the right to abide in any of the 50 states>.

## ABIDE BY

abide by,vb. To act in accordance with or in conformity to.

#### AB IDENTITATE RATIONIS

ab identitate rationis (ab I-den-ti-tay-tee ray-shee-oh-nis or rash-ee-oh-nis). [Law Latin] Hist. By identity of reason; for the same reason.

#### ABIDING CONVICTION

abiding conviction.See CONVICTION.

#### ABIGEATUS

abigeatus (<<schwa>>-bij-ee-ay-t<<schwa>>s), n.[Latin] Roman & civil law. The act of stealing cattle by driving them away (abigere); cattle-rustling. • In the later civil law, the usual term for this was abaction. — Also termed abigeat.

#### ABIGEUS

abigeus (<<schwa>>-bij-ee-<<schwa>>s), n.[Latin] Roman & civil law. One who steals cattle, esp. in large numbers; a cattle-rustler. • This was known in the later civil law as an abactor. Pl. abigei.

“The stealing of a single horse or ox might make a man an abigeus, but it seems that the crime could not be committed on less than four pigs or ten sheep. They need not however be taken all together. In such a state of the law one would expect thefts of three pigs or eight sheep to become abnormally common.” 1 James Fitzjames Stephen, *A History of the Criminal Law of England* 27 (1883).

#### ABILITY

ability. The capacity to perform an act or service; esp., the power to carry out a legal act <ability to enter into a contract>.

present ability.The actual, immediate power to do something (esp. to commit a crime).

#### AB INCONVENIENTI

ab inconvenienti (ab in-k<<schwa>>n-vee-nee-en-tI), adv.[Law Latin] From hardship or inconvenience. See argumentum ab inconvenienti under ARGUMENTUM.

#### AB INITIO

ab initio (ab i-nish-ee-oh), adv.[Latin] From the beginning <the injunction was valid ab initio>. Cf. IN INITIO.

#### AB INTESTATO

ab intestato (ab in-tes-tay-toh), adv.[Latin] By intestacy <succession ab intestato is often treated as being ne-cessary because of the neglect or misfortune of the deceased proprietor>. Cf. EX TESTAMENTO.

## AB INVITO

ab invito (ab in-vI-toh), adv.[Latin] By or from an unwilling party; against one's will <a transfer ab invito>. Cf. IN INVITUM.

## AB IRATO

ab irato (ab I-ray-toh), adv.[Latin] By one who is angry. • This phrase usu. refers to a gift or devise made adversely to an heir's interests, out of anger. An action to set aside this type of conveyance was known at common law as an action ab irato.

## ABISHERING

abishering. See MISKERING.

## ABJUDGE

abjudge (ab-j<<schwa>>j), vb. Archaic. To take away or remove (something) by judicial decision. Cf. ADJUDGE.

“As a result of the trial a very solemn judgment is pronounced. The land is adjudged to the one party and his heirs, and abjudged (abiudicata) from the other party and his heirs for ever.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 63 (2d ed. 1899).

## ABJUDICATIO

abjudicatio (ab-joo-di-kay-shee-oh), n.[Law Latin] The act of depriving a person of a thing by judicial decision.

## ABJURATION

abjuration (ab-juu-ray-sh<<schwa>>n), n. A renouncing by oath.

abjuration of the realm.An oath taken to leave the realm forever.

“If a malefactor took refuge [in sanctuary] ... the coroner came and parleyed with the refugee, who had his choice between submitting to trial and abjuring the realm. If he chose the latter course, he hurried dressed in pilgrim's guise to the port that was assigned to him, and left England, being bound by his oath never to return. His lands escheated; his chattels were forfeited, and if he came back his fate was that of an outlaw.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 590 (2d ed. 1899).

oath of abjuration.English law. An oath renouncing all right of descendants of a pretender to the Crown.

## ABJURE

abjure (ab-joor), vb.1. To renounce formally or on oath <abjure one's citizenship>.2. To avoid or abstain from <abjure one's civic duties>. — abjuratory (ab-joor-<<schwa>>-tor-ee), adj.

## ABLATIVE FACT

ablative fact. See divestitive fact under FACT.

#### ABLE

able, adj. Legally competent and qualified <able to transfer title>.

#### ABLE-BODIED SEAMAN

able-bodied seaman. See SEAMAN.

#### ABLEGATE

ablegate (ab-l<<schwa>>-gayt), n. A papal envoy on a special mission, such as carrying a newly appointed cardinal's insignia of office.

#### ABLEISM

ableism. Prejudice against or disregard of disabled people's needs and rights; discrimination that unreasonably favors able-bodied persons. See DISCRIMINATION(1), (2). — ableist, adj.

#### ABLE SEAMAN

able seaman. See able-bodied seaman under SEAMAN.

#### ABLE TO WORK

able to work. Labor law. (Of a worker) released from medical care and capable of employment; esp., not qualified to receive unemployment benefits on grounds of illness or injury. [Cases: Social Security and Public Welfare 477–495. C.J.S. Social Security and Public Welfare §§ 255–258.]

#### ABLOCATION

ablocation (ab-loh-kay-sh<<schwa>>n). Archaic. The leasing of property for money. Cf. LOCATIO.

#### ABMATERTERA

abmatertera (ab-m<<schwa>>-t<<schwa>>r-t<<schwa>>r-<<schwa>>), n. [Latin] Civil law. A great-great-great-aunt. See MATERTERA MAXIMA.

#### ABNEPOS

abnepos (ab-nep-ahs or -ohs), n. [Latin] Civil law. A great-great-grandson; the grandson of a grandson or granddaughter.

#### ABNEPTIS

abneptis (ab-nep-tis), n. [Latin] Civil law. A great-great granddaughter; the granddaughter of a grandson or granddaughter.

#### ABNORMAL LAW

abnormal law. The law as it applies to persons who are under legal disabilities such as infancy,

alienage, insanity, criminality, and (formerly) coverture.

#### ABNORMALLY DANGEROUS ACTIVITY

abnormally dangerous activity. An undertaking that necessarily carries with it a significant risk of serious harm even if reasonable care is used, and for which the actor may face strict liability for any harm caused; esp., an activity (such as dynamiting) for which the actor is held strictly liable because the activity (1) involves the risk of serious harm to persons or property, (2) cannot be performed without this risk, regardless of the precautions taken, and (3) does not ordinarily occur in the community. • Under the Restatement (Second) of Torts, determining whether an activity is abnormally dangerous includes analyzing whether there is a high degree of risk of harm, whether any harm caused will be substantial, whether the exercise of reasonable care will eliminate the risk, whether the activity is a matter of common usage, whether the activity is appropriate to the place in which it occurs, and whether the activity's value to society outweighs its dangerousness. Restatement (Second) of Torts § 520 (1977). — Also, esp. formerly, termed extrahazardous activity; ultrahazardous activity. See strict liability under LIABILITY. [Cases: Negligence 305. C.J.S. Negligence §§ 176–179.]

#### ABODE

abode. A home; a fixed place of residence. See DOMICILE; PLACE OF ABODE.

#### ABOGADO

abogado (ah-boh-gah-doh), n. [Spanish] Spanish law. An advocate; a lawyer.

#### AB OLIM

ab olim (ab oh-lim), adj. [Law Latin] Of old.

#### ABOLISH

abolish, vb. To annul, eliminate, or destroy, esp. an ongoing practice or thing.

#### ABOLITION

abolition. 1. The act of abolishing. 2. The state of being annulled or abrogated. 3. (usu. cap.) The legal termination of slavery in the United States. [Cases: Slaves 24. C.J.S. Peonage §§ 3–5.] 4. Civil law. Withdrawal of a criminal accusation; a sovereign's remission of punishment for a crime. 5. Hist. Permission granted to the accuser in a criminal action to withdraw from its prosecution. See NOLLE PROSEQUI.

#### ABOMINABLE AND DETESTABLE CRIME AGAINST NATURE

abominable and detestable crime against nature. See SODOMY.

#### A BON DROIT

a bon droit (ay or a bawndrwah), adv. [Law French] With good reason; justly; rightfully.

#### ABORIGINAL COST

aboriginal cost. See COST(1).

#### ABORIGINAL TITLE

aboriginal title. See TITLE(2).

#### ABORTEE

aborte (⟨⟨schwa⟩⟩-bor-tee). A woman who undergoes an abortion. [Cases: Abortion and Birth Control 0.5.]

#### ABORTICIDE

aborticide. See ABORTIFACIENT.

#### ABORTIFACIENT

abortifacient (⟨⟨schwa⟩⟩-bor-t⟨⟨schwa⟩⟩-fay-sh⟨⟨schwa⟩⟩nt), n. A drug, article, or other thing designed or intended to produce an abortion. — Also (rarely) termed aborticide. — abortifacient, adj.

#### ABORTION

abortion, n. 1. An artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus. • In *Roe v. Wade*, the Supreme Court first recognized a woman's right to choose to end her pregnancy as a privacy right stemming from the Due Process Clause of the 14th Amendment. 410 U.S. 113, 93 S.Ct. 705 (1973). Sixteen years later, in *Webster v. Reproductive Health Services*, the Court permitted states to limit this right by allowing them to enact legislation that (1) prohibits public facilities or employees from performing abortions, (2) prohibits the use of public funds for family planning that includes information on abortion, or (3) severely limits the right to an abortion after a fetus becomes viable — that is, could live independently of its mother. 492 U.S. 490, 109 S.Ct. 3040 (1989). In 1992, the Court held that (1) before viability, a woman has a fundamental right to choose to terminate her pregnancy, (2) a law that imposes an undue burden on the woman's right to choose before viability is unconstitutional, and (3) after viability, the state, in promoting its interest in potential human life, may regulate or prohibit abortion unless it is necessary to preserve the life or health of the mother. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 112 S.Ct. 2791 (1992). In 2000, the Court again considered abortion rights and reaffirmed *Casey* in holding the Nebraska law at issue unconstitutional because (1) it failed to provide an exception to preserve the health of the mother, and (2) it unduly burdened a woman's right to choose a late-term abortion, thereby unduly burdening her right to choose abortion itself. *Stenberg v. Carhart*, 530 U.S. 914, 120 S.Ct. 2597 (2000). — Formerly also termed procuring an abortion; criminal operation; criminal miscarriage; pro-curing miscarriage. [Cases: Abortion and Birth Control 0.5.] 2. The spontaneous expulsion of an embryo or fetus before viability; MISCARRIAGE. — abort, vb. — abortionist, n.

“The word ‘abortion,’ in the dictionary sense, means no more than the expulsion of a fetus before it is capable of living. In this sense it is a synonym of ‘miscarriage.’ With respect to human beings, however, it has long been used to refer to an intentionally induced miscarriage as



distinguished from one resulting naturally or by accident. There has been some tendency to use the word to mean a criminal miscarriage, and there would be distinct advantages in assigning this meaning to it; but there are so many references to lawful abortion or justification for abortion that it is necessary to speak of 'criminal abortion' or the 'crime of abortion' to emphasize the element of culpability." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 186–87 (3d ed. 1982).

“Modern legal historians dispute whether, and to what extent, abortion constituted a crime at English common law. One view finds that, at most, abortion was an ecclesiastical crime, and concludes that the common law allowed a woman and her abortionist to terminate a pregnancy at all stages of gestation without secular penalties. Another claims that all abortions are at least secular wrongs to the fetus and that only the problems of proving a causal relationship between some abortions and fetal death prevented the punishment of all abortions. Substantial authority exists, however, for a middle ground: although no penalties attached to abortions before the fetus had quickened, performing a postquickening abortion was a common-law crime, most likely a misdemeanor.” Susan Frelich Appleton, “Abortion,” in 1 *Encyclopedia of Crime and Justice* 1, 1 (Sanford H. Kadish ed., 1983).

induced abortion. An abortion purposely and artificially caused either by the mother herself or by a third party. See ABORTIFACIENT.

late-term abortion. An abortion performed during the latter stages of pregnancy, usu. after the middle of the second trimester.

partial-birth abortion. An abortion in which a viable fetus is partially delivered before being destroyed.

spontaneous abortion. See MISCARRIAGE.

therapeutic abortion. An abortion carried out to preserve the life or health of the mother. [Cases: Abortion and Birth Control 0.5.]

“Until recently it was common to speak of ‘therapeutic abortion.’ The literal meaning of the term is an abortion induced for medical reasons, but it was commonly understood to mean one for the purpose of saving the mother's life ....” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 193 (3d ed. 1982).

#### ABORTIVE CHILD

abortive child. See CHILD.

#### ABORTIVE TRIAL

abortive trial. See MISTRIAL.

#### ABOUTISSEMENT

aboutissement (a-boo-tees-mahn), n. [Law French] An abuttal or abutment.

#### ABOVE

above,adj. & adv. (Of an appellate court) having dealt with an appeal in the case at issue; having the power to review the case at issue. Cf. BELOW.

#### ABOVE-MENTIONED

above-mentioned,adj. See AFORESAID.

#### ABOVE-STATED

above-stated,adj. See AFORESAID.

#### ABOVE-THE-LINE

above-the-line,adj. (Of a deduction) taken after calculating gross income and before calculating adjusted gross income. • Examples of above-the-line deductions are IRA contributions and moving expenses. Formerly, individual tax returns had a dark line above which these deductions were written. Cf. BELOW-THE-LINE. [Cases: Internal Revenue 3114. C.J.S. Internal Revenue § 59.]

#### ABPATRUUS

abpatruus (ab-pa-troo-<<schwa>>s), n.[Latin] Roman & civil law. A great-great-great-uncle. — Also termed patruus maximus.

#### ABRIDGE

abridge,vb.1. To reduce or diminish <abridge one's civil liberties>.2. To condense (as a book or other writing) <the author abridged the treatise before final publication>.

#### ABRIDGMENT

abridgment. 1. A condensed version of a longer work. 2.Hist. A legal digest or encyclopedia.

#### ABRIDGMENT OF DAMAGES

abridgment of damages.The right of a court to reduce the damages in certain cases. See REMITTITUR. [Cases: New Trial 162(1). C.J.S. New Trial §§ 271–274, 276–278.]

#### ABROAD

abroad,adv. Outside a country; esp., other than in a forum country.

#### ABROGARE

abrogare (ab-roh-gair-ee), vb. [Latin] Roman law. To remove something from an old law by a new law. — Also termed exrogare.

#### ABROGATE

abrogate (ab-r<<schwa>>-gayt), vb. To abolish (a law or custom) by formal or authoritative action; to annul or repeal. Cf. OBROGATE. — abrogation,n.

#### ABROGATION OF ADOPTION

abrogation of adoption.Family law. An action brought by an adoptive parent to terminate the parent–child relationship by annulment of the decree of adoption. • An adoption may be nullified if it resulted from fraud, misrepresentation, or undue influence, or if nullification is in the child's best interests. — Also termed annulment of adoption. Cf. WRONGFUL ADOPTION.

### ABS

ABS.abbr. 1.AMERICAN BUREAU OF SHIPPING. 2.AUTOMATED BOND SYSTEM. 3. See able-bodied seaman under SEAMAN.

### ABSCOND

abscond (ab-skond), vb.1. To depart secretly or suddenly, esp. to avoid arrest, prosecution, or service of process. 2. To leave a place, usu. hurriedly, with another's money or property. — abscondence (ab-skon-d<< schwa>>nts), n.

### ABSCONDING DEBTOR

absconding debtor.See DEBTOR.

### ABSENCE

absence,n.1. The state of being away from one's usual place of residence. 2. A failure to appear when expected. 3.Louisiana law. The state of being an absent person. — Also termed (in sense 3) absentia.

### ABSENT DEBTOR

absent debtor.See DEBTOR.

### ABSENTE

absente (ab-sen-tee). [Latin] In the absence of. • This term formerly appeared in law reports to note the absence of a judge <the court, absente Ellis, J., was unanimous>.

### ABSENTEE

absentee,n.1. A person who is away from his or her usual residence; one who is absent. 2. A person who is not present where expected. 3. A person who either resides out of state or has departed from the state without having a representative there.

“Generally, a person is an absentee when he is absent from his domicile or usual place of residence; but in light of pertinent statutes he is an absentee when he is without the state and has no representative therein.” 1 C.J.S. Ab-sentee § 2, at 339 (1985).

absentee,adj. Having the characteristics of an absentee <absentee voter>.

absentee,adv. In an absentee manner <Debby voted absentee>.

### ABSENTEE BALLOT

absentee ballot.See BALLOT(2).

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**ABSENTEE LANDLORD**

absentee landlord. See LANDLORD.

**ABSENTEE MANAGEMENT**

absentee management. See absentee landlord under LANDLORD.

**ABSENTEE VOTE**

absentee vote. See absentee voting under VOTING.

**ABSENTEE VOTING**

absentee voting. See VOTING.

**ABSENTE REO**

absente reo (ab-sen-tee ree-oh). [Latin] The defendant being absent. • This phrase appears syntactically as what English language grammarians term a “nominative absolute.”

**ABSENTIA**

absentia. 1. ABSENCE(3). 2. IN ABSENTIA.

**ABSENT PARENT**

absent parent. See noncustodial parent under PARENT.

**ABSENT PERSON**

absent person. See PERSON(1).

**ABSOILE**

absoile (ab-soyl), vb. See ASSOIL.

**ABSOLUTE**

absolute, adj. 1. Free from restriction, qualification, or condition <absolute ownership>. 2. Conclusive and not liable to revision <absolute delivery>. 3. Unrestrained in the exercise of governmental power <absolute monarchy>. — absolute, n.

**ABSOLUTE ASSIGNEE**

absolute assignee. See ASSIGNEE.

**ABSOLUTE ASSIGNMENT**

absolute assignment. See ASSIGNMENT(2).

**ABSOLUTE AUCTION**

absolute auction. See auction without reserve under AUCTION.

**ABSOLUTE-BAR RULE**

absolute-bar rule. The principle that, when a creditor sells collateral without giving reasonable notice to the debtor, the creditor may not obtain a deficiency judgment for any amount of the debt that is not satisfied by the sale. [Cases: Mortgages 375, 559(3); Secured Transactions 230, 240. C.J.S. Mortgages §§ 674–676, 934–935, 937, 950; Secured Transactions §§ 162–170, 172, 174–175.]

#### ABSOLUTE CONTRABAND

absolute contraband. See CONTRABAND.

#### ABSOLUTE CONVEYANCE

absolute conveyance. See CONVEYANCE.

#### ABSOLUTE COVENANT

absolute covenant. See COVENANT(1).

#### ABSOLUTE DEED

absolute deed. See DEED.

#### ABSOLUTE DEFENSE

absolute defense. See real defense under DEFENSE(4).

#### ABSOLUTE DELIVERY

absolute delivery. See DELIVERY.

#### ABSOLUTE DISPARITY

absolute disparity. Constitutional law. The difference between the percentage of a group in the general population and the percentage of that group in the pool of prospective jurors on a venire.

- For example, if African-Americans make up 12% of a county's population and 8% of the potential jurors on a venire, the absolute disparity of African-American veniremembers is 4%. The reason for calculating the disparity is to analyze a claim that the jury was not impartial because the venire from which it was chosen did not represent a fair cross-section of the jurisdiction's population. Some courts criticize the absolute-disparity analysis, favoring instead the comparative-disparity analysis, in the belief that the absolute-disparity analysis understates the deviation. See FAIR-CROSS-SECTION REQUIREMENT; DUREN TEST; STATISTICAL-DECISION THEORY Y. Cf. COMPARATIVE DISPARITY. [Cases: Jury 33(1.1). C.J.S. Juries §§ 269–273, 279, 306.]

#### ABSOLUTE DIVORCE

absolute divorce. See divorce a vinculo matrimonii under DIVORCE.

#### ABSOLUTE DUTY

absolute duty. See DUTY(1).

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**ABSOLUTE ESTATE**

absolute estate. See ESTATE(1).

**ABSOLUTE GIFT**

absolute gift. See inter vivos gift under GIFT.

**ABSOLUTE GUARANTY**

absolute guaranty. See GUARANTY.

**ABSOLUTE IMMUNITY**

absolute immunity. See IMMUNITY(1).

**ABSOLUTE INTEREST**

absolute interest. See INTEREST(2).

**ABSOLUTE LAW**

absolute law. A supposed law of nature thought to be unchanging in principle, although circumstances may vary the way in which it is applied. See NATURAL LAW .

**ABSOLUTE LEGACY**

absolute legacy. See LEGACY.

**ABSOLUTE LIABILITY**

absolute liability. See strict liability under LIABILITY.

**ABSOLUTE MAJORITY**

absolute majority. See MAJORITY.

**ABSOLUTE MARTIAL LAW**

absolute martial law. See MARTIAL LAW.

**ABSOLUTE NOVELTY**

absolute novelty. See NOVELTY.

**ABSOLUTE-NOVELTY REQUIREMENT**

absolute-novelty requirement. See absolute novelty under NOVELTY.

**ABSOLUTE NUISANCE**

absolute nuisance. See NUISANCE.

**ABSOLUTE NULLITY**

absolute nullity. See NULLITY.

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**ABSOLUTE OBLIGATION**

absolute obligation.See OBLIGATION.

**ABSOLUTE PARDON**

absolute pardon.See PARDON.

**ABSOLUTE POLLUTION EXCLUSION**

absolute pollution exclusion.See pollution exclusion under EXCLUSION(3).

**ABSOLUTE PRESUMPTION**

absolute presumption.See conclusive presumption under PRESUMPTION.

**ABSOLUTE-PRIORITY RULE**

absolute-priority rule.Bankruptcy. The rule that a confirmable reorganization plan must provide for full payment to a class of dissenting unsecured creditors before a junior class of claimants will be allowed to receive or retain anything under the plan. • Some jurisdictions recognize an exception to this rule when a junior class member, usu. a partner or shareholder of the debtor, contributes new capital in exchange for an interest in the debtor. 11 USCA § 1129(b)(2)(B)(ii). [Cases: Bankruptcy 3561. C.J.S. Bankruptcy § 395.]

**ABSOLUTE PRIVILEGE**

absolute privilege.See PRIVILEGE(1).

**ABSOLUTE PROPERTY**

absolute property.See PROPERTY.

**ABSOLUTE RIGHT**

absolute right.See RIGHT.

**ABSOLUTE SALE**

absolute sale.See SALE.

**ABSOLUTE SIMULATED CONTRACT**

absolute simulated contract.See CONTRACT.

**ABSOLUTE TITLE**

absolute title.See TITLE(2).

**ABSOLUTE VETO**

absolute veto.See VETO.

**ABSOLUTIO**

absolutio (ab-s<<schwa>>-loo-shee-oh). See ABSOLUTION(2).

#### ABSOLUTION

absolution (ab-s<<schwa>>-loo-sh<<schwa>>n).1. Release from a penalty; the act of absolving. 2.Civil law. An acquittal of a criminal charge. — Also termed absolutio. 3.Eccles. law. Official forgiveness of sins.

#### ABSOLUTISM

absolutism (ab-s<<schwa>>-loo-tiz-<<schwa>>m), n. In politics, the atmosphere surrounding a dictator whose power has no restrictions, checks, or balances; the belief in such a dictator. — absolutist (ab-s<<schwa>>-loo-tist), adj. & n.

#### ABSOLVE

absolve (ab- or <<schwa>>b-zolv), vb.1. To release from an obligation, debt, or responsibility. 2. To free from the penalties for misconduct. — absolver,n.

#### ABSOLVITOR

absolvitor (ab-sol-vi-t<<schwa>>r), n. Scots law. A decision in a civil action in favor of the defender; an acquittal. — absolvitory,adj.

#### ABSORBABLE RISK

absorbable risk.See RISK.

#### ABSORPTION

absorption,n.1. The act or process of including or incorporating a thing into something else; esp., the application of rights guaranteed by the U.S. Constitution to actions by the states. 2.Int'l law. The merger of one nation into another, whether voluntarily or by subjugation. 3.Labor law. In a postmerger collective-bargaining agreement, a provision allowing seniority for union members in the resulting entity. 4.Real estate. The rate at which property will be leased or sold on the market at a given time. 5.Commercial law. A sales method by which a manufacturer pays the reseller's freight costs, which the manufacturer accounts for before quoting the reseller a price. — Also termed (in sense 5) freight absorption. — absorb,vb.

#### ABSQUE

absque (abs-kwee), adv.[Latin] Without.

#### ABSQUE ALIQUO INDE REDDENDO

absque aliquo inde reddendo (abs-kwee al-<<schwa>>-kwoh in-dee ri-den-doh), adv.[Law Latin] Hist. Without rendering anything therefrom. • This phrase appeared in royal grants in which no tenure was reserved.

#### ABSQUE CONSIDERATIONE CURIAE

absque consideratione curiae (abs-kwee k<<schwa>>n-sid-<<schwa>>-ray-shee-oh-nee



kyoor-ee-ee), adv.[Law Latin] Without the consideration of the court; without judgment.

#### ABSQUE DUBIO

absque dubio (abs-kwee d[y]oo-bee-oh), adv.[Latin] Without doubt.

#### ABSQUE HOC

absque hoc (abs-kwee hok), adv.[Latin] Archaic. Without this. • The phrase was formerly used in common-law pleading to introduce the denial of allegations. — Also termed sans ce que. See TRAVERSE.

#### ABSQUE IMPETITIONE VASTI

absque impetitione vasti (abs-kwee im-p<<schwa>>-tish-ee-oh-nee vas-ti), adv.[Law Latin] Hist. See WITHOUT IMPEACHMENT OF WASTE.

#### ABSQUE INJURIA DAMNUM

absque injuria damnum (ab-skwee in-joor-ee-<<schwa>> dam-n<<schwa>>m). [Law Latin] See DAMNUM SINE INJURIA. — Often shortened to absque injuria.

#### ABSQUE IPSIUS REGIS SPECIALI LICENTIA

absque ipsius regis speciali licentia (abs-kwee ip-see-<<schwa>>s ree-jis spesh-ee-ay-II li-sen-shee-<<schwa>>). [Law Latin] Hist. Without the special authority of the king himself. • The phrase was part of a law forbidding Crown vassals from transferring land without a special warrant.

#### ABSQUE TALI CAUSA

absque tali causa (abs-kwee tay-IIkaw-z<<schwa>>), adv.[Law Latin] Without such cause. • In common-law pleading, this was part of the larger phrase de injuria sua propria, absque tali causa (“of his own wrong, without such cause”) appearing in a reply that a trespass plaintiff made to counter a defendant's claim of excuse. In an assault case, for example, if a defendant pleaded that he had struck the plaintiff in self-defense, the plaintiff could reply that the defendant was guilty of his own wrong committed without such cause as alleged. See DE INJURIA.

#### ABS RULES

ABS Rules.Maritime law. Industry standards for the construction, maintenance, and operation of seagoing vessels and stationary offshore facilities, as set and enforced by the American Bureau of Shipping. See AMERICAN BUREAU OF SHIPPING .

#### ABSTAIN

abstain,vb.1. To voluntarily refrain from doing something, such as voting in a deliberative assembly. 2. (Of a federal court) to refrain from exercising jurisdiction over a matter. [Cases: Federal Courts 41–65.]

#### ABSTENTION

abstention. 1. The act of withholding or keeping back (something or oneself); esp., the withholding of a vote. 2. A federal court's relinquishment of jurisdiction when necessary to avoid needless conflict with a state's administration of its own affairs. 3. The legal principle underlying such a relinquishment of jurisdiction. Cf. COMITY; OUR FEDERALISM. [Cases: Federal Courts 41–65. C.J.S. Bankruptcy §§ 16, 40.]

Burford abstention. A federal court's refusal to review a state court's decision in cases involving a complex regulatory scheme and sensitive areas of state concern. *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098 (1943).

Colorado River abstention. A federal court's decision to abstain while relevant and parallel state-court proceedings are underway. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236 (1976).

equitable abstention. A federal court's refraining from interfering with a state administrative agency's decision on a local matter when the aggrieved party has adequate relief in the state courts.

permissive abstention. Abstention that a bankruptcy court can, but need not, exercise in a dispute that relates to the bankruptcy estate but that can be litigated, or is being litigated, in another forum. • In deciding whether to abstain, the bankruptcy court must consider (1) the degree to which state law governs the case, (2) the appropriateness of the procedure to be followed in the other forum, (3) the remoteness of the dispute to the issues in the bankruptcy case, and (4) the presence of nondebtor parties in the dispute. 28 USCA § 1334(c)(1). [Cases: Federal Courts 47.5.]

Pullman abstention. A federal court's decision to abstain so that state courts will have an opportunity to settle an underlying state-law question whose resolution may avert the need to decide a federal constitutional question. *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941). [Cases: Federal Courts 43, 46.]

Thibodaux abstention (tib-<<schwa>>-doh). A federal court's decision to abstain so that state courts can decide difficult issues of public importance that, if decided by the federal court, could result in unnecessary friction between state and federal authorities. *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 79 S.Ct. 1070 (1959). [Cases: Federal Courts 41, 43.]

Younger abstention. 1. A federal court's decision not to interfere with an ongoing state criminal proceeding by issuing an injunction or granting declaratory relief, unless the prosecution has been brought in bad faith or merely as harassment. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971). — Also termed equitable-restraint doctrine. [Cases: Federal Courts 49, 51, 54.] 2. By extension, a federal court's decision not to interfere with a state-court civil proceeding used to enforce the criminal law, as to abate an obscene nuisance. See OUR FEDERALISM.

## ABSTINENCE

abstinence (ab-st<<schwa>>-n<<schwa>>nts). The practice of refraining completely from indulgence in some act; esp., the practice of not having sex or of not consuming alcoholic

beverages.

#### ABSTRACT

abstract, n.1. A concise statement of a text, esp. of a legal document; a summary. See ABSTRACT OF JUDGMENT; ABSTRACT OF TITLE. 2. Patents. A one-paragraph summary of an invention's design and function, including its nature, structure, purpose, and novelty. • The abstract is a required part of a patent application, and also appears on the front page of the patent itself. It may not exceed 150 words. For the purpose of determining adequacy of disclosure, the abstract is considered to be part of the specification. See 35 USCA § 112. — Also termed abstract of the disclosure; abstract of the specification. [Cases: Patents 99. C.J.S. Patents § 139.]

#### ABSTRACT COMPROMIS

abstract compromis. See general compromis under COMPROMIS.

#### ABTRACTER

abstracter. See ABTRACTOR.

#### ABSTRACT IDEA

abstract idea. Intellectual property. A concept or thought, removed from any tangible embodiment. • An abstract idea is one of the categories of unpatentable subject matter, along with natural phenomena and laws of nature. But a process that uses abstract ideas to produce a useful result can be patented. Copyright law likewise will not protect an abstract idea, but only its expression. The law of unfair competition, on the other hand, does protect abstract ideas that meet the other criteria of a trade secret. See business-method patent under PATENT.

#### ABSTRACTION

abstraction (ab- or <<schwa>>b-strak-sh<<schwa>>n), n.1. The mental process of considering something without reference to a concrete instance <jurisprudence is largely the abstraction of many legal particulars>. 2. A theoretical idea not applied to any particular instance <utopia in any form is an abstraction>. 3. The summarizing and recording of a legal instrument in public records <abstraction of the judgment in Tarrant County>. 4. The act of taking with the intent to injure or defraud <the abstraction of funds was made possible by the forged signature on the check>. — abstract (ab-strakt), vb.

#### ABSTRACTION-FILTRATION-COMPARISON TEST

abstraction-filtration-comparison test. Copyright. A judicially created test for determining whether substantial similarity exists between two works in an action for infringement. • In the first step, the court dissects the copy-righted work's structure and isolates each level of abstraction or generality (abstraction test). In the second step, the court examines each level of abstraction and separates out the unprotectable elements such as ideas, processes, facts, public-domain information, and merger material (filtration test). In the third step, the court compares the resulting core of protectable expression with the accused work to determine whether substantial elements of the copyrighted work have been misappropriated (comparison test). This test was first applied by

the Second Circuit in *Computer Associates Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992). Although that case involved computer software and the test is usu. applied in software-infringement cases, the test has also been applied to nonsoftware works. — Also termed abstraction-filtration test. See SIMILARITY. Cf. ABSTRACTIONS TEST. [Cases: Copyrights and Intellectual Property 53(1).]

#### ABSTRACTIONS TEST

abstractions test.Copyright. A means of comparing copyrighted material with material that allegedly infringes the copyright by examining whether the actual substance has been copied or whether the two works merely share the same abstract ideas. • The primary authority for the abstractions test is Judge Learned Hand's opinion in *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d Cir. 1930). Although referred to as a “test,” it is not a bright-line test, but an approach to discerning the boundaries of protectable expression by isolating and comparing each level of abstraction in the two works, from the lowest (most detailed) to the highest (most conceptual). Cf. ABSTRACTION-FILTRATION-COMPARISON TEST; LOOK-AND-FEEL TEST. [Cases: Copyrights and Intellectual Property 53(1).]

#### ABSTRACT JURIDICAL ACT

abstract juridical act.See ACT.

#### ABSTRACT OF A FINE

abstract of a fine.See NOTE OF A FINE.

#### ABSTRACT OF CONVICTION

abstract of conviction.A summary of the court's finding on an offense, esp. a traffic violation. [Cases: Auto-mobiles 144.2(5.1).]

#### ABSTRACT OF JUDGMENT

abstract of judgment.A copy or summary of a judgment that, when filed with the appropriate public office, creates a lien on the judgment debtor's nonexempt property. See judgment lien under LIEN. [Cases: Judgment 768(1).C.J.S. Judgments §§ 559–561, 568.]

#### ABSTRACT OF RECORD

abstract of record.An abbreviated case history that is complete enough to show an appellate court that the questions presented for review have been preserved. [Cases: Appeal and Error 579; Criminal Law 1103.C.J.S. Appeal and Error § 496.]

#### ABSTRACT OF THE DISCLOSURE

abstract of the disclosure.See ABSTRACT(2).

#### ABSTRACT OF THE SPECIFICATION

abstract of the specification.See ABSTRACT(2).

**ABSTRACT OF TITLE**

abstract of title. A concise statement, usu. prepared for a mortgagee or purchaser of real property, summarizing the history of a piece of land, including all conveyances, interests, liens, and encumbrances that affect title to the property. — Also termed brief; brief of title. [Cases: Abstracts of Title 1. C.J.S. Abstracts of Title §§ 2–3, 5.]

good and merchantable abstract of title. An abstract of title showing clear, good, and marketable title, rather than showing only the history of the property. See clear title, good title, and marketable title under TITLE(2).

**ABTRACTOR**

abstractor (ab- or <<schwa>>b-strak-t<<schwa>>r). A person who prepares abstracts of title. — Also spelled abstracter. [Cases: Abstracts of Title 3. C.J.S. Abstracts of Title §§ 6–20.]

**ABSTRACT QUESTION**

abstract question. See HYPOTHETICAL QUESTION.

**ABSURDITY**

absurdity, n. The state or quality of being grossly unreasonable; esp., an interpretation that would lead to an unconscionable result, esp. one that the parties or (esp. for a statute) the drafters could not have intended and probably never considered. Cf. GOLDEN RULE.

**A-B TRUST**

A-B trust. See bypass trust under TRUST.

**AB URBE CONDITA**

ab urbe condita (ab <<schwa>>r-bee kon-di-t<<schwa>>). [Latin] From the founding of the city (esp. Rome in 753 B.C.). • This term is sometimes used in abbreviated form in classical dates. For example, the date “23 A.U.C.” means “23 years after the founding of Rome,” or 730 B.C. — Abbr. A.U.C.

**ABUSE**

abuse (<<schwa>>-byoos), n. 1. A departure from legal or reasonable use; misuse. 2. Physical or mental mal-treatment, often resulting in mental, emotional, sexual, or physical injury. — Also termed cruel and abusive treatment. Cf. NEGLECT; CRUELTY.

abuse of the elderly. Abuse of a senior citizen by a caregiver. • Examples include deprivation of food or medication, beatings, oral assaults, and isolation. — Also termed elder abuse. [Cases: Assault and Battery 48. C.J.S. Assault and Battery §§ 2–3, 62, 64–66, 81.]

carnal abuse. See sexual abuse (1).

child abuse. 1. Intentional or neglectful physical or emotional harm inflicted on a child, including sexual molestation; esp., a parent's or caregiver's act or failure to act that results in a

child's exploitation, serious physical or emotional injury, sexual abuse, or death. 2. An act or failure to act that presents an imminent risk of serious harm to a child. • Child abuse can be either intentional or negligent. The first case of child abuse actually prosecuted occurred in New York City in 1874. An eight-year-old girl named Mary Ellen was found to have been severely abused. Her abusers were prosecuted under the law for prevention of cruelty to animals, since no law protecting children then existed. Child abuse was first recognized as a medical concern in 1962, when Dr. C. Henry Kempe introduced the medical concept of battered-child syndrome. — Also termed cruelty to a child; cruelty to children; child maltreatment. See abused child under CHILD; battered child under CHILD; BATTERED-CHILD SYNDROME. Cf. secondary abuse. [Cases: Infants 13–13.5(2), 15. C.J.S. Infants §§ 5, 92–98.]

domestic abuse. See domestic violence under VIOLENCE.

elder abuse. See abuse of the elderly.

emotional abuse. Physical or mental abuse that causes or could cause serious emotional injury.

secondary abuse. Child abuse suffered by children who, although they are not physically abused, witness domestic violence within their families.

sexual abuse. 1. An illegal sex act, esp. one performed against a minor by an adult. — Also termed carnal abuse. 2. RAPE(2). [Cases: Assault and Battery 59; Infants 13. C.J.S. Assault and Battery § 74; Infants §§ 5, 92–93, 95–98.]

spousal abuse. Physical, sexual, or psychological abuse inflicted by one spouse on the other spouse; esp., wife-beating. See BATTERED-WOMAN SYNDROME.

abuse (<<schwa>>-byooz), vb. 1. To damage (a thing). 2. To depart from legal or reasonable use in dealing with (a person or thing); to misuse. 3. To injure (a person) physically or mentally. 4. In the context of child welfare, to hurt or injure (a child) by maltreatment. • In most states, a finding of abuse is generally limited to maltreatment that causes or threatens to cause lasting harm to the child.

#### ABUSED CHILD

abused child. See CHILD.

#### ABUSEE

abusee (<<schwa>>-byoo-zee), n. One who is or has been abused.

#### ABUSE EXCUSE

abuse excuse. Criminal law. The defense that a defendant cannot tell right from wrong or control impulses because of physical or mental abuse suffered as a child. • Like the traditional excuse of insanity, the abuse excuse is asserted by a defendant in an effort to avoid all culpability for the crime charged. Cf. BATTERED-CHILD SYNDROME; BATTERED-WOMAN SYNDROME.

#### ABUSE OF DISCOVERY

abuse of discovery.See DISCOVERY ABUSE.

#### ABUSE OF DISCRETION

abuse of discretion. 1. An adjudicator's failure to exercise sound, reasonable, and legal decision-making. 2. An appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence. See DISCRETION. [Cases: Appeal and Error 946; Criminal Law 1147. C.J.S. Appeal and Error § 772.]

#### ABUSE OF PROCESS

abuse of process.The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. — Also termed abuse of legal process; malicious abuse of process; malicious abuse of legal process; wrongful process; wrongful process of law. Cf. MALICIOUS PROSECUTION. [Cases: Process 168–171. C.J.S. Process §§ 106–114.]

“One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.” Restatement (Second) of Torts § 682 (1977).

#### ABUSE OF RIGHTS

abuse of rights. 1.Int'l law.A country's exercise of a right either in a way that impedes the enjoyment by other countries of their own rights or for a purpose different from that for which the right was created (e.g., to harm another country).2.Louisiana law. A person's exercise of a right in an unneighborly spirit that, while of no benefit to that person, causes damage to the neighbor.

#### ABUSE-OF-RIGHTS DOCTRINE

abuse-of-rights doctrine.Civil law. The principle that a person may be liable for harm caused by doing something the person has a right to do, if the right is exercised (1) for the purpose or primary motive of causing harm, (2) without a serious and legitimate interest that is deserving of judicial protection, (3) against moral rules, good faith, or elementary fairness, or (4) for a purpose other than its intended legal purpose. [Cases: Torts 6. C.J.S. Torts §§ 5, 16–22.]

#### ABUSE OF THE ELDERLY

abuse of the elderly.See ABUSE.

#### ABUSE-OF-THE-WRIT DOCTRINE

abuse-of-the-writ doctrine.Criminal procedure. The principle that a petition for a writ of habeas corpus may not raise claims that should have been, but were not, asserted in a previous petition. Cf. SUCCESSIVE-WRIT DOCTRINE. [Cases: Habeas Corpus 896.]

#### ABUSER

abuser (<<schwa>>-byoo-z<<schwa>>r), n.1. One who abuses someone or something. 2.ABUSE(1).

## ABUSIVE

abusive (<<schwa>>-byoo-siv), adj.1. Characterized by wrongful or improper use <abusive discovery tactics>.2. (Of a person) habitually cruel, malicious, or violent <abusive parent>. — abusively,adv.

## ABUSUS

abusus (<<schwa>>-byoo-s<<schwa>>s), n. Civil law. The right to dispose of one's property.

## ABUT

abut (<<schwa>>-b<<schwa>>t), vb. To join at a border or boundary; to share a common boundary with <the company's land in Arizona abuts the Navajo Indian reservation>. — abutment (<<schwa>>-b<<schwa>>t-m<<schwa>>nt), n.

## ABUTTALS

abuttals (<<schwa>>-b<<schwa>>t-<<schwa>>lz). Land boundaries; the boundary lines of a piece of land in relation to other contiguous lands. — Also termed (archaically) buttals.

## ABUTTER

abutter (<<schwa>>-b<<schwa>>t-<<schwa>>r).1. The owner of adjoining land; one whose property abuts another's. [Cases: Adjoining Landowners 1.C.J.S. Adjoining Landowners §§ 2, 6–8, 39.]

“The major right of [an abutter] is that of access to his property — a right of reasonable ingress and egress. He is entitled to compensation for any substantial impairment of this reasonable access. The right normally includes the right to have, at some point, a driveway onto his premises. An abutter does not have the right to the continued flow of traffic in the same amount or pattern past his premises.” Osborne M. Reynolds Jr., Handbook of Local Government Law § 180, at 620 (1982).

2. Land that adjoins the land in question.

## ABUTTING FOOT

abutting foot.See FRONT FOOT.

## A/C

a/c.abbr.ACCOUNT(4).

## ACADEMIC

academic,adj.1. Of or relating to a school or a field of study; esp., of or relating to a field of study that is not vocational or commercial, such as the liberal arts <academic courses>.2. Theoretical; specif., not practical or immediately useful <academic question>.

## ACADEMIC FREEDOM



academic freedom. The right (esp. of a university teacher) to speak freely about political or ideological issues without fear of loss of position or other reprisal. [Cases: Colleges and Universities 8.1(3). C.J.S. Colleges and Universities § 25.]

#### ACADEMIC LAWYER

academic lawyer. A law professor, usu. one who maintains a law practice on the side.

#### ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE

Académie de Droit International de La Haye. See HAGUE ACADEMY OF INTERNATIONAL LAW .

#### ACADEMY

academy. 1. An institution of higher learning. 2. An association dedicated to the advancement of knowledge in a particular field, such as the American Academy of Matrimonial Lawyers. 3. A private high school. 4. (cap.) A garden near Athens where Plato taught; hence, the school of philosophy that he led.

#### A CANCELLANDO

a cancellando (ay kan-s<<schwa>>-lan-doh). [Law Latin] From canceling.

“It has its name of chancery, cancellaria, from the judge who presides here, the lord chancellor or cancellarius; who, Sir Edward Coke tells us, is so termed a cancellando, from cancelling the king's letters patents when granted contrary to law ....” 3 William Blackstone, Commentaries on the Laws of England 46 (1768).

#### A CANCELLIS

a cancellis (ay kan-sel-is), n. [Law Latin] Hist. A chancellor, so called because he performed the duties of office behind a cancelli (“lattice”).

#### A CANCELLIS CURIAE EXPLODI

a cancellis curiae explodi (ay kan-sel-is kyoor-ee-I ek-sploh-dI). [Law Latin] Hist. To be expelled from the bar of the court.

#### A CAUSE DE CY

a cause de cy (ay kaw-z<<schwa>> d<<schwa>> see), adv. [Law French] For this reason.

#### ACCEDAS AD CURIAM

accedas ad curiam (ak-see-d<<schwa>>s ad kyoor-ee-<<schwa>>m), n. [Law Latin “you are to go to the court”] Hist. An original writ for removing a replevin action to a royal court from either of two feudal courts — a court baron or a hundred court. • It is a recordare facias loquelam for replevin actions. See RECORDARE FACIAS LOQUELAM.

#### ACCEDE

accede (ak-seed), vb.1. To consent or agree. 2. To be added (to something else) through accession. 3. To adopt. See ADOPTION(5).4. (Of a body politic) to accept unification with or annexation into another body politic. — accession, accedence (ak-see-d<<schwa>>nts), n.

#### ACCELERATED COST RECOVERY SYSTEM

Accelerated Cost Recovery System. An accounting method that is used to calculate asset depreciation and that allows for the faster recovery of costs by assigning the asset a shorter useful life than was previously permitted under the Internal Revenue Code. • This system applies to property put into service from 1981 to 1986. It was replaced in 1986 by the Modified Accelerated Cost Recovery System. — Abbr. ACRS. [Cases: Internal Revenue 3476. C.J.S. Internal Revenue §§ 230, 234, 239, 249.]

#### ACCELERATED DEPRECIATION METHOD

accelerated depreciation method. See DEPRECIATION METHOD.

#### ACCELERATED DISCLOSURE

accelerated disclosure. See accelerated discovery under DISCOVERY.

#### ACCELERATED DISCOVERY

accelerated discovery. See DISCOVERY.

#### ACCELERATED-REENTRY THEORY

accelerated-reentry theory. See POST-EXPIRATION-SALES THEORY.

#### ACCELERATED REMAINDER

accelerated remainder. See REMAINDER.

#### ACCELERATION

acceleration, n.1. The advancing of a loan agreement's maturity date so that payment of the entire debt is due immediately. [Cases: Bills and Notes 129(2). C.J.S. Bills and Notes; Letters of Credit §§ 76, 92–100.] 2. The shortening of the time for vesting in possession of an expectant interest. — Also termed acceleration of remainder. [Cases: Remainders 5. C.J.S. Estates §§ 77, 80.] 3. Property. The hastening of an owner's time for enjoyment of an estate because of the failure of a preceding estate. 4. Securities. The SEC's expediting of a registration statement's effective date so that the registrant bypasses the required 20-day waiting period. — accelerate, vb.

#### ACCELERATION CLAUSE

acceleration clause. A loan-agreement provision that requires the debtor to pay off the balance sooner than the due date if some specified event occurs, such as failure to pay an installment or to maintain insurance. Cf. DEMAND CLAUSE; INSECURITY CLAUSE. [Cases: Bills and Notes 129(2). C.J.S. Bills and Notes; Letters of Credit §§ 76, 92–100.]

#### ACCELERATION OF REMAINDER

acceleration of remainder. See ACCELERATION(2).

#### ACCEPTABLE IDENTIFICATION OF GOODS AND SERVICES MANUAL

Acceptable Identification of Goods and Services Manual. Trademarks. A U.S. Government publication that sets forth, for goods and services, known acceptable international class categorizations and descriptions that may be used in trademark applications submitted to the U.S. Patent and Trademark Office. • This manual is available from the U.S. Government Printing Office, Washington, D.C. 20402, and through the PTO's website at [http:// www.uspto.gov](http://www.uspto.gov).

#### ACCEPTANCE

acceptance, n.1. An offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed. • If an acceptance modifies the terms or adds new ones, it generally operates as a counteroffer. Cf. OFFER. [Cases: Contracts 22(1). C.J.S. Contracts §§ 46–51, 53–54; Trading Stamps and Coupons §§ 7–9.]

acceptance by silence. Acceptance of an offer not by explicit words but through the lack of an offeree's response in circumstances in which the relationship between the offeror and the offeree justifies both the offeror's expectation of a reply and the offeror's reasonable conclusion that the lack of one signals acceptance. • Ordinarily, silence does not give rise to an acceptance of an offer. [Cases: Contracts 22(1). C.J.S. Contracts §§ 46–51, 53–54; Trading Stamps and Coupons §§ 7–9.]

qualified acceptance. A conditional or partial acceptance that varies the original terms of an offer and operates as a counteroffer; esp., in negotiable instruments (bills of exchange), an acceptor's variation of the terms of the instrument. [Cases: Bills and Notes 83. C.J.S. Bills and Notes; Letters of Credit § 38.]

2. A buyer's assent that the goods are to be taken in performance of a contract for sale. • Under UCC § 2-606, a buyer's acceptance consists in (1) signifying to the seller that the goods are conforming ones or that the buyer will take them despite nonconformities, (2) not making an effective rejection, or (3) taking any action inconsistent with the seller's ownership. If the contract is for the sale of goods that are not identified when the contract is entered into, there is no acceptance until the buyer has had a reasonable time to examine the goods. But if the buyer deals with them as owner, as by reselling them, a court may find constructive acceptance. [Cases: Sales 178(1). C.J.S. Sales §§ 189–191, 194–197.] “Acceptance means communicated acceptance.... [It] must be something more than a mere mental assent.” William R. Anson, *Principles of the Law of Contract* 34 (Arthur L. Corbin ed., 3d Am. ed. 1919). [But Corbin adds:] “This use of the word ‘communicated’ is open to some objection. To very many persons the word means that knowledge has been received. Frequently a contract is made even though the offeror has no such knowledge. In such case the acceptance is not ‘communicated’ and yet it consummates the contract.” *Id.* n.2.

“Acceptance of a conveyance or of a document containing a promise is a manifestation of assent to the terms thereof made, either before or after delivery, in accordance with any requirements imposed by the grantor or promisor. If the acceptance occurs before delivery and is

not binding as an option contract, it is revocable until the moment of delivery.” Restatement (Second) of Contracts § 106 (1979).

3. The formal receipt of and agreement to pay a negotiable instrument. [Cases: Bills and Notes 66–84. C.J.S. Bills and Notes; Letters of Credit §§ 4, 19, 21, 24, 37–40.] 4. A negotiable instrument, esp. a bill of exchange, that has been accepted for payment.

acceptance au besoin (oh b<<schwa>>-zwan). [French “in case of need”] An acceptance by one who has agreed to pay the draft in case the drawee fails to do so.

acceptance for honor.An acceptance or undertaking not by a party to the instrument, but by a third party, for the purpose of protecting the honor or credit of one of the parties, by which the third party agrees to pay the debt when it becomes due if the original drawee does not. • This type of acceptance inures to the benefit of all successors to the party for whose benefit it is made. — Also termed acceptance supra protest; acceptance for honor supra protest. [Cases: Bills and Notes 71. C.J.S. Bills and Notes; Letters of Credit § 37.]

“ ‘Acceptance for honour supra protest’ is an exception to the rule that only the drawee can accept a bill. A bill which has been dishonoured by non-acceptance and is not overdue may, with the consent of the holder, be accepted in this way for the honour of either the drawer or an indorser (i.e., to prevent the bill being sent back upon the drawer or indorser as unpaid) by a friend placing his own name upon it as acceptor for the whole, or part only, of the amount of the bill; after a protest has been drawn up declaratory of its dishonour by the drawee. Similarly, where a bill has been dishonoured by non-payment and protested any person may intervene and pay it supra protest for the honour of any person liable thereon; the effect being to discharge all parties subsequent to the party for whose honour it is paid.” 2 Stephen's Commentaries on the Laws of England 202–03 (L. Crispin Warmington ed., 21st ed. 1950).

accommodation acceptance.The acceptance of an offer to buy goods for current or prompt shipment by shipping nonconforming goods after notifying the buyer that the shipment is intended as an accommodation. • This type of “acceptance” is not truly an acceptance under contract law, but operates instead as a counteroffer if the buyer is duly notified. [Cases: Sales 23(4). C.J.S. Sales §§ 38–40.]

banker's acceptance.A bill of exchange drawn on and accepted by a commercial bank. • Banker's acceptances are often issued to finance the sale of goods in international trade. — Abbr. BA. — Also termed bank acceptance. [Cases: Banks and Banking 189; Bills and Notes 151. C.J.S. Banks and Banking §§ 452–458; Bills and Notes; Letters of Credit § 131.]

blank acceptance.Acceptance by a bill-of-exchange drawee before the bill is made, as indicated by the drawee's signature on the instrument.

conditional acceptance.An agreement to pay a draft on the occurrence or nonoccurrence of a particular event. [Cases: Bills and Notes 83. C.J.S. Bills and Notes; Letters of Credit § 38.]

express acceptance.A written or oral expression indicating that the drawee has seen the instrument and does not dispute its sufficiency. • While a written acceptance is typically signified

by the stamped or written word “ac-cepted” or “presented,” usu. on the instrument itself, an oral acceptance must be made directly to a drawer or holder who has waived the right to a written acceptance.

implied acceptance. An acceptance implied by a drawee whose actions indicate an intention to comply with the request of the drawer; conduct by the drawee from which the holder is justified in concluding that the drawee intends to accept the instrument. [Cases: Bills and Notes 70. C.J.S. Bills and Notes; Letters of Credit § 21.]

special acceptance. An acceptance that departs from either the terms of a bill or the terms added to but not otherwise expressed in a bill. • An example is an acceptance of a draft as payable in a particular place even though the draft contains no such limitation. [Cases: Bills and Notes 83. C.J.S. Bills and Notes; Letters of Credit § 38.]

trade acceptance. A bill of exchange for the amount of a specific purchase, drawn on and accepted by the buyer for payment at a specified time. [Cases: Bills and Notes 1. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 5–6, 8–9, 17–18, 22.]

5. An insurer's agreement to issue a policy of insurance. [Cases: Insurance 1731. C.J.S. Insurance §§ 273, 276–280.] — accept, vb. “And in some instances, insurance companies have even specified in the application forms that acceptance of an applicant's offer will not occur until the insurance policy is literally delivered to the applicant — that is, the insurer chooses to structure the arrangement so that acceptance is to be manifested by the physical delivery of the insurance policy to the applicant.” Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 2.1, at 39–40 (1988).

6. An heir's agreement to take an inheritance. See TACIT ACCEPTANCE. 7. See ADOPTION(5).

#### ACCEPTANCE AU BESOIN

acceptance au besoin. See ACCEPTANCE(4).

#### ACCEPTANCE BY SILENCE

acceptance by silence. See ACCEPTANCE(1).

#### ACCEPTANCE COMPANY

acceptance company. See sales finance company under FINANCE COMPANY.

#### ACCEPTANCE CREDIT

acceptance credit. See time letter of credit under LETTER OF CREDIT.

#### ACCEPTANCE CRITERIA

acceptance criteria. Intellectual property. Agreed-on performance standards that a custom-made product such as computer software or hardware or a commercial website must meet before the customer is legally obligated to accept the product and pay for it. See ACCEPTANCE

## TESTING.

## ACCEPTANCE DOCTRINE

acceptance doctrine. Construction law. The principle that, once an owner accepts the work of a contractor, the contractor is not liable to third parties for an injury arising from the contractor's negligence in performing under the contract, unless the injury results from a hidden, imminently dangerous defect that the contractor knows about and the owner does not know about. — Also termed accepted-work doctrine. [Cases: Negligence 1205(8). C.J.S. Negligence § 601.]

## ACCEPTANCE FOR HONOR

acceptance for honor. See ACCEPTANCE(4).

## ACCEPTANCE-OF-THE-BENEFITS RULE

acceptance-of-the-benefits rule. The doctrine that a party may not appeal a judgment after having voluntarily and intentionally received all or some part of the relief provided by it. [Cases: Appeal and Error 160. C.J.S. Appeal and Error §§ 193–194.]

## ACCEPTANCE SAMPLING

acceptance sampling. The practice of examining only a few items from a shipment to determine the acceptability of the whole shipment.

## ACCEPTANCE SUPRA PROTEST

acceptance supra protest. See acceptance for honor under ACCEPTANCE(4).

## ACCEPTANCE TESTING

acceptance testing. Intellectual property. Formal experiments conducted by or on behalf of the customer to determine whether computer software or hardware or a commercial website satisfies the customer's acceptance criteria. • Us., an acceptance-testing provision in a sales contract or license agreement is accompanied by a termination provision allowing the customer to back out of the contract if the product is not acceptable. — Also termed requirements testing. See ACCEPTANCE CRITERIA.

## ACCEPTARE

acceptare (ak-sep-tair-ee), vb. [Latin] Civil law. To accept or assent to, as a promise made by another.

## ACCEPTED-WORK DOCTRINE

accepted-work doctrine. See ACCEPTANCE DOCTRINE.

## ACCEPTILATION

acceptilation (ak-sep-t<<schwa>>-lay-sh<<schwa>>n), n. [fr. Latin acceptilatio “release”] Roman & civil law. An oral release from an obligation even though payment has not been made in full; a complete discharge, esp. through a fictitious payment. — Also termed (in Roman law)

acceptilatio. Cf. APOCHA.

#### ACCEPTOR

acceptor. A person or entity that accepts a negotiable instrument and agrees to be primarily responsible for its payment or performance. [Cases: Bills and Notes 73. C.J.S. Bills and Notes; Letters of Credit § 39.]

#### ACCEPTOR SUPRA PROTEST

acceptor supra protest. One who accepts a bill that has been protested, for the honor of the drawer or an indorser. [Cases: Bills and Notes 71, 80. C.J.S. Bills and Notes; Letters of Credit § 37.]

#### ACCEPT SERVICE

accept service. To agree that process has been properly served even when it has not been. — Also termed accept service of process.

#### ACCESS

access, n. 1. An opportunity or ability to enter, approach, pass to and from, or communicate with <access to the courts>. 2. Family law. VISITATION(2). 3. Family law. The opportunity to have sexual intercourse. Cf. NON-ACCESS.

multiple access. In a paternity suit, the defense that the mother had lovers other than the defendant around the time of conception. • The basis for the defense is that because the mother bears the burden of proof, she must be able to prove that only the defendant could be the child's father. In some jurisdictions, this is still known by its common-law name, the *exceptio plurium concubentium* defense, or as simply the *plurium* defense. Juries or judges who wished to dismiss the case because of the mother's promiscuity, rather than because of the improbability of the defendant's paternity, often accepted this defense. Most states have now abrogated the defense. In fact, in recent years the issue of multiple access has declined in importance with the rise of highly accurate paternity testing. [Cases: Children Out-of-Wedlock 50. C.J.S. Children Out-of-Wedlock §§ 103, 106.]

4. Patents & trademarks. The right to obtain information about and to inspect and copy U.S. Patent and Trademark Office files of patents, patent applications, trademark applications, and inter partes proceedings pertaining to them. 5. Copyright. An opportunity by one accused of infringement to see, hear, or copy a copyrighted work before the alleged infringement took place <the duplication of the error proved that the defendant had access to the work>. • Proof of access is required to prove copyright infringement unless the two works are strikingly similar. [Cases: Copyrights and Intellectual Property 83(3.1).] “Since direct evidence of copying is rarely available, a plaintiff can rely upon circumstantial evidence to prove this essential element; the most important component of such circumstantial evidence to support a copyright infringement claim is proof of access. Evidence of access and substantial similarity create an inference of copying and establish a *prima facie* case of copying.” 18 Am. Jur. 2d Copyright and Literary Property § 206 (1985).

6. Copyright. The right to obtain information about and to inspect and copy U.S. Copyright Office files and deposited materials. See (for senses 3 & 4) POWER TO INSPECT. — access, vb.

#### ACCESS EASEMENT

access easement. See EASEMENT.

#### ACCESSIO

accessio (ak-s<<schwa>>sh-ee-oh) n. [Latin] Roman law. 1. The doctrine by which something of lesser size, value, or importance is integrated into something of greater size, value, or importance.

“If the identity of one thing (the accessory) is merged and lost in the identity of the other (the principal), the owner of the principal is the owner of the thing.... There is said to be accessio.... The term is used by some commentators (and, following them, by the French Civil Code) in a much wider sense to include all cases in which there has been an addition to my right, i.e. in which the object of my ownership has increased. The owner of an animal therefore acquires ownership of the young of the animal at birth by accessio, though in physical terms there has been not an accession but a separation. In this sense accessio includes all the original natural modes except occupatio and thesauri inventio. And there are other, intermediate, meanings. Since accessio as an abstract word is not Roman and no clear classification emerges from the texts, no one meaning or classification can be said to be ‘right,’ but those adopted by the French Civil Code are so wide as to be almost meaningless.” Barry Nicholas, *An Introduction to Roman Law* 133 & n.1 (1962).

#### 2. ACCESSION(4).

#### ACCESSION

accession (ak-sesh-<<schwa>>n). 1. The act of acceding or agreeing <the family's accession to the kidnapper's demands>. 2. A coming into possession of a right or office <as promised, the state's budget was balanced within two years after the governor's accession>. 3. Int'l law. A method by which a nation that is not among a treaty's original signatories becomes a party to it <Italy became a party to the nuclear-arms treaty by accession>. See Vienna Convention on the Law of Treaties, art. 15 (1155 U.N.T.S. 331, 8 I.L.M. 679 (1969)). — Also termed adherence; adhesion. See INSTRUMENT OF ACCESSION . 4. The acquisition of title to personal property by bestowing labor on a raw material to convert it to another thing <the owner's accession to the lumber produced from his land>. — Also termed (in Roman law) accessio. See ADJUNCTION(2). [Cases: Accession 1. C.J.S. Accession §§ 2–8.]

“Accessio is the combination of two chattels belonging to different persons into a single article: as when A's cloth is used to patch B's coat, or a vehicle let on hire-purchase has new accessories fitted to it.” R.F.V. Heuston, *Salmond on the Law of Torts* 113 (17th ed. 1977).

5. A property owner's right to all that is added to the property (esp. land) naturally or by labor, including land left by floods and improvements made by others <the newly poured concrete driveway became the homeowner's property by accession>. • In Louisiana law, accession is the owner's right to whatever is produced by or united with something, either naturally or artificially.



La. Civ. Code arts. 483, 490, 507. Cf. ANNEXATION. 6. An improvement to existing personal property, such as new shafts on golf clubs. “The problem of accessions arises infrequently, judging from reported cases, but an obvious instance of the difficulty arises where a motor vehicle is being financed by a secured party and the debtor in possession of necessity acquires a new engine or new tires for the vehicle .... If the seller of the engine or tires reserved a security interest at the time the goods were installed, the seller should prevail over the vehicle's secured party, with a right to remove the accessions. Conversely, if the sale were on open credit with no security interest reserved, or if the seller acquired a security interest after installation of the goods, then the financier of the vehicle should prevail.” Ray D. Henson, Handbook on Secured Transactions Under the Uniform Commercial Code § 4-22, at 93 (2d ed. 1979).

7. The physical uniting of goods with other goods in such a manner that the identity of the original goods is not lost. UCC § 9-102(a)(1). 8. ACCESSORYSHIP.

#### ACCESS ORDER

access order. See VISITATION ORDER.

#### ACCESSORIAL

accessorial (ak-s<<schwa>>-sor-ee-<<schwa>>l), adj. 1. (Of a promise) made for the purpose of strengthening another's credit <an accessorial pledge by way of guaranty>. — Also termed accessory. 2. Criminal law. Of or relating to the accessory in a crime <accessorial guilt>. [Cases: Criminal Law 68–77. C.J.S. Criminal Law §§ 137–142.]

#### ACCESSORIAL OBLIGATION

accessorial obligation. See COLLATERAL OBLIGATION.

#### ACCESSORY

accessory (ak-ses-<<schwa>>-ree), n. 1. Something of secondary or subordinate importance. 2. Criminal law. A person who aids or contributes in the commission or concealment of a crime. • An accessory is usu. liable only if the crime is a felony. Cf. PRINCIPAL(2). [Cases: Criminal Law 68–77; Homicide 573. C.J.S. Criminal Law §§ 137–142.] — accessory, adj. — accessoryship, n.

“In most jurisdictions, the common-law distinctions between principals and accessories have largely been abolished, although the pertinent statutes vary in form and substance. Conceptually, the common-law pattern remains the same: The person who aids, abets, commands, counsels, or otherwise encourages another to commit a crime is still regarded as a party to the underlying crime as at common law, even though the labels principal in the first degree, principal in the second degree, and accessory before the fact are no longer used, and even though it usually does not matter whether the aider and abettor is or is not present at the scene of the crime.” 1 Charles E. Torcia, Wharton's Criminal Law § 35, at 202–03 (15th ed. 1993).

accessory after the fact. An accessory who was not at the scene of the crime but knows that a crime has been committed and who helps the offender try to escape arrest or punishment. 18 USCA § 3. • Most penal statutes establish the following four requirements: (1) someone else must

have committed a felony, and it must have been completed before the accessory's act; (2) the accessory must not be guilty as a principal; (3) the accessory must personally help the principal try to avoid the consequences of the felony; and (4) the accessory's assistance must be rendered with guilty knowledge. An accessory after the fact may be prosecuted for obstructing justice. — Sometimes shortened to accessory after. [Cases: Criminal Law 74, 82. C.J.S. Criminal Law §§ 140, 146–147.]

“At common law, an accessory after the fact is one who, knowing that a felony has been committed by another, receives, relieves, comforts, or assists the felon, or in any manner aids him to escape arrest or punishment. To be guilty as an accessory after the fact one must have known that a completed felony was committed, and that the person aided was the guilty party. The mere presence of the defendant at the scene of the crime will not preclude a conviction as an accessory after the fact, where the evidence shows the defendant became involved in the crime after its commission.” 21 Am. Jur. 2d Criminal Law § 209, at 275–76 (1998).

accessory at the fact. See principal in the second degree under PRINCIPAL (2).

“A principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed; for instance, a car-owner sitting beside the chauffeur who kills someone by over-fast driving, or a passenger on a clandestine joy-riding expedition which results in manslaughter; or a bi-gamist's second ‘wife,’ if she knows he is committing bigamy. (In early law he was not ranked as a principal at all, but only as a third kind of accessory — the accessory at the fact.)” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 86 (16th ed. 1952).

accessory before the fact. An accessory who assists or encourages another to commit a crime but who is not present when the offense is actually committed. • Most jurisdictions have abolished this category of accessory and instead treat such an offender as an accomplice. — Sometimes shortened to accessory before. See ACCOMPLICE. [Cases: Criminal Law 68, 81. C.J.S. Criminal Law §§ 137, 146–147.]

“An accessory before the fact is a person who procures or advises one or more of the principals to commit the felony. This definition requires from him an instigation so active that a person who is merely shown to have acted as the stake-holder for a prize-fight, which ended fatally, would not be punishable as an accessory. The fact that a crime has been committed in a manner different from the mode which the accessory had advised will not excuse him from liability for it. Accordingly if A hires B to poison C, but B instead kills C by shooting him, A is none the less liable as accessory before the fact to C's murder. But a man who has counselled a crime does not become liable as accessory if, instead of any form of the crime suggested, an entirely different offence is committed.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 88 (16th ed. 1952).

#### ACCESSORY BUILDING

accessory building. See BUILDING.

#### ACCESSORY CONTRACT

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accessory contract. See CONTRACT.

#### ACCESSORY OBLIGATION

accessory obligation. See OBLIGATION.

#### ACCESSORY RIGHT

accessory right. See RIGHT.

#### ACCESSORYSHIP

accessoryship. The status or fact of being an accessory. — Also termed (loosely) accession.

#### ACCESSORY THING

accessory thing. See THING.

#### ACCESSORY USE

accessory use. See USE(1).

#### ACCESS TO COUNSEL

access to counsel. See RIGHT TO COUNSEL.

#### ACCIDENT

accident, n. 1. An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. 2. Equity practice. An unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct.

“The word ‘accident,’ in accident policies, means an event which takes place without one’s foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insured is not accidental, nor is disease or death caused by the vicissitudes of climate or atmosphere the result of an accident; but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident.” 1A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 360, at 455 (rev. vol. 1981).

“Policies of liability insurance as well as property and personal injury insurance frequently limit coverage to losses that are caused by ‘accident.’ In attempting to accommodate the layman’s understanding of the term, courts have broadly defined the word to mean an occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can be either a sudden happening or a slowly evolving process like the percolation of harmful substances through the ground. Qualification of a particular incident as an accident seems to depend on two criteria: 1. the degree of foreseeability, and 2. the state of mind of the actor in intending or not intending the result.” John F. Dobbyn, *Insurance Law in a Nutshell* 128 (3d ed. 1996).

culpable accident. An accident due to negligence. • A culpable accident, unlike an unavoidable accident, is no defense except in those few cases in which wrongful intent is the exclusive and necessary basis for liability.

unavoidable accident. An accident that cannot be avoided because it is produced by an irresistible physical cause that cannot be prevented by human skill or reasonable foresight. • Examples include accidents resulting from lightning or storms, perils of the sea, inundations or earthquakes, or sudden illness or death. Unavoidable accident has been considered a means of avoiding both civil and criminal liability. — Also termed inevitable accident; pure accident; unavoidable casualty. Cf. ACT OF GOD. [Cases: Automobiles 201(10); Negligence 440. C.J.S. Motor Vehicles § 517; Negligence §§ 66–68, 209.]

“Inevitable accident ... does not mean a catastrophe which could not have been avoided by any precaution whatever, but such as could not have been avoided by a reasonable man at the moment at which it occurred, and it is common knowledge that a reasonable man is not credited with perfection of judgment.” P.H. Winfield, *A Textbook of the Law of Tort* § 15, at 43 (5th ed. 1950).

“An unavoidable accident is an occurrence which was not intended and which, under all the circumstances, could not have been foreseen or prevented by the exercise of reasonable precautions. That is, an accident is considered unavoidable or inevitable at law if it was not proximately caused by the negligence of any party to the action, or to the accident.” W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 29, at 162 (5th ed. 1984).

#### ACCIDENTAL

accidental, adj. 1. Not having occurred as a result of anyone's purposeful act; esp., resulting from an event that could not have been prevented by human skill or reasonable foresight. 2. Not having been caused by a tortious act.

#### ACCIDENTAL DEATH

accidental death. See DEATH.

#### ACCIDENTAL-DEATH BENEFIT

accidental-death benefit. An insurance-policy provision that allows for an additional payment (often double the face amount of the policy) if the insured dies as a result of an accident, as defined in the policy, and not from natural causes. — Abbr. ADB. [Cases: Insurance 2599. C.J.S. Insurance §§ 1094, 1096, 1170–1171.]

#### ACCIDENTAL HARM

accidental harm. See HARM.

#### ACCIDENTALIA

accidentalia (ak-si-den-tay-lee-*<<schwa>>*). [Law Latin “accidental things”] Hist. Incidents of a contract; non-essential contractual terms to which the parties expressly stipulate. Cf.

## ESSENTIALIA.

“Accidentalia have their existence entirely by express stipulation, and are never presumed without it.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 406 (George Watson ed., 7th ed. 1890).

## ACCIDENTALIA FEUDI

accidentalia feudi (ak-si-den-tay-lee-<<schwa>> fyoo-dI). [Law Latin] Hist. All nonessential terms in a feudal contract; esp., those that are not essential to the fee (such as building restrictions). Cf. ESSENTIALIA FEUDI.

## ACCIDENTAL INJURY

accidental injury. See INJURY.

## ACCIDENTAL KILLING

accidental killing. Homicide resulting from a lawful act performed in a lawful manner under a reasonable belief that no harm could occur. — Also termed death by misadventure; homicide by misadventure; killing by misadventure; homicide per infortunium. See justifiable homicide under HOMICIDE; involuntary manslaughter under MANSLAUGHTER. Cf. MALICIOUS KILLING. [Cases: Homicide 762.]

## ACCIDENTAL STRANDING

accidental stranding. See STRANDING.

## ACCIDENT AND HEALTH INSURANCE

accident and health insurance. See health insurance under INSURANCE.

## ACCIDENT-BASED INSURANCE

accident-based insurance. See occurrence-based liability insurance under INSURANCE.

## ACCIDENT INSURANCE

accident insurance. See INSURANCE.

## ACCIDENT POLICY

accident policy. See INSURANCE POLICY.

## ACCIDERE

accidere (ak-sid-<<schwa>>r-ee), vb. [Latin] Civil law. 1. To fall down. 2. By extension, to befall or happen to.

## ACCIPE ECCLESIAM

accipe ecclesiam (ak-si-pee e-kee-z[h]ee-<<schwa>>m). [Law Latin] Hist. Eccles. law. Receive this church or living. • The phrase was used by Patrons in presenting an incumbent to a

vacant parish. *Trado tibi ecclesiam* (“I deliver this church [or living] to you”) was also used. Cf. *TRADO TIBI ECCLESIAM* .

#### ACCIPERE

*accipere* (ak-sip-<<schwa>>r-ee), vb.[Latin] Civil law. To receive; esp., to take under a will.

#### ACCIPITARE

*accipitare* (ak-sip-<<schwa>>-tair-ee), vb.[Law Latin] Hist. To pay (a lord) in order to become a vassal; esp., to pay relief upon succeeding to an estate.

#### ACCLAMATION

acclamation.Parliamentary law. 1. Approval or election by general consent, usu. demonstrated by applause or cheering. • Election by acclamation is common in large conventions where only one candidate has been nominated. 2. Voting by applause or shouting.

#### ACCOLA

*accola* (ak-<<schwa>>-l<<schwa>>), n.[Latin “person living nearby”] 1.Roman law. A person who inhabits or occupies land near a certain place, such as one who dwells near a river. 2.Hist. An agricultural tenant; a tenant of a manor.

#### ACCOMENDA

*accomenda* (ak-<<schwa>>-men-d<<schwa>>).Hist. Maritime law. A contract between a cargo owner and a shipmaster whereby the parties agree to sell the cargo and divide the profits (after deducting the owner's costs). • This contract actually consists of two agreements: a *mandatum*, by which the owner gives the shipmaster the power to dispose of the cargo, and a partnership contract, by which the parties divide any profits arising from the sale. See *MANDATE*(5). [Cases: Shipping 104. C.J.S. Shipping §§ 247–250, 252–254.]

#### ACCOMMODATED PARTY

accommodated party.A party for whose benefit an accommodation party signs and incurs liability. Cf. *AC-COMMODATION PARTY*.

#### ACCOMMODATION

accommodation,n.1. A loan or other financial favor. 2. The act of signing an accommodation paper as surety for another. See *ACCOMMODATION PAPER*. 3. The act or an instance of making a change or provision for someone or something; an adaptation or adjustment. See *PUBLIC ACCOMMODATION*; *REASONABLE ACCOMMODATION* . 4. A convenience supplied by someone; esp., lodging and food.

public accommodation.A business that provides lodging, food, entertainment, or other services to the public; esp. (as defined by the Civil Rights Act of 1964), one that affects interstate commerce or is supported by state action. [Cases: Civil Rights 1043. C.J.S. Civil Rights § 23.]

#### ACCOMMODATION ACCEPTANCE

accommodation acceptance. See ACCEPTANCE(4).

#### ACCOMMODATION BILL

accommodation bill. See ACCOMMODATION PAPER.

#### ACCOMMODATION DIRECTOR

accommodation director. See dummy director under DIRECTOR.

#### ACCOMMODATION INDORSEMENT

accommodation indorsement. See INDORSEMENT.

#### ACCOMMODATION INDORSER

accommodation indorser. See INDORSER.

#### ACCOMMODATION LAND

accommodation land. See LAND.

#### ACCOMMODATION LINE

accommodation line. Insurance. One or more policies that an insurer issues to retain the business of a valued agent, broker, or customer, even though the risk would not be accepted under the insurer's usual standards.

#### ACCOMMODATION LOAN

accommodation loan. See LOAN.

#### ACCOMMODATION MAKER

accommodation maker. See MAKER.

#### ACCOMMODATION NOTE

accommodation note. See NOTE(1).

#### ACCOMMODATION PAPER

accommodation paper. A negotiable instrument that one party cosigns, without receiving any consideration, as surety for another party who remains primarily liable. • An accommodation paper is typically used when the cosigner is more creditworthy than the principal debtor. — Also termed accommodation bill; accommodation note. [Cases: Bills and Notes 49, 96. C.J.S. Bills and Notes; Letters of Credit §§ 24–25, 63.]

#### ACCOMMODATION PARTY

accommodation party. A person who, without recompense or other benefit, signs a negotiable instrument for the purpose of being a surety for another party (called the accommodated party) to the instrument. • The accommodation party can sign in any capacity (i.e., as maker, drawer, acceptor, or indorser). An accommodation party is liable to all parties except the accommodated

party, who impliedly agrees to pay the note or draft and to indemnify the accommodation party for all losses incurred in having to pay it. See SURETY. [Cases: Bills and Notes 49, 96, 122. C.J.S. Bills and Notes; Letters of Credit §§ 24–25, 63.]

#### ACCOMMODATION SURETY

accommodation surety. See voluntary surety under SURETY.

#### ACCOMMODATUM

accommodatum (<<schwa>>-kom-<<schwa>>-day-t<<schwa>>m), n. See COMMODATUM.

#### ACCOMPANY

accompany, vb. To go along with (another); to attend. • In automobile-accident cases, an unlicensed driver is not considered accompanied by a licensed driver unless the latter is close enough to supervise and help the former.

#### ACCOMPLICE

accomplice (<<schwa>>-kom-plis). 1. A person who is in any way involved with another in the commission of a crime, whether as a principal in the first or second degree or as an accessory. • Although the definition includes an accessory before the fact, not all authorities treat this term as including an accessory after the fact. [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.]

“There is some authority for using the word ‘accomplice’ to include all principals and all accessories, but the preferred usage is to include all principals and accessories before the fact, but to exclude accessories after the fact. If this limitation is adopted, the word ‘accomplice’ will embrace all perpetrators, abettors and inciters.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 727 (3d ed. 1982).

“A person is an ‘accomplice’ of another in committing a crime if, with the intent to promote or facilitate the commission of the crime, he solicits, requests, or commands the other person to commit it, or aids the other person in planning or committing it.” 1 Charles E. Torcia, *Wharton's Criminal Law* § 38, at 220 (15th ed. 1993).

2. A person who knowingly, voluntarily, and intentionally unites with the principal offender in committing a crime and thereby becomes punishable for it. See ACCESSORY. Cf. PRINCIPAL(2). “By definition an accomplice must be a person who acts with the purpose of promoting or facilitating the commission of the substantive offense for which he is charged as an accomplice. *State v. White*, N.J. 1984, 484 A.2d 691, 98 N.J. 122.” Model Penal Code § 2.06 annot. (1997).

#### ACCOMPLICE LIABILITY

accomplice liability. See LIABILITY.

#### ACCOMPLICE WITNESS



accomplice witness. See WITNESS.

#### ACCOMPT

accompt. See ACCOUNT(1).

#### ACCORD

accord, n. 1. An amicable arrangement between parties, esp. between peoples or nations; COMPACT; TREATY. 2. An offer to give or to accept a stipulated performance in the future to satisfy an obligor's existing duty, together with an acceptance of that offer. • The performance becomes what is known as a satisfaction. — Also termed executory accord; accord executory. See ACCORD AND SATISFACTION ; SATISFACTION. Cf. COM-PROMISE; NOVATION. [Cases: Accord and Satisfaction 1. C.J.S. Accord and Satisfaction §§ 2–17, 25–33.]

“An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. Performance of the accord discharges the original duty.” Restatement (Second) of Contracts § 281(1) (1979).

“The term executory accord is sometimes used to underscore the point that the accord itself does not discharge the duty. It also reflects an historical anachronism, now generally rejected, under which an unperformed accord was not a defense to an action on the underlying duty.” E. Allan Farnsworth, Contracts § 4.24, at 289 n.10 (3d ed. 1999).

3. A signal used in a legal citation to introduce a case clearly supporting a proposition for which another case is being quoted directly.

accord, vb. 1. To furnish or grant, esp. what is suitable or proper <accord the litigants a stay of costs pending appeal>. 2. To agree <they accord in their opinions>.

#### ACCORD AND SATISFACTION

accord and satisfaction. An agreement to substitute for an existing debt some alternative form of discharging that debt, coupled with the actual discharge of the debt by the substituted performance. • The new agreement is called the accord, and the discharge is called the satisfaction. Cf. COMPROMISE; NOVATION; SETTLEMENT(2), (3). [Cases: Accord and Satisfaction 1. C.J.S. Accord and Satisfaction §§ 2–17, 25–33.]

“ ‘Accord and satisfaction’ means an agreement between the parties that something shall be given to, or done for, the person who has the right of action, in satisfaction of the cause of action. There must be not only agreement (‘accord’) but also consideration (‘satisfaction’). Such an arrangement is really one of substituted performance.” 1 E.W. Chance, Principles of Mercantile Law 101 (P.W. French ed., 13th ed. 1950).

#### ACCORDANT

accordant (<<schwa>>-kor-d<<schwa>>nt), adj. In agreement <accordant with these principles>.

#### ACCOUCHEMENT

accouchement (<<schwa>>-koosh-m<<schwa>>nt or ak-oosh-mawn). [French] Childbirth.

## ACCOUNT

account, n. 1. ACCOUNTING(3) <the principal filed an action for account against his agent>. — Also spelled (archaically) accompt.

“The action of account lies where one has received goods or money for another in a fiduciary capacity, to ascertain and recover the balance due. It can only be maintained where there is such a relationship between the parties, as to raise an obligation to account, and where the amount due is uncertain and unliquidated.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 56, at 144 (Henry Winthrop Ballantine ed., 3d ed. 1923).

2. ACCOUNTING(4) <the contractor filed an action for account against the nonpaying customer>. 3. A statement by which someone seeks to describe or explain an event <Fred's account of the holdup differed significantly from Martha's>. 4. A detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings < the trustee balanced the account at the end of each month>. • In wills and estates, an account is a brief financial statement of the manner in which an executor or administrator has performed the official duties of collecting the estate's assets and paying those who are entitled. An account charges the executor or administrator with the value of the estate as shown by the inventory, plus any increase, and credits the executor with expenses and costs, duly authorized disbursements, and the executor's commission. — Abbr. acct.; a/c. — Also termed accounting. See STATEMENT OF ACCOUNT. 5. A course of business dealings or other relations for which records must be kept <open a brokerage account>.

account in trust. An account established by an individual to hold the account's assets in trust for someone else. [Cases: Trusts 34.]

account payable. (usu. pl.) An account reflecting a balance owed to a creditor; a debt owed by an enterprise in the normal course of business dealing. — Often shortened to payable. — Also termed note payable. Pl. accounts payable.

account receivable. (usu. pl.) An account reflecting a balance owed by a debtor; a debt owed by a customer to an enterprise for goods or services. — Often shortened to receivable. — Also termed note receivable. Pl. accounts receivable.

account rendered. An account produced by the creditor and presented for the debtor's examination and acceptance.

account settled. An account with a paid balance.

account stated. 1. A balance that parties to a transaction or settlement agree on, either expressly or by implication. • The phrase also refers to the agreement itself or to the assent giving rise to the agreement.

“An account stated is a manifestation of assent by debtor and creditor to a stated sum as an accurate computation of an amount due the creditor.” Restatement (Second) of Contracts § 282(1)

(1979).

“If a creditor and a debtor wish to compromise or liquidate a disputed or unliquidated debt, they may do so by either a substituted contract or an accord. If, however, their agreement is in the nature of a computation, it is called an account stated. An account stated, then, is a manifestation of assent by both parties to the stated sum as an accurate computation of the debt.” E. Allan Farnsworth, *Contracts* § 4.24, at 286 (1982).

2. A plaintiff's claim in a suit for such a balance. 3. Equity practice. A defendant's plea in response to an action for an accounting. • The defendant states that the balance due on the statement of the account has been discharged and that the defendant holds the plaintiff's release. — Also termed stated account.

accumulated-adjustments account. Tax. An item on the books of an S corporation (usu. an equity item on the corporation's balance sheet) to account for taxable-income items passed through to shareholders, such as accumulated earnings — earned before the corporation converted from a C corporation to an S corporation — that would have been distributed as a dividend to the shareholders if the corporation had remained a C corporation. • One of the theories underlying the accumulated-adjustments account is that the shareholders should not be permitted to avoid dividend-tax treatment on a corporation's accumulated earnings just because the corporation converts from C status to S status. IRC (26 USCA) § 1368(e)(1). — Abbr. AAA. [Cases: Internal Revenue 3896. C.J.S. Internal Revenue §§ 376–377.]

adjunct account. An account that accumulates additions to another account.

annual account. See intermediate account.

assigned account. A pledge of an account receivable to a bank or factor as security for a loan. [Cases: Assignments 10; Pledges 5; Secured Transactions 181. C.J.S. Assignments §§ 19–21; Pledges § 8; Secured Transactions §§ 25, 134–136.]

bank account. A deposit or credit account with a bank, such as a demand, time, savings, or passbook account. UCC § 4-104(a). [Cases: Banks and Banking 151. C.J.S. Banks and Banking §§ 266–268, 277–278.]

blocked account. An account at a bank or other financial institution, access to which has been restricted either by the government or by an authorized person. • An account may be blocked for a variety of reasons, as when hostilities erupt between two countries and each blocks access to the other's accounts. — Also termed frozen account. [Cases: Banks and Banking 128, 151. C.J.S. Banks and Banking §§ 266–268, 270, 277–278, 280–282, 327.]

book account. A detailed statement of debits and credits giving a history of an enterprise's business transactions.

capital account. An account on a partnership's balance sheet representing a partner's share of the partnership capital. [Cases: Partnership 81. C.J.S. Partnership §§ 91, 336, 340.]

charge account. See CHARGE ACCOUNT.

client trust account. See CLIENT TRUST ACCOUNT.

closed account. An account that no further credits or debits may be added to but that remains open for adjustment or setoff.

community account. An account consisting of community funds or commingled funds. See COMMUNITY PROPERTY.

contra account (kon-tr<<schwa>>). An account that serves to reduce the gross valuation of an asset.

convenience account. An apparent joint account, but without right of survivorship, established by a creator to enable another person to withdraw funds at the creator's direction or for the creator's benefit. • Unlike a true joint account, only one person, the creator, has an ownership interest in the deposited funds. Convenience accounts are often established by those who need a financial manager's help and want to make it easy for the manager to pay bills. Although the manager's name is on the account, he or she does not contribute any personal funds to the account and can write checks or make withdrawals only at the direction of or on behalf of the creator.

current account. 1. A running or open account that is settled periodically, usu. monthly. 2. A partner's account that reflects salary, withdrawals, contributions, and other transactions in a given period. 3. Banking. A depositor's checking account. 4. The portion of a nation's balance of payments that represents its exports, imports, and transfer payments.

custodial account. An account opened on behalf of someone else, such as one opened by a parent for a minor child. • Custodial accounts most often arise under the Uniform Transfers to Minors Act (1983). All states have enacted either that act or its earlier version, the Uniform Gifts to Minors Act. Property can be set aside by a donor or transferred to a third party as custodian for the benefit of a minor, usu. as an irrevocable gift. This is a much simpler mechanism than a trust. The custodian has powers and fiduciary duties similar to those of a trustee, except that the custodian is not under a court's supervision. The custodian must account for the property and turn it over to the beneficiary when he or she reaches majority. See UNIFORM TRANSFERS TO MINORS ACT.

deposit account. A demand, time, savings, passbook, or similar account maintained with a bank, savings-and-loan association, credit union, or like organization, other than investment property or an account evidenced by an instrument. UCC § 9-102(a)(29). — Abbr. D.A. [Cases: Banks and Banking 151; Building and Loan Associations 40. C.J.S. Banks and Banking §§ 266–268, 277–278; Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 66, 68, 71–79.]

escrow account. 1. A bank account, generally held in the name of the depositor and an escrow agent, that is returnable to the depositor or paid to a third person on the fulfillment of specified conditions. — Also termed escrow deposit. See ESCROW(2). [Cases: Deposits and Escrows 11–26. C.J.S. Depositaries §§ 4–5, 8–10, 13–25, 27; Escrows §§ 2–15.] 2. See impound account.

frozen account. See blocked account.

impound account. An account of accumulated funds held by a lender for payment of taxes, insurance, or other periodic debts against real property. — Also termed escrow; escrow account; reserve account. See ESCROW(2).

intermediate account. An account filed by an executor, administrator, or guardian after the initial account and before the final account. • This account is usu. filed annually. — Also termed annual account.

joint account. A bank or brokerage account opened by two or more people, by which each party has a present right to withdraw all funds in the account and, upon the death of one party, the survivors become the owners of the account, with no right of the deceased party's heirs or devisees to share in it. • Typically, the account-holders are designated as “joint tenants with right of survivorship” or “joint-and-survivor account-holders.” In some jurisdictions, they must be so designated to establish a right of survivorship. — Abbr. JA. — Also termed joint-and-survivorship account. [Cases: Joint Tenancy 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9.]

lien account. A statement of claims that fairly informs the owner and public of the amount and nature of a lien. [Cases: Liens 9; Mechanics' Liens 116. C.J.S. Liens § 10; Mechanics' Liens § 121.]

liquidated account. An account whose assets are clearly ascertained, either by agreement of the parties or by law.

long account. An account involving numerous items or complex transactions in an equitable action, usu. referred to a master or commissioner.

margin account. A brokerage account that allows an investor to buy or sell securities on credit, with the securities usu. serving as collateral for the broker's loan.

multiple-party account. An account that has more than one owner with a current or future interest in the account. • Multiple-party accounts include joint accounts, payable-on-death (P.O.D.) accounts, and trust accounts. Unif. Probate Code § 6-201(5).

mutual account. An account showing mutual transactions between parties, as by showing debits and credits on both sides of the account.

“[E]ach party to a mutual account occupies both a debtor and creditor relation with regard to the other party. A mutual account arises where there are mutual dealings, and the account is allowed to run with a view to an ultimate adjustment of the balance. In order to establish a mutual account, it is not enough that the parties to the account have cross demands or cross open accounts; there must be an actual mutual agreement, express or implied, that the claims are to be set off against each other.” 1 Am. Jur. 2d Accounts and Accounting § 6, at 564 (1994).

mutual-fund wrap account. An investment account that allocates an investor's assets only among mutual funds rather than stocks or other investments. See wrap account.

negotiable-order-of-withdrawal account. See NOW account.

nominal account (nahm-<<schwa>>-n<<schwa>>l). An income-statement account that is

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closed into surplus at the end of the year when the books are balanced.

**NOW account (now).** An interest-bearing savings account on which the holder may write checks. — Also termed negotiable-order-of-withdrawal account. [Cases: Banks and Banking 151. C.J.S. Banks and Banking §§ 266–268, 277–278.]

**offset account.** One of two accounts that balance against each other and cancel each other out when the books are closed.

**open account.** 1. An unpaid or unsettled account. 2. An account that is left open for ongoing debit and credit entries by two parties and that has a fluctuating balance until either party finds it convenient to settle and close, at which time there is a single liability.

**partial account.** A preliminary accounting of an executor's or administrator's dealings with an estate. [Cases: Executors and Administrators 509(11). C.J.S. Executors and Administrators § 883.]

**pay-on-death account.** A bank account whose owner instructs the bank to distribute the account's balance to a beneficiary upon the owner's death. • Unlike a joint-and-survivorship account, a pay-on-death account does not give the beneficiary access to the funds while the owner is alive. — Abbr. POD account. — Also termed pay-on-death bank account.

**pledged account.** A mortgagor's account pledged to a lender in return for a loan bearing interest at a below-market rate. [Cases: Pledges 5. C.J.S. Pledges § 8.]

**profit-and-loss account.** A transfer account of all income and expense accounts, closed into the retained earnings of a corporation or the capital account of a partnership. [Cases: Corporations 311; Partnership 81. C.J.S. Corporations §§ 505–506; Partnership §§ 91, 336, 340.]

**real account.** An account that records assets and liabilities rather than receipts and payments.

**reserve account.** See impound account.

**revolving charge account.** See revolving credit under CREDIT(4).

**running account.** An open, unsettled account that exhibits the reciprocal demands between the parties.

**sequestered account.** An account (such as a joint bank account) that a court has ordered to be separated, frozen, and impounded.

**share-draft account.** An account that a member maintains at a credit union and that can be drawn on through the use of share drafts payable to third parties. • A share-draft account operates much like a checking account operates at a bank. — Also termed share account. [Cases: Building and Loan Associations 40. C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 66.]

**suspense account.** A temporary record used in bookkeeping to track receipts and disbursements of an uncertain nature until they are identified and posted in the appropriate ledgers and journals. • A suspense account does not appear in a final financial statement. It is a useful tool

when, for example, a lump-sum receipt or expenditure must be broken down to match several transactions before posting.

tax-deferred account. An interest-bearing account whose earnings are not taxable as income to the account holder before the earnings are withdrawn. • Tax-deferred accounts include most types of IRAs, variable annuities, 401(k) plans, cash-value life insurance, and most other types of tax-deferred savings instruments.

trust account. See CLIENT TRUST ACCOUNT.

wrap account. An investment account for which the investor, helped by a stockbroker, selects an account manager and pays a fee based on a percentage of the total assets to be managed. • Most wrap accounts contain a portfolio of investments, including stocks, bonds, and cash. Investors generally provide a risk profile but do not select the investments or give instructions to buy or sell. — Also termed wrap-fee account. See mutual-fund wrap account.

#### ACCOUNTABLE

accountable, adj. Responsible; answerable <the company was held accountable for the employee's negligence>. — accountability, n.

#### ACCOUNTABLE RECEIPT

accountable receipt. See RECEIPT.

#### ACCOUNTANT

accountant. 1. A person authorized under applicable law to practice public accounting; a person whose business is to keep books or accounts, to perform financial audits, to design and control accounting systems, and to give tax advice. • For some purposes, the term includes a professional accounting association, a corporation, and a partnership, if they are so authorized. [Cases: Accountants 1. C.J.S. Accountants § 2.]

certified public accountant. An accountant who has satisfied the statutory and administrative requirements to be registered or licensed as a public accountant. — Abbr. CPA.

2. A defendant in an action of account.

#### ACCOUNTANT-CLIENT PRIVILEGE

accountant-client privilege. See PRIVILEGE(3).

#### ACCOUNTANT OF COURT

accountant of court. Scots law. An official of the Court of Session who exercises supervision over the accounts of court-appointed managers and receivers of estates, such as trustees in bankruptcy and guardians of incompetent persons.

#### ACCOUNTANT'S LIEN

accountant's lien. See LIEN.

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**ACCOUNT BOOK**

account book. A journal in which a business's transactions are recorded. See **SHOP BOOKS**.

**ACCOUNT DEBTOR**

account debtor. See **DEBTOR**.

**ACCOUNT DUTY**

account duty. See **DUTY**(4).

**ACCOUNT EXECUTIVE**

account executive. See **STOCKBROKER**.

**ACCOUNT FOR**

account for. 1. To furnish a good reason or convincing explanation for; to explain the cause of. 2. To render a reckoning of (funds held, esp. in trust). 3. To answer for (conduct).

**ACCOUNTING**

accounting. 1. The act or a system of establishing or settling financial accounts; esp., the process of recording transactions in the financial records of a business and periodically extracting, sorting, and summarizing the rec-orded transactions to produce a set of financial records. — Also termed financial accounting. 2. A rendition of an account, either voluntarily or by court order. • The term frequently refers to the report of all items of property, income, and expenses prepared by a personal representative, trustee, or guardian and given to heirs, beneficiaries, or the probate court. See **ACCOUNT**(4). 3. A legal action to compel a defendant to account for and pay over money owed to the plaintiff but held by the defendant (often the plaintiff's agent); **ACCOUNTING FOR PROFITS**. — Also termed account render; account; action of account. 4. More broadly, an action for the recovery of money for services performed, property sold and delivered, money loaned, or damages for the nonperformance of simple contracts. • Such an action is available when the rights of parties will be adequately protected by the payment of money. — Also termed action on account; account; action of book debt. 5. Commercial law. An equitable proceeding for a complete settlement of all partnership affairs, usu. in connection with partner misconduct or with a winding up. See **WINDING UP**. [Cases: Partnership 331. C.J.S. Partnership §§ 387, 391.] 6. Secured transactions. A record that (1) is authenticated by a secured party, (2) indicates the aggregate unpaid secured obligation as of a date no more than 35 days before or after the date of the record, and (3) identifies the components of the obligations in reasonable detail. UCC § 9-102(a)(29). [Cases: Secured Transactions 162. C.J.S. Secured Transactions § 112.]

**ACCOUNTING FOR FRUITS**

accounting for fruits. Civil law. A claim for the return of natural or civil fruits against an adverse possessor or other person obligated by law or contract to account for fruits. See **FRUIT**(2).

**ACCOUNTING FOR PROFITS**



accounting for profits. An action for equitable relief against a person in a fiduciary relationship to recover profits taken in a breach of the relationship. — Often shortened to accounting.

“The term accounting, or accounting for profits, is used in several ways. In its most important meaning, it is a restitutionary remedy based upon avoiding unjust enrichment. In this sense it reaches monies owed by a fiduciary or other wrongdoer, including profits produced by property which in equity and good conscience belonged to the plaintiff. It resembles a constructive trust in that tracing may be used to reach profits. But even if tracing fails, the plaintiff may recover a judgment for the profits due from use of his property.” Dan B. Dobbs, *Law of Remedies* § 4.3(5), at 408 (2d ed. 1993).

#### ACCOUNTING METHOD

accounting method. A system for determining income and expenses for tax purposes.

accrual accounting method (<<schwa>>-kroo-<<schwa>>l). An accounting method that records entries of debits and credits when the liability arises, rather than when the income or expense is received or disbursed. — Also termed accrual basis. Cf. cash-basis accounting method. [Cases: Internal Revenue 3099; Taxation 1078. C.J.S. Internal Revenue §§ 25, 46, 57, 371; Taxation § 1759.]

capitalization accounting method. A method of determining an asset's present value by discounting its stream of expected future benefits at an appropriate rate.

cash-basis accounting method. An accounting method that considers only cash actually received as income and cash actually paid out as an expense. Cf. accrual accounting method. [Cases: Internal Revenue 3100; Taxation 1078. C.J.S. Internal Revenue §§ 25, 44, 56; Taxation § 1759.]

completed-contract accounting method. A method of reporting profit or loss on certain long-term contracts by recognizing gross income and expenses in the tax year that the contract is completed. [Cases: Internal Revenue 3101; Taxation 1078. C.J.S. Internal Revenue §§ 21, 24–26; Taxation § 1759.]

cost accounting method. The practice of recording the value of assets in terms of their cost. — Also termed cost accounting.

direct charge-off accounting method. A system of accounting by which a deduction for bad debts is allowed when an account has become partially or completely worthless.

equity accounting method. A method of accounting for long-term investment in common stock based on acquisition cost, investor income, net losses, and dividends.

fair-value accounting method. The valuation of assets at present actual or market value.

installment accounting method. A method by which a taxpayer can spread the recognition of gains from a sale of property over the payment period by computing the gross-profit percentage from the sale and applying it to each payment. [Cases: Internal Revenue 3104; Taxation 1078.

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C.J.S. Internal Revenue §§ 47–50; Taxation § 1759.]

percentage-of-completion method. An accounting method in which revenue is recognized gradually during the completion of the subject matter of the contract.

physical-inventory accounting method. A method of counting a company's goods at the close of an accounting period.

purchase accounting method. A method of accounting for mergers whereby the total value paid or exchanged for the acquired firm's assets is recorded on the acquiring firm's books, and any difference between the fair market value of the assets acquired and the purchase price is recorded as goodwill.

#### ACCOUNTING PERIOD

accounting period. A regular span of time used for accounting purposes; esp., a period used by a taxpayer in determining income and related tax liability.

#### ACCOUNTING RESEARCH BULLETIN

Accounting Research Bulletin. A publication containing accounting practices recommended by the American Institute of Certified Public Accountants. — Abbr. ARB.

#### ACCOUNTING SERIES RELEASE

Accounting Series Release. A bulletin providing the Securities and Exchange Commission's requirements for accounting and auditing procedures to be followed in reports filed with that agency. — Abbr. ASR.

#### ACCOUNT IN TRUST

account in trust. See ACCOUNT.

#### ACCOUNT PARTY

account party. The customer in a letter-of-credit transaction. — Also termed applicant.

#### ACCOUNT PAYABLE

account payable. See ACCOUNT.

#### ACCOUNT RECEIVABLE

account receivable. See ACCOUNT.

#### ACCOUNT RENDER

account render. See ACCOUNTING(3).

#### ACCOUNT RENDERED

account rendered. See ACCOUNT.

#### ACCOUNT REPRESENTATIVE

account representative. See STOCKBROKER.

#### ACCOUNT SETTLED

account settled. See ACCOUNT.

#### ACCOUNTS-RECEIVABLE INSURANCE

accounts-receivable insurance. See accounts-receivable insurance and credit insurance under INSURANCE.

#### ACCOUNT STATED

account stated. See ACCOUNT.

#### ACCOUNT STATEMENT

account statement. See STATEMENT OF ACCOUNT.

#### ACCOUPLE

accouple, vb. Archaic. To unite; to marry.

#### ACCREDIT

accredit (<<schwa>>-kred-it), vb. 1. To give official authorization or status to. 2. To recognize (a school) as having sufficient academic standards to qualify graduates for higher education or for professional practice. [Cases: Schools 4. C.J.S. Schools and School Districts § 811.] 3. Int'l law. To send (a person) with credentials as an envoy. — accreditation (<<schwa>>-kred-i-tay-sh<<schwa>>n), n. — accredited, adj.

#### ACCREDITED INVESTOR

accredited investor. See INVESTOR.

#### ACCREDITED LAW SCHOOL

accredited law school. See LAW SCHOOL.

#### ACCREDITED REPRESENTATIVE

accredited representative. See REPRESENTATIVE.

#### ACCREDULITARE

accredulitare (<<schwa>>-kred-y<<schwa>>-l<<schwa>>-tair-ee), vb. [Law Latin] Hist. To purge an offense by an oath.

#### ACCRESCE

acresce (<<schwa>>-kres), vb. Civil law. To accrue or increase.

#### ACCRETION

accretion (<<schwa>>-kree-sh<<schwa>>n). 1. The gradual accumulation of land by natural

forces, esp. as alluvium is added to land situated on the bank of a river or on the seashore. Cf. ALLUVION; AVULSION(2); DELICTION; EROSION. [Cases: Navigable Waters 44; Waters and Water Courses 93.C.J.S. Navigable Waters § 94; Waters §§ 177–182, 184–185.] 2. Any increase in trust property other than increases ordinarily considered as income. [Cases: Trusts 272–274. C.J.S. Trover and Conversion §§ 510, 539–554.] 3.Civil law. The right of heirs or legatees to unite their shares of the estate with the portion of any coheirs or legatees who do not accept their portion, fail to comply with a condition, or die before the testator. 4. A beneficiary's gain through the failure of a coheir or colegatee to take his or her share. 5.Scots law. The perfection of an imperfect or defective title by some act by the person who conveyed title to the current holder. — accretive, accretionary,adj.

#### ACCROACH

accroach (<<schwa>>-krohch), vb. To exercise power without authority; to usurp. — accroachment (<<schwa>>-krohch-m<<schwa>>nt), n.

#### ACCROCHER

accrocher (a-kroh-shay), vb.[Law French] 1.ACCROACH. 2. To delay.

#### ACCROCHER UN PROCÈS

accrocher un procès (a-kroh-shay <<schwa>>n proh-say). [French] To stay the proceedings in a suit.

#### ACCRUAL, CLAUSE OF

accrual, clause of.See CLAUSE OF ACCRUAL.

#### ACCRUAL ACCOUNTING METHOD

accrual accounting method.See ACCOUNTING METHOD.

#### ACCRUAL BASIS

accrual basis.See accrual accounting method under ACCOUNTING METHOD.

#### ACCRUAL BOND

accrual bond.See BOND(3).

#### ACCRUE

accrue (<<schwa>>-kroo), vb.1. To come into existence as an enforceable claim or right; to arise <the plaintiff's cause of action for silicosis did not accrue until the plaintiff knew or had reason to know of the disease>. [Cases: Action 61; Limitation of Actions 43–114. C.J.S. Actions §§ 230–234; Contracts § 582; Employ-er–Employee Relationship § 87; Limitations of Actions §§ 21, 81–195, 197–212, 303; Physicians, Surgeons, and Other Health-Care Providers § 108; RICO (Racketeer Influenced and Corrupt Organizations) § 16.]

“The term ‘accrue’ in the context of a cause of action means to arrive, to commence, to come

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into existence, or to become a present enforceable demand or right. The time of accrual of a cause of action is a question of fact.” 2 Ann Taylor Schwing, *California Affirmative Defenses* § 25:3, at 17–18 (2d ed. 1996).

2. To accumulate periodically <the savings-account interest accrues monthly>. — accrual,n.

**ACCRUED ASSET**

accrued asset. See ASSET.

**ACCRUED COMPENSATION**

accrued compensation. See COMPENSATION.

**ACCRUED DEPRECIATION**

accrued depreciation. See accumulated depreciation under DEPRECIATION.

**ACCRUED DIVIDEND**

accrued dividend. See accumulated dividend under DIVIDEND.

**ACCRUED EXPENSE**

accrued expense. See EXPENSE.

**ACCRUED INCOME**

accrued income. See INCOME.

**ACCRUED INTEREST**

accrued interest. See INTEREST(3).

**ACCRUED LIABILITY**

accrued liability. See LIABILITY.

**ACCRUED RIGHT**

accrued right. See RIGHT.

**ACCRUED SALARY**

accrued salary. See SALARY.

**ACCRUED TAX**

accrued tax. See TAX.

**ACCRUER**

accruer. See CLAUSE OF ACCRUAL.

**ACCRUING COSTS**

accruing costs. See COST(3).

#### ACCT

acct. abbr. ACCOUNT(4).

#### ACCUMULANDO JURA JURIBUS

accumulando      jura      juribus      (<<schwa>>-kyoom-y<<schwa>>-lan-doh  
joor-<<schwa>>joor-i-b<<schwa>>s). [Law Latin] Hist. By adding rights to rights.

“[Accumulando jura juribus] will be found in deeds, as expressing the intention of the maker or grantor of it that the right thereby conferred on the grantee is not to be regarded as coming in place of other rights which the grantee has or may acquire otherwise, but as an addition thereto: the rights conferred are not prejudicial to other rights existing or future.” John Trayner, Trayner's Latin Maxims 10 (4th ed. 1894).

#### ACCUMULATED-ADJUSTMENTS ACCOUNT

accumulated-adjustments account. See ACCOUNT.

#### ACCUMULATED DEPRECIATION

accumulated depreciation. See DEPRECIATION.

#### ACCUMULATED DIVIDEND

accumulated dividend. See DIVIDEND.

#### ACCUMULATED-EARNINGS CREDIT

accumulated-earnings credit. See CREDIT(7).

#### ACCUMULATED-EARNINGS TAX

accumulated-earnings tax. See TAX.

#### ACCUMULATED INCOME

accumulated income. See INCOME.

#### ACCUMULATED LEGACY

accumulated legacy. See LEGACY.

#### ACCUMULATED PROFIT

accumulated profit. See PROFIT(1).

#### ACCUMULATED SURPLUS

accumulated surplus. See SURPLUS.

#### ACCUMULATED TAXABLE INCOME

accumulated taxable income. See INCOME.

#### ACCUMULATIO ACTIONUM

accumulatio actionum (<<schwa>>-kyoom-y<<schwa>>-lay-shee-oh ak-shee-oh-n<<schwa>>m). [Law Latin] Scots law. The accumulation of actions, which was permitted only in certain circumstances, as when a widow and her children jointly sued to recover damages for the husband's and father's death.

#### ACCUMULATION

accumulation, n. 1. The increase of a thing by repeated additions to it; esp., the increase of a fund by the repeated addition of the income that it creates. 2. The concurrence of several titles to the same thing. 3. The concurrence of several circumstances to the same proof. 4. The retention of dividends for future distribution. 5. Insurance. An increase in the principal sum insured for, effective upon renewal of a policy, without a change of premiums. — accumulate, vb.

#### ACCUMULATIONS, RULE AGAINST

accumulations, rule against. The rule that a direction to accumulate income from property — the income to be distributed later to certain beneficiaries — is valid only if confined to the perpetuity period. Cf. RULE AGAINST PERPETUITIES . [Cases: Perpetuities 9. C.J.S. Perpetuities § 45.]

#### ACCUMULATION TRUST

accumulation trust. See TRUST.

#### ACCUMULATIVE

accumulative (<<schwa>>-kyoo-my<<schwa>>-lay-tiv or -l<<schwa>>-tiv), adj. Increasing by successive addition; cumulative.

#### ACCUMULATIVE DAMAGES

accumulative damages. See DAMAGES.

#### ACCUMULATIVE DIVIDEND

accumulative dividend. See cumulative dividend under DIVIDEND.

#### ACCUMULATIVE JUDGMENT

accumulative judgment. See JUDGMENT.

#### ACCUMULATIVE LEGACY

accumulative legacy. See LEGACY.

#### ACCUMULATIVE SENTENCES

accumulative sentences. See consecutive sentences under SENTENCE.

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**ACCUSATION**

accusation, n. 1. A formal charge of criminal wrongdoing. • The accusation is usu. presented to a court or magistrate having jurisdiction to inquire into the alleged crime. 2. An informal statement that a person has engaged in an illegal or immoral act.

malicious accusation. An accusation against another for an improper purpose and without probable cause. See MALICIOUS PROSECUTION. [Cases: Malicious Prosecution 15, 26. C.J.S. Malicious Prosecution or Wrongful Litigation §§ 23, 38.]

**ACCUSATIO SUSPECTI TUTORIS**

accusatio suspecti tutoris (ak-yoo-zay-shee-oh s<<schwa>>-spek-tī t[y]oo-tor-is). [Latin “accusation against a suspected tutor”] Roman law. A civil action on behalf of a child under the age of puberty against a tutor for negligence or fraud in the performance of the tutor's duties.

**ACCUSATOR**

accusator (ak-yoo-zay-t<<schwa>>r), n. [Latin] Roman law. The person who brought charges in a criminal case. Pl. accusatores.

**ACCUSATORIAL SYSTEM**

accusatorial system. See ADVERSARY SYSTEM.

**ACCUSATORY**

accusatory (<<schwa>>-kyoo-z<<schwa>>-tor-ee), adj. Of, relating to, or constituting an accusation.

**ACCUSATORY BODY**

accusatory body. A body (such as a grand jury) that hears evidence and determines whether a person should be charged with a crime.

**ACCUSATORY INSTRUMENT**

accusatory instrument. See CHARGING INSTRUMENT.

**ACCUSATORY PART**

accusatory part. The section of an indictment in which the offense is named.

**ACCUSATORY PLEADING**

accusatory pleading. See PLEADING(1).

**ACCUSATORY PROCEDURE**

accusatory procedure. See ADVERSARY SYSTEM.

**ACCUSATORY STAGE**

accusatory stage. Criminal procedure. The point in a criminal proceeding when the suspect's



right to counsel attaches. • This occurs usu. after arrest and once interrogation begins. Cf. CRITICAL STAGE. [Cases: Criminal Law 641.3. C.J.S. Criminal Law § 282.]

### ACCUSATRIX

accusatrix (<<schwa>>-kyoo-z<<schwa>>-triks), n. Hist. A female accuser.

### ACCUSE

accuse,vb. To charge (a person) judicially or publicly with an offense; to make an accusation against <she accused him of the crime> <he was accused as an accomplice>.

### ACCUSED

accused,adj. Of or relating to someone or something implicated in wrongdoing < accused infringer>; esp., of or relating to a product that allegedly infringes someone's intellectual-property rights <accused device> <accused work>.

accused,n.1. A person who has been blamed for wrongdoing; esp., a person who has been arrested and brought before a magistrate or who has been formally charged with a crime (as by indictment or information).2. A person against whom legal proceedings have been initiated.

### ACCUSER

accuser.Eccles. law. A person who accuses another of a crime. • In ecclesiastical courts, an accuser cannot be a person who has been convicted of a crime, has been excommunicated, or is otherwise disqualified.

### ACCUSING JURY

accusing jury.See GRAND JURY.

### A CE

a ce (a s<<schwa>>), adv.[Law French] For this purpose.

### A CEL JOUR

a cel jour (<<schwa>> sel zhoor), adv.[Law French] At this day.

### AC ETIAM

ac etiam (ak ee-shee-<<schwa>>m oresh-ee-<<schwa>>m). [Law Latin] Common-law pleading. 1. And also. • These words introduced a genuine claim in a pleading in a common-law case in which a fictitious claim had to be alleged to give the court jurisdiction. In other words, the phrase ac etiam directed the court to the real cause of action. — Also spelled acetiam.

“[T]o remedy this inconvenience, the officers of the king's bench devised a method of adding what is called a clause of ac etiam to the usual complaint of trespass; the bill of Middlesex commanding the defendant to be brought in to answer the plaintiff of a plea of trespass, and also to a bill of debt: the complaint of trespass giving cognizance to the court, and that of debt authorizing the arrest.” 3 William Blackstone, Commentaries on the Laws of England 288 (1768).

“[Once] it was established that the King's Bench was not exclusively a court for ‘crown cases,’ but could also be used for civil litigation, it was not difficult to extend the jurisdiction a step further by allowing the ordinary citizen to allege that the defendant had committed a trespass or other breach of the peace ‘and also’ that the defendant was under some obligation to the plaintiff, and to treat the allegation concerning breach of the peace as a mere fiction which need not be proved, and to allow the suit to be maintained solely on the basis of the civil obligation. The Latin words ‘ac etiam’ were the crucial ones in the old complaint that stated the fictitious breach of the peace ‘and also’ the actual civil obligation.” Charles Herman Kinnane, *A First Book on Anglo-American Law* 269 (2d ed. 1952).

2. The clause that introduced the real allegation after a fictitious allegation of trespass. — Also termed (in sense 2) ac etiam clause.

#### ACF

ACF.abbr. ADMINISTRATION FOR CHILDREN AND FAMILIES.

#### ACHIEVE

achieve,vb. Hist. To do homage upon the taking of a fee or fief.

#### ACID-TEST RATIO

acid-test ratio.See QUICK-ASSET RATIO.

#### ACKNOWLEDGE

acknowledge,vb.1. To recognize (something) as being factual or valid < acknowledge the federal court's juris-diction>.2. To show that one accepts responsibility for <acknowledge paternity of the child>.3. To make known the receipt of <acknowledged the plaintiff's letter>.4. To confirm as genuine before an authorized officer <ac-knowledged before a notary public>. [Cases: Acknowledgment 1. C.J.S. Acknowledgments §§ 2–4.] 5. (Of a notary public or other officer) to certify as genuine <the notary acknowledged the genuineness of the signature>.

#### ACKNOWLEDGED FATHER

acknowledged father.See FATHER.

#### ACKNOWLEDGMENT

acknowledgment. 1. A recognition of something as being factual. 2. An acceptance of responsibility. 3. The act of making it known that one has received something. 4. A formal declaration made in the presence of an authorized officer, such as a notary public, by someone who signs a document and confirms that the signature is authentic. • In most states, the officer certifies that (1) he or she personally knows the document signer or has established the signer's identity through satisfactory evidence, (2) the signer appeared before the officer on the date and in the place (usu. the county) indicated, and (3) the signer acknowledged signing the document freely. Cf. VERIFI-CATION(1). [Cases: Acknowledgment 1. C.J.S. Acknowledgments §§ 2–4.]

“An acknowledgment is a verification of the fact of execution, but is not a verification of the

contents of the instrument executed; in other words, an acknowledgment is the method of authenticating an instrument by showing it was the act of the person executing it, while a verification is a sworn statement as to the truth of the facts stated within an instrument.” 1A C.J.S. Acknowledgments § 2 (1985).

5. The officer's certificate that is affixed to the document. — Also termed (in sense 5) certificate of acknowl-edgment; (loosely) verification. See PROOF OF ACKNOWLEDGMENT. 6. A father's public recognition of a child as his own. — Also termed acknowledgment of paternity.

formal acknowledgment. 1. A father's recognition of a child as his own by a formal, written declaration that meets a state's requirements for execution, typically by signing in the presence of two witnesses. • In Louisiana law, this recognition may also be made by a mother. La. Civ. Code art. 203. 2. A father's recognition of a child as his own in the child's registry of birth or at the child's baptism. • In this sense, a formal acknowledgment typically occurs when a man signs the birth certificate or baptismal certificate as the father or announces at the baptismal service that he is the father. The fact that a man is named as the father on a certificate of birth or baptism is not a formal acknowledgment unless the father signs the document.

informal acknowledgment.A father's recognition of a child as his own not by a written declaration but by receiving the child into his family or supporting the child and otherwise treating the child as his own offspring.

#### ACKNOWLEDGMENT MONEY

acknowledgment money.See LAUDEMIMUM.

#### ACKNOWLEDGMENT OF DEBT

acknowledgment of debt.Louisiana law. Recognition by a debtor of the existence of a debt. • An acknowledg-ment of debt interrupts the running of prescription.

#### ACKNOWLEDGMENT OF PATERNITY

acknowledgment of paternity.See ACKNOWLEDGMENT(6).

#### ACLU

ACLU.abbr.AMERICAN CIVIL LIBERTIES UNION.

#### A CONFECTIONE

a confectiōne (ay k<<schwa>>n-fek-shee-oh-nee). [Law Latin] From the making.

#### A CONFECTIONE PRAESENTIUM

a confectiōne praesentium (ay k<<schwa>>n-fek-shee-oh-nee pri-zen-shee-<< schwa>>m). [Law Latin] From the making of the indentures.

#### A CONSILIIS

a consiliis (ay k<<schwa>>n-sil-ee-is), n.[Law Latin “of counsel”] See APOCRISARIUS.

## A CONTRARIO SENSU

a contrario sensu (ay k<<schwa>>n-trair-ee-oh sen-s[y]oo), adv.[Law Latin] On the other hand; in the opposite sense.

## ACP

ACP.abbr. ADMINISTRATIVE DOMAIN-NAME CHALLENGE PANEL.

## ACPA

ACPA.abbr. 1.ANTICYBERSQUATTING CONSUMER PROTECTION ACT.  
2.ANTICOUNTERFEITING CONSUMER PROTECTION ACT.

## ACP CHALLENGE

ACP challenge.Trademarks. An administrative procedure to settle disputes over Internet domain names, conducted by an Administrative Domain-Name Challenge Panel (ACP) under the auspices of the World Intellectual Property Organization and in accordance with the WIPO (Revised) Substantive Guidelines. • The guidelines are viewable at <http://www.gtld-mou.org/docs/racps.htm>.

## ACQUAINTANCE RAPE

acquaintance rape.See RAPE.

## ACQUEST

acquest (<<schwa>>-kwest). See ACQUET.

## ACQUET

acquet (a-kayor <<schwa>>-kwet), n.[French acquêt “acquisition”] (usu. pl.) Civil law. 1. Property acquired by purchase, gift, or any means other than inheritance. • The term is most commonly used to denote a marital acquisition that is presumed to be community property. — Also termed acquets and conquets. 2. Property acquired by either spouse during the marriage. — Also termed acquest. See COMMUNITY PROPERTY. See also AC-QUIST.

## ACQUETS AND CONQUETS

acquets and conquets.See ACQUET(1).

## ACQUETS AND GAINS

acquets and gains (<<schwa>>-kets).Louisiana law. The assets comprising the community property of spouses who are subject to the Louisiana community-property laws. — Often shortened to acquets.

## ACQUIESCE

acquiesce (ak-wee-es), vb. To accept tacitly or passively; to give implied consent to (an act) <in the end, all the partners acquiesced in the settlement>. — acquiescent,adj.

## ACQUIESCENCE

acquiescence (ak-wee-es-<<schwa>>nts).1. A person's tacit or passive acceptance; implied consent to an act.

commercial acquiescence.Patents. Action or inaction by a patentee's competitor that reflects the competitor's belief that the patent is valid. • A patent owner may use another person's actions or inactions, such as taking a license or attempting to design around a patent, as circumstantial evidence of the nonobviousness of a patented invention or of a patent's validity or enforceability. [Cases: Patents 36.1(1). C.J.S. Patents §§ 98–99.]

2.Int'l law.Passivity and inaction on foreign claims that, according to customary international law, usu. call for protest to assert, preserve, or safeguard rights. • The result is that binding legal effect is given to silence and inaction. Acquiescence, as a principle of substantive law, is grounded in the concepts of good faith and equity.

## ACQUIETANDIS PLEGIIS

acquietandis plegiis (<<schwa>>-kwI-<<schwa>>-tan-dis plee-jee-is), n.[Law Latin “for acquitting sureties”] Hist. A writ to force a creditor to discharge a surety when the debt has been satisfied.

## ACQUIETATUS

acquietatus (<<schwa>>-kwI-<<schwa>>-tay-t<<schwa>>s), adj.[Law Latin] Hist. Pronounced not guilty by a jury; acquitted.

## ACQUIRE

acquire,vb. To gain possession or control of; to get or obtain.

## ACQUIRED ALLEGIANCE

acquired allegiance.See ALLEGIANCE.

## ACQUIRED CORPORATION

acquired corporation.See CORPORATION.

## ACQUIRED DISTINCTIVENESS

acquired distinctiveness.See DISTINCTIVENESS.

## ACQUIRED FEDERAL LAND

acquired federal land.See LAND.

## ACQUIRED LAND

acquired land.See LAND.

## ACQUIRED RIGHT

acquired right. See RIGHT.

#### ACQUIRED-RIGHTS DOCTRINE

acquired-rights doctrine. The principle that once a right has vested, it may not be reduced by later legislation. • The Universal Copyright Convention applies the doctrine to copyright protections, esp. terms, that controlled before the Convention took effect. — Also termed doctrine of acquired rights.

#### ACQUIRED SERVITUDE

acquired servitude. See SERVITUDE(2).

#### ACQUIRED SURPLUS

acquired surplus. See SURPLUS.

#### ACQUIRENDA

acquirenda, n. pl. [Latin] Hist. Things to be gained by purchase.

#### ACQUISITA ET ACQUIRENDA

acquisita et acquirenda (<<schwa>>-kwiz-i-t<<schwa>> et ak-w<<schwa>>-ren-d<<schwa>>). [Law Latin] Scots law. Things acquired and to be acquired. • Certain legal actions (such as inhibition) affected both acquired property and property to be acquired while some actions (such as seizure) affected only property that had already been acquired.

#### ACQUISITION

acquisition, n. 1. The gaining of possession or control over something < acquisition of the target company's as-sets>. 2. Something acquired <a valuable acquisition>.

creeping acquisition. The gradual purchase of a corporation's stock at varying prices on the open market. • As a takeover method, a creeping acquisition does not involve a formal tender offer, although the SEC may classify it as such for regulatory purposes. — Also termed creeping tender offer.

derivative acquisition. An acquisition obtained from another, as by sale or gift.

new acquisition. An estate not originating from descent, devise, or gift from the parental or maternal line of the owner. • For example, an estate acquired from a nonrelative is a new acquisition. See nonancestral estate under ESTATE (1).

original acquisition. An acquisition that has never been the property of anyone else, such as a copyright owned by an author.

#### ACQUISITION COST

acquisition cost. See COST(1).

#### ACQUISITIVE OFFENSE

acquisitive offense. See OFFENSE(1).

#### ACQUISITIVE PRESCRIPTION

acquisitive prescription. See PRESCRIPTION.

#### ACQUIST

acquist (<<schwa>>-kwist), n. Hist. The act of obtaining (a thing); acquisition. • The idiomatic tendency is to use acquist for the action and acquet for the result. Cf. ACQUET.

#### ACQUIT

acquit, vb. 1. To clear (a person) of a criminal charge. 2. To pay or discharge (a debt or claim).

#### ACQUITTAL

acquittal, n. 1. The legal certification, usu. by jury verdict, that an accused person is not guilty of the charged offense.

acquittal in fact. An acquittal by a jury verdict of not guilty.

acquittal in law. An acquittal by operation of law, as of someone who has been charged merely as an accessory after the principal has been acquitted.

implied acquittal. An acquittal in which a jury convicts the defendant of a lesser included offense without commenting on the greater offense. • Double jeopardy bars the retrial of a defendant on the higher offense after an implied acquittal. [Cases: Double Jeopardy 100.1.]

2. Contracts. A release or discharge from debt or other liability; ACQUITTANCE. [Cases: Release 8. C.J.S. Release § 2.] 3. Hist. The obligation of a middle lord to protect a tenant from a claim, entry, or molestation by a paramount lord arising out of service that the middle lord owes the paramount lord.

#### ACQUITTANCE

acquittance, n. A document by which one is discharged from a debt or other obligation; a receipt or release indicating payment in full. — acquit, vb.

#### ACQUITTED

acquitted, adj. 1. Judicially discharged from an accusation; absolved. 2. Released from a debt.

#### ACRE

acre. An area of land measuring 43,560 square feet.

foot acre. A one-foot-deep layer of coal, water, or other material spread over one acre. • This measurement method is used to value coal land for tax purposes. It is also used to measure the volume and capacity of reservoirs.

#### ACREAGE-CONTRIBUTION AGREEMENT

acreage-contribution agreement.Oil & gas. A support agreement under which one party promises to grant leases or interest in leases in the area of a test well to the party who drills the test well in exchange for drilling or geological information if the test well is drilled to a certain depth. See SUPPORT AGREEMENT.

#### ACRE-FOOT

acre-foot. A volume measurement in irrigation, equal to the amount of water that will cover one acre of land in one foot of water (325,850 gallons). [Cases: Weights and Measures 3. C.J.S. Weights and Measures § 3.]

#### ACRE RIGHT

acre right.Hist. In New England, a citizen's share in the common lands. • The value of the acre right varied among towns but was fixed in each town. A 10-acre lot in a certain town was equivalent to 113 acres of upland and 12 acres of meadow, and an exact proportion was maintained between the acre right and salable land. [Cases: Common Lands 10. C.J.S. Common Lands §§ 12–13.]

#### ACROSS-THE-BOARD

across-the-board,adj. Applying to all classes, categories, or groups <an across-the-board tax cut>.

#### ACRS

ACRS.abbr.ACCELERATED COST-RECOVERY SYSTEM.

#### ACT

act,n.1. Something done or performed, esp. voluntarily; a deed. — Also termed action.

“ ‘[A]ct’ or ‘action’ means a bodily movement whether voluntary or involuntary ....” Model Penal Code § 1.13.

2. The process of doing or performing; an occurrence that results from a person's will being exerted on the external world; ACTION(2). — Also termed positive act; act of commission.“The term act is one of ambiguous import, being used in various senses of different degrees of generality. When it is said, however, that an act is one of the essential conditions of liability, we use the term in the widest sense of which it is capable. We mean by it any event which is subject to the control of the human will. Such a definition is, indeed, not ultimate, but it is sufficient for the purpose of the law.” John Salmond, *Jurisprudence* 367 (Glanville L. Williams ed., 10th ed. 1947).

“The word ‘act’ is used throughout the Restatement of this Subject to denote an external manifestation of the actor's will and does not include any of its results, even the most direct, immediate, and intended.” Restatement (Second) of Torts § 2 (1965).

abstract juridical act.Civil law. A juridical act whose validity may be independent of the existence or lawfulness of the underlying cause. • In some systems, examples include negotiable



instruments, debt remission, debt acknowledgment, and the novation of an obligation. See juridical act.

act in pais (in pay). [Law French] An act performed out of court, such as a deed made between two parties on the land being transferred. See IN PAIS.

act in the law. An act that is intended to create, transfer, or extinguish a right and that is effective in law for that purpose; the exercise of a legal power. — Also termed juristic act; act of the party; legal act.

act of hostility. See ACT OF HOSTILITY.

act of law. See act of the law.

act of omission. See negative act.

act of the law. The creation, extinction, or transfer of a right by the operation of the law itself, without any consent on the part of the persons concerned. — Also termed legal act; act of law. Cf. LEGAL ACT.

act of the party. See act in the law.

administrative act. An act made in a management capacity; esp., an act made outside the actor's usual field (as when a judge supervises court personnel). • An administrative act is often subject to a greater risk of liability than an act within the actor's usual field. See IMMUNITY(1).

bilateral act. An act that involves the consenting wills of two or more distinct parties, as with a contract, a conveyance, a mortgage, or a lease; AGREEMENT(1).

conversionary act. An act that, unless privileged, makes the actor liable for conversion.

external act. An act involving bodily activity, such as speaking.

intentional act. An act resulting from the actor's will directed to that end. • An act is intentional when it is foreseen and desired by the doer, and this foresight and desire resulted in the act through the operation of the will.

internal act. An act of the mind, such as thinking.

judicial act. An act involving the exercise of judicial power. — Also termed act of court.

“The distinction between a judicial and a legislative act is well defined. The one determines what the law is, and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it.” *Union Pacific R.R. v. United States*, 99 U.S. 700, 721 (1878) (Field, J., dissenting).

jural act (jooor-*<<schwa>>*l). An act taken in the context of or in furtherance of a society's legal system. — Also termed jural activity.

“In order to identify an act as a jural act, it must be the kind of act that would be engaged in by someone who is enforcing a law, determining an infraction of the law, making or changing a

law, or settling a dispute.” Martin P. Golding, *Philosophy of Law* 23 (1975).

juridical act. Civil law. A lawful volitional act intended to have legal consequences. Cf. abstract juridical act.

juristic act. See act in the law.

legal act. See LEGAL ACT.

ministerial act. An act performed without the independent exercise of discretion or judgment. • If the act is mandatory, it is also termed a ministerial duty. See ministerial duty under DUTY(2).

negative act. The failure to do something that is legally required; a nonoccurrence that involves the breach of a legal duty to take positive action. • This takes the form of either a forbearance or an omission. — Also termed act of omission.

negligent act. An act that creates an unreasonable risk of harm to another.

predicate act. See PREDICATE ACT.

quasi-judicial act. See QUASI-JUDICIAL ACT.

tortious act. An act that subjects the actor to liability under the principles of tort law.

unilateral act. An act in which there is only one party whose will operates, as in a testamentary disposition, the exercise of a power of appointment, or the voidance of a voidable contract.

unintentional act. An act not resulting from the actor's will toward what actually takes place.

verbal act. 1. An act performed through the medium of words, either spoken or written. 2. Evidence. A statement offered to prove the words themselves because of their legal effect (e.g., the terms of a will). • For this purpose, the statement is not considered hearsay.

3. The formal product of a legislature or other deliberative body; esp., STATUTE. • For the various types of acts, see the subentries under STATUTE.

#### ACTA DIURNA

acta diurna (ak-t<<schwa>> dI-<<schwa>>r-n<<schwa>>). [Latin “daily proceedings”] Roman law. A public register of the daily proceedings of the senate, assemblies of the people, or the courts.

#### ACT AND DEED

act and deed. 1. A formally delivered written instrument that memorializes a bargain or transaction. 2. Hist. Words in a traditional spoken formula used when signing a legal instrument. • Immediately after signing, the party would touch the seal and declare, “I deliver this as my act and deed.”

#### ACT AND WARRANT

act and warrant.Scots law.A sheriff's order appointing a trustee in bankruptcy, upon which the trustee assumes office and becomes vested with the bankruptcy estate.

#### ACTA PUBLICA

acta publica (ak-t<<schwa>> p<<schwa>>b-li-k<<schwa>>), n. pl.[Latin] Roman & civil law. Things of general knowledge and concern; matters transacted before certain public officers.

#### ACTE

acte (akt), n.[French] French law. 1. An instrument; a proof in writing, such as a deed, bill of sale, or birth certificate.

acte authentique (akt oh-tawn-teek). A deed executed with certain prescribed formalities, in the presence of a notary or other official.

acte de décès (akt d<<schwa>> day-say). A death certificate.

acte de francisation (akt d<<schwa>> frangk<<schwa>>-za-syawn). A certificate confirming that a ship is of French nationality.

acte de mariage (akt d<<schwa>> mar-yahzh). A marriage certificate.

acte de naissance (akt d<<schwa>> nay-s<<schwa>>nts). A birth certificate.

acte de notoriété.A deposition made before a notary to record and preserve a claim, usu. to property. • Historically, most actes de notoriété were conducted to establish the identity and genealogy of a purported heir. The depositions were subject to exclusion as hearsay. But an acte de notoriété may also appear in a chain of title. See *United States v. Repentigny*, 72 U.S. 211 (1866).

acte extrajudiciaire (akt eks-tr<<schwa>>-zhuu-dee-syair). A document served by a huissier at the request of one party on another party without legal proceedings. See HUISSIER(1).

l'acte de l'état civil (lakt d<<schwa>> lay-tah see-veel). A public document relating to status (e.g., birth, divorce, death).

2. An act; conduct.

acte d'héritier (akt day-ri-tyay). [French "act of an heir"] Conduct by an heir indicating an intent to accept the succession.

#### ACTING

acting,adj. Holding an interim position; serving temporarily <an acting director>.

#### ACTING CHARGÉ D'AFFAIRES

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

#### ACTING EXECUTOR

acting executor.See EXECUTOR.

## ACTING OFFICER

acting officer. See OFFICER(1).

## ACT IN PAIS

act in pais. See ACT.

## ACT IN THE LAW

act in the law. See ACT.

## ACTIO

actio (ak-shee-oh alsoak-tee-oh), n. [Latin] 1. Roman & civil law. An action; a right or claim. 2. A right of action. [Cases: Action 1. C.J.S. Actions §§ 2–9, 11, 17, 21, 32–33, 36.] 3. Hist. At common law, a lawsuit. Pl. actiones (ak-shee-oh-nee-z).

actio ad exhibendum (ak-shee-oh ad ek-si-ben-d<<schwa>>m). Roman law. An action to compel a defendant to produce property so as to establish that it is in the defendant's possession. Pl. actiones ad exhibendum.

actio aestimatoria (ak-shee-oh es-ti-m<<schwa>>-tor-ee-<<schwa>>). See DE AESTIMATO.

actio arbitraria (ak-shee-oh ahr-bi-trair-ee-<<schwa>>). Roman law. An action in which a judge issued an interlocutory decree ordering the defendant to do something (such as restoring property to the plaintiff) on pain of a monetary judgment payable to the plaintiff. • This action was so called because the judge could assess the damage at a high figure if the defendant failed to comply with the interlocutory order. Pl. actiones arbitrarie (ak-shee-oh-nee-z ahr-bi-trair-ee-I).

actio auctoritas (ak-shee-oh awk-tor-i-tas). Roman law. A seller's guarantee against eviction from mancipated land coupled with a promise to pay twice the sale price as damages if the buyer is evicted. • The guarantee was implicit in the mancipation process. See MANCIPATION.

actio bonae fidei (ak-shee-oh boh-nee fi-dee-I). Roman law. One of a class of actions in which a judge could take equitable considerations into account in rendering a decision. Pl. actiones bonae fidei.

actio calumniae (ak-shee-oh k<<schwa>>-l<<schwa>>m-nee-ee). Roman law. An action to restrain, or collect damages for, a malicious civil suit. • The victim could also pursue criminal charges. Pl. actiones calumniae. See CALUMNIA.

actio civilis (ak-shee-oh s<<schwa>>-vi-lis). [Latin “a civil action”] Roman law. An action founded on the traditional Roman law, rather than the innovations of magistrates. Pl. actiones civiles. Cf. actio honoraria.

actio commodati (ak-shee-oh kom-<<schwa>>-day-ti). [Latin “action on loan”] Roman law. An action for the recovery of a thing gratuitously lent but not returned to the lender. — Also termed commodati actio. Pl. actiones commodati. See COMMODATUM.

**actio commodati contraria** (ak-shee-oh kom-*<<schwa>>*-day-tl k*<<schwa>>*n-trair-ee-*<<schwa>>*). Roman law. An action by a gratuitous borrower against a lender for extraordinary expenses or damage caused by the lender's default. Pl. *actiones commodati contrariae*.

**actio commodati directa** (ak-shee-oh kom-*<<schwa>>*-day-tl di-rek-t*<<schwa>>*). Roman law. An action by a lender against a borrower for restitution for an item gratuitously lent. Pl. *actiones commodati directae*.

**actio condictio indebiti** (ak-shee-oh k*<<schwa>>*n-dik-shee-oh in-deb-*<<schwa>>*-tl). See *condictio indebiti* under *CONDICTIO*. • Strictly speaking, the headword is a solecism, since a *condictio* is a type of *actio*, but this phrase is occasionally found in legal literature. Pl. *actiones condictio indebiti*.

**actio conducti** (ak-shee-oh k*<<schwa>>*n-d*<<schwa>>*k-tl). [Latin “action for the thing hired”] An action by the lessee of a thing or the hirer of another's services to enforce the contract or claim damages for breach. — Also termed *actio ex conducto*. Cf. *actio locati*.

**actio confessoria** (ak-shee-oh kon-f*<<schwa>>*-sor-ee-*<<schwa>>*). [Latin “action based on an admission”] 1. See *vindicatio servitutis* under *VINDICATIO*. 2. An action in which the defendant admits liability but does not express it in a fixed sum. • A judge therefore assesses the damages.

**actio contraria** (ak-shee-oh k*<<schwa>>*n-trair-ee-*<<schwa>>*). Roman law. A counterclaim. Pl. *actio contra-ria*. Cf. *actio directa*.

**actio criminalis** (ak-shee-oh kri-m*<<schwa>>*-nay-lis). Roman law. A criminal action. Pl. *actiones criminales*.

**actio damni injuria** (ak-shee-oh dam-nl in-joor-ee-*<<schwa>>*). Roman law. An action for damages for tortiously causing pecuniary loss. Pl. *actiones damni injuriae*. See *actio legis Aquiliae*.

**actio de communi dividundo** (ak-shee-oh dee k*<<schwa>>*-myoo-nl di-vi-d*<<schwa>>*n-doh). [Latin “for dividing a thing held in common”] Roman & civil law. An action to partition common property. — Sometimes shortened to *de communi dividundo*. Pl. *actiones de communi dividundo*. See *ADJUDICATIO*.

**actio de dolo malo** (ak-shee-oh dee doh-loh mal-oh). Roman law. An action of fraud. • This type of action was widely applied in cases involving deceitful conduct. — Also termed *actio doli*. Pl. *actiones de dolo malo*.

**actio de in rem verso** (ak-shee-oh dee in rem v*<<schwa>>*r-soh). See *action de in rem verso* under *ACTION(4)*. Pl. *actiones de in rem verso*.

**actio de pauperie** (ak-shee-oh dee paw-p*<<schwa>>*r-ee). Roman law. An action for harm done by a domestic four-legged animal. • The owner could either pay for the damage or surrender the animal to the injured party. Justinian extended this action to include wild animals in some circumstances. See *PAUPERIES*.

*actio de peculio* (ak-shee-oh dee p<<schwa>>-kyoo-lee-oh). Roman law. An action against a paterfamilias or slave owner concerning the value of the child's or slave's separate funds (peculium). Pl. *actiones de peculio*.

*actio de pecunia constituta* (ak-shee-oh dee p<<schwa>>-kyoo-nee-<<schwa>>kon-sti-t[y]oo-t<<schwa>>). Roman law. An action on a promise to pay a preexisting debt. Pl. *actiones de pecunia constituta*.

*actio depositi contraria* (ak-shee-oh di-poz-<<schwa>>-tĭ k<<schwa>>n-trair-ee-<<schwa>>). Roman law. An action that a depositary has against the depositor for unpaid expenses. Pl. *actiones depositi contrariae*.

*actio depositi directa* (ak-shee-oh di-poz-<<schwa>>-tĭ di-rek-t<<schwa>>). Roman law. An action that a de-positor has against a depositary for the return of the deposited item. Pl. *actiones depositi directae*.

*actio de tigno juncto* (ak-shee-oh dee tig-noh j<<schwa>>ngk-toh). [Latin “action for joining timber”] Roman law. An action by the owner of material incorporated without payment into the defendant's building. • It was akin to a theft action. The plaintiff could recover up to twice the value of the material. Pl. *actiones de tigno juncto*.

*actio directa* (ak-shee-oh di-rek-t<<schwa>>). Roman law. 1. An action founded on strict law and conducted according to fixed forms; an action based on clearly defined obligations actionable at law based on a statute or a praetor's edict. 2. A direct action, as opposed to a counterclaim (*actio contraria*). Cf. *actio in factum*; *actio utilis*. Pl. *actiones directae*.

*actio doli* (ak-shee-oh doh-II). See *actio de dolo malo*.

*actio empti* (ak-shee-oh emp-tĭ). Roman law. An action by a buyer to compel a seller to deliver the item sold or for damages for breach of contract. — Also termed *actio ex empto*. Pl. *actiones empti*.

*actio ex conducto* (ak-shee-oh eks k<<schwa>>n-d<<schwa>>k-toh). See *actio conducti*. Pl. *actiones ex con-ducto*.

*actio ex contractu* (ak-shee-oh eks k<<schwa>>n-trak-t[y]oo). Roman law. An action arising out of a contract. • This term had a similar meaning at common law. Pl. *actiones ex contractu*.

*actio ex delicto* (ak-shee-oh eks d<<schwa>>-lik-toh). Roman law. An action founded on a tort. Pl. *actiones ex delicto*.

*actio ex empto* (ak-shee-oh eks emp-toh). See *actio empti*.

*actio exercitoria* (ak-shee-oh eg-z<<schwa>>r-si-tor-ee-<<schwa>>). Roman law. An action against the owner or lessee (exercitor) of a vessel, esp. for contracts made by the master. Pl. *actiones exercitoriae*.

*actio ex locato* (ak-shee-oh eks loh-kay-toh). See *actio locati*.

*actio ex stipulatu* (ak-shee-oh eks stip-y<<schwa>>-lay-t[y]oo). Roman law. An action

brought to enforce a stipulatio. See STIPULATION(3).

actio ex vendito (ak-shee-oh eks ven-d<<schwa>>-toh). See actio venditi.

actio familiae erciscundae (ak-shee-oh f<<schwa>>-mil-ee-ee <<schwa>>r-sis-k<<schwa>>n-dee). [Latin “action to divide an estate”] An action for the partition of the inheritance among heirs. — Sometimes shortened to familiae erciscundae. See ADJUDICATIO.

actio finium regundorum (ak-shee-oh fl-nee-<<schwa>>m ri-g<<schwa>>n-dor-<<schwa>>m). [Latin “action for regulation of boundaries”] Roman law. An action among neighboring proprietors to fix or to preserve property boundaries. See ADJUDICATIO.

actio furti (ak-shee-oh f<<schwa>>r-tI). Roman law. An action by which the owner of stolen goods can, according to the circumstances, recover a multiple of their value from the thief by way of penalty, without prejudice to a further action to recover the goods themselves or their value. See furtum manifestum under FURTUM.

actio honoraria (ak-shee-oh [h]on-<<schwa>>-rair-ee-<<schwa>>). Pl. actiones honorariae. See ACTIONES HONORARIAE.

actio hypothecaria (ak-shee-oh hI-poth-<<schwa>>-kair-ee-<<schwa>>). See HYPOTHECARIA ACTIO.

actio in factum (ak-shee-oh in fak-t<<schwa>>m). Roman law. An action granted by the praetor when no standard action was available. • The closest Anglo-American equivalent is action on the case or trespass on the case. See trespass on the case under TRESPASS. Cf. actio directa; actio utilis.

actio injuriarum (ak-shee-oh in-juur-ee-ahr-<<schwa>>m). Roman law. An action that lay against anyone who had attacked the body, reputation, or dignity of any person. — Also spelled actio iniuriarum. Pl. actiones inju-riarum (ak-shee-oh-nee-z in-juur-ee-ahr-<<schwa>>m).

actio in personam (ak-shee-oh in p<<schwa>>r-soh-n<<schwa>>m). Pl. actiones in personam. See action in personam under ACTION(4).

actio in rem (ak-shee-oh in rem). Pl. actiones in rem. See action in rem and real action under ACTION(4).

actio institoria (ak-shee-oh in-sti-tor-ee-<<schwa>>). [Latin] Roman law. An action against a principal by one who contracted with the principal's business agent, limited to matters arising out of the business. See INSTITOR.

actio iudicati (ak-shee-oh joo-di-kay-tI). Roman law. An action to enforce a judgment by execution on the de-fendant's property. Pl. actiones iudicati.

actio legis (ak-shee-oh lee-jis). See LEGIS ACTIO.

actio legis Aquiliae (ak-shee-oh lee-jis <<schwa>>-kwil-ee-ee). Roman law. An action under the Aquilian law; specif., an action to recover for loss caused by intentional or negligent damage

to another's property. — Also termed *actio damni injuria*; *actio damni injuria dati*. See *LEX AQUILIA*.

*actio locati* (ak-shee-oh loh-kay-tī). [Latin “action for what has been hired out”] Roman law. An action that a lessor (the locator) of a thing might have against the hirer, or an employer against a contractor. — Also termed *actio ex locato* (ak-shee-oh eks loh-kay-toh). Cf. *actio conducti*.

*actio mandati* (ak-shee-oh man-day-tī). 1. Civil law. An action to enforce a contract for gratuitous services or remuneration. 2. Hist. An action to enforce a contract for gratuitous services. See *MANDATUM*. Pl. *actiones mandati*.

*actio mixta* (ak-shee-oh mik-st<<schwa>>). Roman law. A mixed action; an action in which two or more features are combined, as an action for damages and for a penalty, or an action in rem and in personam. Pl. *actiones mixta* (ak-shee-oh-nee-z mik-st<<schwa>>).

*actio negatoria* (ak-shee-oh neg-<<schwa>>-tor-ee-<<schwa>>). Roman law. An action brought by a landowner against anyone claiming to exercise a servitude over the landowner's property. — Also termed *actio negativa*. Pl. *actiones negatoriae*.

*actio negotiorum gestorum* (ak-shee-oh n<<schwa>>-goh-shee-or-<<schwa>>m jes-tor-<<schwa>>m). Roman law. An action against a gestor for the mismanagement of the principal's property, or for any acquisitions made in the course of management. • The gestor could bring a counteraction to recover management-related expenses (*actio contraria negotiorum gestorum*). Pl. *actiones negotiorum gestorum*. See *NEGOTIORUM GESTOR*.

*actio non accrevit infra sex annos* (ak-shee-oh non <<schwa>>-kree-vit in-fr<<schwa>> seks an-ohs). [Latin “the action did not accrue within six years”] Hist. A plea to the statute of limitations by which the defendant asserts that the plaintiff's cause of action has not accrued within the last six years. Pl. *actiones non accreverant infra sex annos*.

*actio non ulterius* (ak-shee-oh non <<schwa>>l-teer-ee-<<schwa>>s). [Latin “an action no further”] Hist. The distinctive clause in a plea to abate further maintenance of the action. • This plea replaced the *puis darrein continuance*. Pl. *actiones non ulterii*. Cf. plea to further maintenance to the action, plea *puis darrein continuance* under *PLEA*.

*actio Pauliana* (ak-shee-oh paw-lee-ay-n<<schwa>>). [Latin “action attributed to Paul” or “Paulian action”] An action to rescind a transaction (such as alienation of property) that an insolvent debtor made to deceive the debtor's creditors. • This action was brought against the debtor or the third party who benefited from the transaction. Pl. *actiones Paulianae*.

“[A]ctio Pauliana, a name which has been shewn to be inserted by a glossator, after the first publication of the Digest. It lay where the debtor had impoverished himself to the detriment of his creditors, e.g. by alienations, by incurring liabilities or allowing rights to lapse, but not for failing to acquire or for paying just debts .... It lay against the debtor, who might have since acquired property .... But its chief field was against acquirers privy to the fraud, or even innocent, if the acquisition was gratuitous.” W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian 596* (Peter Stein ed., 3d ed. 1963).



*actio perpetua* (ak-shee-oh p<<schwa>>r-pech-oo-<<schwa>>). Roman law. An action that is not required to be brought within a specified time. Pl. *actiones perpetuae*. Cf. *actio temporalis*.

*actio personalis* (ak-shee-oh p<<schwa>>r-s<<schwa>>-nay-lis). Roman law. A personal action. Pl. *actiones personales*.

*actio pignoratitia* (ak-shee-oh pig-n<<schwa>>-r<<schwa>>-tish-ee-<<schwa>>). Roman law. An action of pledge; an action founded on a contract of pledge. — Also spelled *actio pigneraticia*; *actio pignoratitia*. — Also termed *pignoratitia actio*. Pl. *actiones pignoratitiae*. See PIGNUS.

*actio poenalis* (ak-shee-oh pi-nay-lis). Roman law. An action in which the plaintiff sued for a penalty rather than compensation. Pl. *actiones poenales* (ak-shee-oh-nee-z pi-nay-leez). Cf. *actio rei persecutoria*.

*actio popularis* (ak-shee-oh pop-y<<schwa>>-lair-is). [Latin “popular action”] Roman law. An action that a male member of the general public could bring in the interest of the public welfare. Pl. *actiones populares* (ak-shee-oh-nee-z pop-y<<schwa>>-lair-eez).

“*Actiones populares*. Actions which can be brought by ‘any one among the people.’ ... They are of praetorian origin and serve to protect public interest .... They are penal, and in case of condemnation of the offender the plaintiff receives the penalty paid .... There are instances, however, established in statutes or local ordinances, in which the penalty was paid to the state or municipal treasury, or divided between the aerarium and the accuser, as, e.g., provided in a decree of the Senate in the case of damage to aqueducts.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 347 (1953).

*actio praejudicialis* (ak-shee-oh pree-joo-dish-ee-ay-lis). Roman law. A preliminary action; an action begun to determine a preliminary matter on which other litigated matters depend. Pl. *actiones praejudiciales*.

*actio praetoria* (ak-shee-oh pri-tor-ee-<<schwa>>). Roman law. A praetorian action; one introduced by a praetor rather than founded on a statute. Pl. *actiones praetoriae* (ak-shee-oh-nee-z pri-tor-ee-I).

*actio pro socio* (ak-shee-oh proh soh-shee-oh). Roman law. An action brought by one partner against another. Pl. *actiones pro socio*. See SOCIETAS.

*actio Publiciana* (ak-shee-oh p<<schwa>>-blish-ee-ay-n<<schwa>>). Roman law. An action allowing a person who had acquired bonitary ownership of land to recover it from a third party, so that the person would in due course acquire full title by prescription. • This action is named for Publicius, who might have been the first praetor to grant the action. — Also termed *actio Publiciana in rem*. See bonitary ownership under OWNERSHIP.

*actio quanti minoris* (ak-shee-oh kwon-tI mi-nor-is). [Latin “an action for the shortfall in value”] Roman & civil law. A purchaser's action to recover for his overpayment for a defective item. Pl. *actiones quanti minoris*. Cf. *actio redhibitoria*.

“If a defect appeared which had not been so declared the buyer, if he sued within six months,

could claim rescission of the sale by the *actio redhibitoria*, and, if within twelve months, could claim the difference between the price paid and the actual value of the defective slave or animal by the *actio quanti minoris*. In both actions the knowledge or ignorance of the seller was irrelevant: liability was strict.” Barry Nicholas, *An Introduction to Roman Law* 181 (1962).

*actio quod jussu* (ak-shee-oh kwod j<<schwa>>s-[y]oo). Roman law. An action against a paterfamilias or a slaveowner for enforcement of a debt contracted on behalf of the paterfamilias or slaveowner by a son or a slave.

*actio quod metus causa* (ak-shee-oh kwod mee-t<<schwa>>s kaw-z<<schwa>>). Roman law. An action to penalize someone who wrongfully compelled the plaintiff to transfer property or to assume an obligation. • The plaintiff could obtain damages of four times the value of the loss suffered. Pl. *actiones quod metus causa*.

*actio realis* (ak-shee-oh ree-ay-lis). [Law Latin] Hist. A real action. Pl. *actiones reales*.

*actio redhibitoria* (ak-shee-oh red-i-bi-tor-ee-<<schwa>>). Roman & civil law. An action for restoration to cancel a sale because of defects in the thing sold. Pl. *actiones redhibitoriae*. Cf. *actio quanti minoris*.

*actio rei persecutoria* (ak-shee-oh ree-I p<<schwa>>r-si-kyoo-tor-ee-<< schwa>>). [Law Latin “an action for pursuing a thing”] Roman law. An action to recover a specific thing or monetary compensation, rather than a penalty. Pl. *actiones rei persecutoriae* (ak-shee-oh-nee-z ree-I p<<schwa>>r-si-kyoo-tor-ee-I). Cf. *actio poenalis*.

*actio rerum amotarum* (ak-shee-oh reer-<<schwa>>m am-<<schwa>>-tair-<<schwa>>m). Roman law. An action to recover items stolen by a spouse shortly before a divorce. Pl. *actiones rerum amotarum*.

*actio rescissoria* (ak-shee-oh re-si-sor-ee-<<schwa>>). Roman law. An action to restore to the plaintiff property lost by prescription. • This action was available to minors and other persons exempt from prescriptive claims against their property. Pl. *actiones rescissoriae*.

*actio serviana* (ak-shee-oh s<<schwa>>r-vee-ay-n<<schwa>>). Roman law. An action by which a lessor could seize, in satisfaction of unpaid rent, the lessee's personal property brought onto the leased premises. Pl. *actiones servianae*.

*actio servi corrupti* (ak-shee-oh s<<schwa>>r-vI k<<schwa>>-r<<schwa>>p-tI). [Latin] Roman law. An action for corrupting a slave or servant. • Since the “corruption” could take the form of bribery to find out the master's confidential business information, one scholar suggested in a famous article that it could be the precursor of the modern law of trade secrets. A. Arthur Schiller, *Trade Secrets and the Roman Law: The Actio Servi Corrupti*, 30 *Colum. L. Rev.* 837 (1930). Other scholars strongly disagree (see quotation).

“The *actio servi corrupti* presumably or possibly could be used to protect trade secrets and other similar commercial interests. That was not its purpose and was, at most, an incidental spin-off. But there is not the slightest evidence that the action was ever so used.” Alan Watson, *Trade Secrets and Roman Law: The Myth Exploded*, 11 *Tul. Eur. & Civ. L.F.* 19, 19 (1996).

*actio stricti juris* (ak-shee-oh strik-t[ʃ]oor-is). Roman law. A class of personal actions enforceable exactly as stated in the formula without taking equitable considerations into account; an action of strict right. • This type of action was often used to recover a definite sum of money or a particular object that was the subject of a formal promise (*stipulatio*). Pl. *actiones stricti juris*. See FORMULA(1).

*actio temporalis* (ak-shee-oh tem-p[ə]schwa-ray-lis). Roman & civil law. An action that must be brought within a specified time. Pl. *actiones temporales*. Cf. *actio perpetua*.

*actio tutelae* (ak-shee-oh t[y]oo-tee-lee). Roman law. An action arising from a breach of the duty owed by a guardian (*tutor*) to the ward, such as mismanagement of the ward's property. Pl. *actiones tutelae*.

*actio utilis* (ak-shee-oh yoo-t[ə]schwa-lis). Roman law. An extension of a direct action, founded on utility rather than strict right, available esp. to persons having an interest in property less than ownership. • This type of action was modeled after the *actio directa*. Pl. *actiones utiles*. Cf. *actio directa*; *actio in factum*.

*actio venditi* (ak-shee-oh ven-d[ə]schwa-t[ɪ]). Roman law. An action by which a seller could obtain his price or enforce a contract of sale. — Also termed *actio ex vendito*. Pl. *actiones venditi*.

*actio vi bonorum raptorum* (ak-shee-oh v[ɪ] b[ə]schwa-nor[ə]schwa-m rap-tor[ə]schwa-m). Roman law. A penal action to recover goods taken by force. • A successful plaintiff would also receive three times the value of the taken property. Cf. INTERDICTUM QUOD VI AUT CLAM.

*actio vulgaris* (ak-shee-oh v[ə]schwa-l-gair-is). Hist. An ordinary action, as opposed to one granted in special circumstances. Pl. *actiones vulgares*.

*legis actio*. See LEGIS ACTIO.

## ACTION

*action*. 1. The process of doing something; conduct or behavior. 2. A thing done; ACT(2). 3. Patents. OFFICE ACTION.

*advisory action*. Patents. See advisory office action under OFFICE ACTION.

4. A civil or criminal judicial proceeding. — Also termed *action at law*. [Cases: Action 1. C.J.S. Actions §§ 2–9, 11, 17, 21, 32–33, 36.] “An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment.” 1 Morris M. Estee, *Estee's Pleadings, Practice, and Forms* § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885).

“The terms ‘action’ and ‘suit’ are nearly if not quite synonymous. But lawyers usually speak of proceedings in courts of law as ‘actions,’ and of those in courts of equity as ‘suits.’ In olden

time there was a more marked distinction, for an action was considered as terminating when judgment was rendered, the execution forming no part of it. A suit, on the other hand, included the execution. The word 'suit,' as used in the Judiciary Act of 1784 and later Federal statutes, applies to any proceeding in a court of justice in which the plaintiff pursues in such court the remedy which the law affords him." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3 (2d ed. 1899).

“ ‘Action,’ in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.” UCC § 1-201(b)(1).

action at law.A civil suit stating a legal cause of action and seeking only a legal remedy. See suit at law and suit in equity under SUIT.

action de die in diem (dee dI-ee in dI-em). [Law Latin “from day to day”] Hist. 1.An action occurring from day to day; a continuing right of action. 2. An action for trespass for each day that an injury continues.

“That trespass by way of personal entry is a continuing injury, lasting as long as the personal presence of the wrongdoer, and giving rise to actions de die in diem so long as it lasts, is sufficiently obvious.” R.F.V. Heuston, *Salmond on the Law of Torts* 42 (17th ed. 1977).

action de in rem verso (dee in rem v<<schwa>>r-soh). [Latin “action for money applied to (the defendant's) advantage”] 1.Roman & civil law. An action for unjust enrichment, in which the plaintiff must show that an enrichment was bestowed, that the enrichment caused an impoverishment, that there is no justification for the enrichment and impoverishment, and that the plaintiff has no other adequate remedy at law, including no remedy under an express or implied contract. 2.Roman law. An action brought against a paterfamilias or a slaveowner who benefited from the transaction of a child or slave. — Also termed (in both senses) *actio de in rem verso*.

action en declaration de simulation.Louisiana law. An action to void a contract. See simulated contract under CONTRACT.

action ex contractu (eks k<<schwa>>n-trak-t[y]oo). A personal action arising out of a contract. [Cases: Action 27. C.J.S. Actions § 85.]

“Actions ex contractu were somewhat illogically classified thus: covenant, debt, assumpsit, detinue, and account. The action of covenant lay where the party claimed damages for a breach of contract or promise under seal. The writ of debt lay for the recovery of a debt; that is, a liquidated or certain sum of money alleged to be due from defendant to plaintiff. The writ of detinue was the ancient remedy where the plaintiff claimed the specific recovery of goods, chattels, deeds, or writings detained from him. This remedy fell into disuse by reason of the unsatisfactory mode of trial of ‘wager of law,’ which the defendant could claim; and recourse was had to the action of replevin. In the American States an action of replevin founded upon statute provisions is almost universally the remedy for the recovery of specific personal property.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

action ex delicto (eks d<<schwa>>-lik-toh). A personal action arising out of a tort. [Cases:

Action 27. C.J.S. Actions § 85.]

“The actions ex delicto were originally the action of trespass and the action of replevin.”  
Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

action for money had and received. At common law, an action by which the plaintiff could recover money paid to the defendant, the money usu. being recoverable because (1) the money had been paid by mistake or under compulsion, or (2) the consideration was insufficient. [Cases: Implied and Constructive Contracts 10–25. C.J.S. Implied and Constructive Contracts §§ 11–23.]

“The action for money had and received lay to recover money which the plaintiff had paid to the defendant, on the ground that it had been paid under a mistake or compulsion, or for a consideration which had wholly failed. By this action the plaintiff could also recover money which the defendant had received from a third party, as when he was accountable or had attorned to the plaintiff in respect of the money, or the money formed part of the fruits of an office of the plaintiff which the defendant had usurped.” Robert Goff & Gareth Jones, *The Law of Restitution* 3 (3d ed. 1986).

action for money paid. At common law, an action by which the plaintiff could recover money paid to a third party — not to the defendant — in circumstances in which the defendant had benefited. [Cases: Implied and Constructive Contracts 6. C.J.S. Implied and Constructive Contracts § 8.]

“The action for money paid was the appropriate action when the plaintiff's claim was in respect of money paid, not to the defendant, but to a third party, from which the defendant had derived a benefit. Historically, the plaintiff had to show that the payment was made at the defendant's request; but we shall see that the law was prepared to ‘imply’ such a request on certain occasions, in particular where the payment was made under compulsion of law or, in limited circumstances, in the course of intervention in an emergency on the defendant's behalf, which in this book we shall call necessitous intervention.” Robert Goff & Gareth Jones, *The Law of Restitution* 3 (3d ed. 1986).

action for pointing. Hist. A creditor's action to obtain sequestration of the land rents and goods of the debtor to satisfy the debt or enforce a distress.

action for the loss of services. Hist. A husband's lawsuit against one who has taken away, imprisoned, or physically harmed his wife in circumstances in which (1) the act is wrongful to the wife, and (2) the husband is deprived of her society or services. [Cases: Husband and Wife 209(3).]

action for the recovery of land. See EJECTMENT.

action in equity. An action that seeks equitable relief, such as an injunction or specific performance, as opposed to damages. See suit in equity under SUIT. [Cases: Action 21. C.J.S. Actions § 124.]

action in personam (in p<<schwa>>r-soh-n<<schwa>>m). 1. An action brought against a

person rather than property. • An in personam judgment is binding on the judgment debtor and can be enforced against all the property of the judgment debtor. 2. An action in which the named defendant is a natural or legal person. — Also termed personal action; (in Roman and civil law) *actio in personam*; *actio personalis*. Pl. *actiones in personam*; *actiones personales*. See IN PERSONAM. [Cases: Action 16. C.J.S. Actions §§ 10–12, 66, 69, 71–72, 74–77.]

action in rem (in rem). 1. An action determining the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property; a real action. [Cases: Action 16. C.J.S. Actions §§ 10–12, 66, 69, 71–72, 74–77.] 2. Louisiana law. An action brought for the protection of possession, ownership, or other real rights in immovable property. La. Civ. Code arts. 3651 et seq. 3. Louisiana law. An action for the recovery of possession of immovable property. La. Civ. Code art. 526. — Also termed (in Roman law) *actio in rem*; *actio realis*; real action. Pl. *actiones in rem*. See IN REM. 4. An action in which the named defendant is real or personal property.

action of account. See ACCOUNTING(3).

action of assize. Hist. A real action by which the plaintiff proves title to land merely by showing an ancestor's possession. See ASSIZE.

action of book debt. See ACCOUNTING(4).

action of declarator. Scots law. An action brought in the Court of Session for the purpose of establishing a legal status or right. — Also termed declarator; action for declaratory.

action of ejectment. See EJECTMENT(3).

action of reprobator. See REPROBATOR.

action on account. See ACCOUNTING(4).

action on expenditure. An action for payment of the principal debt by a personal surety.

action on the case. See trespass on the case under TRESPASS.

action per quod servitium amisit (p<<schwa>>r kwod s<<schwa>>r-vish-ee-<< schwa>>m <<schwa>>-mI-sit). [Latin] Hist. An action for the loss of a servant's services.

action quasi in rem (kway-sI in remorkway-zI). An action brought against the defendant personally, with jurisdiction based on an interest in property, the objective being to deal with the particular property or to subject the property to the discharge of the claims asserted. See quasi in rem under IN REM. [Cases: Action 16. C.J.S. Actions §§ 10–12, 66, 69, 71–72, 74–77.]

action to quiet title. A proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it. — Also termed quiet-title action. [Cases: Quieting Title 1. C.J.S. Quieting Title §§ 1, 3, 6.]

action to review judgment. Rare. 1. MOTION FOR NEW TRIAL. 2. A request for judicial review of a nonjudicial body's decision, such as an administrative ruling on a workers'-compensation claim. • The grounds for review are usu. similar to those for a new trial,

esp. patent errors of law and new evidence.

amicable action. See test case (1) under CASE.

civil action. An action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation. — Also termed (if brought by a private person) private action; (if brought by a government) public action. [Cases: Action 1. C.J.S. Actions §§ 2–9, 11, 17, 21, 32–33, 36.]

“The code of New York, as originally adopted, declared, ‘the distinctions between actions at law and suits in equity, and the forms of all such actions and heretofore existing, are abolished; and there shall be in this State hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.’ With slight verbal changes the above provision has been enacted in most of the States and Territories which have adopted the reformed procedure.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 106 (2d ed. 1899).

class action. See CLASS ACTION.

collusive action. An action between two parties who have no actual controversy, being merely for the purpose of determining a legal question or receiving a precedent that might prove favorable in related litigation. — Also termed fictional action. [Cases: Action 8. C.J.S. Actions §§ 34–35, 37.]

common-law action. An action governed by common law, rather than statutory, equitable, or civil law. [Cases: Action 21. C.J.S. Actions § 124.]

criminal action. An action instituted by the government to punish offenses against the public. [Cases: Action 18. C.J.S. Actions § 68.]

cross-action. An action brought by the defendant against the plaintiff based on the same subject matter as the plaintiff's action. See CROSS-CLAIM.

derivative action. See DERIVATIVE ACTION.

direct action. See DIRECT ACTION.

fictional action. See collusive action.

fictitious action. An action, usu. unethical, brought solely to obtain a judicial opinion on an issue of fact or law, rather than for the disposition of a controversy. [Cases: Action 8. C.J.S. Actions §§ 34–35, 37.]

hypothecary action (hI-poth-*<<schwa>>*-ker-ee). Roman & civil law. An action for the enforcement of a mortgage (hypotheca); a lawsuit to enforce a creditor's claims under a hypothec or hypothecation. — Also termed *actio hypothecaria*.

innominate action (i-nom-i-n-*<<schwa>>*t). An action that has no special name by which it is known. Cf. nominate action.

joint action. 1. An action brought by two or more plaintiffs. 2. An action brought against two

or more defendants. [Cases: Action 50(4.1).]

**local action.**An action that can be brought only in the jurisdiction where the cause of action arose, as when the action's subject matter is a piece of real property. [Cases: Courts 7. C.J.S. Courts §§ 20–22, 37.]

**matrimonial action.**An action relating to the state of marriage, such as an action for separation, annulment, or divorce. [Cases: Divorce 1; Marriage 57. C.J.S. Divorce §§ 2, 5, 97–98; Marriage § 64.]

**mixed action.**An action that has some characteristics of both a real action and a personal action. [Cases: Action 30. C.J.S. Actions §§ 78–83.]

“In early times the only mixed actions were those for the partition of lands, for which a writ was provided in the common-law courts. The remedy was further enlarged by the statute of 31 Hen. VII c. 1, and 32 Hen. VIII c. 32, which gave compulsory partition, by writ at common law. These statutes formed the basis of partition in the American States; but in England and here courts of Chancery have been found most convenient, and their procedure most favorable for the division of estates in land. The statutes at the present time, in most of the States, prescribe a procedure which is quite similar to that in equity practice.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 10–11 (2d ed. 1899).

**nominate action** (nom-i-n<<schwa>>t). An action that is known by a name, such as a confessory action, a petitory action, or a possessory action. Cf. innominate action.

**nonpersonal action.**An action that proceeds within some category of territorial jurisdiction other than in personam — that is, jurisdiction in rem, quasi in rem, or over status.

**penal action.** 1. A criminal prosecution. [Cases: Action 18. C.J.S. Actions § 68.] 2. A civil proceeding in which either the state or a common informer sues to recover a penalty from a defendant who has violated a statute. • Although civil in nature, a penal action resembles a criminal proceeding because the result of a successful action is a monetary penalty intended, like a fine, to punish the defendant. See COMMON INFORMER. [Cases: Action 19. C.J.S. Actions § 70.]

“At one time it was a frequent practice, when it was desired to repress some type of conduct thought to be harmful, to do so by the machinery of the civil rather than of the criminal law. The means so chosen was called a penal action, as being brought for the recovery of a penalty; and it might be brought, according to the wording of the particular statute creating the penal action, either by the Attorney-General on behalf of the state, or by a common informer on his own account. A common informer was anyone who should first sue the offender for the penalty. Penal actions are still possible in a few cases, and their existence renders invalid several suggested distinctions between civil wrongs and crimes.” John Salmond, *Jurisprudence* 107 (Glanville L. Williams ed., 10th ed. 1947).

“For in ‘penal actions,’ unless the statute expressly authorizes private persons to act as informers, the State alone can sue and recover the penalty; and yet there is full authority for



ranking such suits by it as merely civil proceedings.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 538 (16th ed. 1952).

3. A civil lawsuit by an aggrieved party seeking recovery of a statutory fine or a penalty, such as punitive damages. [Cases: Action 19. C.J.S. Actions § 70.]

“[T]here exists a well-known class of proceedings called ‘penal actions,’ by which pecuniary penalties can be recovered — in some cases by any person who will sue for them — from the doers of various prohibited acts; these acts being thus prohibited, and visited with penalties, solely on account of their tendency to cause evil to the community at large, ‘considered as a community.’ For example, a person who, in advertising a reward for the return of lost property, adds that ‘no questions will be asked’ incurs by the Larceny Act, 1861, a penalty of £50 recoverable by anyone who will sue for it.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 533–34 (16th ed. 1952).

personal action. 1. An action brought for the recovery of debts, personal property, or damages arising from any cause. — Also termed remedial action. [Cases: Action 30. C.J.S. Actions §§ 78–83.]

“Personal actions are subdivided into those brought for the recovery of a debt or of damages for the breach of a contract, or for tort, for some injury to the person or to relative rights or to personal or real property. The most common of these actions are debt, covenant, assumpsit, detinue, trespass, trespass on the case, trover, and replevin.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 34, at 65 (Henry Winthrop Ballantine ed., 3d ed. 1923).

2. See action in personam.

petitory action (pet-*<<schwa>>-tor-ee*). 1. Roman & civil law. An action to establish and enforce title to property independently of the right to possession. 2. Civil law. An action for the recognition of ownership or other real right in immovable (or sometimes movable) property. • In civil-law systems, the petitory action (revendication) is a much broader and more effective remedy than the rei-vindicatio, the Roman prototype. This action is based on, and tends to protect, real rights, that is, ownership and its dismemberments. It is therefore a real action, distinguishable from personal actions based on (and tending to protect) personal rights. Generally, the petitory action is available for the protection of the ownership of both movables and immovables. In Louisiana, however, the petitory action is for the recognition of ownership or other real right in immovable property, brought by a person who is not in possession of it. La. Code Civ. Proc. art. 3651. An action for the recognition of such a right in movable property is an innominate real action, known as a revendicatory action. — Also termed petitory suit; petitorium; revendication. [Cases: Real Actions 6.]

plenary action (plee-n*<<schwa>>-ree or*plen-). A full hearing or trial on the merits, as opposed to a summary proceeding. Cf. summary proceeding under PROCEEDING.

possessory action (p*<<schwa>>-zes-<<schwa>>-ree*). 1. An action to obtain, recover, or maintain possession of property but not title to it, such as an action to evict a nonpaying tenant. — Also termed possessorium. [Cases: Ejectment 17; Replevin 1. C.J.S. Ejectment § 24; Replevin §§ 2–7.]

“The possessory action is available for the protection of the possession of corporeal immovables as well as for the protection of the quasi-possession or real rights in immovable property. It is distinguished from the petitory action which is available for the recognition and enforcement of ownership or of real rights in another's immovable, such as a usufruct, limited personal servitudes, and predial servitudes.” A.N. Yiannopoulos, *Civil Law Property* § 333, at 653 (4th ed. 2001).

2.Maritime law. An action brought to recover possession of a ship under a claim of title. [Cases: Admiralty 8. C.J.S. Admiralty §§ 59–61.]

private action.See civil action.

public action.See civil action.

real action. 1. An action brought for the recovery of land or other real property; specif., an action to recover the possession of a freehold estate in real property, or seisin. 2.Civil law. An action based on, and tending to protect, a real right, namely, the right of ownership and its dismemberments. • It is distinguishable from a personal action, which is based on (and tends to protect) a personal right. 3.Louisiana law. An action brought for the protection of possession, ownership, or other real rights in immovable property.La. Code Civ. Proc. arts. 3651 et seq. — Also termed action in rem; actio in rem; actio realis. See SEISIN. [Cases: Real Actions 1–6.]

“If the question be asked why it was that a large part of the really English law which Bracton undertook to expound is found in connection with the subject of real actions, while in Blackstone's treatise only the personal actions are deemed worthy of attention, the answer must be that the former were dying out. When Chitty wrote (1808) the old real actions were practically obsolete, and in the succeeding generation such vestiges of them as remained were abolished by statute.” Hannis Taylor, *The Science of Jurisprudence* 574 (1908).

“The principal real actions formerly in use were (1) the writs of right; (2) the writs of entry; (3) the possessory assizes, such as novel disseisin and mort d'ancestor. Real actions are those in which the demandant seeks to recover seisin from one called a tenant, because he holds the land. They are real actions at common law because the judgment is in rem and awards the seisin or possession.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 32, at 63 (Henry Winthrop Ballantine ed., 3d ed. 1923).

redhibitory action.Civil law. An action brought to void a sale of a thing having a defect that renders it either useless or so flawed that the buyer would not have bought it in the first place. See REDHIBITION. [Cases: Sales 113; Vendor and Purchaser 123. C.J.S. Sales §§ 123, 128–129, 199; Vendor and Purchaser §§ 300–305.]

remedial action.1.REMEDIAL ACTION. 2. See personal action (1).

representative action.1.CLASS ACTION; 2.DERIVATIVE ACTION(1).

rescissory action.Scots law. An action to set aside a deed.

revendicatory action (ree-ven-di-k<<schwa>>-tor-ee). See petitory action.

separate action. 1. An action brought alone by each of several complainants who are all involved in the same transaction but either cannot legally join the suit or, not being required to join, choose not to join it. 2. One of several distinct actions brought by a single plaintiff against each of two or more parties who are all liable to a plaintiff with respect to the same subject matter. — Also termed several action.

several action. See separate action.

sham action. An objectively baseless lawsuit the primary purpose of which is to hinder or interfere with a competitor's business relationships. See *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 113 S.Ct. 1920 (1993). — Also termed sham lawsuit; sham suit. See SHAM EXCEPTION.

statutory action. An action governed by statutory law rather than equitable, civil, or common law. [Cases: Action 3. C.J.S. Actions §§ 22–25, 28.]

test action. See test case (2) under CASE.

third-party action. An action brought as part of a lawsuit already pending but distinct from the main claim, whereby a defendant sues an entity not sued by the plaintiff when that entity may be liable to the defendant for all or part of the plaintiff's claim. • A common example is an action for indemnity or contribution. [Cases: Parties 50. C.J.S. Parties §§ 128–131, 142, 151.]

transitory action. An action that can be brought in any venue where the defendant can be personally served with process. [Cases: Venue 4. C.J.S. Venue §§ 8–9.]

“Transitory actions are universally founded on the supposed violation of rights which, in contemplation of law, have no locality. They are personal actions, that is, they are brought for the enforcement of purely personal rights or obligations. If the transaction on which the action is founded could have taken place anywhere, the action is generally regarded as transitory; but if the transaction could only have happened in a particular place ... the action is local. Some authorities, considering the effect of the distinction, define transitory actions as actions which may be tried wherever defendant may be found and served.” 92 C.J.S. Venue § 8, at 678–79 (1955).

Action. A former independent federal agency that administered various volunteer-services programs including Foster Grandparents, Retired Senior Volunteers, Senior Companions, Volunteers in Service to America, and Student Community Service Projects. • Its functions were transferred to the Corporation for National and Community Service in 1995. See CORPORATION FOR NATIONAL AND COMMUNITY SERVICE .

#### ACTION, CAUSE OF

action, cause of. See CAUSE OF ACTION.

#### ACTION, FORM OF

action, form of. See FORM OF ACTION.

#### ACTION, RIGHT OF

action, right of. See RIGHT OF ACTION.

#### ACTIONABLE

actionable, adj. Furnishing the legal ground for a lawsuit or other legal action <intentional interference with contractual relations is an actionable tort>.

actionable per quod (p<<schwa>>r kwod). (Of potentially defamatory words) not inherently defamatory and therefore requiring allegation and proof of special damages. • For example, if the defendant says, "The plaintiff is crazy," the utterance is actionable per quod. That is, the plaintiff must prove, in addition to the utterance, that the defendant intended the words to mean that the plaintiff was mentally impaired or deficient in business or professional capacity, and that these words caused the plaintiff to suffer special damages. See PER QUOD.

actionable per se (p<<schwa>>r say). (Of defamatory words) legally and conclusively presumed defamatory. • In the law of defamation, words actionable per se are inherently libelous or slanderous. For example, if a person says of a fiduciary, "That person embezzles client funds," the utterance is actionable per se. The plaintiff does not have to allege or prove special damages. See PER SE.

"The terminology 'actionable per se' has proven treacherous, in that it has invited confusion with another doctrine which obtains in defamation cases. This is the doctrine which distinguishes between words (such as, 'You are a thief') which convey a defamatory meaning on their face, and, on the other hand, words of veiled detraction whose offense is apparent only when the context and circumstances are revealed. The former are sometimes said to be defamatory 'per se' or slanderous 'per se' or libelous 'per se,' whereas the latter, to be properly pleaded, must have an accompanying 'innuendo' or explanation. Clearly this requirement has no relationship to the other rule, that certain slanders are and others are not actionable without a showing of special damage, but the use of the phrase 'per se' in both connections has produced confusion, and we find many American courts adopting the practice of requiring, in cases where the defamation, whether slander or libel, must be explained by an 'innuendo' to reveal its defamatory meaning, that special damages be also pleaded." Charles T. McCormick, Handbook on the Law of Damages § 113, at 417 (1935).

#### ACTIONABLE NEGLIGENCE

actionable negligence. See NEGLIGENCE(1).

#### ACTIONABLE NUISANCE

actionable nuisance. See NUISANCE(3).

#### ACTIONABLE PER QUOD

actionable per quod. See ACTIONABLE.

#### ACTIONABLE PER SE

actionable per se. See ACTIONABLE.

#### ACTIONABLE WORD

actionable word. A term that is defamatory in itself. See libel per se under LIBEL. [Cases: Libel and Slander 6–14. C.J.S. Libel and Slander; Injurious Falsehood §§ 2, 5, 10–12, 17–42, 104.]

#### ACTION AGENDA

action agenda. See action calendar under CALENDAR(4).

#### ACTIONARE

actionare (ak-shee-*<<schwa>>*-nair-ee), vb. [Law Latin] To bring an action; to sue.

#### ACTION AT LAW

action at law. See ACTION(4).

#### ACTION CALENDAR

action calendar. See CALENDAR(4).

#### ACTIONE DIE IN DIEM

action de die in diem. See ACTION(4).

#### ACTIONE IN REM VERSO

action de in rem verso. See ACTION(4).

#### ACTIO NEGATIVA

actio negativa. See actio negatoria under ACTIO.

#### ACTIO NEGATORIA

actio negatoria. See ACTIO.

#### ACTIO NEGOTIORUM GESTORUM

actio negotiorum gestorum. See ACTIO.

#### ACTIONEM NON HABERE DEBET

actionem non habere debet. See ACTIO NON.

#### ACTION EN DECLARATION DE SIMULATION

action en declaration de simulation. See ACTION(4).

#### ACTIONES HONORARIAE

actiones honorariae (ak-shee-oh-nee-z [h]on-*<<schwa>>*-rair-ee-I). A praetorian action; a class of equitable actions introduced by the praetors to prevent injustices.

#### ACTIONES LEGIS

actiones legis. See LEGIS ACTIO.

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**ACTIONES NOMINATAE**

actiones nominatae (ak-shee-oh-nee-z nom-<<schwa>>-nay-tee), n. pl.[Latin “named actions”]  
Hist. Actions for which the Chancery had well-established forms. See CASU CONSIMILI.

**ACTIONES POENALES**

actiones poenales (ak-shee-oh-nee-z pee-nay-lee-z), n. pl.[Latin “penal actions”] See actio poenalis under ACTIO.

**ACTION EX CONTRACTU**

action ex contractu.See ACTION(4).

**ACTION EX DELICTO**

action ex delicto.See ACTION(4).

**ACTION FOR DECLARATOR**

action for declarator.See DECLARATOR.

**ACTION FOR DECLARATORY**

action for declaratory.See action of declarator under ACTION(4).

**ACTION FOR MONEY HAD AND RECEIVED**

action for money had and received.See ACTION(4).

**ACTION FOR MONEY PAID**

action for money paid.See ACTION(4).

**ACTION FOR POINDING**

action for poinding.See ACTION(4).

**ACTION FOR THE LOSS OF SERVICES**

action for the loss of services.See ACTION(4).

**ACTION FOR THE RECOVERY OF LAND****ACTION IN EQUITY**

action in equity.1.ACTION. 2. See suit in equity under SUIT.

**ACTION IN PERSONAM**

action in personam.See ACTION(4).

**ACTION IN REM**

action in rem.See ACTION(4).

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**ACTION OF ACCOUNT****ACTION OF ASSIZE**

action of assize. See ACTION(4).

**ACTION OF BOOK DEBT****ACTION OF DEBT**

action of debt. See CONDICTION.

**ACTION OF DECLARATOR**

action of declarator. See ACTION(4).

**ACTION OF EJECTMENT****ACTION OF REPROBATOR****ACTIO NON**

actio non (ak-shee-oh non). [Latin "an action not"] Hist. A declaration in a special plea denying the plaintiff's right to maintain the action. • The full phrase was *actionem non habere debet* (ought not to have or maintain the action). See special plea under PLEA.

**ACTION ON ACCOUNT****ACTIO NON ACCREVIT INFRA SEX ANNOS**

actio non accrevit infra sex annos. See ACTIO.

**ACTION ON DECISION**

action on decision. A legal memorandum from attorneys in the Internal Revenue Service's litigation division to the Service's Chief Counsel, containing advice on whether the Service should acquiesce, appeal, or take some other action regarding a court's decision that is unfavorable to the Service. — Abbr. AOD.

**ACTION ON EXPENDITURE**

action on expenditure. See ACTION(4).

**ACTION ON THE CASE****ACTIO NON ULTERIUS**

actio non ulterius. See ACTIO.

**ACTIO NOXALIS**

actio noxalis (ak-shee-oh nok-say-lis), n. See NOXAL ACTION.

**ACTION PER QUOD SERVITIUM AMISIT**

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action per quod servitium amisit. See ACTION(4).

**ACTION QUASI IN REM**

action quasi in rem. See ACTION(4).

**ACTION TO QUIET TITLE**

action to quiet title. See ACTION(4).

**ACTION TO REVIEW JUDGMENT**

action to review judgment. See ACTION(4).

**ACTIO PAULIANA**

actio Pauliana. See ACTIO.

**ACTIO PERPETUA**

actio perpetua. See ACTIO.

**ACTIO PERSONALIS**

actio personalis. See ACTIO.

**ACTIO PIGNERATITIA**

actio pignoratitia. See ACTIO.

**ACTIO POENALIS**

actio poenalis. See ACTIO.

**ACTIO POPULARIS**

actio popularis. See ACTIO.

**ACTIO PRAEJUDICIALIS**

actio praejudicialis. See ACTIO.

**ACTIO PRAETORIA**

actio praetoria. See ACTIO.

**ACTIO PRO SOCIO**

actio pro socio. See ACTIO.

**ACTIO PUBLICIANA**

actio Publiciana. See ACTIO.

**ACTIO PUBLICIANA IN REM**

actio Publiciana in rem. See actio Publiciana under ACTIO.



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**ACTIO QUANTI MINORIS**

actio quanti minoris. See ACTIO.

**ACTIO QUOD JUSSU**

actio quod jussu. See ACTIO.

**ACTIO QUOD METUS CAUSA**

actio quod metus causa. See ACTIO.

**ACTIO REALIS**

actio realis. See ACTIO.

**ACTIO REDHIBITORIA**

actio redhibitoria. See ACTIO.

**ACTIO REI PERSECUTORIA**

actio rei persecutoria. See ACTIO.

**ACTIO RERUM AMOTARUM**

actio rerum amotarum. See ACTIO.

**ACTIO RESCISSORIA**

actio rescissoria. See ACTIO.

**ACTIO SERVIANA**

actio serviana. See ACTIO.

**ACTIO SERVI CORRUPTI**

actio servi corrupti. See ACTIO.

**ACTIO STRICTI JURIS**

actio stricti juris. See ACTIO.

**ACTIO TEMPORALIS**

actio temporalis. See ACTIO.

**ACTIO TUTELAE**

actio tutelae. See ACTIO.

**ACTIO UTILIS**

actio utilis. See ACTIO.

**ACTIO VENDITI**

actio venditi. See ACTIO.

ACTIO VI BONORUM RAPTORUM

actio vi bonorum raptorum. See ACTIO.

ACTIO VULGARIS

actio vulgaris. See ACTIO.

ACTIVE ADOPTION-REGISTRY STATUTE

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

ACTIVE BREACH OF CONTRACT

active breach of contract. See BREACH OF CONTRACT.

ACTIVE CASE

active case. See CASE.

ACTIVE CONCEALMENT

active concealment. See CONCEALMENT.

ACTIVE CONDUCT

active conduct. See CONDUCT.

ACTIVE-CONTROL-OF-VESSEL DUTY

active-control-of-vessel duty. See ACTIVE-OPERATIONS DUTY.

ACTIVE DEBT

active debt. See DEBT.

ACTIVE DUTY

active duty. 1. Military law. The full-time status of being in any of the U.S. armed forces. 2. See positive duty under DUTY(1).

ACTIVE EUTHANASIA

active euthanasia. See EUTHANASIA.

ACTIVE INCOME

active income. See INCOME.

ACTIVE INDUCEMENT

active inducement. See INDUCEMENT.

ACTIVE NEGLIGENCE

active negligence. See NEGLIGENCE.

#### ACTIVE-OPERATIONS DUTY

active-operations duty. Maritime law. A shipowner's obligation to provide safe working conditions, in the work areas that it controls, for the longshoremen who are loading or unloading the ship. — Also termed active-control-of-vessel duty. Cf. TURNOVER DUTY; INTERVENTION DUTY. [Cases: Shipping 84(3.2).]

#### ACTIVE SUPERVISION

active supervision. Antitrust. Under the test for determining whether a private entity may claim a state-action exemption from the antitrust laws, the right of the state to review the entity's anticompetitive acts and to disprove those acts that do not promote state policy. See STATE-ACTION DOCTRINE; MIDCAL TEST. [Cases: Monopolies 12(15.5). C.J.S. Monopolies §§ 136, 138–143.]

“The active supervision requirement stems from the recognition that where a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State. The requirement is designed to ensure that the state-action doctrine will shelter only the particular anticompetitive acts that, in the judgment of the State, actually further state regulatory policies. To accomplish this purpose, the active supervision requirement mandates that the State exercise ultimate control over the challenged anticompetitive conduct.” *Patrick v. Burget*, 486 U.S. 94, 100–01, 108 S.Ct. 1658, 1663 (1988).

#### ACTIVE TRUST

active trust. See TRUST.

#### ACTIVE WASTE

active waste. See commissive waste under WASTE(1).

#### ACTIVITY

activity. 1. The collective acts of one person or of two or more people engaged in a common enterprise. 2. MARKET VOLUME.

#### ACTIVITY INCIDENT TO SERVICE

activity incident to service. An act undertaken by a member of the armed forces as a part of a military operation or as a result of the actor's status as a member of the military. • For example, if a member of the military takes advantage of that status by flying home on a military aircraft, the flight is activity incident to service, and a claim against the government for any injuries received may be barred under the *Feres* doctrine. See FERES DOCTRINE.

#### ACTO

acto (ahk-toh), n. Spanish law. 1. ACT(1). 2. ACT(2). 3. An action or lawsuit.

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**ACT OF ADJOURNAL**

Act of Adjournal.Scots law. A regulation issued by the High Court of Justiciary to regulate procedure both in that court and in the lower criminal courts.

**ACT OF ASSEMBLY**

Act of Assembly.Scots law. A piece of legislation passed by the General Assembly of the Church of Scotland for governing the affairs of that church and its members.

**ACT OF ATTAINDER**

act of attainder.See BILL OF ATTAINDER.

**ACT OF BANKRUPTCY**

act of bankruptcy.An event, such as a debtor's fraudulent conveyance of property, that triggers an involuntary bankruptcy proceeding against a debtor. • The 1978 Bankruptcy Reform Act abolished this requirement as a condition to an involuntary bankruptcy proceeding. [Cases: Bankruptcy 2281. C.J.S. Bankruptcy § 56.]

**ACT OF COMMISSION**

act of commission.See ACT.

**ACT OF CONGRESS**

act of Congress.A law that is formally enacted in accordance with the legislative power granted to Congress by the U.S. Constitution. • To become a law, or an act of Congress, a bill or resolution must be passed by a majority of the members of both the House of Representatives and the Senate. Bills or resolutions may generally be introduced in either chamber, except that bills for generating revenue must be introduced in the House of Representatives. When a bill or resolution is introduced in a chamber, it is usu. assigned to a committee. If it is passed by the committee, it is reported to the full chamber. If it passes in the full chamber, it is reported to the other chamber, which then usu. assigns it to a committee in that chamber. If it passes by majority votes of the committee and full body in that chamber, it is reported back to the originating chamber. If its terms have changed in the second chamber, it is submitted to a conference committee, consisting of members from both chambers, to work out a compromise. When the bill or resolution is passed, with the same terms, by both chambers, it is signed by the Speaker of the House and the President of the Senate (usu. the President Pro Tempore), and is presented to the President of the United States for signature. If the President signs it or fails to return it to Congress within ten days, the bill or resolution becomes law. But if the President vetoes the bill or resolution, it must be passed by a two-thirds majority of the House of Representatives and the Senate to become law. U.S. Const. art. I, § 7; 3 The Guide to American Law 165–66 (West 1983).

**ACT OF COURT**

act of court. 1. See judicial act under ACT. 2.Scots law. A memorandum setting forth the proceedings in a lawsuit. 3.Scots law. A rule made by a sheriff regulating proceedings within the

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sheriffalty.

#### ACT OF GOD

act of God. An overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado. • The definition has been statutorily broadened to include all natural phenomena that are exceptional, inevitable, and irresistible, the effects of which could not be prevented or avoided by the exercise of due care or foresight. 42 USCA § 9601(1). — Also termed act of nature; act of providence; superior force; vis major; irresistible superhuman force; vis divina. Cf. FORCE MAJEURE; unavoidable accident under ACCIDENT. [Cases: Contracts 303(3), 309(1). C.J.S. Contracts §§ 520–524.]

“Act of God may be defined as an operation of natural forces so unexpected that no human foresight or skill could reasonably be expected to anticipate it. It has been suggested that it also has the wider meaning of ‘any event which could not have been prevented by reasonable care on the part of anyone.’ This nearly identifies it with inevitable accident, but, however desirable this may be for scientific arrangement of the law, there is no sufficient authority to back this view.” P.H. Winfield, *A Textbook of the Law of Tort* § 16, at 45–46 (5th ed. 1950).

“As a technical term, ‘act of God’ is untheological and infelicitous. It is an operation of ‘natural forces’ and this is apt to be confusing in that it might imply positive intervention of the deity. This (at any rate in common understanding) is apparent in exceptionally severe snowfalls, thunderstorms and gales. But a layman would hardly describe the gnawing of a rat as an act of God, and yet the lawyer may, in some circumstances, style it such. The fact is that in law the essence of an act of God is not so much a positive intervention of the deity as a process of nature not due to the act of man, and it is this negative side which needs emphasis.” *Id.* at 47.

“[A]ll natural agencies, as opposed to human activities, constitute acts of God, and not merely those which attain an extraordinary degree of violence or are of very unusual occurrence. The distinction is one of kind and not one of degree. The violence or rarity of the event is relevant only in considering whether it could or could not have been prevented by reasonable care; if it could not, then it is an act of God which will relieve from liability, howsoever trivial or common its cause may have been. If this be correct, then the unpredictable nature of the occurrence will go only to show that the act of God in question was one which the defendant was under no duty to foresee or provide against. It is only in such a case that the act of God will provide a defence.” R.F.V. Heuston, *Salmond on the Law of Torts* 330 (17th ed. 1977).

#### ACT OF GRACE

act of grace. An act of clemency; esp., such an act performed at the beginning of a monarch's reign or at some other significant occasion.

#### ACT OF HONOR

act of honor. Commercial law. A transaction, memorialized in an instrument prepared by a notary public, evidencing a third person's agreement to accept, for the credit of one or more of the parties, a bill that has been protested. • The UCC eliminated this type of transaction.

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**ACT OF HOSTILITY**

act of hostility. An event that may be considered an adequate cause for war; *CASUS BELLI*.  
— Also termed hostile act.

**ACT OF INDEMNITY**

act of indemnity. 1. A statute that relieves specified persons, esp. government officials, from some penalty to which they might be subject as a result of having exceeded their powers or having otherwise acted illegally. 2. A statute that compensates persons for damage incurred as a result of some public measure or government service.

**ACT OF LAW**

act of law. 1. See act of the law under *ACT*; 2. *LEGAL ACT*.

**ACT OF LEGISLATION**

act of legislation. 1. A formal change in the law that existed previously. 2. A statute.

**ACT OF NATURE**

act of nature. 1. *ACT OF GOD*. 2. *VIS MAJOR*.

**ACT OF OMISSION**

act of omission. See negative act under *ACT*.

**ACT OF PARLIAMENT**

act of Parliament. A law made by the British sovereign, with the advice and consent of the lords and the commons; a British statute.

**ACT OF PARLIAMENT OF SCOTLAND**

act of Parliament of Scotland. 1. A statute passed by the Parliament of Scotland between its creation in the 14th century and 1707. 2. *ACT OF THE SCOTTISH PARLIAMENT*.

**ACT OF PETITION**

act of petition. Hist. A summary proceeding in which litigants provide brief statements supported by affidavit. • This procedure was used in the English High Court of Admiralty.

**ACT OF POSSESSION**

act of possession. 1. The exercise of physical control over a corporeal thing, movable or immovable, with the intent to own it. 2. Conduct indicating an intent to claim property as one's own; esp., conduct that supports a claim of adverse possession. [Cases: Adverse Possession 14–26. C.J.S. Adverse Possession §§ 30–47.]

**ACT OF PROVIDENCE**

act of providence. 1. *ACT OF GOD*. 2. *VIS MAJOR*.

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**ACT OF SALE**

act of sale. An official record of a sale of property; esp., a document drawn up by a notary, signed by the parties, and attested by witnesses. [Cases: Sales 28. C.J.S. Sales §§ 68–73.]

**ACT OF SEDERUNT**

act of sederunt (s<<schwa>>-deer-<<schwa>>nt). Scots law. A regulation issued by the Court of Session to regulate procedure in that court or in the lower civil courts.

**ACT OF SETTLEMENT**

Act of Settlement. Hist. An act of Parliament (12 & 13 Will. 3, ch. 2 (1701)) that resolved the question of royal succession unsettled after the Glorious Revolution of 1688. • The question was resolved by limiting the Crown to Protestant members of the House of Hanover. The Act also provided that the sovereign must be a member of the Church of England, and it established that judges would hold office during good behavior rather than at the will of the sovereign.

**ACT-OF-STATE DOCTRINE**

act-of-state doctrine. Int'l law. The principle that no nation can judge the legality of a foreign country's sovereign acts within its own territory. • As originally formulated by the U.S. Supreme Court in 1897, the doctrine provides that “the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.” *Underhill v. Hernandez*, 168 U.S. 250, 252, 18 S.Ct. 83, 84 (1897). The Supreme Court later declared that though the act-of-state doctrine is compelled by neither international law nor the Constitution, it has “institutional underpinnings.” *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423, 84 S.Ct. 923, 937 (1964). [Cases: International Law 10.9. C.J.S. International Law § 34.]

**ACT OF SUPREMACY**

Act of Supremacy. Hist. A statute that named the English sovereign as supreme head of the Church of England (26 Hen. 8, ch. 1). • The Act was passed in 1534 during Henry VIII's reign and confirmed in 1559 (1 Eliz., ch. 1) to counteract pro-Catholic legislation enacted during the reign of Mary Tudor. In addition to making the monarch both head of state and head of the church, the Act defined some of the monarch's powers as head of the church, such as the power to issue injunctions relating to ecclesiastical affairs.

**ACT OF THE LAW**

act of the law. See ACT.

**ACT OF THE PARTY**

act of the party. See act in the law under ACT.

**ACT OF THE SCOTTISH PARLIAMENT**

act of the Scottish Parliament. A statute passed by the Parliament of Scotland created by the Scotland Act of 1998. • It is typically cited by year, the letters ASP, and a serial number. — Also

termed act of Parliament of Scotland.

#### ACT OF UNIFORMITY

Act of Uniformity.Hist. Any of several 16th- and 17th-century acts mandating uniform religious practices in England and Ireland; specif., an act requiring the use of the Book of Common Prayer.

#### ACT OF UNION

Act of Union.Any of several acts of Parliament uniting various parts of Great Britain. • The term applies to (1) the Laws in Wales Act (1535), which united Wales with England and made that principality subject to English law, and (2) the Union with Ireland Act (1800), which abolished the Irish Parliament and incorporated Ireland into the United Kingdom of Great Britain and Ireland. It is used loosely in reference to the Union with Scotland in 1707, which was made not by statute but by treaty, approved by separate acts of the parliaments of Scotland and England, which by the treaty dissolved each parliament and created the new state of Great Britain with one parliament, the Parliament of Great Britain.

#### ACTOR

actor. 1. One who acts; a person whose conduct is in question. 2.Archaic. A male plaintiff. 3.Hist. An advocate or pleader; one who acted for another in legal matters. Cf. REUS(1).4.Roman law. (ital.) A person who sues; a claimant. — Also termed (in sense 4) petitor. Pl. (in sense 4) actores.

#### ACTRIX

actrix (ak-triks).Archaic. A female plaintiff.

#### ACTS OF ASSEMBLY

acts of assembly.See SESSION LAWS.

#### ACTUAL

actual,adj. Existing in fact; real <actual malice>. Cf. CONSTRUCTIVE.

#### ACTUAL ABANDONMENT

actual abandonment.See ABANDONMENT(9).

#### ACTUAL AGENCY

actual agency.See AGENCY(1).

#### ACTUAL ALLEGIANCE

actual allegiance.See ALLEGIANCE.

#### ACTUAL ASSENT

actual assent.See ASSENT.



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**ACTUAL AUTHORITY**

actual authority. See AUTHORITY(1).

**ACTUAL BAILMENT**

actual bailment. See BAILMENT.

**ACTUAL BIAS**

actual bias. See BIAS.

**ACTUAL CAPITAL**

actual capital. See CAPITAL.

**ACTUAL CASH VALUE**

actual cash value. See VALUE(2).

**ACTUAL CAUSE**

actual cause. See but-for cause under CAUSE(1).

**ACTUAL CHANGE OF POSSESSION**

actual change of possession. A real, rather than constructive, transfer of ownership. • A creditor of the transferor cannot reach property that has actually changed possession.

**ACTUAL CONTROVERSY**

actual controversy. 1. CONTROVERSY(2), (3).

**ACTUAL DAMAGES**

actual damages. See DAMAGES.

**ACTUAL DELIVERY**

actual delivery. See DELIVERY.

**ACTUAL ESCAPE**

actual escape. See ESCAPE(2).

**ACTUAL EVICTION**

actual eviction. See EVICTION.

**ACTUAL FORCE**

actual force. See FORCE.

**ACTUAL FRAUD**

actual fraud. See FRAUD.

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**ACTUAL-INJURY TRIGGER**

actual-injury trigger. Insurance. The point at which an insured suffers damage or injury (such as the time of an automobile accident), so that there is an occurrence invoking coverage under an insurance policy. — Also termed injury-in-fact trigger. Cf. EXPOSURE THEORY; MANIFESTATION THEORY; TRIPLE TRIGGER .

**ACTUAL INNOCENCE**

actual innocence. See INNOCENCE.

**ACTUAL KNOWLEDGE**

actual knowledge. See KNOWLEDGE.

**ACTUAL LOSS**

actual loss. See LOSS.

**ACTUALLY LITIGATED**

actually litigated. (Of a claim that might be barred by collateral estoppel) properly raised in an earlier lawsuit, submitted to the court for a determination, and determined. • A party is barred by the doctrine of collateral estoppel from relitigating an issue that was actually litigated — usually including by summary judgment but not necessarily by default judgment — in an earlier suit involving the same parties, even if that suit involved different claims. Restatement (Second) of Judgments § 27 cmt. d (1980). [Cases: Judgment 720. C.J.S. Judgments §§ 757, 803, 813.]

**ACTUAL MALICE**

actual malice. See MALICE.

**ACTUAL MARKET VALUE**

actual market value. See fair market value under VALUE(2).

**ACTUAL NOTICE**

actual notice. See NOTICE.

**ACTUAL PHYSICAL CONTROL**

actual physical control. Direct bodily power over something, esp. a vehicle. • Many jurisdictions require a showing of “actual physical control” of a vehicle by a person charged with driving while intoxicated. [Cases: Automobiles 332. C.J.S. Motor Vehicles §§ 1382–1394.]

**ACTUAL POSSESSION**

actual possession. See POSSESSION.

**ACTUAL REDUCTION TO PRACTICE**

actual reduction to practice. See REDUCTION TO PRACTICE.

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**ACTUAL-RISK TEST**

actual-risk test. The doctrine that, for an injured employee to be entitled to workers'-compensation benefits, the employee must prove that the injury arose from, and occurred in the course and scope of, employment. [Cases: Workers' Compensation 604–618. C.J.S. Workmen's Compensation §§ 365–373, 376–387.]

**ACTUAL SEISIN**

actual seisin. See seisin in deed under SEISIN.

**ACTUAL SERVICE**

actual service. See PERSONAL SERVICE(1).

**ACTUAL TAKING**

actual taking. See physical taking under TAKING(2).

**ACTUAL TOTAL LOSS**

actual total loss. See LOSS.

**ACTUAL VALUE**

actual value. See fair market value under VALUE(2).

**ACTUARIAL EQUIVALENT**

actuarial equivalent. The amount of accrued pension benefits to be paid monthly or at some other interval so that the total amount of benefits will be paid over the expected remaining lifetime of the recipient. [Cases: Annuities 6; Pensions 131. C.J.S. Annuities §§ 13–14, 17–20; Pensions and Retirement Plans and Benefits §§ 69, 86.]

**ACTUARIALLY SOUND RETIREMENT SYSTEM**

actuarially sound retirement system. A retirement plan that contains sufficient funds to pay future obligations, as by receiving contributions from employees and the employer to be invested in accounts to pay future benefits. Cf. NONACTUARIALLY SOUND RETIREMENT SYSTEM. [Cases: Pensions 48. C.J.S. Pensions and Retirement Plans and Benefits §§ 23–25, 27.]

**ACTUARIAL METHOD**

actuarial method. A means of determining the amount of interest on a loan by using the loan's annual percentage rate to separately calculate the finance charge for each payment period, after crediting each payment, which is credited first to interest and then to principal. [Cases: Interest 59. C.J.S. Interest and Usury; Consumer Credit § 74.]

**ACTUARIAL PRESENT VALUE**

actuarial present value. The amount of money necessary to purchase an annuity that would generate a particular monthly payment, or whatever periodic payment the plan provides, for the

expected remaining life span of the recipient.

#### ACTUARIAL SURPLUS

actuarial surplus. An estimate of the amount by which a pension plan's assets exceed its expected current and future liabilities, including the amount expected to be needed to fund future benefit payments. [Cases: Pensions 104. C.J.S. Pensions and Retirement Plans and Benefits §§ 58, 60, 121, 127.]

#### ACTUARIAL TABLE

actuarial table. An organized chart of statistical data indicating life expectancies for people in various categories (such as age, family history, and chemical exposure). • Actuarial tables are usually admissible in evidence. — Also termed expectancy table; mortality table; mortuary table. Cf. LIFE TABLE.

#### ACTUARIUS

actuarium (ak-choo-air-ee-*<<schwa>>*s or ak-tyoo-), n. [Latin] Roman law. 1. A notary or clerk; a shorthand writer. 2. A keeper of public records.

#### ACTUARY

actuary (ak-choo-air-ee), n. A statistician who determines the present effects of future contingent events; esp., one who calculates insurance and pension rates on the basis of empirically based tables. — actuarial (ak-choo-air-ee-*<<schwa>>*l), adj.

#### ACTUM

actum (ak-t*<<schwa>>*m), n. [Latin] A thing done; an act or deed.

#### ACTUM ET TRACTATUM

actum et tractatum (ak-t*<<schwa>>*m et trak-tay-t*<<schwa>>*m). [Law Latin] Hist. (Of an instrument) done and transacted.

#### ACTUS

actus (ak-t*<<schwa>>*s), n. [Latin] 1. An act or action; a thing done. 2. Hist. An act of Parliament; esp., one passed by both houses but not yet approved by the monarch. Cf. STATUTUM(1). 3. Roman law. A servitude for driving cattle or a carriage across another's land. Cf. ITER(1). — Also termed (in sense 3) *JUS ACTUS*.

#### ACTUS ANIMI

actus animi (ak-t*<<schwa>>*s an-*<<schwa>>*-m). [Law Latin] Hist. An act of the mind; an intention. See ANIMUS.

“Again, consent, which is essential to all contracts, is an *actus animi*, and is presumed in all cases where the contract is *ex facie regular*.” John Trayner, *Trayner's Latin Maxims* 21–22 (4th ed. 1894).

## ACTUS LEGITIMUS

actus legitimus (ak-t<<schwa>>s l<<schwa>>-jit-<<schwa>>-m<<schwa>>s). [Law Latin] Hist. An act in the law; a juristic act; specif., an act the performance of which was accompanied by solemn rituals.

## ACTUS PROXIMUS

actus proximus (ak-t<<schwa>>s prok-si-m<<schwa>>s). [Law Latin] Hist. An immediate act, as distinguished from a preparatory act, esp. in the commission of a crime.

## ACTUS REUS

actus reus (ak-t<<schwa>>s ree-<<schwa>>s alsoray-<<schwa>>s). [Law Latin “guilty act”] The wrongful deed that comprises the physical components of a crime and that generally must be coupled with mens rea to establish criminal liability; a forbidden act <the actus reus for theft is the taking of or unlawful control over property without the owner's consent>. — Also termed deed of crime; overt act. Cf. MENS REA. [Cases: Criminal Law 26.C.J.S. Criminal Law §§ 44–45, 1110.]

“The word actus connotes a ‘deed,’ a physical result of human conduct. When criminal policy regards such a deed as sufficiently harmful it prohibits it and seeks to prevent its occurrence by imposing a penalty for its commission. It has long been the custom of lawyers to describe a deed so prohibited by law in the words actus reus. Thus actus reus may be defined as ‘Such result of human conduct as the law seeks to prevent.’ It is important to note that the actus reus, which is the result of conduct, and therefore an event, must be distinguished from the conduct which produced the result. For example, in a simple case of murder it is the victim's death (brought about by the conduct of the murderer) which is the actus reus; the mens rea is the murderer's intention to cause that death. In other words, the crime is constituted by the event, and not by the activity (or in certain cases, as we shall see, by the omission to act) which caused the event.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 13 (16th ed. 1952).

“The phrase ‘deed of crime’ [= actus reus] as so used does not indicate the crime itself but merely one of the ingredients of crime; and this ingredient may be present without any crime at all, just as hydrogen is one of the ingredients of water but may be present without water. The words ‘deed of crime’ are so suggesting of the crime itself, however, that perhaps the Latin phrase ‘actus reus’ is less likely to cause confusion. The actus reus is es-sential to crime but is not sufficient for this purpose without the necessary mens rea, just as mens rea is essential to crime but is insufficient without the necessary actus reus.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 831 (3d ed. 1982).

## ACUS

ACUS.abbr. ADMINISTRATIVE CONFERENCE OF THE UNITED STATES.

## A.D.

A.D.abbr. ANNO DOMINI.

## AD

ad (ad), prep. [Latin] At; by; for; near; on account of; to; until; upon; with relation to; concerning.

## ADA

ADA.abbr.AMERICANS WITH DISABILITIES ACT.

## AD ABUNDANTIOREM CAUTELAM

ad abundantio rem cautelam (ad ab-<<schwa>>n-dan-shee-or-<<schwa>>m kaw-tee-l<<schwa>>m). [Law Latin] Hist. For more abundant caution. — Also termed ad cautelam ex superabundanti (ad kaw-tee-l<<schwa>>m eks s[y]oo-p<<schwa>>r-ab-<<schwa>>n-dan-tI).

## AD ADMITTENDUM CLERICUM

ad admittendum clericum (ad ad-mi-ten-d<<schwa>>m kler-<<schwa>>-k<<schwa>>m). [Law Latin] See DE CLERICO ADMITTENDO.

## AD ALIUD EXAMEN

ad aliud examen (ad ay-lee-<<schwa>>d eg-zay-m<<schwa>>n), adv.[Law Latin] To another tribunal.

## AD ALIUM DIEM

ad alium diem (ad ay-lee-<<schwa>>m dI-<<schwa>>m), adv.[Law Latin] To another day.

## ADAPTATION RIGHT

adaptation right.Copyright. A copyright holder's exclusive right to prepare derivative works based on the pro- tected work. • For example, before a movie studio can make a film version of a book, it must secure the author's adaptation right. See DERIVATIVE WORK. [Cases: Copyrights and Intellectual Property 12(3).]

## AD ASSISAS CAPIENDAS

ad assisas capiendas (ad <<schwa>>-sIz-<<schwa>>s kap-ee-en-d<<schwa>>s). [Law Latin] To take assizes; to hold assizes.

## A DATO

a dato (ay day-toh), adv.[Law Latin] From the date. — Also termed a datu.

## AD AUCTORITATEM PRAESTANDAM

ad auctoritatem praestandam (ad awk-tor-i-tay-t<<schwa>>m pree-stand-<<schwa>>m). [Law Latin] Hist. For interposing their authority. • The phrase typically referred to tutors or curators ad litem who provided authority but incurred no personal liability in exercising their office.

## AD AUDIENDAM CONSIDERATIONEM CURIAE

ad audiendam considerationem curiae (ad aw-dee-en-d<<schwa>>m k<<schwa>>n-sid-<<schwa>>-ray-shee-oh-n<<schwa>>m kyoor-ee-I), vb.[Law Latin] To hear the judgment of the court.

#### AD AUDIENDUM ET DETERMINANDUM

ad audiendum et determinandum (ad aw-dee-en-d<<schwa>>m et di-t<<schwa>>r-mi-nan-d<<schwa>>m), vb.[Law Latin] To hear and determine. See OYER ET TERMINER .

#### ADB

ADB.abbr.ACCIDENTAL-DEATH BENEFIT.

#### AD BARRAM

ad barram (ad bahr-<<schwa>>m), adv.[Law Latin] To the bar; at the bar.

#### AD BARRAM EVOCATUS

ad barram evocatus (ad bahr-<<schwa>>m ee-voh-kay-t<<schwa>>s). [Law Latin] Called to the bar. See CALL TO THE BAR.

#### AD CAMPI PARTEM

ad campi partem (ad kam-pIahr-t<<schwa>>m or -tem). [Law Latin] For a share of the field or land.

#### AD CAPTANDUM LUCRUM

ad captandum lucrum (ad cap-tan-d<<schwa>>m loo-kr<<schwa>>m). [Law Latin] Hist. For the purpose of making gain.

#### AD CAPTUM VULGI

ad captum vulgi (ad kap-t<<schwa>>m v<<schwa>>l-jI). [Law Latin] Adapted to the common understanding. • The phrase appeared in reference to statutes concerning matters that people usu. handled without legal assistance.

#### AD CAUTELAM EX SUPERABUNDANTI

ad cautelam ex superabundanti.See AD ABUNDANTIOREM CAUTELAM.

#### AD CIVILEM EFFECTUM

ad civilem effectum (ad s<<schwa>>-vI-l<<schwa>>m e-fek-t<<schwa>>m). [Law Latin] Hist. As to the civil effect. • The phrase appeared in reference to the effect of an act in a civil case, as distinguished from the effect of the same act in a criminal case.

#### AD COELUM DOCTRINE

ad coelum doctrine.The common-law rule that a landowner holds everything above and below the land, up to the sky and down to the earth's core, including all minerals. • This rule

governs ownership of “hard” (immovable) minerals such as coal, but not “fugacious” (volatile) minerals such as oil and gas. Cf. RULE OF CAPTURE.

#### AD COELUM ET AD INFEROS

ad coelum et ad inferos.[Law Latin] Up to the sky and down to the center of the earth <the ownership of land extends ad coelum et ad inferos>.

#### AD COLLIGENDUM

ad colligendum (ad kol-i-jen-d<<schwa>>m). [Law Latin] For collecting < administrator ad colligendum>.

#### AD COLLIGENDUM BONA DEFUNCTI

ad colligendum bona defuncti (ad kol-i-jen-d<<schwa>>m boh-n<<schwa>> di-f<<schwa>>ngk-tI). [Law Latin “for collecting the goods of the deceased”] Special letters of administration authorizing a person to collect and preserve a decedent's property.

#### AD COMMUNEM LEGEM

ad communem legem (ad k<<schwa>>-myoo-n<<schwa>>m lee-j<<schwa>>m), n.[Law Latin “to common law”] Hist. A writ of entry available after the death of a life tenant to recover a reversionary interest in land alienated by the tenant. — Also termed entry ad communem legem.

#### AD COMMUNE NOCUMENTUM

ad commune nocumentum (ad k<<schwa>>-myoo-nee nok-y<<schwa>>-men-t<<schwa>>m), adv.[Law Latin] To the common nuisance.

#### AD COMPARENDUM

ad comparendum (ad kom-p<<schwa>>-ren-d<<schwa>>m), vb.[Law Latin] To appear. • This term is part of the larger phrase ad comparendum, et ad standum juri (“to appear and to stand to the law”). — Also termed (in standard Latin) ad comparandum.

#### AD COMPUTUM REDDENDUM

ad computum reddendum (ad k<<schwa>>-m-pyoo-t<<schwa>>m ri-den-d<<schwa>>m), vb.[Law Latin] To render an account.

#### AD CONSIMILES CASUS

ad consimiles casus (ad k<<schwa>>-n-sim<<schwa>>-leez kay-s<<schwa>>s). [Law Latin] Hist. To similar cases. See CONSIMILI CASU.

#### AD CONVINCENDAM CONSCIENTIAM JUDICIS

ad convincendam conscientiam judicis (ad kon-vin-sen-d<<schwa>>m kon-shee-en-shee-<<schwa>>m joo-di-sis). [Law Latin] Scots law. Sufficient to satisfy the moral conviction of the judge. • The phrase appeared in reference to circumstantial evidence that was admissible in paternity cases because direct proof was unavailable.



## ADCORDABILIS DENARII

adcordabilis denarii (ad-kor-day-b<<schwa>>-lis di-nair-ee-I), n.[Latin] Hist. Money paid by a vassal to the lord upon the sale or exchange of a feud.

## AD CULPAM

ad culpam (ad k<<schwa>>l-p<<schwa>>m), adv.[Law Latin] Until misconduct.

## AD CURIAM

ad curiam (ad kyoor-ee-<<schwa>>m), adv.[Law Latin] At a court; to court.

## AD CURIAM VOCARE

ad curiam vocare (ad kyoor-ee-<<schwa>>m voh-kair-ee), vb.[Law Latin] To summon to court.

## AD CUSTAGIA

ad custagia (ad k<<schwa>>-stay-jee-<<schwa>>), adv.[Law Latin] At the costs.

## AD CUSTUM

ad custum (ad k<<schwa>>s-t<<schwa>>m), adv.[Law Latin] At the cost.

## ADD

add,n. Parliamentary law. A form of amendment that places new wording at the end of a motion or of a paragraph or other readily divisible part within a motion. See amendment by adding under AMENDMENT(3).

## AD DAMNUM CLAUSE

ad damnum clause (ad dam-n<<schwa>>m). [Latin “to the damage”] A clause in a prayer for relief stating the amount of damages claimed. See PRAYER FOR RELIEF . [Cases: Federal Civil Procedure 679; Pleading 72.C.J.S. Pleading §§ 110–115.]

“Where the amount the plaintiff is entitled to recover appears from the statement of facts — as where the amount due the plaintiff is alleged on breach of a money demand, the demand of judgment may take the place of an ad damnum clause.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 209 (2d ed. 1899).

## ADDED DAMAGES

added damages.See punitive damages under DAMAGES.

## AD DEFENDENDUM

ad defendendum (ad di-fen-den-d<<schwa>>m), vb.[Latin] To defend.

## ADDENDUM

addendum (<<schwa>>-den-d<<schwa>>m). Something to be added, esp. to a document; a

supplement.

#### ADDICENT

addicent (ad-i-sent), n. Roman law. One who transfers something by official authority.

#### ADDICERE

addicere (<<schwa>>-dis-<<schwa>>r-ee), vb.[Latin] Roman law. To adjudge, allot, or condemn.

#### ADDICT

addict (a-dikt), n. A person who habitually uses a substance, esp. a narcotic drug. [Cases: Chemical Dependents 1; Controlled Substances 38.C.J.S. Chemical Dependents §§ 2–3.] — addict (<<schwa>>-dikt), vb. — addictive,adj. — addiction,n.

drug addict.A person who is psychologically or physiologically dependent on a narcotic drug.

addict,vb.Roman law. 1. To adjudge (to); to deliver under court order. 2. More broadly, to surrender a thing (to someone else).

#### ADDICTIO

addictio (<<schwa>>-dik-shee-oh), n.[Latin] Roman law. The awarding by a magistrate of a person or thing to another, as the property of a debtor to a creditor, or as a form of conveyance. — Also termed addiction. Pl. addictiones (<<schwa>>-dik-shee-oh-nee-z).

#### ADDICTIO IN DIEM

addictio in diem (<<schwa>>-dik-shee-oh in dī-<<schwa>>m). [Latin “assignment for a fixed period” or “postponement to a date”] Roman law. A clause in a contract of sale in which the parties agree that the contract can be terminated if the seller receives a better offer within a specified period. — Also termed in diem addictio.

#### ADDICTION

addiction. 1. The habitual and intemperate use of a substance, esp. a potentially harmful one such as a narcotic drug. • The usual requisites are (1) an emotional dependence that leads to compulsiveness; (2) an enhanced tolerance of the substance, leading to more potent doses; and (3) physical dependence such that withdrawal symptoms result from deprivation. 2.ADDICTIO.

#### ADDICTIVE DRUG

addictive drug.See DRUG.

#### AD DIEM

ad diem (ad dī-<<schwa>>m). [Latin] At a day; at the appointed day.

#### ADDITION

addition. 1. A structure that is attached to or connected with another building that predates the

structure; an extension or annex. • Although some courts have held that an addition is merely an appurtenant structure that might not actually be in physical contact with the other building, most courts hold that there must be physical contact. 2. A title or appellation appended to a person's name to show rank, occupation, or place of residence. • In English law, there are traditionally four kinds of additions: (1) those of estate, such as yeoman, gentleman, or esquire; (2) those of degree (or dignity), such as knight, baron, earl, marquis, or duke; (3) those of trade or occupation, such as scrivener, painter, mason, or carpenter; and (4) those of place of residence, such as London, Bath, or Chester. It was formerly required by the statute of additions (1 Hen. 5, ch. 5) that original writs and indictments state a person's addition, but the practice has long since been abolished.

#### ADDITIONAL CLAIMS AFTER ALLOWANCE

additional claims after allowance. Patents. Claims submitted for the first time by amendment after the U.S. Patent and Trademark Office has informed the applicant of the patent application's allowance. • Once a notice of allowance has been issued, the applicant may not by right submit additional claims. But in some circumstances, such as when the applicant seeks to add only dependent claims, the supervisory examiner has authority to enter an amendment containing additional claims after allowance but on or before the date when the issue fee is paid. See amendment after allowance under PATENT-APPLICATION AMENDMENT . [Cases: Patents 109. C.J.S. Patents §§ 152–155.]

#### ADDITIONAL-CONSIDERATION RULE

additional-consideration rule. Employment law. An exception to the employment-at-will principle, whereby an employee who does not have a written contract but who undertakes substantial hardship in addition to the normal job duties — as by relocating to a different city based on oral assurances of job security — can maintain a breach-of-contract claim if the employer does not fulfill its agreement. [Cases: Master and Servant 3(1), 4.C.J.S. Employer–Employee Relationship §§ 22–26, 42.]

#### ADDITIONAL DAMAGES

additional damages. See DAMAGES.

#### ADDITIONAL EXTENDED COVERAGE

additional extended coverage. Insurance. A policy endorsement providing supplemental residential coverage for a variety of perils, including vandalism, damage from falling trees, and water damage from the plumbing system.

#### ADDITIONAL GRAND JURY

additional grand jury. See special grand jury under GRAND JURY.

#### ADDITIONAL INSTRUCTION

additional instruction. See JURY INSTRUCTION.

#### ADDITIONAL INSURANCE

additional insurance. See INSURANCE.

#### ADDITIONAL INSURED

additional insured. See INSURED.

#### ADDITIONAL LEGACY

additional legacy. See LEGACY.

#### ADDITIONAL-PERILS CLAUSE

additional-perils clause. See INCHMAREE CLAUSE.

#### ADDITIONAL SERVITUDE

additional servitude. See SERVITUDE(2).

#### ADDITIONAL STANDARD DEDUCTION

additional standard deduction. See DEDUCTION.

#### ADDITIONAL TAX

additional tax. See stopgap tax under TAX.

#### ADDITIONAL TERM

additional term. See TERM(5).

#### ADDITIONAL WORK

additional work. See WORK(1).

#### ADDITUR

additur (ad-*<<schwa>>*-tuur). [Latin “it is added to”] A trial court's order, issued usu. with the defendant's consent, that increases the jury's award of damages to avoid a new trial on grounds of inadequate damages. • The term may also refer to the increase itself, the procedure, or the court's power to make the order. — Also termed *increscitur*. Cf. *REMITTITUR*. [Cases: Federal Civil Procedure 2344; New Trial 161. C.J.S. New Trial § 263.]

#### ADD-ON CLAUSE

add-on clause. An installment-contract provision that converts earlier purchases into security for new purchases. [Cases: Secured Transactions 114, 146. C.J.S. Secured Transactions §§ 10, 83, 103–105.]

#### ADDONE

addone (*<<schwa>>*-doh-nee), p.pl. [Law French] Given to. — Also spelled *addonne*.

#### ADD-ON INTEREST

add-on interest. See INTEREST(3).

## ADD-ON LOAN

add-on loan. See LOAN.

## ADDRESS

address, n. 1. The place where mail or other communication is sent. 2. In some states, a legislature's formal request to the executive to do a particular thing, such as to remove a judge from office. 3. Equity practice. The part of a bill in which the court is identified. See DIRECTION(5).

## ADDRESS TO THE CROWN

address to the Crown. Upon a reading of a royal speech in Parliament, the ceremonial resolution by Parliament expressing thanks to the sovereign for the gracious speech. • Formerly, two members were selected in each house for moving and seconding the address. With the commencement of the 1890–1891 session, a single resolution was adopted.

## ADDUCE

adduce (<<schwa>>-d[y]oos), vb. To offer or put forward for consideration (something) as evidence or authority <adduce the engineer's expert testimony>. — adduction (<<schwa>>-d<<schwa>>k-sh<<schwa>>n), n. — adducible (<<schwa>>-d[y]oo-s<<schwa>>-b<<schwa>>l), adj.

## ADEA

ADEA. abbr. AGE DISCRIMINATION IN EMPLOYMENT ACT.

## ADEEM

adeem, vb. To revoke or satisfy (a willed gift) by some other gift.

## AD EFFECTUM

ad effectum (ad i-fek-t<<schwa>>m). [Law Latin] To the effect.

## AD EFFECTUM SEQUENTEM

ad effectum sequentem (ad i-fek-t<<schwa>>m si-kwen-t<<schwa>>m). [Law Latin] To the effect following.

## ADEMPTIO

ademptio (<<schwa>>-demp-shee-oh), n. [Latin] Roman law. Ademption. • The term referred to the revocation of a legacy under certain circumstances, as when the item bequeathed no longer existed or when the testator no longer owned the item. The ablative form ademptions means “by ademption.” Pl. ademptions (<<schwa>>-demp-shee-oh-nee).

## ADEMPTION

ademption (<<schwa>>-demp-sh<<schwa>>n), n. Wills & estates. The destruction or

extinction of a testamentary gift by reason of a bequeathed asset's ceasing to be part of the estate at the time of the testator's death; a beneficiary's forfeiture of a legacy or bequest that is no longer operative. • There are two theories of ademption. Under the identity theory of ademption, a devise of a specific piece of property will fail if that property is not a part of the testator's estate upon his or her death. Under the intent theory of ademption, by contrast, when a specific devise is no longer in the testator's estate at the time of his or her death, the devisee will receive a gift of equal value if it can be proved that the testator did not intend the gift to be adeemed. The intent theory has been codified in § 2-606 of the 1990 Uniform Probate Code. — Also termed extinguishment of legacy. Cf. ABATEMENT; ADVANCEMENT(4); LAPSE(2). [Cases: Wills 764–771. C.J.S. Wills §§ 1742–1761, 1770–1773.] — adeem (<<schwa>>-deem), vb. — adeemed, adempted,adj.

ademption by extinction.An ademption that occurs because the unique property that is the subject of a specific bequest has been sold, given away, or destroyed, or is not otherwise in existence at the time of the testator's death. [Cases: Wills 767–768. C.J.S. Wills §§ 1749–1761.]

ademption by satisfaction.An ademption that occurs because the testator, while alive, has already given property to the beneficiary in lieu of the testamentary gift. [Cases: Wills 766. C.J.S. Wills §§ 1743–1744, 1753.]

#### ADEO

adeo (ad-ee-oh). [Latin] So; as.

#### ADEQUACY OF DISCLOSURE

adequacy of disclosure.Patents. Satisfaction of the statutory requirements that the specification in a patent application (1) gives enough detailed information to enable one skilled in the art to make and use the claimed invention (the enablement requirement); (2) discloses the best way the inventor knows to make and use the invention (the best-mode requirement); and (3) shows that the inventor was in full possession of the claimed invention on the application's filing date (the written-description requirement). • A patent that fails to meet any one of these requirements may be rejected under 35 USCA § 112. Any issued patent with an inadequate disclosure is invalid, although the challenger has to overcome the presumption of validity. — Also termed sufficiency of disclosure. See ENABLEMENT REQUIREMENT; BEST-MODE REQUIREMENT. [Cases: Patents 99.C.J.S. Patents § 139.]

#### ADEQUACY TEST

adequacy test.See IRREPARABLE-INJURY RULE.

#### ADEQUATE

adequate,adj. Legally sufficient <adequate notice>.

#### ADEQUATE ASSURANCE

adequate assurance.See ASSURANCE.

#### ADEQUATE CARE

adequate care.See reasonable care under CARE.

#### ADEQUATE CAUSE

adequate cause.See adequate provocation under PROVOCATION.

#### ADEQUATE COMPENSATION

adequate compensation.See just compensation under COMPENSATION.

#### ADEQUATE CONSIDERATION

adequate consideration.See CONSIDERATION(1).

#### ADEQUATE NOTICE

adequate notice.See due notice under NOTICE.

#### ADEQUATE PROTECTION

adequate protection.Bankruptcy. The protection afforded to a holder of a secured claim against the debtor, such as a periodic cash payment or an additional lien <the bankruptcy court permitted the lender to foreclose on the debtor's home after finding a lack of adequate protection of the lender's property interest>.11 USCA § 361. [Cases: Bankruptcy 3062.C.J.S. Bankruptcy § 208.]

“Bankruptcy intends to safeguard secured creditors’ encumbrances, but the stay threatens them by preventing the secured creditors from foreclosing or taking other actions to apply the property's value against the secured debt. Bankruptcy aims to guard against this threat by ordering relief ... for lack of adequate protection of the secured interest.” David G. Epstein et al., Bankruptcy § 3-27, at 140 (1993).

#### ADEQUATE PROVOCATION

adequate provocation.See PROVOCATION.

#### ADEQUATE REMEDY AT LAW

adequate remedy at law.See REMEDY.

#### ADEQUATE REPRESENTATION

adequate representation.See REPRESENTATION(3).

#### ADEQUATE-STATE-GROUNDS DOCTRINE

adequate-state-grounds doctrine.A judge-made principle that prevents the U.S. Supreme Court from reviewing a state-court decision based partially on state law if a decision on a federal issue would not change the result. [Cases: Federal Courts 502.]

#### ADEQUATE WARNING

adequate warning.See WARNING.

## ADESSE

adesse (ad-es-ee), vb. Civil law. To be present. Cf. ABESSE.

## ADEU

adeu (<<schwa>>-dyoo), adv.[Law French] Without day. • This is a common term in the Year Books, indicating a final dismissal from court (alez adeu “go hence without day”). See GO HENCE WITHOUT DAY; ALLER SANS JOUR.

## AD EVERSIONEM JURIS NOSTRI

ad eversionem juris nostri (ad i-v<<schwa>>r-shee-oh-n<<schwa>>m joor-is nos-tr I). [Law Latin] To the overthrow of our right.

## AD EXCAMBIUM

ad excambium (ad eks-kam-bee-<<schwa>>m). [Law Latin] For exchange; for compensation.

## AD EXHAEREDATIONEM

ad exhaeredationem (ad eks-heer-<<schwa>>-day-shee-oh-n<<schwa>>m). [Law Latin] To the disinheritance; to the injury of the inheritance.

“The writ of waste calls upon the tenant to appear and shew cause why he hath committed waste and destruction in the place named, ad exhaeredationem, to the disinherison of the plaintiff.” 3 William Blackstone, Commentaries on the Laws of England 228 (1768).

## AD EXITUM

ad exitum (ad ek-si-t<<schwa>>m). [Law Latin] At issue; at the end (usu. of pleadings).

## ADF

ADF.abbr. AFRICAN DEVELOPMENT FOUNDATION.

## AD FACIENDAM JURATAM ILLAM

ad faciendam juratam illam (ad fay-shee-en-d<<schwa>>m j<<schwa>>-ray-t<<schwa>>m il-<<schwa>>m). [Law Latin] To make up that jury.

## AD FACIENDUM

ad faciendum (ad fay-shee-en-d<<schwa>>m). [Latin] To do; to make.

## AD FACTUM PRAESTANDUM

ad factum praestandum (ad fak-t<<schwa>>m pree-stan-d<<schwa>>m). [Law Latin “for the performance of a particular act”] Scots law. An obligation to perform an act other than paying money; an obligation that must be strictly fulfilled (such as to hand over a vase sold).

“In popular language almost all obligations may be said to be of this class, but there are



obligations of a peculiar character which alone are denoted by the legal signification of this phrase. The obligation of a debtor is clearly one for the performance of a certain act, namely, the payment of his debt; but a decree at the instance of his creditor would not be termed a decree ad factum praestandum. An obligation ad factum praestandum is one for the performance of an act within the power of the obligant ....” John Trayner, *Trayner's Latin Maxims* 27 (4th ed. 1894).

#### AD FEODI FIRMAM

ad feodi firmam (ad fee-<<schwa>>-dīf<<schwa>>r-m<<schwa>>m). [Law Latin] To fee farm. See FEE FARM.

#### AD FIDEM

ad fidem (ad fī-d<<schwa>>m), adv.[Law Latin] In allegiance; under allegiance; owing allegiance. • This term appeared in a variety of phrases, including ad fidem regis (“under the king's allegiance”) and natus ad fidem regis (“born in allegiance to the king”).

#### AD FILUM AQUAE

ad filum aquae (ad fī-l<<schwa>>m ak-wee), adv.[Law Latin] To the thread of the water; to the central line or middle of a stream. • This refers to the ownership reach of a riparian proprietor. — Also termed ad medium filum aquae.

#### AD FILUM VIAE

ad filum viae (ad fī-l<<schwa>>m vī-ee), adv.[Law Latin] To the middle of the way; to the central line of the road. — Also termed ad medium filum viae.

#### AD FINEM

ad finem (ad fī-n<<schwa>>m), adv.[Latin] To the end. • This citation signal, abbreviated in text ad fin., formerly provided only the first page of the section referred to, but now usu. directs the reader to a stated span of pages.

#### ADFINIS

adfinis (ad-fī-nee-z), n. [Latin] Roman law. A relative of one's spouse. Pl. adfines.

#### ADFINITAS

adfinitas (ad-fin-i-tas), n. [Latin] Roman law. The connection between a husband or wife and relatives of his or her spouse.

#### AD FIRMAM TRADIDI

ad firmam tradidi (ad f<<schwa>>r-m<<schwa>>m tray-d<<schwa>>-dī), n.[Law Latin] See FARM LET.

#### AD FUNDANDAM JURISDICTIONEM

ad fundandam jurisdictionem (ad f<<schwa>>n-dan-d<<schwa>>m joor-is-dik-shee-oh-n<<schwa>>m). [Law Latin] Hist. For the purpose of founding jurisdiction.

See ARRESTUM JURISDICTIONIS FUNDANDAE CAUSA.

#### AD GAOLAM DELIBERANDAM

ad gaolam deliberandam (ad jay-l<<schwa>>m di-lib-<<schwa>>-ran-d<<schwa>>m), vb.[Law Latin] To deliver the jail; to make jail delivery. See COMMISSION OF GAOL DELIVERY ; JAIL DELIVERY.

#### AD GRAVAMEN

ad gravamen (ad gr<<schwa>>-vay-m<<schwa>>n), adv.[Latin] To the grievance, injury, or oppression of (another person).

#### ADHERE

adhere,vb.1. (Of one house in a bicameral legislature) to reject the other house's insistence on a difference in legislation that has passed both houses, without requesting a conference. Cf. INSIST ON.

“When both houses have insisted [on differing views about an amendment] without a request for conference, it is also in order to move to adhere. Adoption of a motion to adhere represents an unyielding attitude of the adopting house. It is unparliamentary for an adhering house to request a conference; however, the other house may continue to insist and request a conference. It is in order for an adhering house to recede from its adherence and agree to a conference.” National Conference of State Legislatures, Mason's Manual of Legislative Procedure § 768, at 556–57 (2000).

2.Scots law. To live together as husband and wife. 3.Scots law. (Of an appellate court) to affirm a lower court's judgment. — adherence,n.

#### ADHERENCE

adherence. 1.ACCESSION(3).2.Scots law. The duty of spouses to live together.

#### ADHESION

adhesion. See ACCESSION(3).

#### ADHESIONARY CONTRACT

adhesionary contract.See adhesion contract under CONTRACT.

#### ADHESION CONTRACT

adhesion contract.See CONTRACT.

#### ADHESORY CONTRACT

adhesory contract.See adhesion contract under CONTRACT.

#### ADHIBERE

adhibere (ad-h<<schwa>>-bair-ee), vb.[Latin] Civil law. To apply; to put (a thing) to use; to

exercise.

#### ADHIBERE DILIGENTIAM

adhibere diligentiam (ad-h<<schwa>>-bair-ee dil-<<schwa>>-jen-shee-<<schwa>>m), vb.[Latin] Civil law. To use care.

#### AD HOC

ad hoc (ad hok), adj.[Latin “for this”] Formed for a particular purpose <the board created an ad hoc committee to discuss funding for the new arena>. — ad hoc,adv.

#### AD HOC ARBITRATION

ad hoc arbitration.See ARBITRATION.

#### AD HOC COMMITTEE

ad hoc committee.See COMMITTEE.

#### AD HOC COMPROMIS

ad hoc compromis.See COMPROMIS.

#### AD HOMINEM

ad hominem (ad hom-<<schwa>>-n<<schwa>>m), adj.[Latin “to the person”] Appealing to personal prejudices rather than to reason; attacking an opponent's character rather than the opponent's assertions <the brief was replete with ad hominem attacks against opposing counsel>. — ad hominem,adv.

#### AD HUNC DIEM

ad hunc diem (ad h<<schwa>>ngk dI-<<schwa>>m), adv.[Law Latin] To this day.

#### ADIATE

adiate (ad-ee-ayt), vb. Roman–Dutch law.To accept as beneficiary under a will. — adiation,n.

#### AD IDEM

ad idem (ad I-d<<schwa>>m). [Latin] To the same point or matter; of the same mind <the parties reached a consensus ad idem and agreed to consummate a sale>.

#### A DIE CONFECTIONIS

a die confectionis (ay dI-ee k<<schwa>>n-fek-shee-oh-nis), adv.[Law Latin] From the day of the making.

#### A DIE DATUS

a die datus (ay dI-ee day-t<<schwa>>s), n.[Latin “given from (such-and-such) a day”] A lease provision estab-lishing the beginning of the rental period.

## ADIEU

adieu (<<schwa>>-dyoo). [Law French “to God”] Farewell. • This term, although etymologically distinct, appears sometimes in the Year Books in place of adeu. See ADEU; ALLER A DIEU.

## AD INDE

ad inde (ad in-dee), adv.[Law Latin] To that or them; thereto.

## AD INFEROS

ad inferos.[Law Latin] To the center of the earth. See AD COELUM ET AD INFEROS .

## AD INFINITUM

ad infinitum (ad in-f<<schwa>>-nI-t<<schwa>>m). [Latin “without limit”] To an indefinite extent <a corporation has a duration ad infinitum unless the articles of incorporation specify a shorter period>.

## AD INFORMANDUM JUDICEM

ad informandum judicem (ad in-for-man-d<<schwa>>m joo-di-s<<schwa>>m). [Law Latin] Hist. For the judge's information. — Also termed ad informationem judicis.

## AD INFORMATIONEM JUDICIS

ad informationem judicis.See AD INFORMANDUM JUDICEM.

## AD INQUIRENDUM

ad inquirendum (ad in-kw<<schwa>>-ren-d<<schwa>>m), n.[Law Latin “to inquire”] Hist. A writ instructing the recipient to investigate something at issue in a pending case.

## AD INSTANTIAM PARTIS

ad instantiam partis (ad in-stan-shee-<<schwa>>m pahr-tis), adv.[Law Latin] Hist. At the instance of a party.

## AD INTERIM

ad interim (ad in-t<<schwa>>r-im), adv.[Latin] Hist. In the meantime; temporarily.

## AD INTERIM COPYRIGHT

ad interim copyright.See COPYRIGHT.

## ADIRATUS

adiratus (ad-<<schwa>>-ray-t<<schwa>>s), adj.[Law Latin] Hist. Lost; strayed; removed.

## ADITIO

aditio (<<schwa>>-dish-ee-oh), n. Hist. An outsider's informal acceptance of heirship.

## ADITIO HEREDITATIS

aditio hereditatis (<<schwa>>-dish-ee-oh h<<schwa>>-red-i-tay-tis). [Latin “entering on an inheritance”] Roman law. An heir's acceptance of an inheritance. — Also spelled aditio haereditatis. See CRETION.

## ADJACENT

adjacent,adj. Lying near or close to, but not necessarily touching. Cf. ADJOINING.

## ADJECT

adject (a-jekt), adj. To annex or adjoin. — adject,adj.

## ADJECTIO DOMINII PER CONTINUATIONEM POSSESSIONIS

adjectio dominii per continuationem possessionis (<<schwa>>-jek-shee-oh d<<schwa>>-min-ee-I p<<schwa>>r k<<schwa>>n-tin-yoo-ay-shee-oh-n<<schwa>>m p<<schwa>>-zes[h]-ee-oh-nis). [Latin] Roman law. The acquisition of the right to property ownership by continued possession. • This acquisition is otherwise known as usucapio or acquisitive prescription. See USUCAPIO; adequate prescription under PRESCRIPTION.

## ADJECTIVE LAW

adjective law (aj-ik-tiv). The body of rules governing procedure and practice; PROCEDURAL LAW. — Also termed adjectival law. [Cases: Action 1.C.J.S. Actions §§ 2–9, 11, 17, 21, 32–33, 36.]

“The body of law in a State consists of two parts, substantive and adjective law. The former prescribes those rules of civil conduct which declare the rights and duties of all who are subject to the law. The latter relates to the remedial agencies and procedure by which rights are maintained, their invasion redressed, and the methods by which such results are accomplished in judicial tribunals.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 1 (2d ed. 1899).

## ADJOINING

adjoining (<<schwa>>-joyn-ing), adj. Touching; sharing a common boundary; CONTIGUOUS. Cf. ADJACENT. [Cases: Adjoining Landowners 1. C.J.S. Adjoining Landowners §§ 2, 6–8, 39.] — adjoin (<<schwa>>-joyn), vb.

## ADJOINING OWNER

adjoining owner. See OWNER.

## ADJOURN

adjourn (<<schwa>>-j<<schwa>>rn), vb. Parliamentary law. To end or postpone (a proceeding). Cf. RECESS(2).

“A motion to recess suspends the current meeting until a later time; the unqualified motion to

adjourn terminates the meeting. When an assembly reconvenes following a recess, it resumes the meeting at the point where it was interrupted by the motion to recess. When an assembly reconvenes following an adjournment, it begins an entirely new meeting, starting with the first step in the regular order of business.” Alice Sturgis, *The Standard Code of Parliamentary Procedure* 76 (4th ed. 2001).

adjourn sine die (sI-nee [or sin-ay] dI-ee). [Latin “without date”] To end a deliberative assembly's or court's session without setting a time to reconvene. — Also termed adjourn without day. Cf. RISE(4).

adjourn to a day certain.To end a deliberative assembly's or court's session while fixing a time for the next meeting. — Also termed adjourn to a day and time certain; fix a day to which to adjourn.

adjourn without day.See adjourn sine die.

#### ADJOURNATUR

adjournatur (aj-*<<schwa>>r-nay-t<<schwa>>r*). [Latin] It is adjourned. • This word formerly appeared at the end of reported decisions.

#### ADJOURNED

adjourned. See STAND ADJOURNED.

#### ADJOURNED MEETING

adjourned meeting.See MEETING.

#### ADJOURNED TERM

adjourned term.See TERM(5).

#### ADJOURNMENT

adjournment (*<<schwa>>-j<<schwa>>rn-m<<schwa>>nt*), n. 1. The act of adjourning; specif., a putting off of a court session or other meeting or assembly until a later time. See ADJOURN.

adjournment sine die (*<<schwa>>-j<<schwa>>rn-m<<schwa>>nt sI-nee [or sin-ay] dI-ee*). The ending of a deliberative assembly's or court's session without setting a time to reconvene. — Also termed adjournment without day.

“The term adjournment sine die (or adjournment without day) usually refers to the close of a session of several meetings: (a) where the adjournment dissolves the assembly — as in a series of mass meetings or in an annual or biennial convention for which the delegates are separately chosen for each convention; or (b) where, unless called into special session, the body will not be convened again until a time prescribed by the bylaws or constitution — as in the case of a session of a legislature.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 8, at 81 (10th ed. 2000).

conditional adjournment. An adjournment that does not schedule another meeting, but provides for reconvening the assembly at an officer's or board's call or under other defined circumstances.

2. The period or interval between adjourning and reconvening. [Cases: Criminal Law 649; Trial 26. C.J.S. Criminal Law § 1155; Trial § 113.]

#### ADJOURNMENT DAY

adjournment day. See DAY.

#### ADJOURNMENT DAY IN ERROR

adjournment day in error. See DAY.

#### ADJUDGE

adjudge (<<schwa>>-j<<schwa>>j), vb. 1. ADJUDICATE(1). 2. To deem or pronounce to be. 3. To award judicially. 4. Scots law. (Of a creditor) to take a debtor's estate through adjudication. See ADJUDICATION(3). 5. To award (some or all of a debtor's estate) to a creditor.

#### ADJUDGER

adjudger, n. 1. One who adjudges. 2. Scots law. An adjudging creditor.

#### ADJUDICATAIRE

adjudicataire (<<schwa>>-joo-di-k<<schwa>>-tair), n. Canadian law. One who buys property at a judicial sale.

#### ADJUDICATE

adjudicate (<<schwa>>-joo-di-kayt), vb. 1. To rule upon judicially. 2. ADJUDGE(2). 3. ADJUDGE(3). — Also termed *judicate*.

#### ADJUDICATEE

adjudicatee (<<schwa>>-joo-di-k<<schwa>>-tee). Civil law. A purchaser at a judicial sale.

#### ADJUDICATIO

adjudicatio. Roman law. A part of a formula in a partition action by which the judge assigned the parties real rights in their shares; specif., a part of a formula (i.e., the praetor's statement of an issue for a *judex*) directing the *judex* to apportion property in a divisory action. • *Adjudicatio* was used to apportion property in divisory actions such as *actio de communi dividundo*, *actio familiae erciscundae*, and *actio finium regundorum*. It was not part of the formula in any other type of action. See FORMULA(1).

#### ADJUDICATION

adjudication (<<schwa>>-joo-di-kay-sh<<schwa>>n), n. 1. The legal process of resolving a dispute; the process of judicially deciding a case. 2. JUDGMENT.

former adjudication. See FORMER ADJUDICATION.

3. Scots law. The Court of Session's transfer of heritable property to a creditor as security for or in satisfaction of a debt, or its vesting title in an entitled claimant.

#### ADJUDICATION HEARING

adjudication hearing. See HEARING.

#### ADJUDICATION WITHHELD

adjudication withheld. See deferred judgment under JUDGMENT.

#### ADJUDICATIVE

adjudicative (<<schwa>>-joo-di-k<<schwa>>-tiv), adj. 1. Of or relating to adjudication. 2. Having the ability to judge. — Also termed adjudicatory; judicative.

#### ADJUDICATIVE-CLAIMS ARBITRATION

adjudicative-claims arbitration. See ARBITRATION.

#### ADJUDICATIVE FACT

adjudicative fact. See FACT.

#### ADJUDICATIVE LAW

adjudicative law. See CASELAW.

#### ADJUDICATOR

adjudicator (<<schwa>>-joo-di-kay-t<<schwa>>r). A person whose job is to render binding decisions; one who makes judicial pronouncements.

#### ADJUDICATORY

adjudicatory. See ADJUDICATIVE.

#### ADJUDICATORY HEARING

adjudicatory hearing. See adjudication hearing under HEARING.

#### ADJUDICATORY PROCEEDING

adjudicatory proceeding. See adjudication hearing under HEARING.

#### AD JUDICIUM PROVOCARE

ad iudicium provocare (ad joo-dish-ee-<<schwa>>m proh-v<<schwa>>-kair-ee), vb. [Latin] To summon to court; to commence an action.

#### ADJUNCT

adjunct (aj-<<schwa>>ngkt), adj. Added as an accompanying object or circumstance;



attached in a subordinate or temporary capacity <an adjunct professor>. — adjunct,n.

#### ADJUNCT ACCOUNT

adjunct account.See ACCOUNT.

#### ADJUNCTION

adjunction (<<schwa>>-j<<schwa>>ngk-sh<<schwa>>n).1. The act of adding to. 2.Civil law. The union of an item of personal property owned by one person with that owned by another. See ACCESSION(4). [Cases: Ac-cession 1.C.J.S. Accession §§ 2–8.]

#### ADJUNCTUM ACCESSORIUM

adjunctum                      accessorium                      (<<schwa>>-j<<schwa>>ngk-t<<schwa>>m ak-s<<schwa>>-sor-ee-<<schwa>>m), n.[Law Latin] An accessory or appurtenance.

#### AD JUNGENDUM AUXILIUM

ad jungendum auxilium (ad j<<schwa>>n-jen-d<<schwa>>m awg-zil-ee-<<schwa>>m), vb.[Law Latin] To join in aid.

#### AD JURA REGIS

ad jura regis (ad joor-<<schwa>>ree-jis), n.[Law Latin “for the rights of the king”] Hist. A writ brought against a person seeking to eject the holder of a royal benefice. • The writ was available to the holder of the benefice.

#### ADJURATION

adjuration (aj-<<schwa>>-ray-sh<<schwa>>n), n.1. The act of solemnly charging or entreating. 2. A swearing; a solemn oath.

#### ADJURE

adjure (<<schwa>>-juur), vb. To charge or entreat solemnly <the President adjured the foreign government to join the alliance>. — adjuration (aj-<<schwa>>-ray-sh<<schwa>>n), n. — adjuratory (<<schwa>>-juur-<<schwa>>-tor-ee), adj. — adjurer, adjuror (<<schwa>>-juur-<<schwa>>r), n.

#### ADJUST

adjust,vb.1. To determine the amount that an insurer will pay an insured to cover a loss. 2. To arrive at a new agreement with a creditor for the payment of a debt. [Cases: Insurance 3234. C.J.S. Insurance §§ 1345–1347.]

#### ADJUSTABLE-RATE MORTGAGE

adjustable-rate mortgage.See MORTGAGE.

#### ADJUSTED BASIS

adjusted basis.See BASIS.

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**ADJUSTED BOOK VALUE**

adjusted book value. See **BOOK VALUE**.

**ADJUSTED COST BASIS**

adjusted cost basis. See **BASIS**.

**ADJUSTED GROSS ESTATE**

adjusted gross estate. See **ESTATE(3)**.

**ADJUSTED GROSS INCOME**

adjusted gross income. See **INCOME**.

**ADJUSTED ORDINARY GROSS INCOME**

adjusted ordinary gross income. See **INCOME**.

**ADJUSTED PRESENT VALUE**

adjusted present value. See **PRESENT VALUE**.

**ADJUSTER**

adjuster. One appointed to ascertain, arrange, or settle a matter; esp., an independent agent or employee of an insurance company who negotiates and settles claims against the insurer. — Also termed claims adjuster. [Cases: Insurance 3222. C.J.S. Insurance §§ 1343–1344.]

independent adjuster. An adjuster who solicits business from more than one insurance company; one who is not employed by, and does not work exclusively for, one insurance company.

**ADJUSTING ENTRY**

adjusting entry. An accounting entry made at the end of an accounting period to record previously unrecognized revenue and expenses, as well as changes in assets and liabilities.

**ADJUSTMENT BOARD**

adjustment board. An administrative agency charged with hearing and deciding zoning appeals. — Also termed board of adjustment; board of zoning appeals. [Cases: Zoning and Planning 354. C.J.S. Zoning and Land Planning §§ 180–181, 183–186, 189.]

**ADJUSTMENT BOND**

adjustment bond. See **BOND(3)**.

**ADJUSTMENT SECURITY**

adjustment security. See **SECURITY**.

**ADJUTANT GENERAL**

adjutant general (aj-*<<schwa>>-t<<schwa>>nt*), n. (usu. cap.) 1. The administrative head of a military unit having a general staff. [Cases: Armed Services 4, 6.1. C.J.S. Armed Services §§ 14, 16–17, 19, 37.] 2. An officer in charge of the National Guard of a state. [Cases: Militia 3, 7. C.J.S. Armed Services § 291.]

#### AD LARGUM

ad largum (ad lahr-g*<<schwa>>m*), adj.[Law Latin] At large; at liberty; unconfined.

#### ADLEGIARE

adlegiare (ad-lee-jee-air-ee), vb.[Law Latin] To purge (oneself) of a crime by oath. See PURGATION.

#### AD LEVANDAM CONSCIENTIAM

ad levandam conscientiam (ad l*<<schwa>>-van-d<<schwa>>m* kon-shee-en-shee-*<<schwa>>m*). [Law Latin] Scots law. For the purpose of easing the conscience. • The phrase typically described certain confessions that a criminal suspect voluntarily made when apprehended and that could be used as evidence in the criminal trial. But an arrested suspect's responses to questions posed by the arresting officer were usu. not admissible because only a magistrate could ask such questions.

#### AD LIBELLUM RESCRIBERE

ad libellum rescribere (ad l*<<schwa>>-bel<<schwa>>m* ri-skrI-b*<<schwa>>-ree*), vb.[Latin] Roman law. To write an answer to a petition, esp. one to the emperor. See RESCRIPT(3).

#### AD LIBITUM

ad libitum (ad lib-i-t*<<schwa>>m*), adv.[Law Latin] At pleasure. • The modern term ad-lib (adj. & vb.), borrowed from drama and music, is essentially the same; it means “at the performer's pleasure,” and allows the performer discretion in innovating a part impromptu.

“[B]ut in actions where the damages are precarious, being to be assessed ad libitum by a jury, as in actions for words, ejectment, or trespass, it is very seldom possible for a plaintiff to swear to the amount of his cause of action; and therefore no special bail is taken thereon ....” 3 William Blackstone, Commentaries on the Laws of England 292 (1768).

#### AD LITEM

ad litem (ad II-tem or -t*<<schwa>>m*). [Latin “for the suit”] For the purposes of the suit; pending the suit. See guardian ad litem under GUARDIAN.

#### AD LONGUM

ad longum (ad long-g*<<schwa>>m*). [Law Latin] Hist. At length.

#### AD LUCRANDUM VEL PERDENDUM

ad lucrandum vel perdendum (ad loo-kran-d*<<schwa>>m* vel p*<<schwa>>-r-den-d<<*

schwa>>m), adv.[Law Latin] For gain or loss. • These were emphatic words in a warrant of attorney. It is sometimes expressed “to lose and gain.” See WARRANT OF ATTORNEY.

#### AD MAJOREM CAUTELAM

ad majorem cautelam (ad m<<schwa>>-jor-<<schwa>>m kaw-tee-l<<schwa>>m), adv.[Law Latin] For greater security.

#### ADMANUENSIS

admanuensis (ad-man-yoo-en-sis), n.[Law Latin fr. Latin ad- + manus “a hand”] Hist. An oath-taker who places a hand on the Bible.

#### AD MANUM

ad manum (ad may-n<<schwa>>m), adj.[Latin] At hand; ready for use.

#### ADMEASUREMENT

admeasurement (ad-mezh-<<schwa>>r-m<<schwa>>nt), n.1. Ascertainment, assignment, or apportionment by a fixed quantity or value, or by certain limits <the ship's admeasurement is based on its crew, engine, and capac-ity>.2. A writ obtained for purposes of ascertaining, assigning, or apportioning a fixed quantity or value or to establish limits; esp., a writ available against persons who usurp more than their rightful share of property. — admeasure (ad-mezh-<<schwa>>r), vb.

admeasurement of dower.Hist. A writ to recover property from a widow who held more than she was entitled to. — Also termed admensuratione dotis.

admeasurement of pasture.Hist. A writ against a person whose cattle have overgrazed a common pasture.

#### AD MEDIUM FILUM AQUAE

ad medium filum aquae.See AD FILUM AQUAE.

#### AD MEDIUM FILUM VIAE

ad medium filum viae.See AD FILUM VIAE.

#### AD MELIUS INQUIRENDUM

ad melius inquirendum (ad mee-lee-<<schwa>>s in-kw<<schwa>>-ren-d<<schwa>>m), n.[Law Latin “for making better inquiry”] Hist. A writ commanding a coroner to hold a second inquest.

#### ADMENSURATIO

admensuratio (ad-men-sh<<schwa>>-ray-shee-oh), n.[Law Latin] Hist. Admeasurement.

#### ADMENSURATIONE DOTIS

admensuratione dotis.See admeasurement of dower under ADMEASUREMENT.

## ADMINICLE

adminicle (ad-min-i-k<<schwa>>l), n.1. Corroborative or explanatory proof. 2.Scots law. A writing that tends to establish the existence or terms of an otherwise unavailable document, such as a lost will or deed. — Also termed adminiculum.

## ADMINICULAR

adminicular (ad-m<<schwa>>-nik-y<<schwa>>-l<<schwa>>r), adj. Corroborative or auxiliary <adminicular evidence>.

## ADMINICULAR EVIDENCE

adminicular evidence.See EVIDENCE.

## ADMINICULATE

adminiculate (ad-m<<schwa>>-nik-y<<schwa>>-layt), vb. Scots law. To give corroborating evidence.

## ADMINICULUM

adminiculum (ad-m<<schwa>>-nik-y<<schwa>>-l<<schwa>>m), n.[Latin “support”] Roman law. Legal or evidentiary means of supporting one's case; ADMINICLE.

## ADMINISTRATION

administration,n.1. The management or performance of the executive duties of a government, institution, or business. 2. In public law, the practical management and direction of the executive department and its agencies. [Cases: Administrative Law and Procedure 301–513. C.J.S. Public Administrative Law and Procedure §§ 49–171.] 3. A judicial action in which a court undertakes the management and distribution of property. • Examples include the administration of a trust, the liquidation of a company, and the realization and distribution of a bankrupt estate. See JOINT ADMINISTRATION. 4. The management and settlement of the estate of an intestate decedent, or of a testator who has no executor, by a person legally appointed and supervised by the court. • Administration of an estate involves realizing the movable assets and paying out of them any debts and other claims against the estate. It also involves the division and distribution of what remains. [Cases: Executors and Administrators 1–516. C.J.S. Executors and Administrators §§ 2–98, 100–181, 183–877, 879–899, 935–966; Parent and Child § 259; Wills § 157.] — administer,vb. — administrative,adj.

administration cum testamento annexo (k<<schwa>>m tes-t<<schwa>>-men-toh <<schwa>>-nek-soh). [Latin “with the will annexed”] An administration granted when (1) a testator's will does not name any executor or when the executor named is incompetent to act, is deceased, or refuses to act, and (2) no successor executor has been named or is qualified to serve. — Abbr. c.t.a. — Also termed administration with the will annexed. [Cases: Ex-ecutors and Administrators 21. C.J.S. Executors and Administrators §§ 947–948.]

administration de bonis non (dee boh-nis non). [Latin “of the goods not administered”] An

administration granted for the purpose of settling the remainder of an intestate estate that was not administered by the former administrator. — Abbr. d.b.n. [Cases: Executors and Administrators 37. C.J.S. Executors and Administrators §§ 935–936, 946.]

administration de bonis non cum testamento annexo (de boh-nis non k<<schwa>>m tes-t<<schwa>>-men-toh <<schwa>>-nek-soh). An administration granted to settle the remainder of a testate estate not settled by a previous administrator or executor. • This type of administration arises when there is a valid will, as opposed to an administration de bonis non, which is granted when there is no will. — Abbr. d.b.n.c.t.a.

administration durante absentia (d[y]uu-ran-tee ab-sen-shee-<<schwa>>). An administration granted during the absence of either the executor or the person who has precedence as administrator.

administration durante minore aetate (d[y]uu-ran-tee mi-nor-ee ee-tay-tee). An administration granted during the minority of either a child executor or the person who has precedence as administrator.

administration pendente lite (pen-den-tee II-tee). An administration granted during the pendency of a suit concerning a will's validity. — Also termed pendente lite administration; special administration. See PENDENTE LITE. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

administration with the will annexed. See administration cum testamento annexo.

ancillary administration (an-s<<schwa>>-ler-ee). An administration that is auxiliary to the administration at the place of the decedent's domicile, such as one in another state. • The purpose of this process is to collect assets, to transfer and record changed title to real property located there, and to pay any debts in that locality. — Also termed foreign administration. [Cases: Executors and Administrators 518–526. C.J.S. Executors and Administrators §§ 916–935.]

“The object of ancillary administration is to collect assets of nonresident decedents found within the state and remit the proceeds to the domiciliary executor or administrator.... One of the principal purposes of ancillary administration is to protect local creditors of nonresident decedents by collecting and preserving local assets for their benefit.” 31 Am. Jur. 2d Executors and Administrators §§ 1057–1058, at 686 (2002).

caeterorum administration (set-<<schwa>>-ror-<<schwa>>m). [Latin “of the rest”] An administration granted when limited powers previously granted to an administrator are inadequate to settle the estate's residue.

domiciliary administration (dom-<<schwa>>-sil-ee-er-ee). The handling of an estate in the state where the decedent was domiciled at death.

foreign administration. See ancillary administration.

general administration. An administration with authority to deal with an entire estate. Cf. special administration.

limited administration. An administration for a temporary period or for a special purpose. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

original administration. An administration that is not ancillary to a domiciliary administration.

pendente lite administration. See administration pendente lite.

public administration. In some jurisdictions, an administration by an officer appointed to administer for an intestate who has left no person entitled to apply for letters (or whose possible representatives refuse to serve). [Cases: Executors and Administrators 24.]

special administration. 1. An administration with authority to deal with only some of a decedent's property, as opposed to administering the whole estate. 2. See administration pendente lite. Cf. general administration. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

temporary administration. An administration in which the court appoints a fiduciary to administer the affairs of a decedent's estate for a short time before an administrator or executor can be appointed and qualified. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

#### ADMINISTRATION BILL

administration bill. See BILL(3).

#### ADMINISTRATION EXPENSE

administration expense. Tax. A necessary expenditure made by an administrator in managing and distributing an estate. • These expenses are tax-deductible even if not actually incurred by the time the return is filed. [Cases: Executors and Administrators 108. C.J.S. Executors and Administrators § 237.]

#### ADMINISTRATION FOR CHILDREN AND FAMILIES

Administration for Children and Families. A unit in the U.S. Department of Health and Human Services responsible for health issues involving children and families, refugees, legalized aliens, and people with developmental disabilities. — Abbr. ACF.

#### ADMINISTRATION LETTERS

administration letters. See LETTERS OF ADMINISTRATION.

#### ADMINISTRATION OF JUSTICE

administration of justice. The maintenance of right within a political community by means of the physical force of the state; the state's application of the sanction of force to the rule of right.

#### ADMINISTRATION ON AGING

Administration on Aging. A unit in the U.S. Department of Health and Human Services

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responsible for promoting the welfare of the elderly and for assisting the states and Native American governments in doing so.

**ADMINISTRATION PENDENTE LITE**

administration pendente lite. See ADMINISTRATION.

**ADMINISTRATION WITH THE WILL ANNEXED**

administration with the will annexed. See administration cum testamento annexo under ADMINISTRATION.

**ADMINISTRATIVE ACT**

administrative act. See ACT.

**ADMINISTRATIVE ADJUDICATION**

administrative adjudication. The process used by an administrative agency to issue regulations through an adversary proceeding. Cf. RULEMAKING. [Cases: Administrative Law and Procedure 441–513. C.J.S. Public Administrative Law and Procedure §§ 87, 115–171.]

**ADMINISTRATIVE AGENCY**

administrative agency. See AGENCY(3).

**ADMINISTRATIVE COLLATERAL ESTOPPEL**

administrative collateral estoppel. See COLLATERAL ESTOPPEL.

**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**

Administrative Conference of the United States. A former independent federal agency that provided a forum where agency heads, private attorneys, university professors, and others studied ways to improve the procedures that agencies use in administering federal programs. • ACUS was abolished in 1995. — Abbr. ACUS.

**ADMINISTRATIVE-CONTROL RULE**

administrative-control rule. Tax. The rule making the grantor of a trust liable for tax if the grantor retains control that may be exercised primarily for the grantor's own benefit. IRC (26 USCA) § 675. [Cases: Internal Revenue 4028.]

**ADMINISTRATIVE-CONVENIENCE EXCEPTION**

administrative-convenience exception. Bankruptcy. A provision permitting a bankruptcy plan to have a separate classification for small, unsecured claims, to the extent that the separate classification will assist in a more efficient disposition of the estate, as by paying or eliminating the small claims earlier than other claims. 11 USCA § 1122(b). [Cases: Bankruptcy 3550. C.J.S. Bankruptcy § 386.]

**ADMINISTRATIVE CRIME**



administrative crime. See CRIME.

#### ADMINISTRATIVE DEVIATION

administrative deviation. A trustee's unauthorized departure from the terms of the trust.

#### ADMINISTRATIVE DISCHARGE

administrative discharge. See DISCHARGE(8).

#### ADMINISTRATIVE DISCRETION

administrative discretion. See DISCRETION(4).

#### ADMINISTRATIVE DOMAIN-NAME CHALLENGE PANEL

Administrative Domain-Name Challenge Panel. Trademarks. A board of experts convened under the auspices of the World Intellectual Property Organization to decide Internet domain-name disputes. — Abbr. ACP.

#### ADMINISTRATIVE EXPENSE

administrative expense. 1. OVERHEAD. 2. Bankruptcy. A cost incurred by the debtor, after filing a bankruptcy petition, that is necessary for the debtor to continue operating its business. • Administrative expenses are entitled to payment on a priority basis when the estate is distributed. 11 USCA § 503(b). See general administrative expense under EXPENSE. [Cases: Bankruptcy 2871–2879. C.J.S. Bankruptcy §§ 232, 250–254, 281, 354.]

#### ADMINISTRATIVE FREEZE

administrative freeze. Bankruptcy. The refusal by a debtor's bank to permit withdrawals from the debtor's bank account after the bank learns that the debtor has filed bankruptcy, usu. because the debtor owes money to the bank in addition to maintaining funds on deposit. [Cases: Bankruptcy 2678. C.J.S. Bankruptcy § 164.]

#### ADMINISTRATIVE HEARING

administrative hearing. An administrative-agency proceeding in which evidence is offered for argument or trial. [Cases: Administrative Law and Procedure 469. C.J.S. Public Administrative Law and Procedure §§ 134, 136, 138–139.]

#### ADMINISTRATIVE INTERPRETATION

administrative interpretation. See INTERPRETATION.

#### ADMINISTRATIVE LAW

administrative law. The law governing the organization and operation of administrative agencies (including executive and independent agencies) and the relations of administrative agencies with the legislature, the executive, the judiciary, and the public. • Administrative law is divided into three parts: (1) the statutes endowing agencies with powers and establishing rules of substantive law relating to those powers; (2) the body of agency-made law, consisting of

administrative rules, regulations, reports, opinions containing findings of fact, and orders; and (3) the legal principles governing the acts of public agents when those acts conflict with private rights. [Cases: Administrative Law and Procedure 1. C.J.S. Public Administrative Law and Procedure § 2.]

“Administrative law deals with the field of legal control exercised by law-administering agencies other than courts, and the field of control exercised by courts over such agencies.” Felix Frankfurter, *The Task of Administrative Law*, 75 U. Pa. L. Rev. 614, 615 (1927).

“[A]dministrative law is to labor law, securities regulation, and tax what civil procedure is to contracts, torts, and commercial law. Administrative law studies the way government institutions do things. It is therefore the pro-cedural component to any practice that affects or is affected by government decisionmakers other than just the courts. Its study goes beyond traditional questions; it explores a variety of procedures and it develops ideas about decisionmaking and decisionmakers.” 1 Charles H. Koch, *Administrative Law and Practice* § 1.2, at 2 (2d ed. 1997).

international administrative law. 1. The internal law and rules of international organizations. 2. The substantive rules of international law that directly refer to the administrative matters of individual states. 3. Domestic ad-ministrative law specifically concerned with international problems or situations. — Also termed administrative international law.

#### ADMINISTRATIVE-LAW JUDGE

administrative-law judge. An official who presides at an administrative hearing and who has the power to ad-minister oaths, take testimony, rule on questions of evidence, and make factual and legal determinations. 5 USCA § 556(c). — Abbr. ALJ. — Also termed hearing examiner; hearing officer; trial examiner. [Cases: Administrative Law and Procedure 443. C.J.S. Public Administrative Law and Procedure § 138.]

#### ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Administrative Office of the United States Courts. An office in the judicial branch of the federal government responsible for administering the nonjudicial business of the federal courts (except the Supreme Court), disbursing funds, collecting statistics, fixing certain salaries, and purchasing supplies and equipment. • Created in 1939, the Office is supervised by the Judicial Conference of the United States. 28 USCA §§ 601 et seq. — Abbr. AOUSC; AO. See JUDICIAL CONFERENCE OF THE UNITED STATES. [Cases: Courts 55. C.J.S. Courts §§ 107–109.]

#### ADMINISTRATIVE OFFICER

administrative officer. See OFFICER(1).

#### ADMINISTRATIVE ORDER

administrative order. See ORDER(2).

#### ADMINISTRATIVE PATENT JUDGE

administrative patent judge. See JUDGE.

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**ADMINISTRATIVE PROCEDURE ACT**

Administrative Procedure Act. 1. A federal statute establishing practices and procedures to be followed in rulemaking and adjudication. • The Act was designed to give citizens basic due-process protections such as the right to present evidence and to be heard by an independent hearing officer. 2. A similar state statute. — Abbr. APA. [Cases: Administrative Law and Procedure 4. C.J.S. Public Administrative Law and Procedure § 3.]

**ADMINISTRATIVE PROCEEDING**

administrative proceeding. A hearing, inquiry, investigation, or trial before an administrative agency, usu. ad-judicatory in nature but sometimes quasi-legislative. — Also termed evidentiary hearing; full hearing; trial-type hearing; agency adjudication. [Cases: Administrative Law and Procedure 309, 341–513. C.J.S. Public Administrative Law and Procedure §§ 71, 76–171.]

**ADMINISTRATIVE PROCESS**

administrative process. 1. The procedure used before administrative agencies. [Cases: Administrative Law and Procedure 309. C.J.S. Public Administrative Law and Procedure § 71.] 2. The means of summoning witnesses to an agency hearing. [Cases: Administrative Law and Procedure 464. C.J.S. Public Administrative Law and Procedure §§ 124, 132.]

**ADMINISTRATIVE REMEDY**

administrative remedy. See REMEDY.

**ADMINISTRATIVE REVIEW**

administrative review. See REVIEW.

**ADMINISTRATIVE RULE**

administrative rule. An officially promulgated agency regulation that has the force of law. • Administrative rules typically elaborate the requirements of a law or policy. [Cases: Administrative Law and Procedure 381. C.J.S. Public Administrative Law and Procedure §§ 87, 91.]

**ADMINISTRATIVE RULEMAKING**

administrative rulemaking. See RULEMAKING.

**ADMINISTRATIVE SEARCH**

administrative search. See SEARCH.

**ADMINISTRATIVE SEARCH WARRANT**

administrative search warrant. See administrative warrant under WARRANT(1).

**ADMINISTRATIVE TRIBUNAL**

administrative tribunal. An administrative agency before which a matter may be heard or tried,

as distinguished from a purely executive agency; an administrative agency exercising a judicial function. [Cases: Administrative Law and Procedure 309. C.J.S. Public Administrative Law and Procedure § 71.]

#### ADMINISTRATIVE WARRANT

administrative warrant. See WARRANT(1).

#### ADMINISTRATOR

administrator (ad-min-<<schwa>>-stray-t<<schwa>>r). 1. A person who manages or heads a business, public office, or agency. [Cases: Executors and Administrators 17. C.J.S. Executors and Administrators § 34.]

court administrator. An official who supervises the nonjudicial functions of a court, esp. the court's calendar, judicial assignments, budget, and nonjudicial personnel. [Cases: Courts 55. C.J.S. Courts §§ 107–109.]

local administrator. Conflict of laws. An administrator appointed in the state where property is located or where an act is done.

2. A person appointed by the court to manage the assets and liabilities of an intestate decedent. • This term once referred to males only (as opposed to administratrix), but legal writers now generally use administrator to refer to someone of either sex. In the Restatement of Property, the term administrator includes the term executor unless specifically stated otherwise. Cf. EXECUTOR (2).

administrator ad colligendum (ad kol-i-jen-d<<schwa>>m). An administrator appointed solely to collect and preserve the decedent's estate.

administrator ad litem (ad II-tem or -t<<schwa>>m). A special administrator appointed by the court to represent the estate's interest in an action usu. either because there is no administrator of the estate or because the current administrator has an interest in the action adverse to that of the estate. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

administrator ad prosequendum (ad prahs-<<schwa>>-kwen-d<<schwa>>m). An administrator appointed to prosecute or defend a certain action or actions involving the estate. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

administrator c.t.a. See administrator cum testamento annexo.

administrator cum testamento annexo (k<<schwa>>m tes-t<<schwa>>-men-toh <<schwa>>-nek-soh). An administrator appointed by the court to carry out the provisions of a will when the testator has named no executor, or the executors named refuse, are incompetent to act, or have died before performing their duties. — Also termed administrator c.t.a.; administrator with the will annexed. [Cases: Executors and Administrators 21. C.J.S. Executors and Administrators §§ 947–948.]

administrator d.b.n. See administrator de bonis non.

administrator de bonis non (dee boh-nis non). An administrator appointed by the court to administer the decedent's goods that were not administered by an earlier administrator or executor. • If there is no will, the administrator bears the name administrator de bonis non (abbr. administrator d.b.n.), but if there is a will, the full name is administrator de bonis non cum testamento annexo (abbr. administrator d.b.n.c.t.a.). [Cases: Executors and Administrators 37. C.J.S. Executors and Administrators §§ 935–936, 946.]

administrator durante absentia (d[y]uu-ran-tee ab-sen-shee-<<schwa>>). An administrator appointed to act while an estate's executor or an administrator with precedence is temporarily absent.

administrator durante minore aetate (d[y]uu-ran-tee mi-nor-ee ee-tay-tee). An administrator who acts during the minority of a person who either is named by the testator as the estate's executor or would be appointed as the estate's administrator but for the person's youth.

administrator pendente lite. See special administrator.

administrator with the will annexed. See administrator cum testamento annexo.

ancillary administrator (an-s<<schwa>>-ler-ee). A court-appointed administrator who oversees the distribution of the part of a decedent's estate located in a jurisdiction other than where the decedent was domiciled (the place of the main administration). [Cases: Executors and Administrators 518. C.J.S. Executors and Administrators § 916.]

domiciliary administrator. A person appointed to administer an estate in the state where the decedent was domiciled at death.

foreign administrator. An administrator appointed in another jurisdiction. [Cases: Executors and Administrators 517. C.J.S. Executors and Administrators § 915.]

general administrator. A person appointed to administer an intestate decedent's entire estate.

public administrator. A state-appointed officer who administers intestate estates that are not administered by the decedent's relatives. • This officer's right to administer is usu. subordinate to the rights of creditors, but in a few jurisdictions the creditors' rights are subordinate. [Cases: Executors and Administrators 24.]

special administrator. 1. A person appointed to administer only a specific part of an intestate decedent's estate. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.] 2. A person appointed to serve as administrator of an estate solely because of an emergency or an unusual situation, such as a will contest. — Also termed (in sense 2) administrator pendente lite.

#### ADMINISTRATOR'S BOND

administrator's bond. See fiduciary bond under BOND(2).

#### ADMINISTRATOR'S DEED

administrator's deed. See DEED.

#### ADMINISTRATRIX

administratrix (ad-min-*<<schwa>>*-stray-triks or ad-min-*<<schwa>>*-str*<<schwa>>*-triks). Archaic. A female administrator. Pl. administratrices, administratrices. See ADMINISTRATOR(2).

#### ADMIRALITAS

admiralitas (ad-m*<<schwa>>*-ral-*<<schwa>>*-tas), n. [Law Latin] 1. Admiralty; an admiralty court. 2. SOCIETAS NAVALIS.

#### ADMIRALTY

admiralty (ad-m*<<schwa>>*-r*<<schwa>>*-tee), n. 1. A court that exercises jurisdiction over all maritime contracts, torts, injuries, or offenses. • The federal courts are so called when exercising their admiralty jurisdiction, which is conferred by the U.S. Constitution (art. III, § 2, cl. 1). — Also termed admiralty court; maritime court. [Cases: Admiralty 1.C.J.S. Admiralty §§ 2–12, 33, 37, 41, 69–70, 83, 280.] 2. The system of jurisprudence that has grown out of the practice of admiralty courts; MARITIME LAW. 3. Narrowly, the rules governing contract, tort, and workers'-compensation claims arising out of commerce on or over navigable water. — Also termed (in senses 2 & 3) admiralty law. — admiralty, adj.

#### ADMIRALTY, FIRST LORD

Admiralty, First Lord. See FIRST LORD OF THE ADMIRALTY.

#### ADMIRALTY AND MARITIME JURISDICTION

admiralty and maritime jurisdiction. The exercise of authority over maritime cases by the U.S. district courts sitting in admiralty. See 28 USCA § 1333. — Often shortened to admiralty jurisdiction; maritime jurisdiction. See ADMIRALTY(1); SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS . [Cases: Admiralty 1–25. C.J.S. Admiralty §§ 2–86, 280; Conflict of Laws § 49.]

#### ADMIRALTY CLAUSE

Admiralty Clause. The clause of the U.S. Constitution giving the federal courts jurisdiction over admiralty and maritime cases. U.S. Const. art. III, § 2, cl. 1.

#### ADMIRALTY COURT

admiralty court. See ADMIRALTY(1).

#### ADMIRALTY EXTENSION ACT

Admiralty Extension Act. A 1948 statute extending admiralty-tort jurisdiction to include all cases in which damage or injury is caused by a vessel on navigable water, regardless of where the injury or damage occurred. 46 USCA app. § 740. • Specifically, the Act extended jurisdiction over damages and injuries that a vessel causes on land, such as to bridges and piers or to people on

them. — Abbr. AEA.

#### ADMIRALTY JURISDICTION

admiralty jurisdiction. See ADMIRALTY AND MARITIME JURISDICTION.

#### ADMIRALTY LAW

admiralty law. 1. ADMIRALTY(2), 2. ADMIRALTY(3).

#### ADMISSIBILITY

admissibility (ad-mis-<<schwa>>-bil-<<schwa>>-tee), n. The quality or state of being allowed to be entered into evidence in a hearing, trial, or other proceeding. [Cases: Federal Civil Procedure 2011; Trial 43.C.J.S. Trial § 162.]

“ ‘Admissibility’ can best be thought of as a concept consisting of two quite different aspects: disclosure to the trier of fact and express or implied permission to use as ‘evidence.’ If we think of admissibility as a question of disclosure or nondisclosure, it is usually easy to say whether or not an item of evidence has been admitted. When we consider the question of permissible use, the concept seems much more complex. In the first place, evidence may be ‘admissible’ for one purpose but not for another.... In the second place, questions of the permissible use of evidence do not arise only at the time of disclosure to the trier of fact. The court may have to consider admissibility in deciding whether to give the jury a limiting instruction, whether or not an opponent’s rebuttal evidence is relevant, and whether or not counsel can argue to the jury that the evidence proves a particular point.” 22 Charles Alan Wright & Kenneth W. Graham Jr., *Federal Practice and Procedure* § 5193, at 184 (1978).

conditional admissibility. The evidentiary rule that when a piece of evidence is not itself admissible, but is admissible if certain other facts make it relevant, the evidence becomes admissible on condition that counsel later introduce the connecting facts. • If counsel does not satisfy this condition, the opponent is entitled to have the conditionally admitted piece of evidence struck from the record, and to have the judge instruct the jury to disregard it. [Cases: Criminal Law 672, 681; Federal Civil Procedure 2014; Trial 51. C.J.S. Criminal Law § 1217; Trial § 177.]

curative admissibility. The rule that an inadmissible piece of evidence may be admitted if offered to cure or counteract the effect of some similar piece of the opponent’s evidence that itself should not have been admitted. [Cases: Criminal Law 396; Evidence 155. C.J.S. Criminal Law § 758; Evidence §§ 248–250.]

limited admissibility. The principle that testimony or exhibits may be admitted into evidence for a restricted purpose. • Common examples are admitting prior contradictory testimony to impeach a witness but not to establish the truth, and admitting evidence against one party but not another. The trial court must, upon request, instruct the jury properly about the applicable limits when admitting the evidence. Fed. R. Evid. 105. [Cases: Criminal Law 385; Trial 54. C.J.S. Criminal Law §§ 656, 753; Trial § 179.]

multiple admissibility. The evidentiary rule that, although a piece of evidence is inadmissible under one rule for the purpose given in offering it, it is nevertheless admissible if relevant and offered for some other purpose not forbidden by the rules of evidence. [Cases: Criminal Law 385; Trial 54. C.J.S. Criminal Law §§ 656, 753; Trial § 179.]

#### ADMISSIBLE

admissible (ad-mis-*<<schwa>>*-b*<<schwa>>*l), adj. 1. Capable of being legally admitted; allowable; permissible *<admissible evidence>*. 2. Worthy of gaining entry or being admitted *<a person is admissible to the bar upon obtaining a law degree and passing the bar exam>*.

#### ADMISSIBLE EVIDENCE

admissible evidence. See EVIDENCE.

#### ADMISSION

admission (ad-mish-*<<schwa>>*n), n. 1. Any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true. Cf. CONFESSIO. [Cases: Criminal Law 405; Evidence 200–205. C.J.S. Criminal Law § 877; Evidence §§ 293, 340, 364–467, 469–471.]

admission against interest. A person's statement acknowledging a fact that is harmful to the person's position as a litigant. • An admission against interest must be made either by a litigant or by one in privity with or occupying the same legal position as the litigant; as an exception to the hearsay rule, it is admissible whether or not the person is available as a witness. Fed. R. Evid. 801(d)(2). A declaration against interest, by contrast, is made by a nonlitigant who is not in privity with a litigant; a declaration against interest is also admissible as an exception to the hearsay rule, but only when the declarant is unavailable as a witness. Fed. R. Evid. 804(b)(3). See declaration against interest under DECLARATION(6).

admission by employee or agent. An admission made by a party-opponent's agent during employment and concerning a matter either within the scope of the agency or authorized by the party-opponent. [Cases: Criminal Law 410; Evidence 237–245. C.J.S. Criminal Law §§ 890–891; Evidence §§ 366, 433–442, 444–450, 454.]

admission by party-opponent. An opposing party's admission, which is not considered hearsay if it is offered against that party and is (1) the party's own statement, in either an individual or a representative capacity; (2) a statement of which the party has manifested an adoption or belief in its truth; (3) a statement by one authorized by the party to make such a statement; (4) a statement by the party's agent concerning a matter within the scope of the agency or employment and made during the existence of the relationship; or (5) a statement by a coconspirator of the party during the course of and in furtherance of the conspiracy. Fed. R. Evid. 801(d)(2). [Cases: Criminal Law 405–410; Evidence 221–253. C.J.S. Criminal Law §§ 877, 880, 882–884, 887–895, 905, 932, 936–940, 942–946; Evidence §§ 293, 364, 366, 410.]

admission by silence. The failure of a party to speak after another party's assertion of fact that, if untrue, would naturally compel a person to deny the statement. [Cases: Criminal Law 407;



Evidence 220. C.J.S. Criminal Law § 887; Evidence §§ 390–393.]

admission in *judicio*. See judicial admission.

adoptive admission. An action by a party that indicates approval of a statement made by another, and thereby acceptance that the statement is true. [Cases: Criminal Law 407; Evidence 220. C.J.S. Criminal Law § 887; Evidence §§ 390–393.]

extrajudicial admission. An admission made outside court proceedings.

implied admission. An admission reasonably inferable from a party's action or statement, or a party's failure to act or speak. — Also termed tacit admission. [Cases: Evidence 265(12). C.J.S. Evidence § 471.]

incidental admission. An admission made in some other connection or involved in the admission of some other fact.

incriminating admission. An admission of facts tending to establish guilt. [Cases: Criminal Law 405. C.J.S. Criminal Law § 877.]

judicial admission. A formal waiver of proof that relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it. — Also termed solemn admission; admission in *judicio*; true admission. [Cases: Criminal Law 406(4); Evidence 206, 265(7). C.J.S. Criminal Law §§ 882–884; Evidence §§ 364, 469, 472, 475–476.]

quasi-admission. An act or utterance, usu. extrajudicial, that creates an inconsistency with and discredits, to a greater or lesser degree, a present claim or other evidence of the person creating the inconsistency. [C.J.S. Evidence §§ 293, 340, 364–467, 469–471.]

solemn admission. See judicial admission.

tacit admission. See implied admission.

true admission. See judicial admission.

2. Acceptance of a lawyer by the established licensing authority, such as a state bar association, as a member of the practicing bar, usu. after the lawyer passes a bar examination and supplies adequate character references <admission to the bar>. • The entry of a lawyer on the rolls of an integrated bar, usu. after the fulfillment of two prerequisites: graduating from law school and passing a state bar examination. — Also termed admission to practice law. [Cases: Attorney and Client 7. C.J.S. Attorney and Client §§ 19–22.]

admission on motion. Permanent admission of a lawyer who is in good standing in the bar of a different state without the need for a full bar examination. [Cases: Attorney and Client 10. C.J.S. Attorney and Client §§ 26–28.]

admission *pro hac vice* (*proh hak vi*-see or *proh hak vee*-chay). Temporary admission of an out-of-jurisdiction lawyer to practice before a court in a specified case or set of cases. See *PRO HAC VICE*. [Cases: Attorney and Client 10. C.J.S. Attorney and Client §§ 26–28.]

3.Patents. A concession or representation by a patent applicant that an activity, knowledge, or a publication is prior art. • An admission requires the U.S. Patent and Trademark Office examiner to consider the relevant item as prior art, even if it does not technically qualify as prior art. — Also termed admission of prior art. [Cases: Patents 51(1). C.J.S. Patents §§ 31–33, 39.]

#### ADMISSION TAX

admission tax.See TAX.

#### ADMISSION TO BAIL

admission to bail.An order to release an accused person from custody after payment of bail or receipt of an adequate surety for the person's appearance for trial. See BAIL(1).

#### ADMISSION TO PRACTICE LAW

admission to practice law.See ADMISSION(2).

#### ADMISSION TO SUFFICIENT FACTS

admission to sufficient facts.See SUBMISSION TO A FINDING.

#### ADMITTANCE

admittance. 1. The act of entering a building, locality, or the like. 2. Permission to enter. 3.Hist. The act of giving seisin of a copyhold estate. • Admittance corresponded with livery of seisin of a freehold. Copyhold estates were abolished by the Law of Property Act of 1922. See COPYHOLD.

#### ADMITTED ASSET

admitted asset.See ASSET.

#### ADMITTED CORPORATION

admitted corporation.See CORPORATION.

#### ADMITTENDO CLERICO

admittendo clerico (ad-mi-ten-doh kler-<<schwa>>-koh). See DE CLERICO ADMITTENDO .

#### ADMITTENDO IN SOCIUM

admittendo in socium (ad-mi-ten-doh in soh-shee-<<schwa>>m). [Latin] Hist. A writ for associating certain persons, such as knights, to justices of assize on the circuit.

#### ADMIXTURE

admixture (ad-miks-ch<<schwa>>r).1. The mixing of things. 2. A substance formed by mixing.

#### ADMONITION

admonition (ad-m<<schwa>>-nish-<<schwa>>n), n.1. Any authoritative advice or caution from the court to the jury regarding their duty as jurors or the admissibility of evidence for consideration <the judge's admonition that the jurors not discuss the case until they are charged>. [Cases: Criminal Law 852; Trial 133.6. C.J.S. Criminal Law § 1371; Trial §§ 331–332.] 2. A reprimand or cautionary statement addressed to counsel by a judge <the judge's admonition that the lawyer stop speaking out of turn>. [Cases: Criminal Law 730; Trial 133.4. C.J.S. Trial § 331.] 3. Eccles. law. An authoritatively issued warning or censure. — admonish (ad-mon-ish), vb. — admonitory (ad-mon-<<schwa>>-tor-ee), adj.

#### ADMONITIO TRINA

admonitio trina (ad-m<<schwa>>-nish-ee-oh trI-n<<schwa>>), n.[Law Latin “triple warning”] Hist. A threefold warning advising a defendant charged with a capital crime that refusal to answer questions about the offense would in itself be considered a capital crime punishable by death. See PEINE FORTE ET DURE .

#### AD MORDENDUM ASSUETUS

ad mordendum assuetus (ad mor-den-d<<schwa>>m <<schwa>>-swee-t<<schwa>>s), adj.[Law Latin] Hist. Accustomed to bite. • This phrase was a common charge in a declaration of damage done by a dog to a person or to another animal.

#### ADMORTIZATION

admortization (ad-mor-t<<schwa>>-zay-sh<<schwa>>n).Hist. The reduction of property of lands or tenements to mortmain.

#### ADNEPOS

adnepos (ad-nep-ohs), n.[Latin] Hist. A great-great-grandson.

#### ADNEPTIS

adneptis (ad-nep-tis), n.[Latin] Hist. A great-great-granddaughter.

#### ADNIHILARE

adnihilare (ad-nI-h<<schwa>>-lair-ee), vb.[Law Latin] Hist. To annul; to make void.

#### AD NOCUMENTUM

ad nocumentum (ad nok-yoo-men-t<<schwa>>m), adv.[Law Latin] Hist. To the nuisance; to the hurt or injury.

#### AD NON EXECUTA

ad non executata (ad non ek-s<<schwa>>-kyoo-t<<schwa>>), adv.[Latin] Hist. For the things not executed (as by an executor).

#### ADNOTATIO

adnotatio (ad-noh-tay-shee-oh), n.[Latin] Roman law. A note written in the margin of a

document; esp., the reply of the emperor in his own hand to a petition addressed to him. Pl. adnotationes (ad-noh-tay-shee-oh-nee-z). See RESCRIPT(3).

#### AD OMISSA VEL MALE APPRETIATA

ad omissa vel male appretiata (ad oh-mis-*<<schwa>>* vel mal-ee *<<schwa>>*-pree-shee-ay-t*<<schwa>>*). [Law Latin] Scots law. Concerning things omitted or undervalued. • The phrase appeared in reference to an executor's duty to include in an estate's inventory previously omitted items or to reevaluate undervalued items in the estate's inventory.

#### ADOPTABILITY

adoptability, n. Family law. 1. A child's availability to be adopted, esp. by reason of all legal impediments having been removed. 2. The likelihood of a child's being adopted; a prospective adoptee's desirability from the prospective parents' point of view. — adoptable, adj.

#### ADOPTED CHILD

adopted child. See CHILD.

#### ADOPTEE

adoptee. A person who has become the legal child of one or two nonbiological parents. — Also termed adopted child.

#### ADOPTION

adoption, n. 1. Family law. The creation of a parent-child relationship by judicial order between two parties who usu. are unrelated; the relation of parent and child created by law between persons who are not in fact parent and child. • This relationship is brought about only after a determination that the child is an orphan or has been abandoned, or that the parents' parental rights have been terminated by court order. Adoption creates a parent-child relationship between the adopted child and the adoptive parents with all the rights, privileges, and responsibilities that attach to that relationship, though there may be agreed exceptions. There is a distinction between adoption and legitimation, and between adoption and fostering. Adoption usu. refers to an act between persons unrelated by blood; legitimation refers to an act between persons related by blood. Universally, a decree of adoption confers legitimate status on the adopted child. See adopted child under CHILD. Cf. LEGITIMATION(2). [Cases: Adoption 1. C.J.S. Adoption of Persons §§ 2-4.]

“Although adoption is found in many societies, ancient and modern, primitive and civilized, and is recognized by the civil law, it was unknown at common law. Accordingly, adoption is entirely a creature of statute ....” Elias Clark et al., *Gratuitous Transfers: Wills, Intestate Succession, Trusts, Gifts, Future Interests, and Estate and Gift Taxation Cases and Materials* 73-74 (4th ed. 1999).

adoption by estoppel. 1. An equitable adoption of a child by one who promises or acts in a way that precludes the person and his or her estate from denying adopted status to the child. 2. An equitable decree of adoption treating as done that which ought to have been done. • Such a decree

is entered when no final decree of adoption has already been obtained, even though the principal has acted as if an adoption has been achieved. A petitioner must show an agreement of adoption, relinquishment of parental authority by the child's biological parents, assumption of parental responsibility by the foster parents, and a de facto relationship of parent and child over a substantial period. Such a claim typically occurs when an adoptive parent has died intestate, and the child tries to be named an heir. In a minority of states, adoption by estoppel may be a basis for allowing a child to participate in a wrongful-death action. — Also termed equitable adoption; virtual adoption. See ESTOPPEL(1).3. See de facto adoption. [Cases: Adoption 6. C.J.S. Adoption of Persons §§ 25–40.]

**adult adoption.**The adoption of one adult by another. • Many jurisdictions do not allow adult adoptions. Those that do often impose restrictions, as by requiring consent of the person to be adopted, but may not look too closely at the purpose for which adoption is sought.

**agency adoption.**An adoption in which parental rights are terminated and legal custody is relinquished to an agency that finds and approves the adoptive parents. • An agency adoption can be either public or private. In all states, adoption agencies must be licensed, and in most they are nonprofit entities. Parents who voluntarily place a child for adoption most commonly use a private agency. Cf. private adoption.

**black-market adoption.** 1. An illegal adoption in which an intermediary (a broker) receives payment for his or her services. 2. Baby-selling.

**closed adoption.**An adoption in which the biological parent relinquishes his or her parental rights and surrenders the child to an unknown person or persons; an adoption in which there is no disclosure of the identity of the birth parents, adopting parent or parents, or child. • Adoptions by stepparents, blood relatives, and foster parents are exceptions to the no-disclosure requirement. — Also termed confidential adoption. Cf. open adoption; cooperative adoption.

**cooperative adoption.**A process in which the birth parents and adoptive parents negotiate to reach a voluntary agreement about the degree and type of continuing contact after adoption, including direct visitation or more limited arrangements such as communication by telephone or mail, the exchange of either identifying or non-identifying information, and other forms of contact. Cf. open adoption; closed adoption.

**de facto adoption.**An adoption that falls short of the statutory requirements in a particular state. • The adoption agreement may ripen to a de jure adoption when the statutory formalities have been met or if a court finds that the requirements for adoption by estoppel have been met. — Also termed adoption by estoppel. [Cases: Adoption 6. C.J.S. Adoption of Persons §§ 25–40.]

**de facto stepparent adoption.**See second-parent adoption.

**direct-placement adoption.**See private adoption.

**embryo adoption.**Slang. The receipt of a frozen embryo that is implanted into a recipient's womb. • Donors must waive all parental rights before the recipients of the embryo assume legal ownership or custody. The process is not considered to be a legal adoption because American law

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does not treat embryos as children.

equitable adoption. See adoption by estoppel.

gray-market adoption. See private adoption.

identified adoption. See private adoption.

independent adoption. See private adoption.

intercountry adoption. See international adoption.

international adoption. An adoption in which parents domiciled in one nation travel to a foreign country to adopt a child there, usu. in accordance with the laws of the child's nation. • International adoptions first became popular after World War II and escalated after the Korean Conflict because of the efforts of humanitarian programs working to find homes for children left orphaned by the wars. More recently, prospective parents have turned to international adoption as the number of healthy babies domestically available for adoption has steadily declined. — Also termed transnational adoption; intercountry adoption. See MULTIETHNIC PLACEMENT ACT OF 1994.

interracial adoption. See transracial adoption.

interstate adoption. An adoption in which the prospective parents live in one state and the child lives in another state. See INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.

joint adoption. An adoption in which the prospective parents apply as a couple and are approved or rejected as a couple, as opposed to filing separate and individual applications to adopt a child. • Although the term most often applies to adoption by a married couple, it also applies to an adoption petition by two unmarried partners who are adopting a child.

open adoption. An adoption in which the biological mother (sometimes with the biological father) chooses the adoptive parents and in which the child often continues to have a post-adoption relationship with his or her biological family. • Typically the birth parents meet the adoptive parents and participate in the separation and placement process. The birth parents relinquish all legal, moral, and nurturing rights over the child, but usu. retain the right to continuing contact and to knowledge of the child's welfare and location. Cf. closed adoption; cooperative adoption.

posthumous adoption. An adoption that becomes legally final after the death of either an adoptive parent or the adopted child. • Few states recognize posthumous adoptions; most require all parties to an adoption to be alive at the time the final judgment is rendered.

private adoption. An adoption that occurs independently between the biological mother (and sometimes the biological father) and the adoptive parents without the involvement of an agency. • A private adoption is usu. arranged by an intermediary such as a lawyer, doctor, or counselor. Legal custody — though sometimes not physical custody — remains with the biological parent or parents until the termination and adoption are complete. — Also termed private-placement adoption; direct-placement adoption; direct adoption; gray-market adoption; identified adoption;

independent adoption. Cf. agency adoption.

private-placement adoption. See private adoption.

pseudo-stepparent adoption. See second-parent adoption.

second-parent adoption. An adoption by an unmarried cohabiting partner of a child's legal parent, not involving the termination of a legal parent's rights; esp., an adoption in which a lesbian, gay man, or unmarried heterosexual person adopts his or her partner's biological or adoptive child. See Restatement (Third) of Property: Wills and Other Donative Transfers § 2.5 cmt. i. • Although not all jurisdictions recognize second-parent adoption, the practice is becoming more widely accepted. See *In re Adoption of B.L.V.B.*, 628 A.2d 1271 (Vt. 1993); *In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); *In re Adoption of Evan*, 583 N.Y.S.2d 997 (Sur. Ct. 1992). — Also termed de facto stepparent adoption; pseudo-stepparent adoption. Cf. stepparent adoption.

stepparent adoption. The adoption of a child by a stepfather or stepmother. • Stepparent adoptions are the most common adoptions in the United States. Cf. second-parent adoption.

transnational adoption. See international adoption.

transracial adoption. An adoption in which at least one adoptive parent is of a race different from that of the adopted child. • Under federal law, child-placement agencies may not use race as a factor in approving adoptions. 42 USCA § 5115a. — Also termed interracial adoption. See MULTIETHNIC PLACEMENT ACT OF 1994.

virtual adoption. See adoption by estoppel.

wrongful adoption. See WRONGFUL ADOPTION.

2. Roman law. The legal process of creating a parent-child relationship with a young person who is still under the power of another father. • The adopted person became part of the new paterfamilias's agnatic family with exactly the same standing as children (or grandchildren) by blood. This was later modified by Justinian. 3. Contracts. The process by which a person agrees to assume a contract previously made for that person's benefit, such as a newly formed corporation's acceptance of a preincorporation contract. Cf. ADROGATION. [Cases: Corporations 448(2). C.J.S. Corporations §§ 70–71, 73.] 4. Trademarks. The mental act necessary to acquire legal rights in a trademark, consisting of knowledge and intention to use a trademark on or in connection with a product or service in commerce. [Cases: Trade Regulation 63. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 31, 35, 37.] 5. Parliamentary law. A deliberative assembly's approval or endorsement by vote of a motion or report. — Also termed acceptance; consent; passage; ratification. — adopt, vb. — adoptive, adj.

#### ADOPTION AGENCY

adoption agency. A licensed establishment where a biological parent can voluntarily surrender a child for adoption. See agency adoption under ADOPTION.

#### ADOPTION AND SAFE FAMILIES ACT

**Adoption and Safe Families Act.**A 1997 federal law that requires states to provide safe and permanent homes for abused and neglected children within shorter periods than those required by earlier state and federal laws. • The primary focus is on the safety and well-being of the child, in contrast to previously paramount rights of the parents. The ASFA signaled a dramatic shift in the philosophy of child-protection proceedings that had controlled since 1980 under the Adoption Assistance and Child Welfare Act. — Abbr. ASFA. See ADOPTION ASSISTANCE AND CHILD WELFARE ACT; FOSTER-CARE DRIFT.

#### ADOPTION ASSISTANCE AND CHILD WELFARE ACT

**Adoption Assistance and Child Welfare Act.**A 1980 federal statute whose purpose was to force states to use reasonable efforts (1) to avoid removing children from their homes, (2) to reunite families when children had been removed because of abuse or neglect, and (3) when reunification failed, to terminate parental rights and place the children in permanent homes.42 USCA §§ 620 et seq.; §§ 670 et seq. • The Act provided funds for foster-care placement, Child Protective Services, family preservation and reunification, and foster-care reform to states complying with the Act. Its aim was to prevent the unnecessary removal of children from homes and to hasten the return of children in foster care to their families. It has now been essentially overruled in philosophy by the 1997 enactment of the Adoption and Safe Families Act. See ADOPTION AND SAFE FAMILIES ACT.

#### ADOPTION-ASSISTANCE PLAN

**adoption-assistance plan.**An employer-sponsored program that provides financial assistance to employees for adoption-related expenses.

#### ADOPTION BY ESTOPPEL

**adoption by estoppel.**See ADOPTION(1).

#### ADOPTION BY REFERENCE

**adoption by reference.**See INCORPORATION BY REFERENCE.

#### ADOPTION-REGISTRY STATUTE

**adoption-registry statute.**A law that provides for the release of adoption information if the biological parent, the adoptive parent, and the adoptee (after he or she reaches a certain statutorily prescribed age) all officially record their desire for its release. — Also termed voluntary-registry law.

**active adoption-registry statute.**A registry statute that authorizes a state authority to seek out parties' desires to obtain or release adoption information when one party expresses a desire for that information.

**passive adoption-registry statute.**A registry statute allowing parties to register their desires for release of adoption information after an adopted child reaches a specified age.

#### ADOPTIVE ADMISSION



adoptive admission. See ADMISSION(1).

#### ADOPTIVE-ADMISSIONS RULE

adoptive-admissions rule. Evidence. The principle that a statement offered against an accused is not inadmissible hearsay if the accused is aware of the statement and has, by words or conduct, indicated acceptance that the statement is true. See adoptive admission under ADMISSION(1).

#### ADOPTIVE FATHER

adoptive father. See adoptive parent under PARENT.

#### ADOPTIVE MOTHER

adoptive mother. See adoptive parent under PARENT.

#### ADOPTIVE PARENT

adoptive parent. See PARENT.

#### AD OPUS

ad opus (ad oh-p<<schwa>>s), adv. [Law Latin] For the benefit; for the use. • This term indicated an intent to create a use to benefit another. See USE (4).

#### AD OSTENDENDUM

ad ostendendum (ad ah-sten-den-d<<schwa>>m), vb. [Law Latin] To show.

#### AD OSTIUM ECCLESIAE

ad ostium ecclesiae (ad ah-stee-<<schwa>>m e-kee-z[h]ee-ee), adv. [Law Latin] At the church door. See dower ad ostium ecclesiae under DOWER.

#### AD PARATAM EXECUTIONEM

ad paratam executionem (ad p<<schwa>>-ray-t<<schwa>>m ek-si-kyoo-shee-oh-n<<schwa>>m). [Law Latin] Hist. For execution on completed diligence. • The phrase appeared in judgments.

#### AD PARES CASUS

ad pares casus (ad par-eez kay-s<<schwa>>s). [Law Latin] Hist. To similar cases.

#### AD PERPETUAM REI MEMORIAM

ad perpetuam rei memoriam (ad p<<schwa>>r-pech-oo-<<schwa>>m ree-I m<<schwa>>-mor-ee-<<schwa>>m). [Latin] Hist. For a perpetual record of the matter.

“By the statute 1685, a register-book is appointed to be kept, in which entails are to be recorded, with the name of the maker, the heirs, the provisions and conditions of the entail, ‘all to remain in the said register ad perpetuam rei memoriam.’ ” John Trayner, *Trayner's Latin Maxims* 29–30 (4th ed. 1894).

## AD PERPETUAM REMANENTIAM

ad perpetuam remanentiam (ad p<<schwa>>r-pech-oo-<<schwa>>m rem-<<schwa>>-nen-shee-<<schwa>>m). [Law Latin] Hist. To remain forever. • When a vassal surrendered the right of property to the superior ad perpetuam remanentiam, the surrender was in favor of the superior, as distinguished from a transfer in favorem, in which the vassal transferred the property to the superior to be regranted in favor of a purchaser.

## AD PIOS USUS

ad pios usus (ad pI-ohs yoo-s<<schwa>>s oryoo-z<<schwa>>s), adv.[Law Latin] For pious (religious or charitable) uses or purposes. • This phrase was used in reference to gifts and bequests.

## AD PRISTINUM STATUM

ad pristinum statum (ad pris-ti-n<<schwa>>m stay-t<<schwa>>m). [Latin] Hist. To its pristine condition.

## ADPROMISSION

adpromission (ad-pr<<schwa>>-mish-<<schwa>>n). [fr. Latin adpromissio] Roman law. 1. A suretyship contract in which the surety promises to be liable for no more than the debtor owes. • Roman law had three types of adpromission: (1) sponsion; (2) fidepromission; and (3) fidejussion. In addition, mandatam and pactum de con-stitutio could indirectly be used by way of guarantee. 2. A suretyship relation. — Also termed adpromissio.

## ADPROMISSOR

adpromissor (ad-prom-is-<<schwa>>r), n. [Latin] Roman law. A surety for a debtor under a promise by stipulation. See ADPROMISSION.

## AD PROSEQUENDAM

ad prosequendam (ad prahs-<<schwa>>-kwen-d<<schwa>>m), vb.[Law Latin] To prosecute.

## AD PUNCTUM TEMPORIS

ad punctum temporis (ad p<<schwa>>ngk-t<<schwa>>m tem-p<<schwa>>-ris), adv.[Law Latin] At the point of time.

## AD QUAERIMONIAM

ad quaerimoniam (ad kweer-<<schwa>>-moh-nee-<<schwa>>m), adv.[Law Latin] On complaint of.

## AD QUEM

ad quem (ad kwem), adv.[Latin] To whom. • This term is used as a correlative to a quo in computation of time or distance. For example, the terminus a quo is the point of beginning or departure; the terminus ad quem is the end of the period or point of arrival.

**AD QUOD CURIA CONCORDAVIT**

ad quod curia concordavit (ad kwod kyoor-ee-<<schwa>> kon-kor-day-vit). [Law Latin] To which the court agreed.

**AD QUOD DAMNUM**

ad quod damnum (ad kwod dam-n-<<schwa>>m). [Latin “to what damage”] Hist. A writ directing the sheriff to inquire of jurors under oath to what damage a grant (as of a fair, market, liberty, or other franchise) would be to various people if the king were to make the grant. • The writ was issuable from the court of chancery. — Also termed writ of ad quod damnum.

**AD QUOD NON FUIT RESPONSUM**

ad quod non fuit responsum (ad kwod non fyoo-it ri-spon-s-<<schwa>>m). [Law Latin] To which there was no answer. • This phrase was used in law reports to indicate an unresponded-to argument or objection.

**ADR**

ADR.abbr.1.ALTERNATIVE DISPUTE RESOLUTION. 2.ASSET-DEPRECIATION RANGE. 3.AMERICAN DEPOSITORY RECEIPT.

**AD RATIONEM PONERE**

ad rationem ponere (ad ray-shee-oh-n-<<schwa>>m poh-n-<<schwa>>-ree), vb.[Law Latin “to give a reason”] To cite (a person) to appear. • The Exchequer summoned persons to appear and explain a charge with this phrase.

**AD RECOGNOSCENDUM**

ad recognoscendum (ad ree-kog-n-<<schwa>>-sen-d-<<schwa>>m), vb.[Law Latin] To recognize. • These were formal words in writs.

**ADRECTARE**

adrectare (ad-rek-tair-ee), vb.[Law Latin] Hist. To do right; to satisfy.

**AD RECTUM**

ad rectum (ad rek-t-<<schwa>>m), vb.[Law Latin] To right; to meet an accusation.

**AD REPARATIONEM ET SUSTENTATIONEM**

ad reparationem et sustentationem (ad rep-<<schwa>>-ray-shee-oh-n-<<schwa>>m et s-<<schwa>>-sten-tay-shee-oh-n-<<schwa>>m), adv.[Law Latin] For repairing and keeping in suitable condition.

**AD REPRIMENDAM IMPROBITATEM HUIUS GENERIS HOMINUM**

ad reprimendam improbitatem huius generis hominum (ad rep-ri-men-d-<<schwa>>m im-proh-bi-tay-t-<<schwa>>m hI-<<schwa>>s [or hwI-<<schwa>>s] jen-<<schwa>>-ris

hom-*<<schwa>>-n<<schwa>>m*). [Latin] Hist. To repress the dishonesty of this class of men. • The phrase appeared in reference to obligations that the law imposed on certain persons (such as innkeepers) because they were in a unique position to receive and misappropriate valuables entrusted to them. Cf. NAUTAE, CAUPONES, STABULARII.

#### AD RESPONDENDUM

ad respondendum (ad ree-spon-den-d*<<schwa>>m*). [Latin] To answer. See *capias ad respondendum* under CAPIAS; *habeas corpus ad respondendum* under HABEAS CORPUS.

#### AD RIMANDAM VERITATEM

ad rimandam veritatem (ad ri-man-d*<<schwa>>m* ver-i-tay-t*<<schwa>>m*). [Latin] Hist. For the investigation of the truth. • Parol testimony was sometimes allowed *ad rimandam veritatem*.

#### ADROGATE

adrogate (ad-roh-gayt), vb. Roman law. (Of a man) to adopt a son or daughter who is not already under another father's power (*patria potestas*). • Daughters became eligible for adoption in the later Empire.

#### ADROGATION

adrogation (ad-roh-gay-sh*<<schwa>>n*), n.[fr. Latin *arrogatio* (a-roh-gay-shee-oh)] Roman law. An adoption of a person of full capacity (*sui juris*) into another family. — Also termed *adrogatio* (ad-roh-gay-shee-oh). Cf. ADOPTION (3). — adrogate, vb.

“When the person to be adopted was *sui juris*, and not in the power of a *paterfamilias*, the ceremony of adoption was called *adrogatio*.” Lord Mackenzie, *Studies in Roman Law* 132 (John Kirkpatrick ed., 7th ed. 1898).

#### ADS

ads.abbr.AD SECTAM.

#### AD SATISFACIENDUM

ad satisfaciendum (ad sat-is-fay-shee-en-d*<<schwa>>m*). [Latin] To satisfy. See *capias ad satisfaciendum* under CAPIAS.

#### ADSCENDENTES

adscendentes (ad-sen-den-teez), n. pl.[Latin] Civil law. Ascendants.

#### ADSCRIPTI GLEBAE

adscripti glebae (ad-skrip-tIglee-bee), n.[Latin “(tenants) tied to the soil”] Roman law. Tenants or serfs bound to the land. • If the land was conveyed, the serfs were conveyed along with it. — Also termed *glebae ascriptitii*.

#### ADSCRIPTITIUS

adscriptitius (ad-skrip-tish-ee-<<schwa>>s), n.[Latin] Roman law. 1. A supernumerary citizen or soldier. 2. A tenant bound to the land. — Also spelled adscripticius; ascripticius.

#### ADSCRIPTUS

adscriptus (ad-skrip-t<<schwa>>s), adj.[Latin] Roman law. 1. Added, annexed, or bound by or in writing; enrolled or registered. 2. Bound, as in servus colonae adscriptus (a tenant bound to an estate as a cultivator) or fundus adscriptus (an estate bound to or burdened with a duty). — Also spelled ascriptus; ascriptitius. See ADSCRIPTUS GLEBAE.

#### ADSCRIPTUS GLEBAE

adscriptus glebae (ad-skrip-tuus glee-bee). [Latin “(a tenant) tied to the soil”] Roman law. A tenant or serf bound to the land. • If the land was conveyed, the serfs were conveyed along with it, but in other respects they were free citizens. — Also termed glebae ascriptitius. Pl. adscripti glebae.

#### AD SECTAM

ad sectam (ad sek-t<<schwa>>m), adj.[Law Latin] At the suit of. • This term, in abbreviated form, was used in indexing the names of cases by defendant — for example, “B ads. A” if B is the defendant. — Abbr. ads.; adsm.

#### ADSESSOR

adessor (ad-ses-<<schwa>>r), n.[Latin] 1.Roman law. A legally qualified assistant or adviser to a judge. 2.Hist. Assessor. • This was a title of a master in chancery. — Also spelled assessor.

#### AD SIMILES CASUS

ad similes casus (ad sim-<<schwa>>-leez kay-s<<schwa>>s). [Law Latin] Hist. To like cases. See CONSIMILI CASU.

#### ADSM

adsm.abbr.AD SECTAM.

#### ADSTIPULATOR

adstipulator (ad-stip-y<<schwa>>-lay-t<<schwa>>r), n.[Latin] Roman law. An additional party to a contract who could enforce the contract along with the principal (i.e., the stipulator). • An adstipulator who enforced an agreement would have to, in turn, pay the stipulator. An adstipulator was brought in to avoid the rule that a person could not directly stipulate for payment after death.

#### AD SUSTINENDA ONERA MATRIMONII

ad sustinenda onera matrimonii (ad s<<schwa>>s-ti-nen-d<<schwa>>on-<<schwa>>r-<<schwa>>ma-tr<<schwa>>-moh-nee-I). [Latin] Scots law. To bear the burdens or expenses of the married state. • The phrase appeared in reference to the purpose for which the dowry was used.

## AD TENTANDAS VIRES HAEREDITATIS

ad tentandas vires haereditatis (ad ten-tan-d<<schwa>>s vI-reez h<<schwa>>-red-i-tay-tis). [Latin] Hist. For the purpose of testing the strength of the inheritance.

## AD TERMINUM ANNORUM

ad terminum annorum (ad t<<schwa>>r-m<<schwa>>-n<<schwa>>m <<schwa>>-nor-<<schwa>>m), adv.[Law Latin] For a term of years.

## AD TERMINUM QUI PRAETERIIT

ad terminum qui praeteriit (ad t<<schwa>>r-m<<schwa>>-n<<schwa>>m kwI pri-ter-ee-it). [Law Latin “for a term which has passed”] A writ of entry to recover land leased out to a holdover tenant. — Also termed entry ad terminum qui praeteriit.

## AD TESTIFICANDUM

ad testificandum (ad tes-ti-fi-kan-d<<schwa>>m). [Latin] To testify. See habeas corpus ad testificandum under HABEAS CORPUS; subpoena ad testificandum under SUBPOENA.

## AD TUNC

ad tunc.[Latin] Then and there.

## AD TUNC ET IBIDEM

ad tunc et ibidem (ad t<<schwa>>ngk et i-bI-d<<schwa>>m orib-i-d<<schwa>>m), adv.[Latin] Hist. Then and there being found. • This phrase was formerly used in indictments.

## ADULT

adult (<<schwa>>-d<<schwa>>ltorad-<<schwa>>lt), n. A person who has attained the legal age of majority, generally 17 in criminal cases and 18 for other purposes. — Also termed major. Cf. MINOR(1). [Cases: Infants 68.5. C.J.S. Infants §§ 43–45.] — adult (<<schwa>>-d<<schwa>>lt), adj.

vulnerable adult.An adult who is physically or mentally disabled; esp., one dependent on institutional services.

## ADULT ADOPTION

adult adoption.See ADOPTION.

## ADULT CORRECTIONAL INSTITUTION

adult correctional institution.See PRISON.

## ADULT DISABLED PERSON

adult disabled person.See PERSON(1).

## ADULTER

adulter (<<schwa>>-d<<schwa>>l-t<<schwa>>r), n.[Latin] Roman law. An adulterer; a man guilty of adultery.

#### ADULTERA

adultera (<<schwa>>-d<<schwa>>l-t<<schwa>>-r<<schwa>>), n.[Latin] Roman law. An adulteress; a woman guilty of adultery.

#### ADULTERATE

adulterate (<<schwa>>-d<<schwa>>l-t<<schwa>>-rayt), vb. To debase or make impure by adding a foreign or inferior substance. [Cases: Adulteration 4. C.J.S. Adulteration §§ 2, 6–9.] — adulteration,n.

#### ADULTERATED DRUG

adulterated drug.See DRUG.

#### ADULTERATOR

adulator (<<schwa>>-d<<schwa>>l-t<<schwa>>-ray-t<<schwa>>r), n.[Latin fr. adulterare “to adulterate”] Civil law. A corrupter; a forger; a counterfeiter, as in adulteratores monetæ (“counterfeiters of money”).

#### ADULTERINE

adulterine (<<schwa>>-d<<schwa>>l-t<<schwa>>-rin), adj.1. Characterized by adulteration. 2. Illegal; unlicensed. 3. Born of adultery. 4. Of or involving adultery.

adulterine,n. Archaic. An illegitimate child.

#### ADULTERINE BASTARD

adulterine bastard.See BASTARD.

#### ADULTERINE GUILD

adulterine guild.Hist. A group of traders who act like a corporation without a charter and who pay an annual fine for permission to exercise their usurped privileges.

#### ADULTERINI

adulterini (<<schwa>>-d<<schwa>>l-t<<schwa>>-rI-nI). [Law Latin] Hist. Children begotten adulterously. Cf. INCESTUOSI.

#### ADULTERIUM

adulterium (ad-<<schwa>>l-teer-ee-<<schwa>>m), n.[Latin] Roman & civil law. 1. The crime of adultery. 2. A punishment imposed for the offense of adultery.

“Adulterium.... [A]dultery ... was considered a criminal offense only when committed by a married woman (adultera) .... [Before the Lex Julia de adulteriis coercendis of 18 B.C.], customary law admitted only immediate revenge of the husband .... Under the Julian statute, the father of the

adulterous woman was permitted to kill her and her partner (adulter) if he surprised them in his or her husband's house. The husband's rights were rather limited; he was forced to divorce her, for otherwise he made himself guilty of matchmaking [pandering] .... Besides, he or his father had to accuse the adulteress of adulterium which now became a public crime prosecuted before a criminal court." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 352 (1953).

#### ADULTERY

adultery (<<schwa>>-d<<schwa>>l-t<<schwa>>-ree), n. Voluntary sexual intercourse between a married person and someone other than the person's spouse. • In many jurisdictions, adultery is a crime, but it is rarely prosecuted. In states that still permit fault divorce, proof of adultery is a ground on which a divorce may be granted. A court may also use proof of adultery as a reason to reduce the offending spouse's marital-property award in a property division. Judges traditionally viewed adultery as a reason for denying the offending spouse primary custody of a child in a child-custody dispute. But today, only the deleterious effect of immoral behavior on the child is typically considered relevant. — Formerly also termed spouse-breach; avowtry. Cf. FORNICATION; INFIDELITY. [Cases: Adultery 1.C.J.S. Adultery §§ 2–8.] — adulterous,adj. — adulterer, adulteress,n.

“Returning to the question of adultery, evidently this word cannot be interpreted today in precisely the meaning it bore for the Old Testament patriarchs. On Old Testament principles one may marry several wives, even two sisters; and a married man may and should beget children for his dead brother. When Sarah found herself childless, she advised her husband Abraham to go in unto her maid, so that she might obtain children by the maid. Such acts, though evidently not adulterous within the original meaning of the Decalogue, would be regarded as adulterous by the laws and customs of Western society at the present day.” Glanville Williams, *The Sanctity of Life and the Criminal Law* 134 (1957).

“If a statute provided for the punishment of adultery without definition of the term, this gave rise to a difficulty as to the meaning of the word. In England, (1) the common-law meaning of the word was sex with another's wife, but this was not a common-law offense; (2) as the name of an offense it referred to sex by a married person with one other than the spouse, but that was recognized only in the ecclesiastical court.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 455 (3d ed. 1982).

“In some states, sexual intercourse between two married persons, who are not married to each other, constitutes adultery on the part of both; sexual intercourse between a married person and an unmarried person likewise constitutes adultery on the part of both. In other states, adultery can be committed only by a married person. Thus, sexual intercourse between two married persons, who are not married to each other, constitutes adultery on the part of both; but if only one party to the sexual intercourse is married, the intercourse constitutes adultery on the part of the married person and fornication on the part of the unmarried person. In other states, sexual intercourse constitutes adultery only where the woman is the married party. Thus, sexual intercourse between a married woman and a married man other than her spouse or sexual intercourse between a married woman and an unmarried man constitutes adultery on the part of both; but if the woman is unmarried,



neither party is guilty of adultery even if the man is married.” 2 Charles E. Torcia, Wharton's Criminal Law § 211, at 531 (15th ed. 1994).

double adultery.Adultery between persons who are both married to other persons. [Cases: Adultery 1. C.J.S. Adultery §§ 2–8.]

incestuous adultery.Adultery between relatives; adultery committed by persons who are closely related. [Cases: Adultery 1; Incest 3. C.J.S. Adultery §§ 2–8; Incest§ 3.]

open and notorious adultery.Archaic. Adultery in which the parties reside together publicly, as if married, and the community is generally aware of the living arrangement and the fact that the couple is not married. [Cases: Marriage 53. C.J.S. Marriage § 45.]

single adultery.Adultery in which only one of the persons is married. [Cases: Adultery 1. C.J.S. Adultery §§ 2–8.]

#### ADULT OFFENDER

adult offender.See OFFENDER.

#### ADULT PROTECTIVE SERVICES

Adult Protective Services.A governmental agency with responsibility for investigating allegations of elder abuse and neglect and for responding appropriately. • Every state has such an agency. — Abbr. APS.

#### AD USUM ET COMMODUM

ad usum et commodum (ad yoo-s<<schwa>>m [or -z<<schwa>>m] et kom-<<schwa>>-d<<schwa>>m), adv.[Law Latin] To the use and benefit.

#### AD VALENTIAM

ad valentiam (ad v<<schwa>>-len-shee-<<schwa>>m), adv.[Law Latin] To the value.

#### AD VALOREM

ad valorem (ad v<<schwa>>-lor-<<schwa>>m), adj.[Latin “according to the value”] (Of a tax) proportional to the value of the thing taxed. [Cases: Taxation 1, 1201.1. C.J.S. Taxation §§ 1–3, 5–6.] — ad valorem,adv.

#### AD VALOREM DUTY

ad valorem duty.See DUTY(4).

#### AD VALOREM TARIFF

ad valorem tariff.See TARIFF(2).

#### AD VALOREM TAX

ad valorem tax.See TAX.

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**ADVANCE**

advance, n. 1. The furnishing of money or goods before any consideration is received in return.  
2. The money or goods furnished.

**ADVANCE BILL**

advance bill. See BILL(6).

**ADVANCE-DECLINE INDEX**

advance-decline index. See INDEX(2).

**ADVANCE DIRECTIVE**

advance directive. 1. A document that takes effect upon one's incompetency and designates a surrogate decision-maker for healthcare matters. • The Uniform Health-Care Decision Act (1993) states that the power of attorney for healthcare must be in writing and signed by the principal. Unless otherwise stated, the authority is effective only upon a determination that the principal lacks capacity, and it ceases to be effective once the principal regains his capacity. The agent must make decisions in accordance with the principal's relevant instructions, if there are any, or in the principal's best interests. — Also termed power of attorney for healthcare; healthcare proxy. See POWER OF ATTORNEY; UNIFORM HEALTH-CARE DECISION ACT. 2. A legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate. — Often shortened to directive. — Also termed medical directive; physician's directive; written directive. See NATURAL-DEATH ACT; PROXY DIRECTIVE. Cf. LIVING WILL. 3. DO-NOT-RESUSCITATE ORDER. [Cases: Health 916.]

**ADVANCED TELEVISION ENHANCEMENT FORUM**

Advanced Television Enhancement Forum. A standard-setting organization that defines the protocols for HTML-based enhanced television. • The organization is an alliance of representatives from broadcast and cable networks, the consumer electronics and personal-computer industries, and television-transport companies. — Abbr. ATVEF.

**ADVANCEMENT**

advancement, n. A payment or gift to an heir (esp. a child) during one's lifetime as an advance share of one's estate, with the intention of reducing or extinguishing or diminishing the heir's claim to the estate under intestacy laws. • In some jurisdictions, the donor's intent is irrelevant if all the statutory elements of an advancement are present. A few jurisdictions define the relationship between the donor and donee to include inter vivos transfers between ancestors and descendants. Cf. ADEMPTION. [Cases: Descent and Distribution 93–118; Wills 757–762. C.J.S. Descent and Distribution §§ 69, 95–111, 116; Wills §§ 1774–1790.] — advance, vb.

“It is sometimes difficult to know whether money which a parent has given to his child is an advancement or not, but, generally speaking, an advancement is money which is given either to start a child in life or to provide for him, and does not include casual payments, so that a child is not bound to account for every sum received from a parent.” G.C. Cheshire, *Modern Law of Real*

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Property 784 (3d ed. 1933).

#### ADVANCE PAYMENT

advance payment. See PAYMENT.

#### ADVANCE PREMIUM

advance premium. See PREMIUM(1).

#### ADVANCE PRICING AGREEMENT

advance pricing agreement. Tax. A usu. binding arrangement made between a multinational company and one or more national tax authorities about what method the company will use to calculate transfer prices. • The agreement's purpose is to reduce or eliminate double taxation. — Abbr. APA.

bilateral advance pricing agreement. An advance pricing agreement made between a company and two tax authorities.

multilateral advance pricing agreement. An advance pricing agreement made between a company and more than two tax authorities.

unilateral advance pricing agreement. An advance pricing agreement made between a company and one tax authority. • This does not necessarily allow a company to avoid double taxation. A tax authority that is not a party to the agreement is not bound by the transfer-pricing method specified in the agreement.

#### ADVANCE SHEETS

advance sheets. A softcover pamphlet containing recently reported opinions by a court or set of courts. • Advance sheets are published during the interim between an opinion's announcement and its inclusion in a bound volume of law reports. Cf. slip opinion (1) under OPINION; REPORT(3). [Cases: Courts 103; Reports 1. C.J.S. Courts §§ 170, 173–174, 176; Reports §§ 2–3.]

“As a bound volume of any series of reports is not published until sufficient matter has accumulated to fill it, it necessarily results in the holding of the first decisions rendered after the preceding volume has been issued, until there are enough more to justify the publication of the next volume. Even after enough material has been accumulated to fill a volume, there is necessarily considerable time consumed in its printing, indexing, and binding before the book is ready for delivery. Hence, it is customary, as soon as a part of the volume has come from the press, to issue such part in pamphlet form; and these paper-bound copies are known as ‘advance sheets.’ They are portions of the next volume issued in advance of final publication, being paged as they will appear in the bound volume. Advance sheets enable the enterprising lawyer to obtain the decisions right down almost to the date of his search for the law.” Frank Hall Childs, *Where and How to Find the Law* 21 (1922).

#### ADVANCING MARKET

advancing market. See bull market under MARKET.

#### ADVANTAGIUM

advantagium (ad-van-tay-jee-⟨schwa⟩m), n. [Law Latin] Hist. An advantage.

#### ADVENA

advena (ad-v⟨schwa⟩-n⟨schwa⟩), n. [Latin] Roman law. One who has come from abroad, esp. for a temporary stay; a sojourner.

#### ADVENTITIA BONA

adventitia bona (ad-ven-tish-ee-⟨schwa⟩ boh-n⟨schwa⟩). See BONA ADVENTITIA.

#### ADVENTITIA DOS

adventitia dos (ad-ven-tish-ee-⟨schwa⟩ dohs), n. [Latin] Civil law. A dowry given by someone other than the wife's paterfamilias. Pl. adventitiae dotes.

#### ADVENTITIOUS PROPERTY

adventitious property. See PROPERTY.

#### AD VENTREM INSPICIENDUM

ad ventrem inspiciendum (ad ven-tr⟨schwa⟩m in-spish-ee-en-d⟨schwa⟩m), n. [Latin] See DE VENTRE INSPICIENDO.

#### ADVENTURA

adventura (ad-ven-t[y]oor-⟨schwa⟩), n. [Law Latin] Hist. An adventure. • Flotsam, jetsam, and lagan were styled *adventurae maris* (“adventures of the sea”).

#### ADVENTURE

adventure. 1. A commercial undertaking that has an element of risk; a venture. Cf. JOINT VENTURE. 2. Marine insurance. A voyage involving financial and insurable risk, as to a shipment of goods. — Often shortened to venture. [Cases: Insurance 2214.]

common adventure. A maritime enterprise, characterized as an undertaking in which all participants, including the carrier, everyone with an interest in the cargo, and the insurers of all share the risks of the perils of the sea. • The principle of shared risk is fundamental to maritime law. — Also termed joint adventure; common venture.

gross adventure. A loan on bottomry, so called because the lender will be liable for the gross (or general) average. See BOTTOMRY.

joint adventure. 1. See common adventure. 2. See JOINT VENTURE.

#### ADVENTURER

adventurer. A person who undertakes a hazardous action or enterprise; one with a stake in a

commercial ad-venture.

#### ADVERSARIUS

adversarius (ad-v<<schwa>>r-sair-ee-<<schwa>>s), n.[Latin] Roman law. An adversary in a lawsuit.

#### ADVERSARY

adversary (ad-v<<schwa>>r-ser-ee), n. An opponent; esp., opposing counsel. — adversary, adversarial,adj.

#### ADVERSARY PROCEDURE

adversary procedure.See ADVERSARY SYSTEM.

#### ADVERSARY PROCEEDING

adversary proceeding. 1. A hearing involving a dispute between opposing parties <Judge Adams presided over the adversary proceeding between the landlord and tenant>.2.Bankruptcy. A lawsuit that is brought within a bankruptcy proceeding, governed by special procedural rules, and based on conflicting claims usu. between the debtor (or the trustee) and a creditor or other interested party <the Chapter 7 trustee filed an adversary proceeding against the party who received \$100,000 from the debtor one week before the bankruptcy filing>. [Cases: Bankruptcy 2156. C.J.S. Bankruptcy § 26.]

#### ADVERSARY SYSTEM

adversary system.A procedural system, such as the Anglo-American legal system, involving active and unhin-dered parties contesting with each other to put forth a case before an independent decision-maker. — Also termed adversary procedure; (in criminal cases) accusatorial system, accusatory procedure. Cf. INQUISITORIAL SYSTEM.

“The term adversary system sometimes characterizes an entire legal process, and sometimes it refers only to criminal procedure. In the latter instance, it is often used interchangeably with an old expression of continental European origin, ‘accusatorial procedure,’ and is juxtaposed to the ‘inquisitorial,’ or ‘nonadversary,’ process. There is no precise understanding, however, of the institutions and arrangements denoted by these expressions.” Mirjan Damaska, “Adversary Procedure,” in 1 Encyclopedia of Crime and Justice 24, 24–25 (Sanford H. Kadish ed., 1983).

#### ADVERSE

adverse. 1. Against; opposed (to).2. Having an opposing or contrary interest, concern, or position. 3. Contrary (to) or in opposition (to).4.HOSTILE.

#### ADVERSE-AGENT DOCTRINE

adverse-agent doctrine.The rule that an agent's knowledge will not be imputed to the principal if the agent is engaged in fraudulent activities that are concealed as part of the fraud. [Cases: Principal and Agent 180.C.J.S. Agency §§ 440, 442.]

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**ADVERSE AUTHORITY**

adverse authority. See AUTHORITY(4).

**ADVERSE-DOMINATION DOCTRINE**

adverse-domination doctrine. The equitable principle that the statute of limitations on a breach-of-fiduciary-duty claim against officers and directors (esp. a corporation's action against its own officers and directors) is tolled as long as a corporate plaintiff is controlled by the alleged wrongdoers. • The statute is tolled until a majority of the disinterested directors discover or are put on notice of the claim against the wrongdoers. The purpose of this doctrine is to prevent a director or officer from successfully hiding wrongful or fraudulent conduct during the limitations period. *FDIC v. Shrader & York*, 991 F.2d 216, 227 (5th Cir. 1993). This doctrine is available only to benefit the corporation. — Also termed adverse dominion; doctrine of adverse domination. [Cases: Limitation of Actions 58(4, 5). C.J.S. Limitations of Actions § 205.]

**ADVERSE DOMINION**

adverse dominion. 1. See ADVERSE-DOMINATION DOCTRINE. 2. Torts. Rare. The unlawful exercise of authority or control over goods so that the true owner is dispossessed. See CONVERSION(2). 3. Rare. ADVERSE POSSESSION. [Cases: Limitation of Actions 58(4, 5). C.J.S. Limitations of Actions § 205.]

**ADVERSE EASEMENT**

adverse easement. See prescriptive easement under EASEMENT.

**ADVERSE EMPLOYMENT ACTION**

adverse employment action. An employer's decision that substantially and negatively affects an employee's job, such as a termination, demotion, or pay cut. — Also termed adverse job action.

**ADVERSE ENJOYMENT**

adverse enjoyment. See ENJOYMENT.

**ADVERSE IMPACT**

adverse impact. See DISPARATE IMPACT.

**ADVERSE INFERENCE**

adverse inference. See INFERENCE.

**ADVERSE-INFERENCE RULE**

adverse-inference rule. See ADVERSE-INTEREST RULE.

**ADVERSE INTEREST**

adverse interest. An interest that is opposed or contrary to that of someone else.

**ADVERSE-INTEREST RULE**

adverse-interest rule. The principle that if a party fails to produce a witness who is within its power to produce and who should have been produced, the judge may instruct the jury to infer that the witness's evidence is unfavorable to the party's case. — Also termed empty-chair doctrine; adverse-inference rule. [Cases: Criminal Law 788; Evidence 77; Trial 211. C.J.S. Criminal Law § 1341; Evidence §§ 169–173; Trial §§ 501–504, 568.]

#### ADVERSE JOB ACTION

adverse job action. See ADVERSE EMPLOYMENT ACTION.

#### ADVERSE OPINION

adverse opinion. See OPINION(2).

#### ADVERSE PARTY

adverse party. See PARTY(2).

#### ADVERSE POSSESSION

adverse possession. 1. The use or enjoyment of real property with a claim of right when that use or enjoyment is continuous, exclusive, hostile, open, and notorious. • In Louisiana, it is the detention or enjoyment of a corporeal thing with the intent to hold it as one's own. La. Civ. Code art. 3421. — Also termed adverse dominion. Cf. PRESCRIPTION(5). [Cases: Adverse Possession 1–95. C.J.S. Adverse Possession §§ 2–225, 263–299, 327–338; Conflict of Laws § 76.]

constructive adverse possession. 1. Adverse possession in which the claim arises from the claimant's payment of taxes under color of right rather than by actual possession of the land. 2. Louisiana law. Adverse possession by operation of law. • When a possessor holds title to the property and corporeally possesses part of it, the possessor is deemed to have constructive possession of the rest of the property described in the title. La. Civ. Code art. 3426. [Cases: Adverse Possession 86–95. C.J.S. Adverse Possession §§ 210–225, 263, 265–267, 277, 279, 291, 293, 299.]

2. The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time. See POSSESSION.

#### ADVERSE PRESUMPTION

adverse presumption. See adverse inference under INFERENCE.

#### ADVERSE TITLE

adverse title. See TITLE(2).

#### ADVERSE USE

adverse use. See USE(1).

#### ADVERSE WITNESS

adverse witness. See hostile witness under WITNESS.

**ADVERSUS**

adversus (ad-v<<schwa>>r-s<<schwa>>s), prep. [Latin] Against. • The first letter of this term was formerly used in law reports in place of the more commonly used v. (“versus”). — Abbr. a.

**ADVERSUS BONOS MORES**

adversus bonos mores. See CONTRA BONOS MORES.

**ADVERTENT NEGLIGENCE**

advertent negligence. See NEGLIGENCE.

**ADVERTISING**

advertising. 1. The action of drawing the public's attention to something to promote its sale. 2. The business of producing and circulating advertisements.

comparative advertising. Advertising that specifically compares the advertised brand with another brand of the same product.

competitive advertising. Advertising that contains little information about the advertised product, and that is used only to help a producer maintain a share of the market for that product.

informative advertising. Advertising that gives information about the suitability and quality of a product.

**ADVERTISING INJURY**

advertising injury. See INJURY.

**ADVERTISING SUBSTANTIATION**

advertising substantiation. A doctrine of the Federal Trade Commission making it an unfair and deceptive act to put out an advertisement unless the advertiser first has a reasonable basis for believing that each claim in the advertisement is true.

**ADVICE**

advice (ad-vIz). 1. Guidance offered by one person, esp. a lawyer, to another. See ADVICE OF COUNSEL. 2. Notice of the drawing of a draft for goods or services. See LETTER OF ADVICE. — advise (ad-vIz), vb.

remittance advice. Notice that a sum of money has been sent (esp. by mail) for goods or services. See REMITTANCE.

**ADVICE AND CONSENT**

advice and consent. The right of the U.S. Senate to participate in making treaties and appointing federal officers, provided by U.S. Const. art. II, § 2. • As to treaties, the Senate's advice and consent generally includes Senate involvement in the negotiation process, and the need for a



two-thirds majority of the Senate for ratification. As to public officers, the Senate's advice and consent generally includes the right to vote on approval of an appointment. [Cases: United States 35. C.J.S. United States §§ 23, 53, 56–57.]

#### ADVICE OF COUNSEL

advice of counsel. 1. The guidance given by lawyers to their clients. 2. In a malicious-prosecution lawsuit, a defense requiring both a complete presentation of facts by the defendant to his or her attorney and honest compliance with the attorney's advice. [Cases: Malicious Prosecution 21, 25(2). C.J.S. Malicious Prosecution or Wrongful Litigation §§ 25, 42, 44–47.] 3. A defense in which a party seeks to avoid liability or punishment by claiming that he or she acted reasonably and in good faith on the attorney's advice. • Such a defense usu. requires waiver of the attorney–client privilege, and the attorney cannot have knowingly participated in implementing an illegal plan. [Cases: Criminal Law 37.20. C.J.S. Criminal Law §§ 56, 94–95.]

“Advice of counsel is a defense to a limited number of torts involving lack of probable cause, bad faith, or malice as an element of the cause of action. By far the most frequent cause of action against which the defense is asserted is malicious prosecution. The defense may also be asserted to avoid liability for punitive damages on the reasoning that good faith reliance on advice of counsel defeats the malice necessary to an award of punitive damages. In civil matters, the advice is typically obtained from the defendant's own attorney; when the underlying proceeding is criminal, the advice may be obtained from the district attorney's office or similar source and may take the form of action by that officer rather than advice followed by action by the defendant.” 4 Ann Taylor Schwing, *California Affirmative Defenses* § 41:26, at 82 (2d ed. 1996).

#### ADVICE-OF-COUNSEL DEFENSE

advice-of-counsel defense. Patents. In an action for infringement, an assertion that after learning of the owner's rights, the defendant sought, obtained, and relied on an attorney's well-reasoned opinion before continuing the challenged act. • Courts treat the assertion as a factor in determining whether an act was willful (to support enhanced damages). It is not a true defense. Cf. willful infringement under INFRINGEMENT. [Cases: Patents 227. C.J.S. Patents § 403.]

#### ADVICE OF CREDIT

advice of credit. Notice by an advising bank of the issuance of a letter of credit. [Cases: Banks and Banking 191.10. C.J.S. Bills and Notes; Letters of Credit §§ 341–366, 368–370, 372–376.]

#### AD VINDICTAM PUBLICAM

ad vindictam publicam (ad vin-dik-t<<schwa>>m p<<schwa>>b-li-k<<schwa>>m). [Latin] Scots law. For vindicating the public interest. • The phrase appeared in reference to the purpose for which government prosecuted crimes.

#### ADVISARE

advisare (ad-vi-zair-ee), vb. [Law Latin] To consult, deliberate, or consider. See CURIA ADVISARI VULT.

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**ADVISEMENT**

advisement (ad-vIz-m<<schwa>>nt). Careful consideration; deliberation <the judge took the matter under ad-visement and promised a ruling by the next day>.

**ADVISORY ACTION****ADVISORY COMMITTEE**

advisory committee. A committee formed to make suggestions to some other body or to an official; esp., any one of five committees that propose to the Standing Committee on Rules of Practice and Procedure amendments to federal court rules, the five committees being responsible for appellate, bankruptcy, civil, criminal, and evidence rules. [Cases: Federal Civil Procedure 31.]

**ADVISORY COUNSEL**

advisory counsel. See COUNSEL.

**ADVISORY JURY**

advisory jury. See JURY.

**ADVISORY OFFICE ACTION**

advisory office action. See OFFICE ACTION.

**ADVISORY OPINION**

advisory opinion. See OPINION(1).

**AD VITAM**

ad vitam (ad vI-t<<schwa>>m), adj. [Latin] For life.

**AD VITAM AUT CULPAM**

ad vitam aut culpam (ad vI-t<<schwa>>m awt k<<schwa>>l-p<<schwa>>m), adj. [Law Latin] For life or until misbehavior. • This phrase described a tenure of office.

**AD VITANDUM PERJURIUM**

ad vitandum perjurium (ad vI-tan-d<<schwa>>m p<<schwa>>r-juur-ee-<<schwa>>m). [Latin] Scots law. For avoiding perjury. See OB METUM PERJURII.

**ADVOCACY**

advocacy. 1. The work or profession of an advocate. 2. The act of pleading for or actively supporting a cause or proposal.

**ADVOCARE**

advocare (ad-v<<schwa>>-kair-ee), vb. [Law Latin] 1. To advocate, defend, or protect. 2. To acknowledge or admit openly, as to acknowledge a child (advocare filium).

## ADVOCASSIE

advocassie (ad-v<<schwa>>-k<<schwa>>-see), n.[Law French] Advocacy.

## ADVOCATA

advocata (ad-v<<schwa>>-kay-t<<schwa>>), n.[Law Latin] Hist. A patroness; a woman holding the right to present to a church.

## ADVOCATE

advocate (ad-v<<schwa>>-kit), n.1. A person who assists, defends, pleads, or prosecutes for another.

public advocate.An advocate who purports to represent the public at large in matters of public concern, such as utility rates or environmental quality.

2.Civil & Scots law. A barrister; specif., a member of the Faculty of Advocates (the Scottish counterpart of a barrister) or of the Society of Advocates in Aberdeen (a society of solicitors). • A member of the Aberdeen society is designated “advocate in Aberdeen.” Cf. BARRISTER. 3.Hist. Eccles. law. A person who is trained in both canon and secular law and can (1) appear in an ecclesiastical or admiralty court on another's behalf, and (2) give legal advice. • Members of the College of Advocates (also known as Doctors' Commons) bore the title of advocate. After the dissolution of the College in 1857, the term became indistinguishably associated with barrister. — advocate (ad-v<<schwa>>-kayt), vb. — advocacy (ad-v<<schwa>>-k<<schwa>>-see), n.

## ADVOCATE-DEPUTE

advocate-depute.Scots law. One of a number of advocates appointed by the Lord Advocate to prosecute criminal cases in his or her name.

## ADVOCATE GENERAL

Advocate General.Scots law. An officer appointed under the Scotland Act of 1998 to advise the British government on Scotland and to represent it in court.

## ADVOCATE OF THE FAITH

advocate of the faith.Eccles. law. Counsel for the prosecution in a heresy trial.

## ADVOCATE-WITNESS RULE

advocate-witness rule.See LAWYER-WITNESS RULE.

## ADVOCATI ECCLESIAE

advocati ecclesiae (ad-v<<schwa>>-kay-tI e-klee-z[h]ee-ee), n. pl.[Latin “church advocates”] Hist. Eccles. law. 1. Church patrons who had a right to present a clerk to a benefice. See ADVOWSON. 2. Legal advocates retained to argue cases relating to a church.

## ADVOCATIO

advocatio (ad-v<<schwa>>-kay-shee-oh), n.[Law Latin] Hist. 1.An inferior's management of a business for a superior. 2. The defense of a religious establishment. 3.ADVOWSON. 4.Civil law. The quality, function, privilege, office, or service of an advocate; legal assistance.

#### ADVOCATION

advocation (ad-v<<schwa>>-kay-sh<<schwa>>n), n. Scots law. The removal of a criminal case from a lower court to the High Court of Justiciary for verdict.

#### ADVOCATIONE DECIMARUM

advocatione decimarum (ad-v<<schwa>>-kay-shee-oh-nee des-<<schwa>>-mair-<<schwa>>m), n.[Law Latin] Hist. A writ to collect a tithe belonging to the church.

#### ADVOCATOR

advocator (ad-voh-kay-t<<schwa>>r), n.[Law Latin] Hist. 1.A person who calls on another to warrant a title. 2. A warrantor. 3. The patron of a benefice.

#### ADVOCATUS

advocatus (ad-voh-kay-t<<schwa>>s). [Latin “advocate”] 1.Roman law. A legal adviser; a person who assists clients with cases before judicial tribunals. Cf. CAUSIDICUS. 2.Hist. The patron who has an advowson. — Also termed advowee; avowee. See ADVOWSON. 3.Hist. A person called on by another to warrant a title.

#### ADVOCATUS DIABOLI

advocatus diaboli (ad-voh-kay-t<<schwa>>s dI-ab-<<schwa>>-II), n.[Latin “devil's advocate”] Eccles. law. An official who argues against a person's beatification or canonization.

#### ADVOCATUS ECCLESIAE

advocatus ecclesiae (ad-v<<schwa>>-kay-t<<schwa>>s e-klee-z[h]ee-ee). [Law Latin] Hist. Eccles. law. The patron of a benefice.

#### ADVOCATUS FISCI

advocatus fisci (ad-voh-kay-t<<schwa>>s fisk-I). [Latin] Roman law. An official responsible for representing the emperor in cases involving the public fisc.

#### AD VOLUNTATEM

ad voluntatem (ad vol-<<schwa>>n-tay-t<<schwa>>m), adv. & adj.[Law Latin] At will.

#### ADVOUTRER

advouter (ad-vow-tr<<schwa>>r), n.[Law French] Hist. An adulterer. — Also termed advouter; advouterer; advoutre.

#### ADVOUTRY

advoutry (ad-vow-tree), n.[Law French] Hist. Adultery between two married persons. — Also

spelled advowtry.

#### ADVOWEE

advowee (ad-vow-ee). A patron who holds an advowson; *ADVOCATUS*(2). — Also spelled avowee.

advowee paramount. The sovereign, or highest patron.

#### ADVOWSON

advowson (ad-vow-z<<schwa>>n). Eccles. law. The right of presenting or nominating a person to a vacant benefice in the church. • The person enjoying this right is called the “patron” (patronus) of the church, and was formerly termed “advocatus,” the advocate or defender, or in English, the “advowee.” The patron presents the nominee to the bishop (or, occasionally, another church dignitary). If there is no patron, or if the patron neglects to exercise the right within six months, the right lapses and a title is given to the ordinary (usu. the bishop) to appoint a cleric to the church. Cf. *PRESENTATION*(2); *INSTITUTION*(5).

“A right of presentation has always been regarded as a valuable object of a sale, a species of real property which can be transferred and dealt with generally in the same way as a fee simple estate in lands .... Thus an advowson may be conveyed away in fee simple, fee tail, for life or years, or the conveyance may be limited to the right of next presentation or of a specified number of future presentations.” G.C. Cheshire, *Modern Law of Real Property* 110 (3d ed. 1933).

“An advowson is the perpetual right of presentation to an ecclesiastical living. The owner of an advowson is known as the patron. When a living becomes vacant, as when a rector or vicar dies or retires, the patron of the living has a right to nominate the clergyman who shall next hold the living. Subject to a right of veto on certain specified grounds, the Bishop is bound to institute (formally appoint) any duly qualified person presented. This is a relic of the days when it was common for the lord of a manor to build and endow a church and in return have the right of patronage.” Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 414 (4th ed. 1969).

advowson appendant (<<schwa>>-pen-d<<schwa>>nt). An advowson annexed to a manor, and passing as incident to it, whenever the manor is conveyed to another. • The advowson passes with the manor even if it is not mentioned in the grant.

advowson collative (k<<schwa>>-lay-tiv). An advowson for which there is no separate presentation to the bishop because the bishop happens to be the patron as well. • In this case, the one act by which the benefice is conferred is called “collation.”

advowson donative (don-<<schwa>>-tiv ordoh-n<<schwa>>-tiv). An advowson in which the patron has the right to put a cleric in possession by a mere gift, or deed of donation, without any presentation to the bishop. • This type of advowson was converted into the advowson presentative by the Benefices Act of 1898. — Also termed donative advowson.

“An advowson donative is when the king, or any subject by his licence, doth found a church

or chapel, and ordains that it shall be merely in the gift or disposal of the patron; subject to his visitation only, and not to that of the ordinary; and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution, or induction. This is said to have been anciently the only way of conferring ecclesiastical benefices in England; the method of institution by the bishop not being established more early than the time of archbishop Becket in the reign of Henry II." 2 William Blackstone, Commentaries on the Laws of England 23 (1766).

**advowson in gross.** An advowson that is separated from the manor and annexed to a person. • All advowsons that have been separated from their original manors are advowsons in gross.

**advowson presentative** (pri-zen-t<<schwa>>-tiv). The usual kind of advowson, in which the patron has the right to make the presentation to the bishop and to demand that the nominee be instituted, if the bishop finds the nominee canonically qualified.

**donative advowson.** See advowson donative.

#### AEA

AEA.abbr.See ADMIRALTY EXTENSION ACT.

#### AEDES

aedes (ee-deez), n.[Latin] Roman law. A building; esp., a temple (aedes sacra).

#### AEDIFICARE

aedificare (ee-d<<schwa>>-fi-kair-ee), vb.[Latin] Roman law. To erect a building.

#### AEDILE

aedile (ee-dil). Roman law. A magistrate charged with policing the city, managing public buildings and services, supervising markets, and arranging public games. — Also spelled edile.

#### AEDILITIUM EDICTUM

aedilium edictum (ee-d<<schwa>>-lish-ee-<<schwa>>m ee-dik-t<<schwa>>m). See edictum aedilicium under EDICTUM.

#### AEGROTUS

aegrotus (ee-groh-t<<schwa>>s), adj.[Latin] Sick; indisposed by illness.

#### AEMULATIONIS CAUSA

aemulationis causa (ee-my<<schwa>>-lay-shee-oh-nis kaw-z<<schwa>>). [Latin] Hist. For the purpose of rivaling or annoying.

#### AEMULATIO VICINI

aemulatio vicini (ee-my<<schwa>>-lay-shee-oh vis-i-nee). [Latin] Scots law. The use of land in a way injurious to a neighbor.

#### AENUM

aenum. See ordeal by water (2) under ORDEAL.

#### AEQUITAS

aequitas (ek-w<<schwa>>-tas oree-kw<<schwa>>-tas), n.[Latin] Roman law. Equity, as opposed to jus strictum or jus summum.

#### AEQUUS

aequus (ee-kw<<schwa>>s), adj.[Latin] Equal; even. • A provision in a will, for example, might divide the re-siduary estate ex aequis (the adverbial form) among the legatees.

#### AERARIUM

aerarium (i-rair-ee-<<schwa>>m), n.[Latin fr. aes “money”] Roman law. The treasury of the Roman Republic. See FISCUS.

#### AES

aes (eez), n.[Latin] Roman law. 1. Copper. 2. Money, of whatever metal.

#### AES ALIENUM

aes alienum (eez ay-lee-ee-n<<schwa>>m or al-ee-), n.[Latin “another's money”] Roman law. Money owed to another; borrowed money.

#### AESNECIA

aesnechia (ees-neesh-ee-<<schwa>>). [Law Latin] See ESNECY.

#### AES SUUM

aes suum (eez s[y]oo-<<schwa>>m), n.[Latin “one's own money”] Roman law. Money lent to a borrower.

#### AESTHETIC FUNCTIONALITY

aesthetic functionality. See FUNCTIONALITY.

#### AESTHETIC ZONING

aesthetic zoning. See ZONING.

#### AESTIMATIO

aestimatio (es-t<<schwa>>-may-shee-oh). [Latin] Roman law. An agreement by which the owner of goods handed them over to another person with the understanding that the other would sell what he could for the most he could get, paying the owner an agreed price for whatever goods sold and returning the others. Pl. aestimationes (es-t<<schwa>>-may-shee-oh-nee-z).

#### AETAS

aetas (ee-tas), n.[Latin] Roman law. Age.

**AETAS INFANTIAE PROXIMA**

aetas infantiae proxima (ee-tas in-fan-shee-ee prok-s<<schwa>>-m<<schwa>>), n.[Latin] Roman law. The first part of the period of childhood between infancy (up to 7 years) and puberty (12 to 14 years); esp., for males, the period between 7 and 10 1/2 years of age. Cf. AETAS PUBERTATI PROXIMA; PUERITIA.

**AETAS LEGITIMA**

aetas legitima (ee-tas l<<schwa>>-jit-<<schwa>>-m<<schwa>>), n.[Latin] Roman law. Lawful age.

**AETAS PERFECTA**

aetas perfecta (ee-tas p<<schwa>>r-fek-t<<schwa>>), n.[Latin] Roman law. Complete age; the age of majority.

**AETAS PRIMA**

aetas prima (ee-tas prI-m<<schwa>>), n.[Latin] Roman law. First age. See INFANTIA.

**AETAS PUBERTATI PROXIMA**

aetas pubertati proxima (ee-tas pyoo-b<<schwa>>r-tay-tIprok-s<<schwa>>-m<<schwa>>), n.[Latin] Roman law. The second period of childhood, (for males) from 10 1/2 to 14 years of age. Cf. AETAS INFANTIAE PROXIMA; PUERITIA.

**AETATE PROBANDA**

aetate probanda (ee-tay-tee proh-ban-d<<schwa>>). See DE AETATE PROBANDA.

**AFDC**

AFDC.abbr.AID TO FAMILIES WITH DEPENDENT CHILDREN.

**AFF'D**

aff'd.abbr.Affirmed.

**AFFECT**

affect,vb.1. Most generally, to produce an effect on; to influence in some way. 2.Civil law. To pledge (property or revenues) as security for a loan; HYPOTHECATE. 3.Scots law.To seize (debtor's property, etc.).

**AFFECTATION DOCTRINE**

affectation doctrine.See AFFECTS DOCTRINE.

**AFFECTING COMMERCE**

affecting commerce.(Of an industry, activity, etc.) touching or concerning business, industry, or trade; esp., under the Labor–Management Relations Act, burdening or obstructing commerce,



or having led or tending to lead to a labor dispute that burdens or obstructs the free flow of commerce. 29 USCA § 152(7).

#### AFFECTION

affection. 1. Fond attachment, devotion, or love <alienation of affections>.2.Hist. The pawning or mortgaging of a thing to ensure the payment of money or performance of some other obligation.

#### AFFECTS DOCTRINE

affects doctrine.Constitutional law. The principle allowing Congress to regulate intrastate activities that have a substantial effect on interstate commerce. • The doctrine is so called because the test is whether a given activity “affects” interstate commerce. — Also termed effects doctrine or (erroneously) affectation doctrine. [Cases: Commerce 7(2). C.J.S. Commerce § 6.]

#### AFFECTUS

affectus (<<schwa>>-fek-t<<schwa>>s), n.[Latin] Hist. Intent; disposition of mind.

#### AFFECTUS SINE EFFECTU

affectus sine effectu (e-fek-t<<schwa>>s sI-nee e-fek-t[y]oo). [Latin “an intention without effect”] Hist. An intention that is not carried out.

#### AFFEER

affeer (<<schwa>>-feer), vb.[fr. Old French affeurer “to tax”] Hist. To fix the amount of an amercement. — affeerment,n.

#### AFFEEROR

affeeror (<<schwa>>-feer-<<schwa>>r), n. Hist. An official responsible for assessing amercements in cases in which no precise penalty is given by statute.

#### AFFERMER

affermer (a-f<<schwa>>r-may), vb.[Law French] 1. To let to farm. 2. To make sure; to confirm.

#### AFF'G

aff'g.abbr.Affirming.

#### AFFIANCE

affiance (<<schwa>>-fi-<<schwa>>nts).1.Archaic. The act of confiding. 2. The pledging of faith; specif., the act of promising to wed.

#### AFFIANT

affiant (<<schwa>>-fi-<<schwa>>nt).1. One who makes an affidavit. — Also termed deponent. [Cases: Affi-davits 2. C.J.S. Affidavits §§ 8–12.] 2.COMPLAINANT(2).

## AFFIDARE

affidare (af-*<<schwa>>*-dair-ee), vb.[Law Latin] To swear faith to; esp., a tenant's pledge of faith to a lord.

## AFFIDATIO DOMINORUM

affidatio dominorum (af-*<<schwa>>*-day-shee-oh dom-*<<schwa>>*-nor-*<<schwa>>*m), n.[Law Latin] Hist. An oath taken by lords in Parliament.

## AFFIDATUS

affidatus (af-*<<schwa>>*-day-t-*<<schwa>>*s), n.[Law Latin] Hist. A tenant by fealty.

## AFFIDAVIT

affidavit (af-*<<schwa>>*-day-vit). A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public. • A great deal of evidence is submitted by affidavit, esp. in pretrial matters such as summary-judgment motions. Cf. DECLARATION(1), (8). [Cases: Affidavits 1. C.J.S. Affidavits §§ 2–6.]

affidavit after appeal.Patents. A sworn statement submitted to the U.S. Patent and Trademark Office after the filing of a notice of appeal from an adverse determination by an examiner. • An affidavit or declaration submitted after a case has been appealed will not be admitted without a showing of good and sufficient reasons why it was not presented earlier. [Cases: Patents 111. C.J.S. Patents §§ 180–183.]

affidavit after final rejection.Patents. A sworn statement submitted to the U.S. Patent and Trademark Office after an application's final rejection. — Also termed declaration after final rejection.

affidavit of claim.An affidavit in which a plaintiff asserts that he or she has a meritorious cause of action.

affidavit of continued use.See DECLARATION OF USE.

affidavit of defense.See affidavit of merits.

affidavit of incontestability.See DECLARATION OF INCONTESTABILITY.

affidavit of increase.Hist. An affidavit that lists — and seeks reimbursement from the opposing party for — the additional costs (above the filing fee and other basic fees charged by the court clerk) incurred by a party in taking a matter through trial. • Attorney fees, witness payments, and the like were included in this affidavit. See COSTS OF INCREASE.

affidavit of inquiry.An affidavit, required in certain states before substituted service of process on an absent defendant, in which the plaintiff's attorney or a person with knowledge of the facts indicates that the defendant cannot be served within the state. [Cases: Process 74, 137. C.J.S. Process §§ 57, 89.]

affidavit of merit.See CERTIFICATE OF MERIT.

affidavit of merits. An affidavit in which a defendant asserts that he or she has a meritorious defense. — Also termed affidavit of defense. [Cases: Judgment 160, 391. C.J.S. Judgments §§ 345, 407.]

affidavit of nonprosecution. An affidavit in which a crime victim requests that the perpetrator not be prosecuted. • In many cases, if the victim files an affidavit of nonprosecution, the prosecutor will withdraw or not file criminal charges against the perpetrator on grounds that there is no victim. Sometimes, though, the prosecutor will go forward with the prosecution even if the victim files an affidavit of nonprosecution.

affidavit of notice. An affidavit stating that the declarant has given proper notice of hearing to other parties to the action.

affidavit of service. An affidavit certifying the service of a notice, summons, writ, or process. [Cases: Process 137. C.J.S. Process § 89.]

affidavit of use. See DECLARATION OF USE.

affidavit of verification. See VERIFICATION(1).

affidavit under § 8. See DECLARATION OF USE.

affidavit under § 15. See DECLARATION OF INCONTESTABILITY.

counteraffidavit. An affidavit made to contradict and oppose another affidavit. [Cases: Affidavits 1. C.J.S. Affidavits §§ 2–6.]

IFP affidavit. See poverty affidavit.

in forma pauperis affidavit. See poverty affidavit.

pauper's affidavit. See poverty affidavit.

poverty affidavit. An affidavit made by an indigent person seeking public assistance, appointment of counsel, waiver of court fees, or other free public services. 28 USCA § 1915. — Also termed pauper's affidavit; in forma pauperis affidavit; IFP affidavit. [Cases: Federal Civil Procedure 2734.]

self-proving affidavit. An affidavit attached to a will and signed by the testator and witnesses certifying that the statutory requirements of due execution of the will have been complied with. • The affidavit, which recites the facts of the will's proper execution, permits the will to be probated without the necessity of having the witnesses appear and prove due execution by their testimony. [Cases: Wills 113. C.J.S. Wills §§ 253–255.]

sham affidavit. An affidavit that contradicts clear testimony previously given by the same witness, usu. used in an attempt to create an issue of fact in response to a motion for summary judgment. [Cases: Federal Civil Procedure 2539; Judgment 185.2(8). C.J.S. Judgments § 266.]

supplemental affidavit. An affidavit made in addition to a previous one, usu. to supply additional facts. [Cases: Affidavits 16. C.J.S. Affidavits §§ 53–55.]

**AFFILARE**

affilare (af-*<<schwa>>-lair-ee*), vb.[Law Latin] To put on record; to file.

**AFFILE**

affile (*<<schwa>>-fil*), vb. Archaic. To file.

**AFFILIATE**

affiliate (*<<schwa>>-fil-ee-it*), n.1. A corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation. [Cases: Corporations 1.5. C.J.S. Corporations § 15.] 2.Securities. One who controls, is controlled by, or is under common control with an issuer of a security. SEC Rule 10b-18(a)(1) ( 17 CFR § 240.10b-18(a)(1)). See CONTROL PERSON. Cf. ASSOCIATED PERSON. — affiliate (*<<schwa>>-fil-ee-ayt*), vb. — affiliation (*<<schwa>>-fil-ee-ay-sh<<schwa>>n*), n.

**AFFILIATED DIRECTOR**

affiliated director.See outside director under DIRECTOR.

**AFFILIATED GROUP**

affiliated group.A chain of corporations that can elect to file a consolidated tax return because at least 80% of each corporation is owned by others in the group. [Cases: Internal Revenue 3870.]

**AFFILIATED PURCHASER**

affiliated purchaser.See PURCHASER(1).

**AFFILIATION ORDER**

affiliation order.See filiation order under ORDER(2).

**AFFINE**

affine (*<<schwa>>-fIn*). A relative by marriage.

**AFFINITAS**

affinitas (*<<schwa>>-fin-i-tas*). [Latin] Roman law. Relationship by marriage.

**AFFINITAS AFFINITATIS**

affinitas affinitatis (*<<schwa>>-fin-i-tas <<schwa>>-fin-i-tay-tis*), n.[Law Latin “affinity of affinity”] Hist. Relationship by two marriages, e.g., with one's stepmother's stepchild; a connection that arises from marriage but is neither consanguinity nor affinity. Cf. CONSANGUINITY; AFFINITY.

**AFFINITY**

affinity (*<<schwa>>-fin-<<schwa>>-tee*).1. A close agreement. 2. The relation that one

spouse has to the blood relatives of the other spouse; relationship by marriage. 3. Any familial relation resulting from a marriage. Cf. CONSANGUINITY. See relative by affinity under RELATIVE. Cf. AFFINITAS AFFINITATIS ; CONSAN-GUINITY. [Cases: Marriage 10. C.J.S. Marriage § 17.]

“There is no affinity between the blood relatives of one spouse and the blood relatives of the other. A husband is related by affinity to his wife's brother, but not to the wife of his wife's brother. There is no affinity between the husband's brother and the wife's sister; this is called affinitas affinitatis.” 2 Charles E. Torcia, Wharton's Criminal Law § 242, at 573 (15th ed. 1994).

collateral affinity.The relationship of a spouse's relatives to the other spouse's relatives. • An example is a wife's brother and her husband's sister. [Cases: Marriage 10. C.J.S. Marriage § 17.]

direct affinity.The relationship of a spouse to the other spouse's blood relatives. • An example is a wife and her husband's brother.

quasi-affinity.Civil law. The affinity existing between two persons, one of whom has been engaged to a relative of the other.

secondary affinity.The relationship of a spouse to the other spouse's marital relatives. • An example is a wife and her husband's sister-in-law.

#### AFFIRM

affirm,vb.1. To confirm (a judgment) on appeal. • Sometimes the verb is used without a direct object <we affirm>. The equivalent expression in British English is to deny the appeal. [Cases: Appeal and Error 1124–1145.C.J.S. Appeal and Error §§ 714, 745, 770, 814, 826, 864–868, 878–898.] 2. To solemnly declare rather than swear under oath. 3. To testify or declare by affirmation.

#### AFFIRMANCE

affirmance,n.1. A ratification, reacceptance, or confirmation.

“A party who has the power of avoidance may lose it by action that manifests a willingness to go on with the contract. Such action is known as ‘affirmance’ and has the effect of ratifying the contract. See Restatement of Restitution § 68. The rule stated in this Section is a special application of that stated in § 85, under which a promise to perform a voidable duty is binding. On ratification, the affirming party is bound as from the outset and the other party continues to be bound.” Restatement (Second) of Contracts § 380 cmt. a (1979).

2. The formal approval by an appellate court of a lower court's judgment, order, or decree. [Cases: Appeal and Error 1124–1145. C.J.S. Appeal and Error §§ 714, 745, 770, 814, 826, 864–868, 878–898.] 3. The manifestation of a choice by someone with the power of avoidance to treat a voidable or unauthorized transaction as valid or authorized. 4. The manifestation of a choice, by one on whose behalf an unauthorized act has been performed, to treat the act as authorized.Restatement (Second) of Agency § 83 (1958). — affirm,vb.

#### AFFIRMANCE DAY GENERAL

affirmance day general. See DAY.

#### AFFIRMANT

affirmant. A person who testifies under affirmation and not under oath. [Cases: Witnesses 227. C.J.S. Witnesses § 394.]

#### AFFIRMATION

affirmation, n. A pledge equivalent to an oath but without reference to a supreme being or to "swearing"; a solemn declaration made under penalty of perjury, but without an oath. Fed. R. Civ. P. 43(d). • While an oath is "sworn to \_\_\_\_\_," an affirmation is merely "affirmed," but either type of pledge may subject the person making it to the penalties for perjury. Cf. OATH. [Cases: Witnesses 227. C.J.S. Witnesses § 394.] — affirm, vb. — affirmatory, adj.

#### AFFIRMATIVE

affirmative, adj. 1. Supporting the existence of certain facts <affirmative evidence>. 2. Involving or requiring effort <an affirmative duty>.

#### AFFIRMATIVE ACTION

affirmative action. A set of actions designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination. See reverse discrimination under DISCRIMINATION. [Cases: Civil Rights 1033(3), 1236. C.J.S. Civil Rights §§ 18, 20, 23–24, 64–65.]

#### AFFIRMATIVE CHARGE

affirmative charge. See affirmative instruction under JURY INSTRUCTION.

#### AFFIRMATIVE CONDITION

affirmative condition. See positive condition under CONDITION(2).

#### AFFIRMATIVE CONVERSE INSTRUCTION

affirmative converse instruction. See JURY INSTRUCTION.

#### AFFIRMATIVE COVENANT

affirmative covenant. 1. COVENANT(1). 2. COVENANT(4).

#### AFFIRMATIVE DEFENSE

affirmative defense. See DEFENSE(1).

#### AFFIRMATIVE DUTY

affirmative duty. See DUTY(1).

#### AFFIRMATIVE EASEMENT

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affirmative easement. See EASEMENT.

**AFFIRMATIVE INJUNCTION**

affirmative injunction. See mandatory injunction under INJUNCTION.

**AFFIRMATIVE INSTRUCTION**

affirmative instruction. See JURY INSTRUCTION.

**AFFIRMATIVE MISCONDUCT**

affirmative misconduct. See MISCONDUCT.

**AFFIRMATIVE PLEA**

affirmative plea. See pure plea under PLEA(3).

**AFFIRMATIVE PREGNANT**

affirmative pregnant. A positive statement that ambiguously implies a negative; a statement that does not explicitly deny a charge, but instead answers an unasked question and thereby implies culpability, as when a person says "I returned your car yesterday" to the charge "You stole my car!" Cf. NEGATIVE PREGNANT .

**AFFIRMATIVE PROOF**

affirmative proof. See PROOF.

**AFFIRMATIVE RELIEF**

affirmative relief. See RELIEF.

**AFFIRMATIVE REPRESENTATION**

affirmative representation. See REPRESENTATION(1).

**AFFIRMATIVE SERVITUDE**

affirmative servitude. See positive servitude under SERVITUDE(2).

**AFFIRMATIVE STATUTE**

affirmative statute. See STATUTE.

**AFFIRMATIVE TESTIMONY**

affirmative testimony. See TESTIMONY.

**AFFIRMATIVE WARRANTY**

affirmative warranty. See WARRANTY(3).

**AFFIRMATIVE WASTE**

affirmative waste. See commissive waste under WASTE(1).

## AFFIX

affix (<<schwa>>-fiks), vb.1. To attach, add to, or fasten on permanently. See FIXTURE.  
 2.Trademarks. To attach, physically or functionally, a trademark or servicemark to the goods or services it represents. • A mark must be affixed to show that it is used in trade. If physical attachment is impossible or impracticable, the mark may be used on a container or tag, or (esp. with servicemarks) displayed prominently in advertising. [Cases: Patents 98; Trade Regulation 64. C.J.S. Patents §§ 137–139; Trade-Marks, Trade-Names, and Unfair Competition § 34.] — affixation (af-ik-say-sh<<schwa>>n), n.

## AFFIXUS

affixus (<<schwa>>-fik-s<<schwa>>s). [Latin] Roman law. Affixed or fastened to.

## AFFORARE

afforare (af-<<schwa>>-rair-ee), vb.[Law Latin] To set a price or value on a thing.

## AFFORCE

afforce (<<schwa>>-fors), vb. To strengthen (a jury) by adding new members.

## AFFORCEMENT

afforcement (<<schwa>>-fors-m<<schwa>>nt), n.[Law Latin] Hist. 1.A reinforcement or fortification; esp., the reinforcing of a court on a solemn or extraordinary occasion. 2. A fortress. — Also termed afforciamment (<<schwa>>-for-sh<<schwa>>-m<<schwa>>nt); afforciammentum (<<schwa>>-for-shee-<<schwa>>-men-t<<schwa>>m).

## AFFORCING THE ASSIZE

afforcing the assize.Hist. A method of securing a jury verdict from a hung jury either by denying food and drink to the members until they reached a verdict or by bringing in new jurors until 12 would agree.

## AFFOREST

afforest,vb. To convert (land) into a forest, esp. by subjecting it to forest law. [Cases: Woods and Forests 1. C.J.S. Woods and Forests §§ 1–2.] — afforestation,n.

## AFFRANCHIR

affranchir (a-frahn-sheer). See AFFRANCHISE.

## AFFRANCHISE

affranchise (<<schwa>>-fran-chIz), vb. Archaic. To set free; to liberate from servitude or an obligation. • The equivalent verb in Law French was affranchir.

## AFFRAY

affray (<<schwa>>-fray). The fighting, by mutual consent, of two or more persons in some



public place, to the terror of onlookers. • The fighting must be mutual. If one person unlawfully attacks another who resorts to self-defense, the first is guilty of assault and battery, but there is no affray. — Also termed fray. Cf. RIOT; un-lawful assembly under ASSEMBLY; ROUT. [Cases: Criminal Law 45.15. C.J.S. Affray §§ 2–3, 5, 7, 13, 20.]

“An affray differs from a riot, a rout, or an unlawful assembly in that an affray is not premeditated and in order to constitute a riot, a rout, or an unlawful assembly at least three participants are essential, while ... an affray may be committed by only two. Moreover, an affray is more of a private nature than a riot.” 2A C.J.S. Affray § 3, at 519 (1972).

“The word ‘affray’ comes from the same source as the word ‘afraid,’ and the tendency to alarm the community is the very essence of this offense.” Rollin M. Perkins & Ronald N. Boyce, Criminal Law 479 (3d ed. 1982).

casual affray. See CHANCE-MEDLEY.

mutual affray. See MUTUAL COMBAT.

#### AFFRECTAMENTUM

affrectamentum (<<schwa>>-fɹɛk-t<<schwa>>-mɛn-t<<schwa>>m). See AFFREIGHTMENT.

#### AFFREIGHTMENT

affreightment (<<schwa>>-fɹaɪt-m<<schwa>>nt). The contracting of a ship to carry cargo. — Also termed charter of affreightment; (in French law) affretement; (in Law Latin) affrectamentum. See CONTRACT OF AFFREIGHTMENT. [Cases: Shipping 104. C.J.S. Shipping §§ 247–250, 252–254.]

#### AFFRETEMENT

affretement. See AFFREIGHTMENT.

#### A FINE FORCE

a fine force (ay fɪn fɔrs). [Law French] Of pure necessity.

#### AFIS

AFIS.abbr.AMERICAN FORCES INFORMATION SERVICE.

#### AFL-CIO

AFL-CIO.abbr.AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS .

#### AF OF M

AF of M.abbr.AMERICAN FEDERATION OF MUSICIANS.

#### A FORCE

a force (ay fors). [Law French] Of necessity.

#### A FORCE ET ARMES

a force et armes (ay fors et ahr-mis). [Law French] With force and arms. — Also spelled a force et armis. See VI ET ARMIS.

#### AFORESAID

aforesaid (<<schwa>>-for-sed), adj. Mentioned above; referred to previously. — Also termed aforementioned; above-mentioned; above-stated; said.

#### AFORETHOUGHT

aforethought (<<schwa>>-for-thawt), adj. Thought of in advance; deliberate; premeditated <malice afore-thought>. See MALICE AFORETHOUGHT.

#### A FORTIORI

a fortiori (ay for-shee-or-Ior ah for-shee-or-ee), adv.[Latin] By even greater force of logic; even more so <if a 14-year-old child cannot sign a binding contract, then, a fortiori, a 13-year-old cannot>. Cf. A MULTO FOR-TIORI .

#### AFRICAN DEVELOPMENT FOUNDATION

African Development Foundation. A nonprofit federal foundation that supports the self-help efforts of poor people in African countries by making grants and by making and guaranteeing loans to any African entity engaged in peaceful activities that enable African people to develop more fully. • ADF was created by the African Development Foundation Act and began operating in 1984. 22 USCA § 290h. — Abbr. ADF.

#### AFTER-ACQUIRED DOMICILE

after-acquired domicile. See DOMICILE.

#### AFTER-ACQUIRED-EVIDENCE DOCTRINE

after-acquired-evidence doctrine. Employment law. The rule that if an employer discharges an employee for an unlawful reason and later discovers misconduct sufficient to justify a lawful discharge, the employee cannot win reinstatement. • The doctrine either shields the employer from liability or limits the available relief when, after an employee has been terminated, the employer learns for the first time that the employee engaged in wrongdoing that would have resulted in a discharge anyway. *McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 115 S.Ct. 879 (1995). [Cases: Master and Servant 37. C.J.S. Employer–Employee Relationship §§ 60, 86.]

#### AFTER-ACQUIRED PROPERTY

after-acquired property. 1. Secured transactions. A debtor's property that is acquired after a security transaction and becomes additional security for payment of the debt. UCC § 9-204. — Also termed future-acquired property. [Cases: Secured Transactions 13, 116. C.J.S. Secured Transactions §§ 12, 85.] 2. Bankruptcy. Property that the bankruptcy estate acquires after

commencement of the bankruptcy proceeding. 11 USCA § 541(a)(7). [Cases: Bankruptcy 2558. C.J.S. Bankruptcy §§ 120, 122.] 3.Wills & estates. Property acquired by a person after making a will. • The old rule was that a testamentary gift of personal property spoke at the time of the testator's death, whereas a gift of lands spoke from the date of the will's execution (so that after-acquired property was not disposed of), but this has been changed by legislation in most states. [Cases: Wills 8, 578. C.J.S. Wills §§ 53, 55–56, 1099–1104.]

#### AFTER-ACQUIRED-PROPERTY CLAUSE

after-acquired-property clause. A mortgage provision that makes any later-acquired real estate subject to the mortgage. [Cases: Mortgages 131. C.J.S. Mortgages § 174.]

#### AFTER-ACQUIRED TITLE

after-acquired title. See TITLE(2).

#### AFTER-ACQUIRED-TITLE CLAUSE

after-acquired-title clause. Oil & gas. A provision in an oil-and-gas lease extending the lease's coverage to include any interest in the property that the lessor may obtain after the lease is signed. • A common formulation is “This lease covers all the interest now owned by or hereafter vested in the lessor ....”

#### AFTER-ACQUIRED-TITLE DOCTRINE

after-acquired-title doctrine. The principle that title to property automatically vests in a person who bought the property from a seller who acquired title only after purporting to sell the property to the buyer. [Cases: Vendor and Purchaser 8. C.J.S. Vendor and Purchaser § 6.]

#### AFTERBORN CHILD

afterborn child. See CHILD.

#### AFTERBORN HEIR

afterborn heir. See HEIR.

#### AFTERCARE

aftercare. See juvenile parole under PAROLE.

#### AFTER COST

after cost. See COST(1).

#### AFTERMARKET

aftermarket. See secondary market under MARKET.

#### AFTER THE FACT

after the fact. Subsequent to an event of legal significance <accessory after the fact>.

## AFTRA

AFTRA.abbr.AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS.

## AG

AG.abbr.ATTORNEY GENERAL.

## AGAINST THE FORM OF THE STATUTE

against the form of the statute.Contrary to the statutory requirements. • This formal phrase, which traditionally concludes an indictment, indicates that the conduct alleged contravenes the cited statute and therefore constitutes a criminal offense. In modern contexts, the full conclusion often reads: “against the form of the statute in such case made and provided.” The phrase is a translation of the Law Latin *contra formam statuti*. [Cases: Indictment and Information 32(4).]

## AGAINST THE PEACE AND DIGNITY OF THE STATE

against the peace and dignity of the state.A concluding phrase in an indictment, used to condemn the offending conduct generally (as opposed to the specific charge of wrongdoing contained in the body of the instrument). • This phrase derives from the Law Latin *contra pacem domini regis* (“against the peace of the lord the king”), a charging phrase formerly used in indictments and in civil actions of trespass. Cf. KING'S PEACE. [Cases: Indictment and Information 32(3).]

## AGAINST THE WEIGHT OF THE EVIDENCE

against the weight of the evidence.(Of a verdict or judgment) contrary to the credible evidence; not sufficiently supported by the evidence in the record. See WEIGHT OF THE EVIDENCE.

## AGAINST THE WILL

against the will.Contrary to a person's wishes. • Indictments use this phrase to indicate that the defendant's conduct was without the victim's consent.

## AGALMA

agalma (<<schwa>>-gal-m<<schwa>>). [Greek] A figure or design on a seal.

## AGARD

agard (<<schwa>>-gahrd). [Law French] An award. See NUL FAIT AGARD.

## AGARDER

agarder (ah-gahr-day), vb.[Law French] To award, adjudge, or determine; to sentence or condemn.

## AGE

age,n. A period of time; esp., a period of individual existence or the duration of a person's life.

• In American usage, age is stated in full years completed (so that someone 15 years of age might actually be 15 years and several months old). State statutes define various types of ages, as shown in the subentries.

**age of capacity.**The age, usu. defined by statute as 18 years, at which a person is legally capable of agreeing to a contract, maintaining a lawsuit, or the like. • A person may be authorized to make certain critical personal decisions at an earlier age than the general age of capacity, such as the decision whether to bear a child, to donate blood, to obtain treatment for sexually transmitted diseases, to marry, or to write a will. The age of capacity to write a will is typically not 18, but 14. — Also termed age of majority; legal age; lawful age. See CAPACITY(2). [Cases: Infants 1. C.J.S. Infants §§ 2–4.]

**age of consent.**The age, usu. defined by statute as 16 years, at which a person is legally capable of agreeing to marriage (without parental consent) or to sexual intercourse. • If a person over the age of consent has sexual intercourse with a person under the age of consent, the older person may be prosecuted for statutory rape regardless of whether the younger person consented to the act. See statutory rape under RAPE. [Cases: Infants 5; Marriage 19. C.J.S. Infants § 111; Marriage § 26.]

**age of criminal responsibility.**The age at which a child may be held responsible for a criminal act. • In American criminal law, some state statutes allow a child as young as 7 to be held responsible (as a juvenile) for some acts. See, e.g., N.D. Cent. Code § 12.1-04-01. The minimum age for imposing adult liability is as low as 10. See, e.g., Ind. Code Ann. § 31-30-3-4(3). But in some circumstances, at least one state allows an offender to be tried as an adult at any age. See, e.g., Mich. Comp. Laws Ann. § 712A.2d.

**age of discretion.** 1. The age at which a person is considered responsible for certain acts and competent to exercise certain powers. • For example, a person must be a legal adult to be eligible to serve a summons. 2. PUBERTY.

**age of majority.** 1. The age, usu. defined by statute as 18 years, at which a person attains full legal rights, esp. civil and political rights such as the right to vote. • The age of majority must be the same for men and women. In almost all states today, the age of majority is 18, but the age at which a person may legally purchase and consume alcohol is 21. — Also termed lawful age; legal age. 2. See age of capacity. — Also termed (in both senses) full age. [Cases: Child Support 389; Infants 1; Parent and Child 16. C.J.S. Infants §§ 2–4; Parent and Child §§ 13–37.]

**age of reason.**The age at which a person becomes able to distinguish right from wrong and is thus legally capable of committing a crime or tort. • The age of reason varies from jurisdiction to jurisdiction, but 7 years is traditionally the age below which a child is conclusively presumed not to have committed a crime or tort, while 14 years is usu. the age below which a rebuttable presumption applies. A child of 14 or older has traditionally been considered legally competent to commit a crime and therefore held accountable. With the creation of juvenile courts and their investiture of delinquency jurisdiction over children from birth to age 18, these traditional distinctions have nearly vanished. They surface from time to time in murder cases when a juvenile court considers whether to certify or transfer a very young child for trial in criminal court or when

a prosecutor seeks to bypass the juvenile court by filing criminal charges against a young child. [Cases: Infants 59, 66. C.J.S. Infants §§ 189, 197, 204.]

fighting age. The age at which a person becomes eligible to serve in (or liable to conscription into) a military unit. [Cases: Armed Services 17, 20.4(1). C.J.S. Armed Services § 42.]

full age. See age of majority.

lawful age. 1. See age of capacity. 2. See age of majority (1).

legal age. 1. See age of capacity. 2. See age of majority (1).

#### AGE DISCRIMINATION

age discrimination. See DISCRIMINATION.

#### AGE DISCRIMINATION IN EMPLOYMENT ACT

Age Discrimination in Employment Act. A federal law prohibiting job discrimination based on a person's age, esp. unfair and discriminatory employment decisions that negatively affect someone who is 40 years old or older. 29 USCA §§ 621–634. • Passed in 1967, the Act applies to businesses with more than 20 employees and to all governmental entities. — Abbr. ADEA. [Cases: Civil Rights 1199. C.J.S. Civil Rights §§ 56–58.]

#### AGENCY

agency. 1. A fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions. See AUTHORITY (1). [Cases: Principal and Agent 1. C.J.S. Agency §§ 2, 4–6, 23, 25–27, 33, 38–40, 58.]

“The basic theory of the agency device is to enable a person, through the services of another, to broaden the scope of his activities and receive the product of another's efforts, paying such other for what he does but retaining for himself any net benefit resulting from the work performed.” Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 1, at 3 (2d ed. 1990).

actual agency. An agency in which the agent is in fact employed by a principal. [Cases: Principal and Agent 96, 99. C.J.S. Agency §§ 148–149, 153–164.]

agency by estoppel. An agency created by operation of law and established by a principal's actions that would reasonably lead a third person to conclude that an agency exists. — Also termed apparent agency; ostensible agency; agency by operation of law. [Cases: Principal and Agent 25(3), 137. C.J.S. Agency §§ 61, 157, 211.]

agency by necessity. See agency of necessity.

agency by operation of law. See agency by estoppel.

agency coupled with an interest. An agency in which the agent is granted not only the power to act on behalf of a principal but also a legal interest in the estate or property involved. • This

type of agency is irrevocable before the interest expires, unless the parties agree otherwise when creating the interest. The agency survives even if the principal becomes insane or dies. See power coupled with an interest under POWER(3). [Cases: Principal and Agent 34, 43(2). C.J.S. Agency §§ 114–119, 136.]

agency from necessity. See agency of necessity.

agency in fact. An agency created voluntarily, as by a contract. • Agency in fact is distinguishable from an agency relationship created by law, such as agency by estoppel. [Cases: Principal and Agent 8. C.J.S. Agency §§ 36–40.]

agency of necessity. An agency arising during an emergency that necessitates the agent's acting without authorization from the principal; the relation between a person who in exigent circumstances acts in the interest of another without being authorized to do so. • It is a quasi-contractual relation formed by the operation of legal rules and not by the agreement of the parties. — Also termed agency from necessity; agency by necessity. See NEGOTIORUM GESTIO. [Cases: Principal and Agent 14(1), 99. C.J.S. Agency §§ 20, 53, 153–164; Architects § 21.]

apparent agency. See agency by estoppel.

exclusive agency. The right to represent a principal — esp. either to sell the principal's products or to act as the seller's real-estate agent — within a particular market free from competition. • Strictly speaking, an exclusive agency merely excludes all other brokers, but not the owner, from selling the products or property. — Also termed exclusive agency to sell; exclusive franchise; sole selling agency. Cf. EXCLUSIVE RIGHT OF SALE.

“Contracts involving the element of exclusive agency generally fall into three classes: (1) where the contract does not prevent the principal from making direct sales but deprives him of the right to appoint other agents; (2) where the agent is the only one with any right to sell; and (3) where the exclusive agency is accompanied with a stipulated right to commissions on all sales whether made through the agent or not.” 3 Am. Jur. 2d Agency § 268, at 768 (1986).

express agency. An actual agency arising from the principal's written or oral authorization of a person to act as the principal's agent. Cf. implied agency. [Cases: Principal and Agent 96. C.J.S. Agency §§ 148–149.]

financing agency. A bank, finance company, or other entity that in the ordinary course of business (1) makes advances against goods or documents of title, or (2) by arrangement with either the seller or the buyer intervenes to make or collect payment due or claimed under a contract for sale, as by purchasing or paying the seller's draft, making advances against it, or taking it for collection, regardless of whether documents of title accompany the draft. UCC § 2-104(2).

general agency. A principal's delegation to an agent, without restriction, to take any action connected with a particular trade, business, or employment. — Also termed universal agency. [Cases: Principal and Agent 93. C.J.S. Agency § 172.]

implied agency. An actual agency arising from the conduct by the principal that implies an intention to create an agency relationship. Cf. express agency. [Cases: Principal and Agent 99. C.J.S. Agency §§ 153–164.]

ostensible agency. See agency by estoppel.

special agency. An agency in which the agent is authorized only to conduct a single transaction or a series of transactions not involving continuous service. [Cases: Principal and Agent 94. C.J.S. Agency § 172.]

undisclosed agency. An agency relationship in which an agent deals with a third party who has no knowledge that the agent is acting on a principal's behalf. • The fact that the agency is undisclosed does not prohibit the third party from seeking redress from the principal or the agent. [Cases: Principal and Agent 138–146. C.J.S. Agency §§ 166, 369–371, 385, 387–388, 393, 412–419, 448–451.]

universal agency. See general agency.

2. An agent's place of business. 3. A governmental body with the authority to implement and administer particular legislation. — Also termed (in sense 3) government agency; administrative agency; public agency; regulatory agency. [Cases: Administrative Law and Procedure 101. C.J.S. Public Administrative Law and Procedure § 8.]

federal agency. A department or other instrumentality of the executive branch of the federal government, including a government corporation and the Government Printing Office. • The Administrative Procedure Act defines the term agency negatively as being any U.S. governmental authority that does not include Congress, the courts, the government of the District of Columbia, the government of any territory or possession, courts-martial, or military authority. 5 USCA § 551. The caselaw on this definition focuses on authority: generally, an entity is an agency if it has authority to take binding action. Other federal statutes define agency to include any executive department, government corporation, government-controlled corporation, or other establishment in the executive branch, or federal regulatory board. [Cases: Administrative Law and Procedure 101; United States 30. C.J.S. Public Administrative Law and Procedure § 8; United States § 49.]

independent agency. A federal agency, commission, or board that is not under the direction of the executive, such as the Federal Trade Commission or the National Labor Relations Board. — Also termed independent regulatory agency; independent regulatory commission. [Cases: United States 29. C.J.S. United States §§ 52, 57.]

local agency. A political subdivision of a state. • Local agencies include counties, cities, school districts, etc.

quasi-governmental agency. A government-sponsored enterprise or corporation (sometimes called a government-controlled corporation), such as the Federal National Mortgage Corporation. [Cases: United States 53. C.J.S. United States §§ 83, 88–95.]

state agency. An executive or regulatory body of a state. • State agencies include state offices, departments, divisions, bureaus, boards, and commissions. — Also termed state body.



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**AGENCY ADJUDICATION**

agency adjudication. See ADMINISTRATIVE PROCEEDING.

**AGENCY ADOPTION**

agency adoption. See ADOPTION.

**AGENCY FOR HEALTHCARE RESEARCH AND QUALITY**

Agency for Healthcare Research and Quality. An agency in the U.S. Department of Health and Human Services responsible for conducting research into improving the quality of healthcare, reducing its cost, and broadening access to essential healthcare services.

**AGENCY FOR INTERNATIONAL DEVELOPMENT**

Agency for International Development. See UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT .

**AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY**

Agency for Toxic Substances and Disease Registry. An agency in the U.S. Department of Health and Human Services responsible for evaluating the impact on public health of the release of hazardous substances into the environment, for maintaining a registry of contaminated waste sites, and for conducting research on the effects of hazardous substances on human health. — Abbr. ATSDR.

**AGENCY JURISDICTION**

agency jurisdiction. See JURISDICTION.

**AGENCY RECORDS**

agency records. Under the Freedom of Information Act, documents that are created or obtained by a government agency, and that are in the agency's control at the time the information request is made. 5 USCA § 552; United States Dep't of Justice v. Tax Analysts, 492 U.S. 136, 109 S.Ct. 2841 (1989). [Cases: Records 54. C.J.S. Records §§ 99–100, 103–104.]

**AGENCY REGULATION**

agency regulation. See REGULATION(3).

**AGENCY SECURITY**

agency security. See government security under SECURITY.

**AGENCY SHOP**

agency shop. See SHOP.

**AGENCY-SHOP MEMBERSHIP**

agency-shop membership. See FINANCIAL-CORE MEMBERSHIP.

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**AGENDA**

agenda. A list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration. — Also termed calendar; calendar of business; order of business. Cf. PROGRAM(1).

consent agenda. See consent calendar under CALENDAR(4).

debate agenda. See debate calendar under CALENDAR(4).

final agenda. An agenda that a deliberative assembly has adopted, or that has been adopted for a deliberative assembly by an officer or board charged with setting such an agenda.

proposed agenda. An agenda offered, usu. with the notice calling the meeting that the agenda covers, for a deliberative assembly's consideration. — Also termed tentative agenda.

report agenda. See report calendar under CALENDAR(4).

special-order agenda. See special-order calendar under CALENDAR(4).

tentative agenda. See proposed agenda.

unanimous-consent agenda. See consent calendar under CALENDAR(4).

**AGENS**

agens (ay-jenz). [Latin] 1. One who acts or does an act; an agent. Cf. PATIENS. 2. A plaintiff.

**AGENT**

agent. 1. Something that produces an effect <an intervening agent>. See CAUSE (1); ELECTRONIC AGENT. 2. One who is authorized to act for or in place of another; a representative <a professional athlete's agent>. — Also termed commissionaire. Cf. PRINCIPAL(1); EMPLOYEE. [Cases: Principal and Agent 1, 3. C.J.S. Agency §§ 2, 4–9, 11–16, 18, 23, 25–27, 33, 38–40, 58.]

“Generally speaking, anyone can be an agent who is in fact capable of performing the functions involved. The agent normally binds not himself but his principal by the contracts he makes; it is therefore not essential that he be legally capable to contract (although his duties and liabilities to his principal might be affected by his status). Thus an infant or a lunatic may be an agent, though doubtless the court would disregard either's attempt to act as if he were so young or so hopelessly devoid of reason as to be completely incapable of grasping the function he was attempting to perform.” Floyd R. Mechem, *Outlines of the Law of Agency* 8–9 (Philip Mechem ed., 4th ed. 1952).

“The etymology of the word agent or agency tells us much. The words are derived from the Latin verb, ago, agere; the noun agens, agentis. The word agent denotes one who acts, a doer, force or power that accomplishes things.” Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 1, at 2–3 (2d ed. 1990).

apparent agent. A person who reasonably appears to have authority to act for another,

regardless of whether actual authority has been conferred. — Also termed ostensible agent. [Cases: Principal and Agent 99. C.J.S. Agency §§ 153–164.]

bail-enforcement agent. See BOUNTY HUNTER.

bargaining agent. A labor union in its capacity of representing employees in collective bargaining. [Cases: Labor Relations 291. C.J.S. Labor Relations § 274.]

broker-agent. See BROKER.

business agent. See BUSINESS AGENT.

clearing agent. Securities. A person or company acting as an intermediary in a securities transaction or providing facilities for comparing data with respect to securities transactions. • The term includes a custodian of securities in connection with the central handling of securities. Securities Exchange Act § 3(a)(23)(A) (15 USCA § 78c(a)(23)(A)). — Also termed clearing agency.

co-agent. A person who shares with another agent the authority to act for the principal. — Also termed dual agent. Cf. common agent.

commercial agent. 1. BROKER. 2. A consular officer responsible for the commercial interests of his or her country at a foreign port. 3. See mercantile agent.

common agent. An agent who acts on behalf of more than one principal in a transaction. Cf. co-agent.

corporate agent. An agent authorized to act on behalf of a corporation; broadly, all employees and officers who have the power to bind the corporation. [Cases: Corporations 397–399. C.J.S. Corporations §§ 586–587, 591, 593–596, 598.]

county agent. See juvenile officer under OFFICER(1).

del credere agent (del kred-*<<schwa>>*-ray or kray-d*<<schwa>>*-ray). An agent who guarantees the solvency of the third party with whom the agent makes a contract for the principal. • A del credere agent receives possession of the principal's goods for purposes of sale and guarantees that anyone to whom the agent sells the goods on credit will pay promptly for them. For this guaranty, the agent receives a higher commission for sales. The promise of such an agent is almost universally held not to be within the statute of frauds. — Also termed del credere factor. [Cases: Factors 29.]

diplomatic agent. A national representative in one of four categories: (1) ambassadors, (2) envoys and ministers plenipotentiary, (3) ministers resident accredited to the sovereign, or (4) *chargés d'affaires* accredited to the minister of foreign affairs. [Cases: Ambassadors and Consuls 1–8. C.J.S. Ambassadors and Consuls §§ 2–32.]

dual agent. See co-agent.

emigrant agent. One engaged in the business of hiring laborers for work outside the country or state.

enrolled agent. See ENROLLED AGENT.

escrow agent. The third-party depository of an escrow; ESCROW(3). — Also termed escrow holder; escrowee; escrow officer. [Cases: Deposits and Escrows 13. C.J.S. Depositories §§ 15–17; Escrows §§ 8–10.]

fiscal agent. A bank or other financial institution that collects and disburses money and services as a depository of private and public funds on another's behalf.

foreign agent. A person who registers with the federal government as a lobbyist representing the interests of a foreign nation or corporation.

forwarding agent. 1. See FREIGHT FORWARDER. 2. A freight forwarder who assembles less-than-carload shipments (small shipments) into carload shipments, thus taking advantage of lower freight rates. [Cases: Carriers 178. C.J.S. Carriers § 463.]

general agent. An agent authorized to transact all the principal's business of a particular kind or in a particular place. • Among the common types of general agents are factors, brokers, and partners. [Cases: Insurance 1634(2); Principal and Agent 93. C.J.S. Agency § 172; Insurance §§ 193–194.]

“Although the distinction between general and special agents can be difficult to apply, the terminology is some-times used by courts and the distinction plays a major role in the Restatement of Agency. A general agent ... is an integral part of the principal's business and does not need fresh authorization for each separate transaction. A manager of a store is an example of a general agent.” J. Dennis Hynes, *Agency, Partnership, and the LLC in a Nutshell* 21 (1997).

government agent. 1. An employee or representative of a governmental body. [Cases: United States 36. C.J.S. United States §§ 56–57.] 2. A law-enforcement official, such as a police officer or an FBI agent. 3. An informant, esp. an inmate, hired by law enforcement to obtain incriminating statements from another inmate. • An accused's Sixth Amendment right to counsel is triggered when the accused is questioned by a government agent.

high-managerial agent. An agent of a corporation or other business, having authority to formulate corporate policy or supervise employees. — Also termed superior agent.

independent agent. An agent who exercises personal judgment and is subject to the principal only for the results of the work performed.

innocent agent. Criminal law. A person whose action on behalf of a principal is unlawful but does not merit prosecution because the agent had no knowledge of the principal's illegal purpose; a person who lacks the mens rea for an offense but who is tricked or coerced by the principal into committing a crime. • Although the agent's conduct was unlawful, the agent might not be prosecuted if the agent had no knowledge of the principal's illegal purpose. The principal is legally accountable for the innocent agent's actions. See Model Penal Code § 2.06(2)(a).

insurance agent. See INSURANCE AGENT.

jural agent. See JURAL AGENT.

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land agent. See LAND MANAGER.

listing agent. See LISTING AGENT.

local agent. An agent appointed to act as another's (esp. a company's) representative and to transact business within a specified district.

managing agent. A person with general power involving the exercise of judgment and discretion, as opposed to an ordinary agent who acts under the direction and control of the principal. — Also termed business agent. [Cases: Principal and Agent 50.]

mercantile agent. An agent employed to sell goods or merchandise on behalf of the principal. — Also termed commercial agent.

nonservant agent. An agent who agrees to act on the principal's behalf but is not subject to the principal's control over how the task is performed. • A principal is not liable for the physical torts of a nonservant agent. See IN-DEPENDENT CONTRACTOR. Cf. SERVANT.

ostensible agent. See apparent agent.

patent agent. A specialized legal professional — not necessarily a licensed lawyer — who prepares and prosecutes patent applications before the Patent and Trademark Office • Patent agents must be licensed by the Patent and Trademark Office. — Also termed patent solicitor; registered patent agent.

primary agent. An agent who is directly authorized by a principal. • A primary agent generally may hire a subagent to perform all or part of the agency. Cf. subagent.

private agent. An agent acting for an individual in that person's private affairs. [Cases: Principal and Agent 92(3).]

process agent. A person authorized to accept service of process on behalf of another. [Cases: Corporations 668(4); Process 58. C.J.S. Corporations §§ 954–956; Process § 39.]

procuring agent. A person who obtains drugs on behalf of another person and delivers the drugs to that person. • In criminal-defense theory, the procuring agent does not sell, barter, exchange, or make a gift of the drugs to the other person because the drugs already belong to that person, who merely employs the agent to pick up and deliver them.

public agent. A person appointed to act for the public in matters pertaining to governmental administration or public business. [Cases: Officers and Public Employees 1. C.J.S. Officers and Public Employees §§ 1–9, 12–17, 21.]

real-estate agent. An agent who represents a buyer or seller (or both, with proper disclosures) in the sale or lease of real property. • A real-estate agent can be either a broker (whose principal is a buyer or seller) or a salesperson (whose principal is a broker). [Cases: Brokers 6. C.J.S. Brokers §§ 25–26, 31–32.]

record agent. See INSURANCE AGENT.

registered agent. A person authorized to accept service of process for another person, esp. a corporation, in a particular jurisdiction. — Also termed resident agent. [Cases: Corporations 507(5), 668(4); Process 58. C.J.S. Corporations §§ 728, 954–956; Process § 39.]

selling agent. The real-estate broker's representative who sells the property, as opposed to the agent who lists the property for sale. Cf. LISTING AGENT. [Cases: Brokers 18. C.J.S. Brokers § 49.]

soliciting agent. 1. Insurance. An agent with limited authority relating to the solicitation or submission of applications to an insurance company but usu. without authority to bind the insurer, as by accepting the applications on behalf of the company. [Cases: Insurance 1634(3). C.J.S. Insurance § 195.] 2. An agent who solicits orders for goods or services for a principal. 3. A managing agent of a corporation for purposes of service of process. [Cases: Corporations 668(5).]

special agent. 1. An agent employed to conduct a particular transaction or to perform a specified act. [Cases: Principal and Agent 94. C.J.S. Agency § 172.] 2. See INSURANCE AGENT.

specially accredited agent. An agent with whom a third person has been specially invited to deal by the principal under circumstances leading the third person to believe that he or she will be notified if the authority is altered or revoked.

statutory agent. An agent designated by law to receive litigation documents and other legal notices for a nonresident corporation. • In most states, the secretary of state is the statutory agent for such corporations. [Cases: Corporations 507(5, 12), 646, 668(14). C.J.S. Corporations §§ 725, 728, 902, 959.]

stock-transfer agent. An organization that oversees and maintains records of transfers of shares for a corporation. [Cases: Corporations 128.1.]

subagent. A person to whom an agent has delegated the performance of an act for the principal; a person designated by an agent to perform some duty relating to the agency. • If the principal consents to a primary agent's employment of a subagent, the subagent owes fiduciary duties to the principal, and the principal is liable for the subagent's acts. Cf. primary agent. — Also termed subservant. [Cases: Principal and Agent 73. C.J.S. Agency §§ 257–263, 265–267.]

“By delegation ... the agent is permitted to use agents of his own in performing the function he is employed to perform for his principal, delegating to them the discretion which normally he would be expected to exercise personally. These agents are known as subagents to indicate that they are the agent's agents and not the agents of the principal. Normally (though of course not necessarily) they are paid by the agent. The agent is liable to the principal for any injury done him by the misbehavior of the agent's subagents.” Floyd R. Mechem, *Outlines of the Law of Agency* § 79, at 51 (Philip Mechem ed., 4th ed. 1952).

successor agent. An agent who is appointed by a principal to act in a primary agent's stead if the primary agent is unable or unwilling to perform.

superior agent. See high-managerial agent.

transfer agent. An organization (such as a bank or trust company) that handles transfers of shares for a publicly held corporation by issuing new certificates and overseeing the cancellation of old ones and that usu. also maintains the record of shareholders for the corporation and mails dividend checks. • Generally, a transfer agent ensures that certificates submitted for transfer are properly indorsed and that the right to transfer is appropriately documented. [Cases: Corporations 128.1.]

undercover agent. 1. An agent who does not disclose his or her role as an agent. 2. A police officer who gathers evidence of criminal activity without disclosing his or her identity to the suspect.

universal agent. An agent authorized to perform all acts that the principal could personally perform. [Cases: Principal and Agent 50.]

vice-commercial agent. Hist. In the consular service of the United States, a consular officer who was substituted temporarily to fill the place of a commercial agent who was absent or had been relieved from duty.

3. Patents. A person who is not an attorney but who has fulfilled the U.S. Patent and Trademark Office requirements as a lay representative and is registered to prepare and prosecute patent applications before the PTO. • To be registered to practice before the PTO, a candidate must establish mastery of the relevant technology (by holding a specified technical degree or equivalent training) in order to advise and assist patent applicants. The candidate must also pass a written examination (the "Patent Bar") that tests knowledge of patent law and PTO procedure. — Also termed patent agent. Cf. PATENT ATTORNEY. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

agent not recognized. Patents. A patent applicant's appointed agent who is not registered to practice before the U.S. Patent and Trademark Office. • A power of attorney appointing an unregistered agent is void.

associate agent. An agent who is registered to practice before the U.S. Patent and Trademark Office, has been appointed by a principal agent, and is authorized to prosecute a patent application through the filing of a power of attorney. • An associate agent is often used by outside counsel to assist in-house counsel.

#### AGENT PROVOCATEUR

agent provocateur (ay-j<<schwa>>nt pr<<schwa>>-vok-<<schwa>>-t<<schwa>>rorazhawn praw-vaw-k<<schwa>>-tuur), n. 1. An undercover agent who instigates or participates in a crime, often by infiltrating a group suspected of illegal conduct, to expose and punish criminal activity. 2. A person who entraps another, or entices another to break the law, and then informs against the other as a lawbreaker.

#### AGENT'S LIEN

agent's lien. See LIEN.

#### AGENT'S POWER

agent's power. See POWER(3).

#### AGE OF CAPACITY

age of capacity. See AGE.

#### AGE OF CONSENT

age of consent. See AGE.

#### AGE OF CRIMINAL RESPONSIBILITY

age of criminal responsibility. See AGE.

#### AGE OF DISCRETION

age of discretion. See AGE.

#### AGE OF MAJORITY

age of majority. See AGE.

#### AGE OF REASON

age of reason. See AGE.

#### AGER

ager (ay-j<<schwa>>r), n. [Latin] Roman law. Land or territory; esp., a portion of land enclosed by definite boundaries.

ager arcifinius (ay-j<<schwa>>r ahr-si-fin-ee-<<schwa>>s). [Latin "land having irregular boundaries; unsurveyed land"] Roman law. Land enclosed only as a means of identification, not as a limit. Pl. agri arcifinii. Cf. ager limitatus.

ager limitatus (ay-j<<schwa>>r lim-i-tay-t<<schwa>>s). [Latin "field limited" or "land enclosed by boundaries"] Roman & civil law. Land with settled boundaries; esp., land whose boundaries have been fixed by a surveyor. • The term applied to land belonging to the state by right of conquest, then granted and sold in individual plots. Cf. ager arcifinius. Pl. agri limitati (ag-rI lim-i-tay-tI).

"The agri limitati of the Roman law were lands detached from the public domain, and converted into private property, by sale or grant, beyond the limits of which the owners could claim nothing." John Trayner, Trayner's Latin Maxims 36 (4th ed. 1894).

ager publicus (ay-j<<schwa>>r p<<schwa>>b-li-k<<schwa>>s). Land of the people; public land.

#### AGGRAVATED



aggravated,adj.1. (Of a crime) made worse or more serious by circumstances such as violence, the presence of a deadly weapon, or the intent to commit another crime <aggravated robbery>. Cf. SIMPLE(1).2. (Of a tort) made worse or more serious by circumstances such as intention to cause harm or reckless disregard for another's safety <the defendant's negligence was aggravated by malice>. [Cases: Negligence 272–276. C.J.S. Negligence §§ 88–113.] 3. (Of an injury) harmful to a part of the body previously injured or debilitated <an aggravated bone fracture>. See AGGRAVATION RULE. [Cases: Damages 58. C.J.S. Damages § 165.]

**AGGRAVATED ARSON**

aggravated arson.See ARSON.

**AGGRAVATED ASSAULT**

aggravated assault.See ASSAULT.

**AGGRAVATED BATTERY**

aggravated battery.See BATTERY.

**AGGRAVATED DAMAGES**

aggravated damages.See punitive damages under DAMAGES.

**AGGRAVATED KIDNAPPING**

aggravated kidnapping.See KIDNAPPING.

**AGGRAVATED LARCENY**

aggravated larceny.See LARCENY.

**AGGRAVATED MISDEMEANOR**

aggravated misdemeanor.See serious misdemeanor under MISDEMEANOR.

**AGGRAVATED ROBBERY**

aggravated robbery.See ROBBERY.

**AGGRAVATED SODOMY**

aggravated sodomy.See SODOMY.

**AGGRAVATING CIRCUMSTANCE**

aggravating circumstance.See CIRCUMSTANCE.

**AGGRAVATING ELEMENT**

aggravating element.See aggravating circumstance under CIRCUMSTANCE.

**AGGRAVATING FACTOR**

aggravating factor.See aggravating circumstance under CIRCUMSTANCE.

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**AGGRAVATION**

aggravation. 1. The fact of being increased in gravity or seriousness. 2. Eccles. law. A censure threatening the recipient with an increase in the penalties associated with excommunication, usu. because the recipient disre-garded an earlier sentence. • For example, a person who spurned a sentence of excommunication might be sub-jected to an anathema (a formal ban or curse). — aggravate, vb.

**AGGRAVATION RULE**

aggravation rule. Workers' compensation. The principle that when an on-the-job injury combines with a preex-isting injury, resulting in a greater disability than that which would have resulted from the on-the-job injury alone, the entire disability is compensable as if it had occurred at work. [Cases: Workers' Compensation 552–566. C.J.S. Workmen's Compensation §§ 325–337.]

**AGGRAVATOR**

aggravator. 1. One who commits a crime with an aggravating circumstance. 2. See aggravating circumstance under CIRCUMSTANCE. Cf. MITIGATOR.

**AGGREGATE**

aggregate (ag-r<<schwa>>-git), adj. Formed by combining into a single whole or total <aggregate income>. — aggregately, adv.

aggregate (ag-r<<schwa>>-git), n. An assemblage of particulars; an agglomeration <aggregate of interests>.

aggregate (ag-r<<schwa>>-gayt), vb. To collect into a whole <aggregate the claims>.

**AGGREGATE CONCEPT**

aggregate concept. Tax. An approach to taxing business organizations whereby an organization is viewed as a collection of its individual owners, not as a separate taxable entity. [Cases: Internal Revenue 3879; Taxation 1015. C.J.S. Internal Revenue §§ 17–18; Taxation § 1707.]

**AGGREGATE CORPORATION**

aggregate corporation. See CORPORATION.

**AGGREGATE DEMAND**

aggregate demand. See DEMAND(4).

**AGGREGATE INCOME**

aggregate income. See INCOME.

**AGGREGATE SENTENCE**

aggregate sentence. See SENTENCE.

#### AGGREGATE SUPPLY

aggregate supply. See SUPPLY.

#### AGGREGATE THEORY OF PARTNERSHIP

aggregate theory of partnership. The theory that a partnership does not have a separate legal existence (as does a corporation), but rather is only the totality of the partners who make it up. Cf. ENTITY THEORY OF PARTNERSHIP. [Cases: Partnership 63. C.J.S. Partnership § 68.]

#### AGGREGATIO MENTIUM

aggregatio mentium (ag-r<<schwa>>-gay-shee-oh men-shee-<<schwa>>m). [Latin “gathering together of minds”] See MEETING OF THE MINDS.

#### AGGREGATION

aggregation. Patents. 1. A set of parts that do not cooperate in structure or function, and are therefore unpatentable as an invention; the opposite of a combination. [Cases: Patents 25. C.J.S. Patents § 86.] 2. Hist. A patent examiner's label for a claimed invention that may or may not be a patentable combination but whose claims do not clearly explain how the parts cooperate to produce a new or unexpected result. • As a term of art, aggregation lost its usefulness when it was replaced by a statutory test in § 103 of the Patent Act of 1952. — Also termed juxtaposition. Cf. COMBINATION (4).

“I think of a football team as a combination; one passes, one receives, another runs, and still others hold the line. Eleven men are doing different things, each in his own way, and not always simultaneously; yet they are working to a common end, to advance the ball; and they coact as a unit. I think of a track team as an aggregation; one runs, another hurdles, another jumps, another throws. They all work for a common general end, to amass points for their alma mater; but there is lacking the vital spark of cooperation or coordination. They work, not as one unit, but as several.” *Skinner v. Oil*, 54 F.2d 896, 898–99 (10th Cir. 1931).

“The mere combining of old machine parts, each operating in the old way and accomplishing the old result, is an aggregation, and hence unpatentable; whereas, if a new result be produced by the joint action of the elements, and if such a result be not the mere adding together of the contributions of the separate elements, then there exists a patentable combination.” Roger Sherman Hoar, *Patent Tactics and the Law* 38 (3d ed. 1950).

#### AGGREGATION DOCTRINE

aggregation doctrine. The rule that precludes a party from totaling all claims for purposes of meeting the minimum amount necessary to give rise to federal diversity jurisdiction under the amount-in-controversy requirement. See diversity jurisdiction under JURISDICTION; AMOUNT IN CONTROVERSY. [Cases: Federal Courts 344.]

#### AGGREGATION OF CLAIMS

aggregation of claims. Patents. In a patent application, an excessive number of claims that do not differ significantly in scope and are essentially duplicative. • Although a patent applicant may claim an invention and its various features in a reasonable number of ways, each claim must differ materially from the others. — Also termed multiplicity of claims; undue multiplicity of claims. [Cases: Patents 124. C.J.S. Patents § 210.]

#### AGGREGATION REJECTION

aggregation rejection. See REJECTION.

#### AGGRESSION

aggression. Int'l law. A grave breach of international law by a nation. • The prohibition of aggression is a peremptory rule (*jus cogens*). Aggressors are guilty of an international crime. But there is no generally accepted definition of what constitutes aggression despite many attempts over the years to devise one. In 1974, the United Nations General Assembly adopted a Resolution on the Definition of Aggression (Resolution 3314 (XXIX) of December 14, 1974). It defines aggression, in part, as “the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another country, or in a manner inconsistent with the Charter of the United Nations...” The definition does not extend to measures that, in certain circumstances, might constitute aggression, nor does it recognize exceptional circumstances that would make the enumerated acts defensive rather than offensive. The U.N. Security Council has never expressly relied on the resolution when determining whether a nation's acts constitute a “threat to the peace, breach of the peace, or act of aggression.” (See U.N. Charter art. 39, 59 Stat. 1031.) The difficulty of finding a generally accepted definition of aggression is reflected in Article 5 of the Statute of the International Criminal Court (37 I.L.M. 999). It confers jurisdiction on the Court over “the crime of aggression” but also requires the parties to the Statute to define the crime before the Court can exercise jurisdiction. [Cases: War and National Emergency 1, 19. C.J.S. War and National Defense §§ 1, 5–6.]

“Although classical aggression has generally been thought to involve direct military operations by regular national forces under government control, today subjugation and control of peoples may well result from resort to non-military methods. Economic pressures on the other states; demands couched in traditional diplomatic terms but laden with implied threats to compel action or inaction; fifth column activities; the endless propaganda harangue urging another state's peoples to rise against their government; the aiding and abetting of rebel bands intent on overthrowing another government; and a wide range of other modern techniques must be included in the concept of aggression in so far as they are delicts at international law, for they are directed against the sovereign independence of a state.” Ann Van Wynen Thomas & A.J. Thomas Jr., *The Concept of Aggression in International Law* 69 (1972).

direct aggression. Aggression in which a state's regular armed forces participate.

indirect aggression. Aggression carried out by some means other than through a state's regular armed forces.

“[I]ndirect aggression would seem to have two prime meanings: (1) delictual acts armed or

unarmed and conducted vicariously by the aggressor state through third parties which endanger the essential rights of a state, rights upon which its security depends, and (2) delictual acts taken directly by the governing authorities of a state against another state or vicariously through third-party groups which do not involve the use of armed force, but which do endanger the essential rights of a state upon which its security depends. No directly military operations by the regular armed forces of a state are involved in either case; therefore the aggression can be regarded as an indirect method of constraint carried on by the aggressor state." Ann Van Wynen Thomas & A.J. Thomas Jr., *The Concept of Aggression in International Law* 69 (1972).

#### AGGRESSOR CORPORATION

aggressor corporation. See CORPORATION.

#### AGGRESSOR DOCTRINE

aggressor doctrine. The principle precluding tort recovery for a plaintiff who acts in a way that would provoke a reasonable person to use physical force for protection, unless the defendant in turn uses excessive force to repel the plaintiff. [Cases: Assault and Battery 13. C.J.S. Assault and Battery §§ 19–21.]

#### AGGRIEVED

aggrieved, adj. (Of a person or entity) having legal rights that are adversely affected; having been harmed by an infringement of legal rights.

#### AGGRIEVED PARTY

aggrieved party. See PARTY (2).

#### AGI

AGI. abbr. See adjusted gross income under INCOME.

#### AGILLARIUS

agillarius (aj-*schwa*-lair-ee-*schwa*), n. [Law Latin] Hist. A keeper of a herd of cattle in a common field; a hayward.

#### AGING OF ACCOUNTS

aging of accounts. A process of classifying accounts receivable by the time elapsed since the claim came into existence for the purpose of estimating the balance of uncollectible accounts as of a given date.

#### AGING-OUT

aging-out, n. A foster child's or minor ward's reaching the age at which any legal right to care expires. • Aging-out usu. occurs when the child reaches the age of majority and becomes ineligible for foster care. Some states allow an extension of eligibility up to age 21 if the child is still in school or cannot live independently, or if it is otherwise in the child's best interests to remain in foster care and the child consents. See INDEPENDENT-LIVING PROGRAM M.

## AGIO

agio (aj-ee-oh oray-jee-oh). The premium paid for the exchange of one kind of money for another, such as paper currency for coin or one country's currency for another's.

## AGIOTAGE

agiotage (aj-ee-<<schwa>>-tij). 1. The business of dealing in foreign exchange. 2. Speculative buying and selling of securities.

## AGIST

agist (<<schwa>>-jist), vb. To allow animals to graze on one's pasture for a fee.

## AGISTER

agister (<<schwa>>-jis-t<<schwa>>r). One who takes and pastures grazing animals for a fee; a person engaged in the business of agistment. • An agister is a type of bailee for hire. — Also spelled agistor. — Also termed gisetaker.[Cases: Animals 21. C.J.S. Animals § 46.]

## AGISTER'S LIEN

agister's lien. See LIEN.

## AGISTMENT

agistment (<<schwa>>-jist-m<<schwa>>nt). 1. A type of bailment in which a person, for a fee, allows animals to graze on his or her pasture; the taking in of cattle or other livestock to feed at a per-animal rate. [Cases: Animals 21. C.J.S. Animals § 46.] 2. A charge levied upon the owner or occupier of land. — Also termed gisement. See TITHE OF AGISTMENT.

agistment of sea-banks.Hist. A charge on land used to pay for the upkeep of dikes that prevent the encroachment of the sea.

## AGISTOR

agistor. See AGISTER.

## AGNATE

agnate (ag-nayt), adj. Related or akin through male descent or on the father's side.

agnate,n.1. A blood relative whose connection is through the male line. 2. A relative on the father's side, whether or not traced exclusively through the male line. Cf. COGNATE.

## AGNATIC

agnatic (ag-nat-ik), adj. (Of a relationship) restricted to affiliations through the male line. — Also termed agnatical (ag-nat-i-k<<schwa>>l).

## AGNATIO

agnatio (ag-nay-shee-oh). [Latin] Roman law. Kinship through the male line, not necessarily

involving blood ties; specif., an affiliation of free persons of either sex in the power (patria potestas) of the senior living male or of a male who would be in his power if he were living. • An agnatic relationship could be created either by adoption or by a blood relationship (cognatio) traced solely through the male side of a family. See COGNATIO; patria potestas under POTESTAS.

#### AGNATION

agnation (ag-nay-sh<<schwa>>n), n. The relationship of agnates.

#### AGNATUS

agnatus (ag-nay-t<<schwa>>s), n.[Latin] Roman law. A person related through the male line. Cf. COGNATUS.

“[Agnati were] all individuals subject for the time being to the same patria potestas, or who would be so subject were the common ancestor alive. Brothers and sisters, with their uncles, aunts, nephews, nieces, and other collaterals (not having been received into another family), if related through males, were agnates. The civil issue of the state was the Agnatic Family. Cognates were all persons who could trace their blood to a single ancestor or ancestress, and agnates were those cognates who traced their connection exclusively through males.” John Bouvier, Bouvier's Law Dictionary (8th ed. 1914).

#### AGNOMEN

agnomen (ag-noh-m<<schwa>>n). [Latin] 1. An additional name or title; a nickname. 2.Roman law. An additional name, given in recognition of some achievement or to reflect adoption by a different gens. See NOMEN.

#### AGRARIAN

agrarian (<<schwa>>-grair-ee-<<schwa>>n), adj. Of or relating to land, land tenure, or a division of landed property. — agrarian,n.

#### AGRARIAN LAW

agrarian law.Roman & civil law. The body of law governing the ownership, use, and distribution of rural land.

#### AGRARIUM

agrarium (<<schwa>>-grair-ee-<<schwa>>m). [Law Latin] Hist. A tax on, or tribute payable out of, land.

#### AG GRATIA

a gratia (ay gray-shee-<<schwa>>). [Law Latin] EX GRATIA.

#### AGREEMENTUM

agreementum (<<schwa>>-gree-<<schwa>>-men-t<<schwa>>m). [Law Latin] Agreement;

an agreement.

#### AGREE

agree,vb. 1. To unite in thought; to concur in opinion or purpose. 2. To exchange promises; to unite in an en-gagement to do or not do something. 3.Parliamentary law. To adopt (usu. in the phrase agree to). See ADOP-TION(5).

#### AGREED-AMOUNT CLAUSE

agreed-amount clause.An insurance-policy provision that the insured will carry a stated amount of coverage.

#### AGREED BOUNDARY

agreed boundary.See BOUNDARY.

#### AGREED-BOUNDARY DOCTRINE

agreed-boundary doctrine.The principle by which adjacent landowners resolve uncertainties over land boun-daries by permanently fixing the boundaries by agreement; specif., the rule that owners of contiguous land may agree on the boundary between the parcels, as long as the actual boundary is uncertain, there is agreement between the two owners about the boundary line, there is acquiescence in the agreed line for a time exceeding the statute of limitations, and the agreed boundary is identifiable on the ground. — Also termed doctrine of practical location. See agreed boundary under BOUNDARY. [Cases: Boundaries 46, 48. C.J.S. Boundaries §§ 67, 69–73, 83.]

#### AGREED CASE

agreed case.See agreed statement of facts under STATEMENT OF FACTS.

#### AGREED DECREE

agreed decree.See DECREE.

#### AGREED DISMISSAL

agreed dismissal.See dismissal agreed under DISMISSAL(1).

#### AGREED JUDGMENT

agreed judgment.See JUDGMENT.

#### AGREED PRICE

agreed price.See PRICE.

#### AGREED STATEMENT OF FACTS

agreed statement of facts.See STATEMENT OF FACTS.

#### AGREED STATEMENT ON APPEAL

agreed statement on appeal.See agreed statement of facts under STATEMENT OF FACTS .



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**AGREED VALUE**

agreed value. See VALUE(2).

**AGREEMENT**

agreement. 1. A mutual understanding between two or more persons about their relative rights and duties re-garding past or future performances; a manifestation of mutual assent by two or more persons. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.] 2. The parties' actual bargain as found in their language or by implication from other circumstances, including course of dealing, usage of trade, and course of performance. UCC § 1-201(b)(3). [Cases: Sales 33. C.J.S. Sales § 43.]

“The term ‘agreement,’ although frequently used as synonymous with the word ‘contract,’ is really an expression of greater breadth of meaning and less technicality. Every contract is an agreement; but not every agreement is a contract. In its colloquial sense, the term ‘agreement’ would include any arrangement between two or more persons intended to affect their relations (whether legal or otherwise) to each other. An accepted invitation to dinner, for example, would be an agreement in this sense; but it would not be a contract, because it would neither be intended to create, nor would it in fact create, any legal obligation between the parties to it. Further, even an agreement which is intended to affect the legal relations of the parties does not necessarily amount to a contract in the strict sense of the term. For instance, a conveyance of land or a gift of a chattel, though involving an agreement, is ... not a contract; because its primary legal operation is to effect a transfer of property, and not to create an obligation.” 2 Stephen's Commentaries on the Laws of England 5 (L. Crispin Warmington ed., 21st ed. 1950).

“An agreement, as the courts have said, ‘is nothing more than a manifestation of mutual assent’ by two or more legally competent persons to one another. Agreement is in some respects a broader term than contract, or even than bargain or promise. It covers executed sales, gifts, and other transfers of property.” Samuel Williston, *A Treatise on the Law of Contracts* § 2, at 6 (Walter H.E. Jaeger ed., 3d ed. 1957).

agreement incident to divorce. See DIVORCE AGREEMENT.

agreement of sale. An agreement that obligates someone to sell and that may include a corresponding obligation for someone else to buy. [Cases: Sales 1. C.J.S. Sales § 2.]

agreement to agree. 1. An unenforceable agreement that purports to bind two parties to negotiate and enter into a contract; esp., a proposed agreement negotiated with the intent that the final agreement will be embodied in a formal written document and that neither party will be bound until the final agreement is executed. 2. A fully enforceable agreement containing terms that are sufficiently definite as well as adequate consideration, but leaving some details to be worked out by the parties. [Cases: Contracts 25. C.J.S. Contracts § 60.]

“Although the parties expect that they will reach agreement on the missing terms, what they expect to happen if they fail to reach agreement is often unclear. They may understand that there will be no contract at all or they may understand that there will be a contract with the missing term

supplied as a matter of law. If the latter is their understanding, a question arises whether the agreement is one with open terms sufficiently definite to be enforceable or whether it is a mere unenforceable 'agreement to agree.' ” E. Allan Farnsworth, *Contracts* § 3.29, at 217 (3d ed. 1999).

agreement to sell. An agreement that obligates someone to sell. [Cases: Sales 1. C.J.S. Sales § 2.]

antenuptial agreement. See PRENUPTIAL AGREEMENT.

binding agreement. An enforceable contract. See CONTRACT. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.]

closing agreement. Tax. A written contract between a taxpayer and the Internal Revenue Service to resolve a tax dispute. [Cases: Internal Revenue 4761. C.J.S. Internal Revenue § 654.]

cohabitation agreement. See COHABITATION AGREEMENT.

divorce agreement. See DIVORCE AGREEMENT.

formal agreement. An agreement for which the law requires not only the consent of the parties but also a manifestation of the agreement in some particular form (e.g., a signed writing), in default of which the agreement is unenforceable. Cf. formal contract under CONTRACT. [Cases: Contracts 30. C.J.S. Contracts §§ 66–67, 72.]

integrated agreement. See INTEGRATED CONTRACT.

invalid agreement. See invalid contract under CONTRACT.

living-together agreement. See COHABITATION AGREEMENT.

marital agreement. See MARITAL AGREEMENT.

marital settlement agreement. See DIVORCE AGREEMENT.

negotiated agreement. See NEGOTIATED AGREEMENT.

outsourcing agreement. See OUTSOURCING AGREEMENT.

point-and-click agreement. See POINT-AND-CLICK AGREEMENT.

postnuptial agreement. See POSTNUPTIAL AGREEMENT.

prenuptial agreement. See PRENUPTIAL AGREEMENT.

property settlement agreement. See PROPERTY SETTLEMENT(2).

reconciliation agreement. See RECONCILIATION AGREEMENT.

separation agreement. See SEPARATION AGREEMENT.

side agreement. 1. An agreement that is ancillary to another agreement. 2. Int'l law. An international accord that is specifically negotiated to supplement a broader trade treaty. • For example, NAFTA contains no provisions about labor standards or environmental protection. But

two side agreements about those areas were negotiated separately and designed to supplement NAFTA, making the treaty more attractive to the ratifying bodies. — Also termed supplemental agreement.

simple agreement. An agreement for which the law requires nothing for its effective operation beyond some manifestation that the parties have consented.

subordination agreement. An agreement by which one who holds an otherwise senior interest agrees to subordinate that interest to a normally lesser interest, usu. when a seller agrees to subordinate a purchase-money mortgage so that the buyer can obtain a first-mortgage loan to improve the property. [Cases: Secured Transactions 147. C.J.S. Secured Transactions § 108.]

supplemental agreement. See side agreement.

surrogate-parenting agreement. See SURROGATE-PARENTING AGREEMENT.

takeover agreement. An agreement under which a defaulting party's surety agrees to perform the original contract in the defaulting party's stead.

trust agreement. See declaration of trust (2) under DECLARATION(1).

unconscionable agreement (<<schwa>>n-kon-sh<<schwa>>-n<<schwa>>-b<<schwa>>l). An agreement that no promisor with any sense, and not under a delusion, would make, and that no honest and fair promisee would accept. • For commercial contexts, see UCC § 2-302. — Also termed unconscionable contract; unconscionable bargain. [Cases: Contracts 1. C.J.S. Contracts §§ 2-3, 9, 12.]

underwriting agreement. An agreement between a corporation and an underwriter covering the terms and conditions of a new securities issue. [Cases: Corporations 79. C.J.S. Corporations § 186.]

valid agreement. See valid contract under CONTRACT.

voidable agreement. See voidable contract under CONTRACT.

void agreement. See void contract under CONTRACT.

#### AGREEMENT OF IMPERFECT OBLIGATION

agreement of imperfect obligation. See unenforceable contract under CONTRACT.

#### AGREEMENT OF RESCISSION

agreement of rescission. See RESCISSION(2).

#### AGREEMENT OF SALE

agreement of sale. See AGREEMENT.

#### AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

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Agreement on Trade-Related Aspects of Intellectual Property Rights. See TRIPS.

AGREEMENT RELATING TO LIABILITY LIMITATION OF THE WARSAW CONVENTION

Agreement Relating to Liability Limitation of the Warsaw Convention and The Hague Protocol. See MONTREAL AGREEMENT.

AGREEMENT TO AGREE

agreement to agree. See AGREEMENT.

AGREEMENT TO MARRY

agreement to marry. See marriage promise under PROMISE.

AGREEMENT TO SELL

agreement to sell. See AGREEMENT.

AGRI

agri (ag-rī), n. pl. [Latin] Lands.

AGRIBUSINESS

agribusiness. The pursuit of agriculture as an occupation or profit-making enterprise, including labor, land-use planning, and financing the cost of land, equipment, and other necessary expenses.

AGRICULTURAL ADJUSTMENT ACT

Agricultural Adjustment Act. A 1933 federal statute that paid farmers not to produce crops in an effort to raise crop prices. • The U.S. Supreme Court declared the Act unconstitutional in 1936 on grounds that Congress had overstepped its power to regulate commerce. A second, more limited Agricultural Adjustment Act was enacted in 1938. — Abbr. AAA. [Cases: Agriculture 3.1.]

AGRICULTURAL COOPERATIVE SERVICE

Agricultural Cooperative Service. The federal agency within the U.S. Department of Agriculture responsible for helping farmers to organize farm cooperatives. • The Service also collects statistical information on co-ops and publishes Farmer Cooperatives, a monthly magazine.

AGRICULTURAL-DISPARAGEMENT LAW

agricultural-disparagement law. A statute designed to protect food producers from and provide remedies for pecuniary harm resulting from false and malicious reports of food contamination. • A typical statute applies to false and disparaging public statements implying or claiming that a perishable food product is unsafe for human consumption. It typically applies when the speaker or writer knows that the statements are false because the claim or implication has no basis in reliable scientific inquiry, facts, or data. — Also termed veggie-libel law; perishable-food-disparagement

act; agricultural-product-disparagement law; food-disparagement law.

#### AGRICULTURAL LABOR

agricultural labor. Work that is performed on a farm or ranch, or that pertains to the production of commodities, such as harvesting crops, raising livestock, or obtaining milk, honey, or other animal products. • Agricultural labor is often excluded from certain labor laws, such as unemployment insurance and workers' compensation.

#### AGRICULTURAL LIEN

agricultural lien. See LIEN.

#### AGRICULTURAL MARKETING SERVICE

Agricultural Marketing Service. An agency in the U.S. Department of Agriculture responsible for compiling and publishing marketing information, establishing and enforcing quality standards for agricultural products, testing those products, and making grants to states and farmers. • It was established by the Secretary of Agriculture in 1972. — Abbr. AMS.

#### AGRICULTURAL-PRODUCT-DISPARAGEMENT LAW

agricultural-product-disparagement law. See AGRICULTURAL-DISPARAGEMENT LAW.

#### AGRICULTURAL RESEARCH SERVICE

Agricultural Research Service. An agency in the U.S. Department of Agriculture responsible for conducting agricultural research to ensure the production of high-quality food and food products. — Abbr. ARS.

#### AGRICULTURE

agriculture. The science or art of cultivating soil, harvesting crops, and raising livestock. [Cases: Agriculture 3.1.]

“ ‘Agriculture’ is broader in meaning than ‘farming’; and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes gardening, horticulture, viticulture, dairying, poultry, bee raising, and ranching.” 3 Am. Jur. 2d Agriculture § 1, at 934–35 (1986).

#### AGRI LIMITATI

agri limitati (ag-rī lim-i-tay-tī). See ager limitatus under AGER.

#### AGUILAR–SPINELLI TEST

Aguilar–Spinelli test (ah-gee-lahr spi-nel-ee orag-w<<schwa>>-lahr). Criminal procedure. A standard for determining whether hearsay (such as an informant's tip) is sufficiently reliable to establish probable cause for an arrest or search warrant. • Under this two-pronged test — which has been replaced by a broader, totality-of-the-circumstances approach — the reliability of both the information and the informant must be assessed independently. *Aguilar v. Texas*, 378 U.S. 108,

84 S.Ct. 1509 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584 (1969). Cf. TOTALITY-OF-THE-CIRCUMSTANCES TEST. [Cases: Criminal Law 211(3); Searches and Seizures 118.C.J.S. Criminal Law §§ 330, 337; Searches and Seizures §§ 160–165, 167.]

#### AGUNAH

agunah (ah-goo-nah), n. Jewish law. 1. A woman whose husband has deserted her or otherwise disappeared. • She may not remarry until either proving his death or obtaining a divorce. 2. A woman whose husband will not agree to a divorce.

#### AGVA

AGVA.abbr.AMERICAN GUILD OF VARIETY ARTISTS.

#### AHUPUAA

ahupuaa (ah-hoo-poo-ah-ah). [Hawaiian] A variable measure of Hawaiian land, traditionally understood to stretch from the sea to the mountains, to allow the people to obtain the various materials needed for subsistence offered at different elevations. — Also spelled ahupua'a.

#### AICPA

AICPA.abbr.American Institute of Certified Public Accountants. [Cases: Accountants 3.1.]

#### AID

AID.abbr.1. See artificial insemination by donor under ARTIFICIAL INSEMINATION . 2.UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

aid,n. Hist. 1.A subsidy or tax granted to the king for an extraordinary purpose. — Also termed grant-in-aid. 2. A benevolence or tribute (i.e., a sum of money) granted by the tenant to his lord in times of difficulty and distress. • Over time, these grants grew from being discretionary to matters of right. The three principal aids were: (1) to ransom the lord's person if he was taken prisoner; (2) to contribute toward the ceremony of knighting the lord's eldest son; and (3) to provide a suitable portion to the lord's eldest daughter when she married. 3. Assistance in defending a lawsuit in which the plaintiff also has a claim against an unsued third party having a joint interest in the defense.

#### AID AND ABET

aid and abet,vb. To assist or facilitate the commission of a crime, or to promote its accomplishment. • Aiding and abetting is a crime in most jurisdictions. — Also termed aid or abet; counsel and procure. [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.] — aider and abettor,n.

“The phrase ‘aid and abet’ and ‘aider and abettor’ seem unnecessarily verbose.... [A]ny aid given with mens rea is abetment; hence to add the word ‘aid’ to the word ‘abet’ is not necessary and is sometimes misleading.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 724–25 (3d ed. 1982).

“In connection with the principal in the second degree or accessory before the fact, the terms ‘aid’ and ‘abet’ are frequently used interchangeably, although they are not synonymous. To ‘aid’ is to assist or help another. To ‘abet’ means, literally, to bait or excite, as in the case of an animal. In its legal sense, it means to encourage, advise, or instigate the commission of a crime.” 1 Charles E. Torcia, *Wharton's Criminal Law* § 29, at 181 (15th ed. 1993).

#### AID AND COMFORT

aid and comfort.Help given by someone to a national enemy in such a way that the help amounts to treason. [Cases: Treason 6. C.J.S. Treason § 8.]

“Aid and comfort may be given in various ways, such as buying a vessel and fitting it for service in aid of the enemy, delivering prisoners and deserters to the enemy, or selling critical materials with knowledge of the fact that the purchaser buys them to use in the manufacture of gunpowder for the enemy, or otherwise to aid him in his prosecution of the war. And the courts have given short shrift to the claim that such a sale was not intended to aid the enemy but only to make a profit.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 502 (3d ed. 1982).

#### AIDED-AWARENESS SURVEY

aided-awareness survey.Trademarks. A trademark survey in which interviewees are asked to choose from a spectrum of choices that prominently feature the desired response. • Aided-awareness surveys are often dis-counted or entirely disregarded by courts in trademark-infringement actions. — Also termed aided-recall survey. [Cases: Trade Regulation 580. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 268, 271.]

#### AIDE-MÉMOIRE

aide-mémoire (ayd-mem-wahr). [French] Int'l law.A diplomatic document that a diplomatic agent leaves with the receiving state's department of foreign affairs on the occasion of a démarche. • The aide-mémoire presents the receiving state with a precise record of the substance of the diplomatic agent's mission. It is typically written in an impersonal style, without mentioning either the addressee or the author. It appears on printed letterhead and is dated, but it is not signed, initialed, or embossed with a seal. See DÉMARCHE.

#### AIDER

aider,n.1. An act of aiding; the curing of a defect. 2. One who aids another.

#### AIDER BY PLEADING OVER

aider by pleading over.The cure of a pleading defect by an adversary's answering the pleading without an ob-jection, so that the objection is waived.

#### AIDER BY SUBSEQUENT PLEADING

aider by subsequent pleading.The cure of a pleading defect by an adversary's answer that refers to or admits a material fact or allegation that was not mentioned in the pleading, or an answer that shows the correct basis for the plaintiff's pleading. — Also termed express aider.

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**AIDER BY VERDICT**

aider by verdict. The cure of a pleading defect by a trial verdict, based on the presumption that the record contains adequate proof of the necessary facts even if those facts were not specifically alleged. — Also termed cure by verdict. [Cases: Indictment and Information 200–203; Pleading 432–437. C.J.S. Indictments and Informations §§ 252–256; Pleading §§ 873–886.]

“AIDER BY VERDICT. Wherever a pleading states the essential requisites of a cause of action or ground of defense, it will be held sufficient after a general verdict in favor of the party pleading, though the statement be informal or inaccurate; but a verdict will never aid the statement of a title or cause of action inherently defective.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 332, at 531 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**AIDING AN ESCAPE**

aiding an escape. The crime of helping a prisoner escape custody. [Cases: Escape 5. C.J.S. Escape §§ 19–23, 25–26.]

**AID OF THE KING**

aid of the king. Hist. A request of the king made by a tenant for relief from another's demand for rent.

**AID OR ABET**

aid or abet. See AID AND ABET.

**AID OR ABET INFRINGEMENT**

aid or abet infringement. Patents. Through some affirmative act or conduct, to actively induce or assist with another person's infringement. • Aiding or abetting patent infringement is actionable under § 271(b) of the Patent Act. Cf. infringement in the inducement under INFRINGEMENT.

**AID PRAYER**

aid prayer. Hist. A plea by a life tenant or other holder of less than a fee simple to bring into the action another who holds an interest in the estate (such as a reversioner or remainderman) to help defend the title. — Also termed prayer in aid.

**AIDS**

aids. See AID(2).

**AID TO FAMILIES WITH DEPENDENT CHILDREN**

Aid to Families with Dependent Children. Obsolete. A federally funded, state-administered welfare program that provided financial assistance to needy families with dependent children. • Aid to Families with Dependent Children has been replaced by Temporary Assistance to Needy Families. — Abbr. AFDC. See TEMPORARY ASSISTANCE TO NEEDY FAMILIES.

**AIEL**



aiel (ay-<<schwa>>l), n.[Law French] Hist. 1.A grandfather. 2. A writ by an heir of a grandfather for recovery of the grandfather's estate, which had been wrongfully possessed by a stranger. — Also termed (in sense 2) writ of aiel. — Also spelled aile; ayel; ayle. Cf. BESAYEL; COSINAGE.

#### AIH

AIH.abbr. See artificial insemination by husband under ARTIFICIAL INSEMINATION .

#### AIKEN<TT> EXEMPTION

Aiken exemption. Copyright. An exception in the law of infringement that permits retail establishments with less than 2,000 square feet of space to play radio and television broadcasts for employees and patrons without obtaining a license. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 95 S.Ct. 2040 (1975). — Also termed store-receiver exemption. [Cases: Copyrights and Intellectual Property 48.1. C.J.S. Copyrights and Intellectual Property §§ 86–91.]

#### AIMABLE COMPOSITEUR

aimable compositeur (ay-mah-bl<<schwa>> kon-poh-zee-tuur). [French] See AMIABLE COMPOSITOR .

#### AIPA

AIPA.abbr. AMERICAN INVENTORS PROTECTION ACT.

#### AIPLA

AIPLA.abbr. AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION.

#### AIRBILL

airbill. A document serving as a bill of lading for goods transported by air. • The term includes air consignment notes and air waybills. [Cases: Carriers 51. C.J.S. Carriers § 390.]

#### AIRCRAFT PIRACY

aircraft piracy. See air piracy under PIRACY(2).

#### AIR LAW

air law. The part of law, esp. international law, relating to civil aviation.

#### AIRMAN'S CERTIFICATE

airman's certificate. A license that every aircraft pilot must have to operate an aircraft in U.S. airspace. 49 USCA §§ 44701–44711; 14 CFR § 61.3. [Cases: Aviation 122. C.J.S. Aeronautics and Aerospace §§ 42–45, 56.]

#### AIRMAN'S INFORMATION MANUAL

Airman's Information Manual. A publication of the Federal Aviation Administration, providing the fundamental requirements of any pilot who flies in national airspace.

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**AIR PIRACY**

air piracy. See PIRACY.

**AIR POLLUTION**

air pollution. Environmental law. Any harmful substance or energy emitted directly or indirectly into the air, esp. if the harm is to the environment or to the public health or welfare. [Cases: Environmental Law 241–301.]

**AIR-QUALITY-CONTROL REGION**

air-quality-control region. Environmental law. A federally designated area in which communities share an air-pollution problem, often involving several states; an interstate area or major intrastate area that the Environmental Protection Agency designates for monitoring and ameliorating ambient air-quality standards. 42 USCA § 7407(c). [Cases: Environmental Law 254–301.]

**AIR-QUALITY CRITERIA**

air-quality criteria. Environmental law. The legal limits that the Environmental Protection Agency sets for pollutants in a defined area and at a specified time. [Cases: Environmental Law 255.]

**AIR RIGHT**

air right. The right to use all or a portion of the airspace above real property.

**AIR-SERVICES AGREEMENT**

air-services agreement. See AIR-TRANSPORT AGREEMENT.

**AIRSPACE**

airspace. The space that extends upward from the surface of land, esp. so far as is necessary for the owner or possessor to have reasonable use and enjoyment of the incidents of its ownership or possession. Cf. OUTER SPACE.

national airspace. Int'l law. The pillar of air above a nation's territory — including internal waters and the territorial sea — over which it has complete and exclusive sovereignty and through which foreign aircraft have no right of innocent passage. • There is no agreement on the boundary between national airspace and outer space.

navigable airspace. The area above the legally established minimum flight altitudes, including the area needed to ensure safe takeoffs and landings of aircraft. 49 USCA § 40102(a)(30). [Cases: Aviation 3, 231. C.J.S. Aeronautics and Aerospace §§ 7–9, 21, 73.]

**AIR-TRANSPORT AGREEMENT**

air-transport agreement. A contract governing the operation of air services; esp., an intergovernmental agreement governing the operation of international air services between their

territories. — Also termed air-services agreement.

#### AIR WAYBILL

air waybill. See WAYBILL.

#### AISIAMENTUM

aisiamentum (ay-shee-<<schwa>>-men-t<<schwa>>m). [Law Latin] An easement or privilege.

#### AISNE

aisne. See EIGNE.

#### A ISSUE

a issue (ah is[h]-yoo). [Law French] At issue.

#### AJS

AJS.abbr. AMERICAN JUDICATURE SOCIETY.

#### A JURE SUO CADUNT

a jure suo cadunt (ay joor-ee s[y]oo-oh kay-d<<schwa>>nt). [Latin] Scots law. They fall from their right. • The phrase appeared in reference to those who lose a property right through loss of possession or through abandon-ment.

#### A.K.A.

a.k.a.abbr. Also known as.

#### AL

àl (ahl), prep. [Law French] At.

#### À LA GRANDE GREVAUNCE

a la grande grevaunce (ah l<<schwa>> grawnd gr<<schwa>>-vawns). [Law French] To the great grievance.

#### ALAI

ALAI.abbr. L'ASSOCIATION LITTERAIRE ET ARTISTIQUE INTERNATIONALE.

#### A LARGE

a large (ah lahrzh). [Law French] Free; at large.

#### A LATERE

a latere (ay lat-<<schwa>>-ree). [Latin] From the side; collaterally. • This term was formerly used to denote collateral succession rather than lineal succession.

## ALBACEA

albacea (ahl-b<<schwa>>-thay-<<schwa>>), n. Spanish law. An executor; the person named by a testator to carry out the directions of a will.

## ALBA FIRMA

alba firma (al-b<<schwa>> f<<schwa>>r-m<<schwa>>). [Law Latin] See WHITE RENT.

## ALBANUS

albanus (al-bay-n<<schwa>>s), n.[Law Latin] See ADVENA.

## AL BARRE

al barre (ahl bahr). [Law French] At the bar.

## ALBUM BREVE

album breve (al-b<<schwa>>m brev or bree-vee). See BREVE.

## ALBUS LIBER

albus liber (al-b<<schwa>>s II-b<<schwa>>r). [Law Latin “white book”] Hist. An ancient book containing a compilation of the laws and customs of the city of London. — Also termed White Book.

## ALCALDE

alcalde (ahl-kahl-day or al-kal-dee). [fr. Arabic al-qadi “the Cadi” or “the judge”] Spanish law. 1.Hist. A judicial officer. • The alcalde's functions typically resembled those of a justice of the peace. 2. The mayor of a Spanish or Spanish-American town, usu. with a judicial element. • This is the modern sense.

## ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Alcohol and Tobacco Tax and Trade Bureau.A bureau in the U.S. Department of the Treasury that administers the laws governing the production, use, and distribution of alcohol and tobacco products, and collects excise taxes on firearms and ammunition. • The Bureau has the tax-enforcement functions of the former Bureau of Alcohol, Tobacco, and Firearms. — Abbr. TTB.

## ALCOHOLOMETER

alcoholometer. See BREATHALYZER.

## ALDERMAN

alderman. A member of a city council or other local governing body. — Also termed alderperson. [Cases: Mu-nicipal Corporations 84. C.J.S. Municipal Corporations §§ 214–215.]

## ALDERMANNUS

aldermannus (al-d<<schwa>>r-man-<<schwa>>s). [Law Latin] Hist. An alderman.

aldermannus civitatis vel burgi (siv-i-tay-tis vel b<<schwa>>r-jI). An alderman of a city or borough.

aldermannus hundredi seu wapentachii (h<<schwa>>n-dri-dIyoo wahp-<<schwa>>n-tay-kee-I). An alderman of a hundred or wapentake.

aldermannus regis (ree-jis). An alderman of the king, so called because he is appointed by the king or gives the king's judgment in the premises allotted to him.

aldermannus totius Angliae (toh-shee-<<schwa>>s ang-gee-ee). An alderman of all England, similar to the chief justiciary of England in later times. See JUSTICIARY.

#### ALDERPERSON

alderperson. See ALDERMAN.

#### ALDERWOMAN

alderwoman. A female member of a city council or other local governing body. [Cases: Municipal Corporations 84. C.J.S. Municipal Corporations §§ 214–215.]

#### ALEA

alea (ay-lee-<<schwa>>), n.[Latin] Roman law. 1. A game of chance. 2. The chance of gain or loss in a contract.

#### ALEATOR

aleator (ay-lee-ay-t<<schwa>>r). [Latin] Roman law. A gambler; dice player.

#### ALEATORY

aleatory (ay-lee-<<schwa>>-tor-ee), adj. Dependent on uncertain contingencies. • The word aleatory derives from the Latin word aleator, meaning “a gambler,” which itself comes from alea (a die used in gaming). — Also termed aleatoric.

#### ALEATORY CONTRACT

aleatory contract. See CONTRACT.

#### ALEATORY PROMISE

aleatory promise. See PROMISE.

#### ALEGAL

alegal, adj. Outside the sphere of law; not classifiable as being legal or illegal <the law often treats the promises of unmarried cohabitants as contractual words rather than alegal words of commitment>. — alegality, n.

#### ALER A DIEU

aler a Dieu.See ALLER A DIEU.

#### ALER SANS JOUR

aler sans jour.See ALLER SANS JOUR.

#### ALE SILVER

ale silver.Hist. A rent or tribute paid annually to the lord mayor of London by persons who sold ale within the city.

#### ALEVOSIA

alevosia.Spanish law. MALICE. See *Pico v. United States*, 228 U.S. 225, 33 S.Ct. 482 (1913).

#### ALEZ ADEU

alez adeu (ah-lay ah-duu). See ADEU.

#### ALFET

alfet (al-fet).Hist. A cauldron filled with boiling water, used to scald the arm of a person undergoing an ordeal. See ordeal by water (2) under ORDEAL.

#### ALFORD<TT> PLEA

Alford plea. A guilty plea that a defendant enters as part of a plea bargain, without actually admitting guilt. • This plea is not considered compelled within the language of the Fifth Amendment if the plea represents a voluntary, knowing, and intelligent choice between the available options <the defendant — realizing the strength of the prosecution's evidence and not wanting to risk receiving the death penalty — entered into an Alford plea>.North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970). Cf. NO CONTEST . [Cases: Criminal Law 273(4.1), 273.1(2). C.J.S. Criminal Law §§ 365–374.]

#### ALGORITHM

algorithm.Patents. A mathematical or logical process consisting of a series of steps, designed to solve a specific type of problem. • Algorithms were long considered abstract ideas and therefore unpatentable subject matter. But in 1998, the U.S. Court of Appeals for the Federal Circuit found valid a patent on financial software as “a practical application of a mathematical algorithm [that] produces a useful, concrete and tangible result.” *State St. Bank & Trust Co. v. Signature Fin. Group*, 149 F.3d 1368, 1373 (Fed. Cir. 1998). That precedent makes it easier to patent computer software, which consists almost entirely of algorithms. [Cases: Patents 6. C.J.S. Patents §§ 26–27.]

#### ALGORITHM EXCEPTION

algorithm exception.Patents. The general rule that an abstract mathematical function, such as an algorithm, cannot be patented. • The exception was first articulated by the U.S. Supreme Court in *Gottschalk v. Benson*, 409 U.S. 63, 93 S.Ct. 253 (1972). The rule was undermined by *State St.*

Bank & Trust Co. v. Signature Fin. Group, 149 F.3d 1368 (Fed. Cir. 1998). In that case, the court decided that a machine's transformation of numerical data into a calculated share price was a sufficient and practical application of a mathematical algorithm, formula, or calculation because the final share price was "a useful, concrete and tangible result." — Also termed mathematical-algorithm exception.

## ALI

ALI.abbr.AMERICAN LAW INSTITUTE.

## ALIA ENORMIA

alia enormia (ay-lee-*<<schwa>>* i-nor-mee-*<<schwa>>*). [Law Latin "other serious wrongs"] Hist. A general allegation of injuries made at the conclusion of the declaration by a plaintiff in a trespass action. [Cases: Trespass 40(5). C.J.S. Trespass § 85.]

## ALIAMENTA

aliamenta (al-ee-*<<schwa>>*-men-t*<<schwa>>*). [Latin] A liberty of passage or open way, such as a path through another's hedge or drainage for a waterway.

## ALIAS

alias (ay-lee-*<<schwa>>*s), adj. Issued after the first instrument has not been effective or resulted in action.

alias, adv.1. Otherwise called or named; also known as <William Grimsby, alias the Grim Reaper>.2. At another time.

alias,n.1. An assumed or additional name that a person has used or is known by. — Also termed assumed name; fictitious name. [Cases: Names 14.C.J.S. Names §§ 29–34.] 2.Hist. A second writ issued after the first has failed. See alias writ under WRIT. Pl. aliases.

## ALIAS DICTUS

alias dictus (ay-lee-*<<schwa>>*s dik-t*<<schwa>>*s), adv.[Latin] Otherwise called; ALIAS(1).

## ALIAS EXECUTION

alias execution.See EXECUTION.

## ALIAS PROCESS

alias process.See PROCESS.

## ALIAS SUBPOENA

alias subpoena.See SUBPOENA.

## ALIAS SUMMONS

alias summons.See SUMMONS.

**ALIAS WRIT**

alias writ. See WRIT.

**A LIBELLIS**

a libellis (ay li-bel-is). [Law Latin] Roman law. 1. An officer having charge of petitions (libelli) addressed to the emperor or sovereign. 2. CHANCELLOR OF THE EXCHEQUER .

**A LIBELLO UT LIBELLATUR**

a libello ut libellatur (ay l<<schwa>>-bel-oh <<schwa>>t lib-<<schwa>>-lay-t<< schwa>>r). [Law Latin] Hist. From the libel as laid. • The phrase appeared in a dismissal in favor of a defendant.

**ALIBI**

alibi (al-<<schwa>>-bi), n. [Latin “elsewhere”] 1. A defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. Fed. R. Crim. P. 12.1. [Cases: Criminal Law 31.5. C.J.S. Criminal Law § 87.] 2. The fact or state of having been elsewhere when an offense was committed.

alibi, vb. To offer or provide an alibi for <the conspirators alibied for each other>.

**ALIBI WITNESS**

alibi witness. See WITNESS.

**ALIEN**

alien (ay-lee-<<schwa>>n or ayl-y<<schwa>>n), n. A person who resides within the borders of a country but is not a citizen or subject of that country; a person not owing allegiance to a particular nation. • In the United States, an alien is a person who was born outside the jurisdiction of the United States, who is subject to some foreign government, and who has not been naturalized under U.S. law. [Cases: Aliens 1–15. C.J.S. Aliens §§ 2–13, 16–46.]

alien ami. See alien friend.

alien amy. See alien friend.

alien enemy. A citizen or subject of a country at war with the country in which the citizen or subject is living or traveling. — Also termed enemy alien. [Cases: War and National Emergency 11. C.J.S. War and National Defense §§ 7–8.]

“In its natural meaning, the term ‘alien enemy’ indicates a subject of a State with which this country is at war; but in considering the enforcement of civil rights, the test is not nationality, but residence or place of business. Hence, if a person is voluntarily resident in or is carrying on business in an enemy country, then he is an alien enemy even though he be a British subject or the subject of a neutral State ....” 1 E.W. Chance, Principles of Mercantile Law 52–53 (P.W. French ed., 13th ed. 1950).



alien friend. An alien who is a citizen or subject of a friendly power. — Also termed (in Law French) alien amy; alien ami.

alien immigrant. See IMMIGRANT.

enemy alien. See alien enemy.

illegal alien. An alien who enters a country at the wrong time or place, eludes an examination by officials, obtains entry by fraud, or enters into a sham marriage to evade immigration laws. — Also termed undocumented alien. [Cases: Aliens 52–59. C.J.S. Aliens §§ 53, 70–71, 75, 77–82, 84–87, 92, 97–100, 102, 107, 109–111, 114, 116–134, 136, 138–149, 151–180, 182–275.]

nonresident alien. A person who is neither a resident nor a citizen of the United States.

resident alien. An alien who has a legally established domicile in the United States. See NATURALIZATION. [Cases: Aliens 3. C.J.S. Aliens §§ 6, 8, 13.]

undocumented alien. See illegal alien.

alien, vb. See ALIENATE.

#### ALIENABLE

alienable (ay-lee-*<<schwa>>*-n*<<schwa>>*-b*<<schwa>>*l orayl-y*<<schwa>>*-), adj. Capable of being transferred to the ownership of another; transferable <an alienable property interest>. — alienability, n.

#### ALIENAGE

alienage (ay-lee-*<<schwa>>*-nij orayl-y*<<schwa>>*-nij), n. The condition or status of being an alien. See DECLARATION OF ALIENAGE. [Cases: Aliens 1. C.J.S. Aliens §§ 2–3, 5.]

#### ALIEN AMI

alien ami. See alien friend under ALIEN.

#### ALIEN AMY

alien amy. See alien friend under ALIEN.

#### ALIEN AND SEDITION ACTS

Alien and Sedition Acts. Hist. Four statutes passed in 1798 designed to silence critics of the Federalist party by tightening residency requirements for citizenship, granting to the President the power to jail aliens considered dangerous to the country, and restricting freedoms of the press and speech by criminalizing speech hostile to the government. • All the acts had expired or been repealed by 1802.

#### ALIENATE

alienate (ay-lee-*<<schwa>>*-nayt orayl-y*<<schwa>>*-), vb. To transfer or convey (property or a property right) to another. — Also termed alien. — alienator, n.

## ALIENATIO FEUDI

alienatio feudi (ay-lee-<<schwa>>-nay-shee-oh fyoo-dI). [Law Latin] Hist. Disposition of a feudal right.

## ALIENATIO FEUDIFIRMAE FEUDIFIRMARUM

alienatio feudifirmae feudifirmarum (ay-lee-<<schwa>>-nay-shee-oh fyoo-di-f<<schwa>>r-mee fyoo-di-f<<schwa>>r-mair-<<schwa>>m). [Law Latin “disposition of a feuholding of feuholders”] Hist. A conveyance to avoid the prohibition on alienation of Crown lands. • It was nullified by statute in 1597.

## ALIENATION

alienation (ay-lee-<<schwa>>-nay-sh<<schwa>>n or ayl-y<<schwa>>-nay-sh<<schwa>>n), n.1. Withdrawal from former attachment; estrangement <alienation of affections>.2. Conveyance or transfer of property to another <alienation of one's estate>. [Cases: Property 11. C.J.S. Property §§ 27, 33.] — alienative (ay-lee-<<schwa>>-nay-tiv or ayl-y<<schwa>>-), adj.

“[A]ny transfer of real estate short of a conveyance of the title is not an alienation of the estate.” 4A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 2741, at 325 n.12 (rev. vol. 1969).

involuntary alienation. Alienation against the wishes of the transferor, as by attachment. — Also termed involuntary conveyance.

## ALIENATION CLAUSE

alienation clause. 1. A deed provision that either permits or prohibits the further conveyance of the property. [Cases: Deeds 144(1), 149.C.J.S. Deeds §§ 275, 305–307, 309, 313.] 2. Insurance. A clause in an insurance policy voiding coverage if the policyholder alienates the insured property. [Cases: Insurance 3051. C.J.S. Insurance §§ 574, 640–652, 772.]

## ALIENATION OF AFFECTIONS

alienation of affections. A tort claim for willful or malicious interference with a marriage by a third party without justification or excuse. • Where the cause of action still exists, the elements are (1) some wrongful conduct by the defendant with the plaintiff's spouse, (2) the loss of affection or loss of consortium of the plaintiff's spouse, and (3) a causal relationship between the defendant's conduct and the loss of consortium. Heartbalm statutes in 26 states and the District of Columbia have now abolished in whole or in part suits for alienation of affections. But the doctrine thrives elsewhere. For example, a North Carolina court has upheld a \$1 million award to an ex-wife who filed an alienation-of-affections action against her ex-husband's new wife. *Hutelmyer v. Cox*, 514 S.E.2d 554 (N.C. Ct. App. 1999). See CONSORTIUM; HEARTBALM STATUTE. [Cases: Husband and Wife 322–337.]

## ALIENATION OFFICE

alienation office. See OFFICE.

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**ALIENATIVE FACT**

alienative fact. See **FACT**.

**ALIEN CORPORATION**

alien corporation. See foreign corporation under **CORPORATION**.

**ALIENEE**

alienee (ay-lee-*<<schwa>>*-nee or ayl-y*<<schwa>>*-nee), n. One to whom property is transferred or conveyed. — Also termed disponent.

fraudulent alienee. One who knowingly receives an asset by means of fraudulent alienation. [Cases: Fraudulent Conveyances 156–158.]

**ALIEN ENEMY**

alien enemy. See **ALIEN**.

**ALIEN FRIEND**

alien friend. See **ALIEN**.

**ALIENIGENA**

alienigena (ay-lee-*<<schwa>>*-nij-*<<schwa>>*-n*<<schwa>>*). [Latin] Hist. An alien. Cf. **INDIGENA**.

**ALIENI GENERIS**

alieni generis (ay-lee-ee-ni [or al-ee-] jen-*<<schwa>>*-ris). [Latin] Of another kind; of a foreign kind.

**ALIENI JURIS**

alieni juris (ay-lee-ee-ni [or al-ee-] joor-is), adj. [Latin] Roman law. Subject to the power or authority of another. — Also spelled alieni iuris.

**ALIEN IMMIGRANT****ALIENISM**

alienism. The state, condition, or character of an alien.

**ALIENIST**

alienist. A psychiatrist, esp. one who assesses a criminal defendant's sanity or capacity to stand trial.

**ALIENOR**

alienor (ay-lee-*<<schwa>>*-n*<<schwa>>*r or -nor), n. One who transfers or conveys property to another. — Also termed disponent.

## ALIENUS

alienus (ay-lee- or al-ee-ee-n<<schwa>>s), adj.[Latin] Roman law. Belonging to another. • Alienus homo means “another's slave.”

## ALIMENT

aliment.Scots law. The financial support that an indigent person is entitled to receive from a spouse or, if un-married, from a relative or relatives in a prescribed order, beginning with the person's children. — Also termed (in English law) alimony.

## ALIMENTA

alimenta (al-<<schwa>>-men-t<<schwa>>). [Latin] Roman law. Things necessary to sustain life, such as food and clothing.

## ALIMONY

alimony (al-<<schwa>>-moh-nee).1. A court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced. • Alimony is distinct from a property settlement. Alimony payments are taxable income to the receiving spouse and are deductible by the payor spouse; payments in settlement of property rights are not. The Supreme Court has held unconstitutional a statute that imposed alimony obligations on the husband only. *Orr v. Orr*, 440 U.S. 268, 99 S.Ct. 1102 (1979). — Also termed spousal support; maintenance. Cf. CHILD SUPPORT; DIVORCE AGREEMENT. [Cases: Divorce 208, 230. C.J.S. Divorce §§ 315, 320–331, 336–339, 369, 394–400, 422–426, 481–487.]

“ ‘Alimony,’ which signifies literally nourishment or sustenance, means, in a general sense, the allowance required by law to be made to a spouse from the other spouse's estate for support or maintenance, either during a matrimonial suit or at its termination, where the fact of marriage is established and the right to a separate main-tenance is proved. Similarly stated, alimony is the allowance which a party may be compelled to pay to his or her spouse for maintenance when they are living apart or after they have been divorced.” 27B CJS Divorce § 306, at 102–03 (1986).

alimony in gross.Alimony in the form of a single and definite sum not subject to modification. — Also termed lump-sum alimony. [Cases: Divorce 241. C.J.S. Divorce §§ 395–397.]

alimony pendente lite (pen-den-tee II-tee). [Latin pendente lite “pending litigation”] See temporary alimony.

final alimony.See permanent alimony.

lump-sum alimony.See alimony in gross.

periodic alimony.See permanent alimony.

permanent alimony.Alimony payable in usu. weekly or monthly installments either indefinitely or until a time specified by court order. • This kind of alimony may usu. be modified for changed circumstances of either party. It terminates upon the death of either spouse and usu.

upon the remarriage of the obligee. — Also termed final alimony; periodic alimony. [Cases: Divorce 230. C.J.S. Divorce §§ 369, 394–400, 422, 425–426, 481–487.]

provisional alimony. See temporary alimony.

rehabilitative alimony. Alimony found necessary to assist a divorced person in acquiring the education or training required to find employment outside the home or to reenter the labor force. • It usu. has time limitations, such as a maximum of one or two years. — Also termed short-term alimony; transitional alimony. [Cases: Divorce 247. C.J.S. Divorce §§ 373–377, 405–413.]

reimbursement alimony. Alimony designed to repay a spouse who during the marriage made financial contributions that directly enhanced the future earning capacity of the other spouse. • An example is alimony for a wife who worked full-time supporting herself and her husband with separate-property earnings while he earned a medical degree. [Cases: Divorce 231. C.J.S. Divorce §§ 370, 379.]

temporary alimony. Interim alimony ordered by the court pending an action for divorce or separation in which one party has made a claim for permanent alimony. — Also termed provisional alimony; alimony pendente lite; allowance pendente lite. [Cases: Divorce 208. C.J.S. Divorce §§ 315, 320–331, 336–339, 422–426.]

transitional alimony. See rehabilitative alimony.

2. English law. ALIMENT.

#### ALIO INTUITU

alio intuitu (ay-lee-oh in-t[y]oo-<<schwa>>-t[y]oo), adv. [Latin “under a different aspect”] In a different view; with respect to another case or condition.

#### ALIOQUI SUCCESSURUS

alioqui successurus (ay-lee-oh-kwI s<<schwa>>k-ses-<<schwa>>-r<<schwa>>s). [Latin] Hist. (Of an heir) otherwise entitled to succeed. • The phrase appeared in reference to an heir who would have succeeded to the property by law, even without a deed granting succession rights. — Also spelled alioquin successurus.

“In the general case, an heir who succeeds to an estate, incurs by his succession liability for the debts and obligations of his ancestor .... But if the heir succeeding to the estate can take it up in a different character from that of heir of the last proprietor, if he be alioqui successurus, such liability is not incurred.” John Trayner, Trayner's Latin Maxims 38 (4th ed. 1894).

#### ALIQUELIS PROBATIO

aliquelis probatio (al-i-kway-lis proh-bay-shee-oh). [Law Latin] Hist. Proof of some sort. • The phrase referred to evidence that, although not meeting strict legal requirements, was the best available under the circumstances.

#### ALIQUEOT

aliquot (al-*<<schwa>>-kwot*), adj. Contained in a larger whole an exact number of times; fractional <5 is an aliquot part of 30>.

#### ALIUOT-PART RULE

aliquot-part rule. The principle that a person must intend to acquire a fractional part of the ownership of property before a court can declare a resulting trust in the person's favor. [Cases: Trusts 62–90. C.J.S. Trover and Conversion §§ 10–11, 128–142, 144–173.]

#### ALITER

aliter (al-*<<schwa>>-t<<schwa>>r*). [Latin] Otherwise; it would be otherwise.

“If I trespass on another's land, and make an excavation there without leaving any rubbish on the land, the trespass ceases as soon as I leave the land, and does not continue until I have filled the excavation up again. Consequently only one action will lie, and in it full damages are recoverable for both the past and the future. Aliter if I have brought a heap of soil and left it on the plaintiff's land.” R.F.V. Heuston, *Salmond on the Law of Torts* 42 (17th ed. 1977).

#### ALI TEST

ALI test. See SUBSTANTIAL-CAPACITY TEST.

#### ALIUD

aliud (ay-lee-*<<schwa>>d*). [Latin] Something else; another thing.

#### ALIUD EXAMEN

aliud examen (ay-lee-*<<schwa>>d ig-zay-m<<schwa>>n*). [Latin “another investigation” or “another trial”] A different or foreign mode of trial.

#### ALIUD SIMULATUM, ALIUD ACTUM

aliud simulatum, aliud actum (ay-lee-*<<schwa>>d sim-y<<schwa>>-lay-t<<schwa>>m*, ay-lee-*<<schwa>>d ak-t<<schwa>>m*). [Latin] Hist. One thing pretended, another thing done.

#### ALIUNDE

aliunde (ay-lee-y-*<<schwa>>n-dee*), adj. [Latin] From another source; from elsewhere <evidence aliunde>. See extrinsic evidence under EVIDENCE. [Cases: Criminal Law 957; Federal Civil Procedure 2371; Trial 344. C.J.S. Criminal Law §§ 1415–1418; Trial §§ 921–926.]

#### ALIUNDE RULE

aliunde rule. Evidence. The doctrine that a verdict may not be impeached by a juror's testimony unless a foundation for the testimony is first made by competent evidence from another source.

#### ALJ

ALJ.abbr.ADMINISTRATIVE-LAW JUDGE.

ALL AND SINGULAR

all and singular.Collectively and individually.

ALL-CLAIMS RULE

all-claims rule.Patents. The now-abandoned doctrine that a patent is invalid unless every inventor named in the patent made an inventive contribution to every claim in the patent. • Section 116 of the Patent Act now expressly provides that inventors may apply for a patent jointly even though each did not make a contribution to the subject matter of every claim. [Cases: Patents 92. C.J.S. Patents §§ 126, 134.]

ALLEGATA

allegata (al-<<schwa>>-gay-t<<schwa>>). [Latin] pl.ALLEGATUM.

ALLEGATIO FALSI

allegatio falsi (al-<<schwa>>-gay-shee-oh fal-sIorfawl-sI). [Latin] Hist. An untrue allegation. Cf. EXPRESSIO FALSI.

ALLEGATION

allegation,n.1. The act of declaring something to be true. 2. Something declared or asserted as a matter of fact, esp. in a legal pleading; a party's formal statement of a factual matter as being true or provable, without its having yet been proved. — allege,vb.

defensive allegation.Eccles. law. A defendant's response in an ecclesiastical action; specif., a defendant's pleading of the facts relied upon that require the plaintiff's response under oath. Cf. primary allegation (2).

“The proceedings in the ecclesiastical courts are therefore regulated according to the practice of the civil and canon laws .... [T]heir ordinary course of proceeding is; first, by citation, to call the party injuring before them. Then ... to set forth the complainant's ground of complaint. To this succeeds the defendant's answer upon oath; when, if he denies or extenuates the charge, they proceed to proofs by witnesses examined, and their depositions taken down in writing, by an officer of the court. If the defendant has any circumstances to offer in his defence, he must also propound them in what is called his defensive allegation, to which he is entitled in his turn to the plaintiff's answer upon oath, and may from thence proceed to proofs as well as his antagonist.” 3 William Blackstone, Commentaries on the Laws of England 100 (1768).

disjunctive allegation.A statement in a pleading or indictment that expresses something in the alternative, usu. with the conjunction “or” <a charge that the defendant murdered or caused to be murdered is a disjunctive alle-gation>. [Cases: Federal Civil Procedure 675; Indictment and Information 72; Pleading 20, 53. C.J.S. Indictments and Informations § 152; Pleading §§ 72–73, 150.]

material allegation.In a pleading, an assertion that is essential to the claim, charge, or defense

<a material alle-gation in a battery case is harmful or offensive contact with a person>.

primary allegation. 1. The principal charge made against an adversary in a legal proceeding.  
2.Eccles. law. The opening pleading in an action in ecclesiastical court. Cf. defensive allegation.  
— Also termed primary plea.

3.Eccles. law. The entire statement of facts to be used in a contested suit.

#### ALLEGATION OF FACULTIES

allegation of faculties.Family law. Archaic. A statement detailing a husband's or wife's property, made by a spouse who seeks alimony. See FACULTIES. [Cases: Divorce 239. C.J.S. Divorce §§ 416–419, 421–426.]

#### ALLEGATION OF USE

allegation of use.See amendment to allege use under TRADEMARK-APPLICATION AMENDMENT .

#### ALLEGATIONS-OF-THE-COMPLAINT RULE

allegations-of-the-complaint rule.See EIGHT-CORNERS RULE.

#### ALLEGATUM

allegatum (al-<<schwa>>-gay-t<<schwa>>m), n.[Latin] A fact alleged in a pleading; ALLEGATION. Pl. alle-gata.Cf. PROBATUM.

#### ALLEGED

alleged (<<schwa>>-lejd), adj.1. Asserted to be true as described <alleged offenses>.2. Accused but not yet tried <alleged murderer>.

#### ALLEGIANCE

allegiance. 1. A citizen's obligation of fidelity and obedience to the government or sovereign in return for the benefits of the protection of the state. • Allegiance may be either an absolute and permanent obligation or a qualified and temporary one.

acquired allegiance.The allegiance owed by a naturalized citizen.

actual allegiance.The obedience owed by one who resides temporarily in a foreign country to that country's government. • Foreign sovereigns, their representatives, and military personnel are typically excepted from this requirement. — Also termed local allegiance.

natural allegiance. The allegiance that native-born citizens or subjects owe to their nation.

permanent allegiance.The lasting allegiance owed to a state by citizens or subjects.

temporary allegiance.The impermanent allegiance owed to a state by a resident alien during the period of resi-dence.

2.Hist. A vassal's obligation to the liege lord. See LIEGE.



## ALL-ELEMENTS RULE

all-elements rule. Patents. The doctrine that each element of a claim must be present in an allegedly infringing device in order to establish literal infringement. • This rule acts to limit the doctrine of equivalents and prevent the doctrine's application to an entire claim, rather than the claim's constituent elements. — Also termed all-limitations rule. Cf. ALL-STEPS RULE E; INHERENCY DOCTRINE. [Cases: Patents 226.6. C.J.S. Patents § 415.]

## ALLEN&lt;TT&gt; CHARGE

Allen charge. Criminal procedure. A supplemental jury instruction given by the court to encourage a deadlocked jury, after prolonged deliberations, to reach a verdict. *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154 (1896). — Also termed dynamite charge; dynamite instruction; nitroglycerine charge; shotgun instruction; third-degree instruction. [Cases: Criminal Law 865(1.5). C.J.S. Criminal Law § 1386.]

## ALLER A DIEU

aller a Dieu (a-lay <<schwa>> dyuuordyoo). [Law French] To go to God. • This phrase prays for the case to be dismissed from court. — Sometimes spelled aler a Dieu. Cf. ADIEU.

## ALLER SANS JOUR

aller sans jour (a-lay sanzhoor). [Law French] To go without day. • This phrase prays for a final dismissal of a case. — Also spelled aler sans jour. See GO HENCE WITHOUT DAY; ADEU.

## ALL-ESTATE CLAUSE

all-estate clause. See ALL-THE-ESTATE CLAUSE.

## ALL-EVENTS TEST

all-events test. Tax. A requirement that all events fixing an accrual-method taxpayer's right to receive income or incur expense must occur before the taxpayer can report an item of income or expense. [Cases: Internal Revenue 3373.]

## ALLEVIARE

alleviare (<<schwa>>-lee-vee-air-ee), vb. [Law Latin] To levy or pay a fine or composition.

## ALL FAULTS, WITH

all faults, with. See AS IS.

## ALL FOURS

all fours. See ON ALL FOURS.

## ALL-HOLDERS RULE

all-holders rule. Securities. 1. An SEC rule that prohibits a public offering by the issuer of

shares to some, but not all, of the holders of a class of shares. 2. An SEC rule requiring a tender offeror to make its offer to all the target company's shareholders. [Cases: Securities Regulation 52.30–52.50. C.J.S. Securities Regulation §§ 121–122, 127–128, 131–138, 140–141.]

#### ALLIANCE

alliance. 1. A bond or union between persons, families, states, or other parties. Cf. STRATEGIC ALLIANCE. 2. Int'l law. A union or association of two or more states or nations, usu. formed by league or treaty, esp. for jointly waging war or mutually protecting against and repelling hostile attacks. • An example is the North Atlantic Treaty Organization (NATO). Cf. DÉTENTE; ENTENTE.

#### ALLIED OFFENSE

allied offense. See OFFENSE(1).

#### ALL-INCLUSIVE MORTGAGE

all-inclusive mortgage. See wraparound mortgage under MORTGAGE.

#### ALLISION

allision (<<schwa>>-lɪzh-<<schwa>>n), n. Maritime law. The contact of a vessel with a stationary object such as an anchored vessel or a pier. • In modern practice, “collision” is often used where “allision” was once the preferred term. Cf. COLLISION. [Cases: Shipping 81. C.J.S. Shipping §§ 184–187.] — allide (<<schwa>>-lɪd), vb.

#### ALL-LIMITATIONS RULE

all-limitations rule. See ALL-ELEMENTS RULE.

#### ALLOCABLE

allocable (al-<<schwa>>-k<<schwa>>-b<<schwa>>l), adj. That can be assigned or allocated.

#### ALLOCATION

allocation, n. A designation or apportionment for a specific purpose; esp., the crediting of a receipt or the charging of a disbursement to an account < allocation of funds>. — allocate, vb. — allocable, adj. — allocator, n.

#### ALLOCATIONE FACIENDA

allocatione facienda (al-<<schwa>>-kay-shee-oh-nee fay-shee-en-d<<schwa>>), n. See DE ALLOCATIONE FACIENDA.

#### ALLOCATUR

allocatur (al-<<schwa>>-kay-t<<schwa>>r). [Law Latin] It is allowed. • This word formerly indicated that a writ, bill, or other pleading was allowed. It is still used today in Pennsylvania to denote permission to appeal. — Also termed allogatur.

special allocatur. An allowance of a writ (such as a writ of error) that is legally required in certain cases.

#### ALLOCUTE

allocute (al-*<<schwa>>*-kyoot), vb. To deliver an allocution in court.

#### ALLOCUTION

allocution (al-*<<schwa>>*-kyoo-sh*<<schwa>>*n), n. Criminal procedure. 1. A trial judge's formal address to a convicted defendant, asking him or her to speak in mitigation of the sentence to be imposed. • This address is required under Fed. R. Crim. P. 32(c)(3)(C). 2. An unsworn statement from a convicted defendant to the sentencing judge or jury in which the defendant can ask for mercy, explain his or her conduct, apologize for the crime, or say anything else in an effort to lessen the impending sentence. • This statement is not subject to cross-examination. [Cases: Sentencing and Punishment 356–360. C.J.S. Criminal Law § 1498.]

victim allocution. A crime victim's address to the court before sentencing, usu. urging a harsher punishment. [Cases: Sentencing and Punishment 361. C.J.S. Criminal Law §§ 1460, 1472, 1479–1480, 1492–1495, 1530, 1779.]

#### ALLOCUTORY

allocutory (*<<schwa>>*-lok-y*<<schwa>>*-tor-ee), adj. Of or relating to an allocution <allocutory pleas for mercy>.

#### ALLOCUTUS

allocutus. See ARREST OF JUDGMENT.

#### ALLOD

allod (al-*<<schwa>>*d), n. Hist. The domain of a household.

#### ALLODIAL

allodial (*<<schwa>>*-loh-dee-*<<schwa>>*l), adj. Held in absolute ownership; pertaining to an allodium. Cf. FEUDAL. — Also spelled alodial. — allodially, adv.

“The term ‘alodial’ originally had no necessary reference to the mode in which the ownership of land had been conferred; it simply meant land held in absolute ownership, not in dependence upon any other body or person in whom the proprietary rights were supposed to reside, or to whom the possessor of land was bound to render service. It would thus properly apply to the land which in the original settlement had been allotted to individuals, while bookland was primarily applicable to land the title to which rested on a formal grant. Before long, however, the words appear to have been used synonymously to express land held in absolute ownership, the subject of free disposition inter vivos or by will.” Kenelm E. Digby, *An Introduction to the History of the Law of Real Property* 11–12 (5th ed. 1897).

#### ALLODIUM

allodium (<<schwa>>-loh-dee-<<schwa>>m), n. An estate held in fee simple absolute. — Also spelled alodium. — Also termed alod; alode. [Cases: Estates in Property 5. C.J.S. Estates §§ 11–12.]

“In this country, one who has full ownership of land is said to own it allodially — that is, free of feudal services and incidents.” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 18 (2d ed. 1984).

#### ALLOGATUR

allogatur. See ALLOCATUR.

#### ALLOGRAPH

allograph (al-<<schwa>>-graf). An agent's writing or signature for the principal. • This is the antonym of auto-graph. [Cases: Principal and Agent 132(1).]

#### ALLONGE

allonge (a-lawnzh). A slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements. • Former UCC § 3-202 required that indorsements be made on the instrument unless there was no space — and only then could an allonge be used. Current § 3-204(a) eliminates that requirement and provides that “a paper affixed to the instrument is part of the instrument.” The UCC comment makes it clear that the allonge is valid even if space is available on the instrument. [Cases: Bills and Notes 183. C.J.S. Bills and Notes; Letters of Credit §§ 147, 149.]

#### ALL-OR-NONE OFFERING

all-or-none offering. See OFFERING.

#### ALL-OR-NONE ORDER

all-or-none order. See ORDER(8).

#### ALL-OR-NOTHING RULE

all-or-nothing rule. A gloss on the rule against perpetuities holding that a class gift is invalid in its entirety if it is invalid in part. • The effect is to invalidate a class member's interest even if it vests within the period of the rule because it may be subject to partial divestment by the remote interest of another class member. [Cases: Perpetuities 4(1). C.J.S. Perpetuities §§ 2, 12, 15–18, 20–24, 27–28, 30, 33, 35–36, 52–53.]

#### ALLOTMENT

allotment, n. 1. A share or portion of something, such as property previously held in common or shares in a corporation, or time assigned to speakers or sides in a deliberative assembly. [Cases: Common Lands 14. C.J.S. Common Lands §§ 17–19.] 2. In American Indian law, the selection of specific land awarded to an individual allottee from a common holding. [Cases: Indians 13. C.J.S. Indians §§ 82, 84.] — allot, vb.

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**ALLOTMENT CERTIFICATE**

allotment certificate.Securities. A document that records the essential elements of a subscription of shares, as how many shares are to be purchased, the price to be paid, and the payment and delivery schedule.

**ALLOTMENT NOTE**

allotment note.English law. A seaman's written assignment of a portion of his wages to a wife, parent, grand-parent, or sibling. • These notes are governed by the Merchant Shipping Act of 1970, § 13(1).

**ALLOTMENT SYSTEM**

allotment system.English law. The practice of dividing land into small portions for cultivation by agricultural laborers and others.

**ALLOTTEE**

allottee. One to whom an allotment is made; a recipient of an allotment.

**ALLOWABLE STATE**

allowable state.Patents. Of a patent claim, the condition of containing patentable subject matter in an acceptable form.

**ALLOWANCE**

allowance. 1. A share or portion, esp. of money that is assigned or granted.

allowance pendente lite.See temporary alimony under ALIMONY.

backhaul allowance.A price discount given to customers who get their goods from a seller's warehouse as a reflection of the seller's freight-cost savings.

family allowance.A portion of a decedent's estate set aside by statute for a surviving spouse, children, or parents, regardless of any testamentary disposition or competing claims. • Every state has a statute authorizing the probate court to award an amount for the temporary maintenance and support of the surviving spouse (and often for dependent children). The allowance may be limited for a fixed period (18 months under the Uniform Probate Code) or may continue until all contests are resolved and a decree of distribution is entered. This support, together with probate homesteads and personal-property allowances, is in addition to whatever interests pass by the will or by intestate succession. See probate homestead under HOMESTEAD. Cf. spousal allowance. [Cases: Executors and Administrators 173–201. C.J.S. Executors and Administrators §§ 344–393.]

gratuitous allowance.A pension voluntarily granted by a public entity. • The gratuitous (rather than contractual) nature of this type of allowance gives the pensioner no vested rights in the allowance. [Cases: Pensions 2.]

spousal allowance.A portion of a decedent's estate set aside by statute for a surviving spouse,

regardless of any testamentary disposition or competing claims. • This allowance is superior to the claims of general creditors. In some states, it is even preferred to the expenses of administration, funeral, and last illness of the spouse. — Also termed widow's allowance; widower's allowance. See probate homestead under HOMESTEAD. Cf. family allowance. [Cases: Executors and Administrators 173–201. C.J.S. Executors and Administrators §§ 344–393.]

widower's allowance. See spousal allowance.

widow's allowance. See spousal allowance.

2. The sum awarded by a court to a fiduciary as payment for services. 3. A deduction.

depletion allowance. A tax deduction for the owners of oil, gas, mineral, or timber resources corresponding to the reduced value of the property resulting from the removal of the resource. [Cases: Internal Revenue 3490, 3501, 3504. C.J.S. Internal Revenue §§ 261–265.]

4. Archaic. A special sum that a court awards to the prevailing party in addition to the usual costs of court, esp. in a difficult case. — Also termed extra allowance; special allowance. 5. Patents. The U.S. Patent and Trademark Office's decision to issue a patent to an applicant; specif., the patent examiner's approval of an application's claims. • Once a Notice of Allowance is sent, the inventor must pay an issue fee before the PTO issues the patent. [Cases: Patents 107. C.J.S. Patents §§ 157–158.] 6. Trademarks. The U.S. Patent and Trademark Office's decision to approve a trademark for which the application was made under § 1(b) of the Lanham Act. • If a trademark application is made under § 1(b) and approved by the PTO, the PTO issues a certificate of registration and publishes notice of the registration in the Official Gazette. [Cases: Trade Regulation 214. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 180.]

#### ALLOWED APPLICATION

allowed application. See PATENT APPLICATION.

#### ALLOW THE APPEAL

allow the appeal. See REVERSE.

#### ALLOYNOUR

alloynour (<<schwa>>-loy-n<<schwa>>r). [Law French] Hist. One who conceals, steals, or furtively carries off something.

#### ALL-PURPOSE PUBLIC FIGURE

all-purpose public figure. See PUBLIC FIGURE.

#### ALL RIGHTS RESERVED

All rights reserved. Copyright. A phrase required as part of a valid copyright notice under the Buenos Aires Convention. • Because other international copyright treaties do not require the phrase, and all signatories to the Buenos Aires Convention are parties to other treaties, the phrase is now surplusage.

**ALL-RISK INSURANCE**

all-risk insurance. See INSURANCE.

**ALL-STEPS RULE**

all-steps rule. Patents. The doctrine that in order for a method or process claim to be literally infringed by an accused process, the accused process must have every step and limitation — or an equivalent — of the infringed claim. Cf. ALL-ELEMENTS RULE. [Cases: Patents 229. C.J.S. Patents § 410.]

**ALL SUBSTANTIAL RIGHTS**

all substantial rights. Patents. Every right in a patent (whether or not held by the grantor) that is of value when the patent rights or an undivided interest in a patent is transferred. • A transfer is not a transfer of all substantial rights to a patent if: (1) it is territorially restricted; (2) its term is less than the patent term; (3) it contains field-of-use limitations; or (4) it does not convey rights to all claims in the patent. [Cases: Patents 202(1). C.J.S. Patents § 332.]

**ALL-THE-ESTATE CLAUSE**

all-the-estate clause. English law. The provision in a conveyance transferring “all the estate, right, title, interest, claims, and demand” of the grantor in the property conveyed. — Also termed all-estate clause.

“It was also usual before 1882 to add what was called an ‘all estate clause’ with the object of ensuring that the entire interest of the grantor should be transferred. This was as a matter of fact quite ineffective to transfer any-thing that would not pass automatically, and it is now omitted in reliance on the enactment that, unless a contrary intention is expressed, every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have in, to, or on the property.” G.C. Cheshire, *Modern Law of Real Property* 679–80 (3d ed. 1933).

**ALLUREMENT**

allurement. Torts. An attractive object that tempts a trespassing child to meddle when the child ought to abstain. See ATTRACTIVE-NUISANCE DOCTRINE. [Cases: Negligence 1172–1178. C.J.S. Negligence §§ 399, 476–477, 494–526.]

**ALLUVIAL MINING**

alluvial mining. The practice of removing sand and gravel from a riverbed.

**ALLUVIO MARIS**

alluvio maris (<<schwa>>-loo-vee-oh mar-is). [Latin “alluvion of the sea”] The formation of soil or land from the sea.

**ALLUVION**

alluvion (<<schwa>>-loo-vee-<<schwa>>n). [fr. Latin alluvio “flood”] Roman & civil law. 1.

Strictly, the flow or wash of water against a shore or riverbank. 2. An accumulation of soil, clay, or other material deposited by water; esp., in land law, an addition of land caused by the buildup of deposits from running water, the added land then belonging to the owner of the property to which it is added. — Also termed alluvium. 3. Louisiana law. An accumulation of soil, clay, or other material deposited on the bank of a river. • In Louisiana, lands formed on a seashore or the bank of a navigable lake are not alluvion. They belong to the state rather than the riparian owners. Cf. ACCRETION(1); AVULSION(2); DELICTION; EROSION. [Cases: Navigable Waters 44; Waters and Water Courses 93. C.J.S. Navigable Waters § 94; Waters §§ 177–182, 184–185.] — alluvial,adj. — allu-viate,vb. — alluviation,n.

#### ALLUVIUM

alluvium. See ALLUVION(2).

#### ALL WRITS ACT

All Writs Act. A federal statute that gives the U.S. Supreme Court and all courts established by Congress the power to issue writs in aid of their jurisdiction and in conformity with the usages and principles of law. 28 USCA § 1651(a). [Cases: Federal Courts 10.1.]

#### ALLY

ally. Int'l law. 1. A nation tied to another by treaty or alliance. 2. A citizen or subject of an allied nation.

#### ALMARIA

almaria (al-mair-ee-<<schwa>>). [Latin “cupboard, bookcase”] The archives of a church or library. — Also termed armaria.

#### ALMOIGN

almoign (al-moyn). [Law French “alms”] 1. Alms; a church treasury; an ecclesiastical possession. 2. FRANKALMOIN.

#### ALMOIN

almoign. See FRANKALMOIN.

#### ALMONER

almoner (al-m<<schwa>>-n<<schwa>>r). A person charged with distributing the alms of a monarch, religious house, or other institution. • This office was first instituted in religious houses and although formerly one of importance is now almost a sinecure.

#### ALMS

alms (ahmz). Charitable donations; any type of relief bestowed on the poor.

#### ALMS FEE

alms fee. Hist. A fee held by frankalmoin. See FRANKALMOIN.



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**ALMSHOUSE**

almshouse.Archaic. A dwelling for the publicly or privately supported poor of a city or county.

**ALMS LAND**

alms land.Hist. Land held in frankalmoin. See FRANKALMOIN.

**ALNAGER**

alnager (al-n<<schwa>>-j<<schwa>>r). [Law Latin] Hist. A royal official responsible for collecting taxes (the alnage) on woolen cloth. • The tax was abolished in 1699.

**ALOD**

alod. See ALLODIUM.

**ALODE**

alode. See ALLODIUM.

**ALODIUM**

alodium. See ALLODIUM.

**A LOUR FOY**

a lour foy (ah loor fwah). [Law French “in their faith”] In their allegiance.

**ALPHA SUBCLASS**

alpha subclass.Patents. In U.S. patent law, a patent classification that has an alphabetic suffix.

**ALPHA TESTING**

alpha testing.Intellectual property. The first phase of operational experimenting with a software program before the program's production release, usu. at the developer's site. • Often, alpha testing involves only modular or component testing and not system testing. Alpha testing is usu. followed by beta testing, in which the entire system is tested at a customer's site before the product is released to the general public. Cf. BETA TESTING.

**ALTA**

ALTA.abbr.American Land Title Association.

**ALTA PRODITIO**

alta proditio (al-t<<schwa>> proh-dish-ee-oh). [Law Latin] See TREASON.

**ALTARAGE**

altarage (awl-t<<schwa>>r-ij).Eccles. law. 1. The offerings made upon an altar or to a church. 2. An endowment or honorarium received by a priest for services performed at the altar.

## ALTA VIA

alta via (al-t<<schwa>> vI-<<schwa>>). [Law Latin] A highway.

## ALTERATION

alteration. 1. Property. A substantial change to real estate, esp. to a structure, usu. not involving an addition to or removal of the exterior dimensions of a building's structural parts. • Although any addition to or improvement of real estate is by its very nature an alteration, real-estate lawyers habitually use alteration in reference to a lesser change. Still, to constitute an alteration, the change must be substantial — not simply a trifling modification.

structural alteration. A significant change to a building or other structure, essentially creating a different building or structure.

2. An act done to an instrument, after its execution, whereby its meaning or language is changed; esp., the changing of a term in a negotiable instrument without the consent of all parties to it. • Material alterations void an instrument, but immaterial ones do not. An alteration is material if it (1) changes the burden of a party (as by changing the date, time, place, amount, or rate of interest), (2) changes the liabilities or duties of any party (as by adding or removing the name of a maker, drawer, indorser, payee, or cosurety), or (3) changes the operation of the instrument or its effect in evidence (as by adding words or negotiability, changing the form of an indorsement, or changing the liability from joint to several). [Cases: Alteration of Instruments 1–30. C.J.S. Alteration of Instruments §§ 2–99, 104–109.] “With respect to written instruments, ‘alteration’ generally means a change in an instrument's sense of language caused by a party to the instrument, and does not include such changes by non-parties or ‘strangers’ to the instrument. Although the distinction is not always observed, technically an alteration by a non-party or stranger to the instrument is a ‘spoliation,’ not an alteration, which does not invalidate it or change the rights or liabilities of the parties in interest, so long as the original writing remains legible.” 4 Am. Jur. 2d Alteration of Instruments § 1 (1995).

material alteration. 1. A significant change in something; esp., a change in a legal instrument sufficient to alter the instrument's legal meaning or effect. [Cases: Alteration of Instruments 1. C.J.S. Alteration of Instruments §§ 2–4.] 2. An unauthorized change in an instrument or an addition to an incomplete instrument resulting in the modification of a party's obligations. UCC § 3-407(a). [Cases: Alteration of Instruments 1–30. C.J.S. Alteration of Instruments §§ 2–99, 104–109.]

## ALTERCATION

altercation. A vehement dispute; a noisy argument.

“altercation. The traditional view is that this word refers to ‘a noisy brawl or dispute,’ not rising to the seriousness of physical violence.... But in AmE, the word now often denotes some type of scuffling or fighting, especially in police jargon.” Bryan A. Garner, *A Dictionary of Modern American Usage* 34 (1998).

## ALTER EGO

alter ego. A corporation used by an individual in conducting personal business, the result being that a court may impose liability on the individual by piercing the corporate veil when fraud has been perpetrated on someone dealing with the corporation. See **PIERCING THE CORPORATE VEIL**. [Cases: Corporations 1.4(4). C.J.S. Corporations § 12.]

#### ALTER-EGO RULE

alter-ego rule. 1. Corporations. The doctrine that shareholders will be treated as the owners of a corporation's property, or as the real parties in interest, whenever it is necessary to do so to prevent fraud or to do justice. [Cases: Corporations 1.4(4). C.J.S. Corporations § 12.] 2. Criminal law. The principle that one who defends another against attack stands in the position of that other person and can use only the amount of force that the other person could use under the circumstances. [Cases: Assault and Battery 68; Homicide 757. C.J.S. Assault and Battery § 93.]

#### ALTERING OR AMENDING A JUDGMENT

altering or amending a judgment. A trial court's act of correcting a substantive mistake in a judgment, as by correcting a manifest error of law or fact. Fed. R. Civ. P. 59(e). [Cases: Federal Civil Procedure 2641–2662.]

#### ALTERNAT

alternat (awl-t<<schwa>>r-nit or al-ter-nah). [French] The rotation in precedence among states, diplomats, etc., esp. in the signing of treaties. • This practice gives each diplomat a copy of the treaty with the diplomat's signature appearing first.

#### ALTERNATE

alternate. Parliamentary law. A proxy for a delegate, usu. chosen in the same manner as the delegate rather than chosen by the delegate. See **DELEGATE(2)**; **PROXY(1)**.

#### ALTERNATE LEGACY

alternate legacy. See **LEGACY**.

#### ALTERNATE VALUATION DATE

alternate valuation date. Tax law. The date six months after a decedent's death. • Generally, the estate can elect to appraise the decedent's property either as of the date of the decedent's death or as of the alternate valuation date. See **BASIS**. [Cases: Internal Revenue 4184.20; Taxation 895(4). C.J.S. Taxation §§ 1902–1903.]

#### ALTERNATIM

alternatim (al-t<<schwa>>r-nay-tim or awl-), adv. [Latin] Interchangeably; by turns.

#### ALTERNATIVE AGRICULTURAL RESEARCH AND COMMERCIALIZATION

Alternative Agricultural Research and Commercialization Corporation. A federally chartered corporation in the U.S. Department of Agriculture responsible for funding the development and

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marketing of new nonfood products made from farm and forestry materials. — Abbr. AARCC.

#### ALTERNATIVE CONSTITUENCY

alternative constituency. See NONSHAREHOLDER CONSTITUENCY.

#### ALTERNATIVE CONTRACT

alternative contract. See CONTRACT.

#### ALTERNATIVE DEVISE

alternative devise. See DEVISE.

#### ALTERNATIVE DISPUTE RESOLUTION

alternative dispute resolution. A procedure for settling a dispute by means other than litigation, such as arbitration or mediation. — Abbr. ADR. — Also termed dispute resolution. See ARBITRATION; MEDIATION. [Cases: Arbitration 1. C.J.S. Arbitration §§ 2–3.]

“ADR can be defined as encompassing all legally permitted processes of dispute resolution other than litigation. While this definition (or something like it) is widely used, ADR proponents may object to it on the ground that it privileges litigation by giving the impression that litigation is the normal or standard process of dispute resolution, while alternative processes are aberrant or deviant. That impression is false. Litigation is a relatively rarely used process of dispute resolution. Alternative processes, especially negotiation, are used far more frequently. Even disputes involving lawyers are resolved by negotiation far more often than litigation. So ADR is not defined as everything-but-litigation because litigation is the norm. Litigation is not the norm. ADR is defined as every-thing-but-litigation because litigation, as a matter of law, is the default process of dispute resolution.” Stephen J. Ware, *Alternative Dispute Resolution* § 1.5, at 5–6 (2001).

#### ALTERNATIVE EXPRESSION

alternative expression. Patents. In a patent claim, a recitation of two or more elements or limitations that perform the same function <iron, steel, or other magnetic material>. • Although once contrary to U.S. Patent and Trade-mark Office policy, alternative expressions are now permitted if they present no uncertainty or ambiguity about the scope or clarity of the claims. — Also termed alternative language. [Cases: Patents 101(5).]

#### ALTERNATIVE JUDGMENT

alternative judgment. See JUDGMENT.

#### ALTERNATIVE LIABILITY

alternative liability. See LIABILITY.

#### ALTERNATIVE MANDAMUS

alternative mandamus. See MANDAMUS.

#### ALTERNATIVE-MEANS DOCTRINE

alternative-means doctrine. Criminal law. The principle that when a crime may be committed in more than one way, the jury must be unanimous on the defendant's guilt but need not be unanimous on the possible different methods of committing the crime, as long as each possible method is supported by substantial evidence. [Cases: Criminal Law 872.5. C.J.S. Criminal Law §§ 1396–1398, 1543.]

#### ALTERNATIVE-METHODS-OF-PERFORMANCE CONTRACT

alternative-methods-of-performance contract. See alternative contract under CONTRACT.

#### ALTERNATIVE MINIMUM TAX

alternative minimum tax. See TAX.

#### ALTERNATIVENESS REJECTION

alternativeness rejection. See REJECTION.

#### ALTERNATIVE OBLIGATION

alternative obligation. See OBLIGATION.

#### ALTERNATIVE ORDER

alternative order. 1. See ORDER(2). See ORDER(4).

#### ALTERNATIVE PLEADING

alternative pleading. See PLEADING(2).

#### ALTERNATIVE PROMISE

alternative promise. See PROMISE.

#### ALTERNATIVE RELIEF

alternative relief. See RELIEF.

#### ALTERNATIVE REMAINDER

alternative remainder. See REMAINDER.

#### ALTERNATIVE SENTENCE

alternative sentence. See SENTENCE.

#### ALTERNATIVE WRIT

alternative writ. See WRIT.

#### ALTERNIS VICIBUS

alternis vicibus (al-t<<schwa>>r-nis vis-i-b<<schwa>>s). [Law Latin] Hist. Eccles. law. By turn; alternately. • The patrons of two united churches could exercise their right of presentation to a benefice alternis vicibus.

## ALTERUM NON LAEDERE

alterum non laedere (al-t<<schwa>>r-<<schwa>>m [or awl-] non lee-d<<schwa>>-ree). [Latin “not to injure another”] Roman & civil law. To hurt no one by word or deed. • This was one of the three general precepts in which Justinian expressed the requirements of the law (Digest 1.1.10.1; Institutes 1.1.3). Cf. HONESTE VIVERE; SUUM CUIQUE TRIBUERE.

## ALTERUTER

alteruter (al-t<<schwa>>r-yoo-t<<schwa>>r or awl-). [Law Latin] One of two; either.

## ALTIUS NON TOLLENDI

altius non tollendi (al-shee-<<schwa>>s non t<<schwa>>-len-dI). [Latin “of not raising higher”] Roman & civil law. A servitude prohibiting a landowner from building a house above a certain height.

## ALTIUS TOLLENDI

altius tollendi (al-shee-<<schwa>>s t<<schwa>>-len-dI). [Latin “of raising higher”] Roman & civil law. A servitude that allows a landowner to build a house as high as desired.

## ALTO ET BASSO

alto et basso. See DE ALTO ET BASSO.

## ALTUM MARE

altum mare (al-t<<schwa>>m mair-ee ormahr-ee), n. [Law Latin] Hist. The high seas; the deep seas.

## A LUI ET A SES HERITIERS POUR TOUJOURS

a lui et a ses heritiers pour toujours (a lwee ay a sayz e-ree-tyay poor too-zhoor). [Law French] To him and his heirs forever. See and his heirs under HEIR.

## ALVEI MUTATIO

alvei mutatio (al-vee-I myoo-tay-shee-oh). [Latin fr. alveus “the bed or channel of a stream”] Hist. A change in a stream's course.

## ALVEUS

alveus (al-vee-<<schwa>>s), n. [Law Latin] Hist. The bed or channel through which a stream flows in its ordinary course. [Cases: Waters and Water Courses 89. C.J.S. Waters §§ 170–174, 188–189.]

## ALWD

ALWD (ahl-w<<schwa>>d oral-w<<schwa>>d). abbr. See ASSOCIATION OF LEGAL WRITING DIRECTORS .

## ALWD CITATION MANUAL

ALWD Citation Manual. A guide to American legal citation written and edited by legal-writing professionals affiliated with the Association of Legal Writing Directors. • First published in 2000 as an alternative to the Bluebook, it contains one citation system for all legal documents and does not distinguish between citations in law-journal footnotes and those in other writings. The full name is the ALWD Citation Manual: A Professional System of Citation. — Often shortened to ALWD Manual. Cf. BLUEBOOK.

## A.M.

a.m.abbr.ANTE MERIDIEM.

## AMA

AMA.abbr.1. American Medical Association. 2. Against medical advice.

## A MA INTENT

a ma intent (ah mah an-tawn). [Law French] On my action.

## AMALGAMATION

amalgamation (<<schwa>>-mal-g<<schwa>>-may-sh<<schwa>>n), n. The act of combining or uniting; con-solidation <amalgamation of two small companies to form a new corporation>. See MERGER. [Cases: Corporations 581.C.J.S. Corporations §§ 792–797.] — amalgamate, vb. — amalgamator, n.

## AMALPHITAN CODE

Amalphitan Code (<<schwa>>-mal-f<<schwa>>-t<<schwa>>n).Hist. A compilation of maritime law made late in the 11th century at the port of Amalfi near Naples. • The Code was regarded as a primary source of maritime law throughout the Mediterranean to the end of the 16th century. — Also termed Amalphitan Table; Laws of Amalfi; Tablets of Amalfi.

## A MANIBUS

a manibus (ay man-<<schwa>>-b<<schwa>>s), n.[Law Latin] Hist. A royal scribe.

## AMANUENSIS

amanuensis (<<schwa>>-man-yoo-en-sis), n.[fr. Latin ab- “from” + manus “hand”] One who takes dictation; a scribe or secretary.

## A MANU SERVUS

a manu servus (ay man-yoo s<<schwa>>r-v<<schwa>>s). [Latin] A handservant; scribe; secretary.

## AMBACTUS

ambactus (am-bak-t<<schwa>>s). [Latin] Hist. 1. A messenger. 2. A servant whose services are hired out by the master.

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**AMBASCIATOR**

ambasciator (am-bash-ee-ay-t<<schwa>>r). [Law Latin] Hist. A person sent about in the service of another; an ambassador.

**AMBASSADOR**

ambassador. 1. A diplomatic officer of the highest rank, usu. designated by a government as its resident repre-sentative in a foreign state. • Ambassadors represent the sovereign as well as the nation and enjoy many privileges while abroad in their official capacity, including immunity. Ambassadors are distinguished from ministers and envoys, who represent only the state where they are from and not the sovereign. Ambassadors are also generally distinguished from certain legates who have only ecclesiastical authority. But the papal nuncio and some legates, such as the legate a latere, bear the rank of ambassador. See NUNCIO; LEGATE. [Cases: Ambassadors and Consuls 1–8. C.J.S. Ambassadors and Consuls §§ 2–32.] 2. A representative appointed by another. 3. An unofficial or nonappointed representative. — Also spelled (archaically) ambassador. — ambassadorial,adj. — ambassadorship,n.

ambassador extraordinary.An ambassador who is employed for a particular purpose or occasion and has limited discretionary powers. Cf. ambassador plenipotentiary.

ambassador leger.See resident ambassador.

ambassador ordinary.See resident ambassador.

ambassador plenipotentiary.An ambassador who has unlimited discretionary powers to act as a sovereign's or government's deputy, esp. to carry out a particular task, such as treaty negotiations. — Also termed minister plenipotentiary; envoy plenipotentiary. Cf. ambassador extraordinary.

ordinary ambassador.See resident ambassador.

resident ambassador.An ambassador who resides in a foreign country as the permanent representative of a sovereign or nation. • A resident ambassador has the right to request a personal interview with the host nation's head of state. — Also termed ambassador leger; ordinary ambassador; ambassador ordinary.

**AMBER ALERT**

Amber Alert.A system by which the police can rapidly broadcast to the general public a report of a missing or endangered child by means of radio and television announcements. • The alert is named for Amber Hagerman of Texas, a nine-year-old who was abducted and murdered in 1996 by an unknown person. The system has been adopted by many communities in the U.S. and Canada. Local variations exist. In Arkansas, for example, the system is called the Morgan Nick Alert after a child who was abducted by a stranger in 1995. — Also termed Amber Plan.

**A.M. BEST COMPANY**

A.M. Best Company.An investment-analysis and -advisory service. • A.M. Best rates the financial strength of businesses from A++ (strongest) to A+, A, A–, B++, and so on to C– and D. A



grade of E means that the company is under state supervision, and an F indicates that the company is in liquidation.

#### AMBIDEXTER

ambidexter. 1. A judge or embracer who takes bribes from both sides in a dispute. 2. A lawyer who abandons the party that he or she initially represented in a dispute to represent the opposing party in the same suit. 3. A person who engages in double-dealing.

“Ambidexter is he that, when a matter is in suit between men, takes money of the one side and of the other, either to labour the suit, or such like; or if he be of the jury, to give his verdict.” William Rastell, *Termes de la Ley* 28 (1st Am. ed. 1812).

#### AMBIGUITAS LATENS

ambiguitas latens (am-bi-gyoo-*<<schwa>>*-tas lay-tenz). See latent ambiguity under AMBIGUITY.

#### AMBIGUITAS LATENS ET AMBIGUITAS PATENS

ambiguitas latens et ambiguitas patens (am-bi-gyoo-*<<schwa>>*-tas lay-tenz et am-bi-gyoo-*<<schwa>>*-tas pay-tenz). [Latin] Hist. Latent and patent ambiguity. See latent ambiguity and patent ambiguity under AMBIGUITY.

#### AMBIGUITAS PATENS

ambiguitas patens (am-bi-gyoo-*<<schwa>>*-tas pay-tenz). See patent ambiguity under AMBIGUITY.

#### AMBIGUITY

ambiguity (am-bi-gyoo-*<<schwa>>*-tee), n. An uncertainty of meaning or intention, as in a contractual term or statutory provision. Cf. MEANING. [Cases: Contracts 143(2); Statutes 190. C.J.S. Contracts §§ 303–305; Statutes § 321.] — ambiguous (am-big-yoo-*<<schwa>>*s), adj.

“In the context of statutory interpretation the word most frequently used to indicate the doubt which a judge must entertain before he can search for and, if possible, apply a secondary meaning is ‘ambiguity’. In ordinary language this term is often confined to situations in which the same word is capable of meaning two different things, but, in relation to statutory interpretation, judicial usage sanctions the application of the word ‘ambiguity’ to describe any kind of doubtful meaning of words, phrases or longer statutory provisions. Hinchy's case prompted the suggestion that if, in a particular context, words convey to different judges a different range of meanings ‘derived from, not fanciful speculations or mistakes about linguistic usage, but from true knowledge about the use of words, they are ambiguous.’ ” Rupert Cross, *Statutory Interpretation* 76–77 (1976).

ambiguity on the factum. An ambiguity relating to the foundation of an instrument, such as a question relating to whether a testator intended for a particular clause to be part of an agreement, whether a codicil was intended to republish a former will, or whether the residuary clause was accidentally omitted.

calculated ambiguity. A purposeful use of unclear language, usu. when two negotiating parties cannot agree on clear, precise language and therefore leave a decision-maker to sort out the meaning in case of a dispute. • Strictly speaking, this is a misnomer: the more precise term is vagueness, not ambiguity. See VAGUENESS(1).

extrinsic ambiguity. See latent ambiguity.

intrinsic ambiguity. See patent ambiguity.

latent ambiguity. An ambiguity that does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed <the contract contained a latent ambiguity: the shipping terms stated that the goods would arrive on the Peerless, but two ships have that name>. — Also termed extrinsic ambiguity; equivocation; *ambiguitas latens*. [Cases: Contracts 143(2); Evidence 452. C.J.S. Contracts §§ 303–305; Evidence §§ 1222–1224.]

“Instead of this word ‘equivocation,’ the phrase ‘latent ambiguity’ is sometimes used by courts, — ‘latent’ because it does not develop until we seek to apply it and then discover the equivocation. This phrase was invented by Lord Bacon, in one of his maxims, and it long held sway; but it has only served to confuse discussion, and his other word for the same thing, ‘equivocation,’ is more suitable, and has come into general use since Professor Thayer's masterly analysis of the subject some fifty years ago.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 529 (1935). — In fact, the usual term today is latent ambiguity. — Eds.

patent ambiguity (*payt-<<schwa>>nt*). An ambiguity that clearly appears on the face of a document, arising from the language itself <the nonperformance was excused because the two different prices expressed in the contract created a patent ambiguity>. — Also termed intrinsic ambiguity; *ambiguitas patens*. [Cases: Contracts 143(2); Evidence 451. C.J.S. Contracts §§ 303–305; Evidence §§ 1222, 1224–1225.]

“[L]atent ambiguity ... must be carefully distinguished from patent ambiguity, where words are omitted, or contradict one another; for in such cases explanatory evidence is not admissible. Where a bill of exchange was expressed in words to be drawn for ‘two hundred pounds’ but in figures for ‘£245,’ evidence was not admitted to show that the figures expressed the intention of the parties.” William R. Anson, *Principles of the Law of Contract* 401 (Arthur L. Corbin ed., 3d Am. ed. 1919).

#### AMBIGUITY DOCTRINE

ambiguity doctrine. See CONTRA PROFERENTEM.

#### AMBIT

ambit (*am-bit*). 1. A boundary line or limit; esp., the scope of a statute or regulation, or the sphere of influence and authority of an agency, committee, department, or the like. 2. A space surrounding a house or town.

#### AMBITUS

ambitus (am-bi-t<<schwa>>s), n.[Latin ambitus “deviousness, corruption”] Hist. The procuring of a public office by money or gifts; the unlawful buying and selling of a public office.

#### AMBULANCE CHASER

ambulance chaser. 1. A lawyer who approaches victims of accidents in hopes of persuading them to sue for damages. 2. A lawyer's agent who engages in this activity. — ambulance-chasing,n.

#### AMBULANCE-CHASING

ambulance-chasing. A blatant form of solicitation in which the lawyer (either personally or through an agent) urges injured people to employ the lawyer to represent them.

#### AMBULATORY

ambulatory (am-by<<schwa>>-l<<schwa>>-tor-ee), adj.1. Able to walk <the accident victim is still ambula-tory>.2. Capable of being altered or revised; not yet legally fixed <a will is ambulatory because it is revocable until the testator's death>.

#### AMBULATORY AUTOMATISM

ambulatory automatism.See AUTOMATISM.

#### AMBULATORY DISPOSITION

ambulatory disposition.See DISPOSITION(2).

#### AMBULATORY WILL

ambulatory will.See WILL.

#### A ME

a me (ay mee). [Latin] From me. • This phrase was used in feudal grants to denote tenure held directly of the chief lord. The phrase is short for a me de superiore meo (ay mee dee s[y]oo-peer-ee-or-ee mee-oh), meaning “from me of my superior.” Cf. DE ME.

#### A ME DE SUPERIORE MEO

a me de superiore meo (ay mee dee s[y]oo-peer-ee-or-ee mee-oh). [Law Latin] Hist. From me, of my superior. • In a feudal land grant, this phrase provided that when feudal title was completed, the grantee would hold the land of the grantor's superior.

#### AMELIORATE

ameliorate (<<schwa>>-meel-y<<schwa>>-rayt), vb.1. To make better <the charity tries to ameliorate the con-ditions of the homeless>.2. To become better < with time, the situation ameliorated>.

#### AMELIORATING WASTE

ameliorating waste.See WASTE(1).

## AMELIORATION

amelioration, n. 1. The act of improving something; the state of being made better. 2. An improvement. — ameliorative, adj.

## AMELIORATIVE WASTE

ameliorative waste. See ameliorating waste under WASTE(1).

## AMENABLE

amenable (<<schwa>>-mee-n<<schwa>>-b<<schwa>>l or -men-<<schwa>>-), adj. Legally answerable; liable to being brought to judgment <amenable to process>. — amenability, n.

## AMEND

amend, vb. 1. To make right; to correct or rectify <amend the order to fix a clerical error>. 2. To change the wording of; specif., to formally alter (a statute, constitution, motion, etc.) by striking out, inserting, or substituting words <amend the legislative bill>. See AMENDMENT(3). — amendable, adj. — amendability, n.

amend a previous action. See amend something previously adopted.

amend something previously adopted. Parliamentary law. (Of a deliberative assembly) to change an otherwise final text. — Also termed amend a previous action.

## AMENDATORY

amendatory (<<schwa>>-men-d<<schwa>>-tor-ee), adj. Designed or serving to amend; corrective <an amendatory rider to an insurance policy>.

## AMENDED COMPLAINT

amended complaint. See COMPLAINT.

## AMENDED PLEADING

amended pleading. See PLEADING(1).

## AMENDED RETURN

amended return. See TAX RETURN.

## AMENDE HONORABLE

amende honorable (<<schwa>>-mend on-<<schwa>>-r<<schwa>>-b<<schwa>>l or a-mawnd on-<<schwa>>-rah-b<<schwa>>l). [French “honorale reparation”] Hist. A formal reparation for an offense or injury, done by making an open and usu. humiliating acknowledgment and apology so as to restore the victim's honor. • This apology could be accomplished, for example, by walking into church with a rope around the neck and a torch in hand, begging forgiveness from the injured party.

## AMENDE PROFITABLE

amende profitable (<<schwa>>-mend proh-fee-tahb-l<<schwa>>), n. Roman–Dutch law. In a defamation action, reparations made by a defendant who pays a sum that the plaintiff has named under oath as being less than full satisfaction for the claim.

#### AMENDER

amender, n. One who amends (a document, etc.).

#### AMENDMENT

amendment. 1. A formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or correction; esp., an alteration in wording. [Cases: Constitutional Law 4, 10; Statutes 131. C.J.S. Constitutional Law §§ 5–6; Statutes § 243.] 2. The process of making such a revision.

amendment as of course. An amendment, usu. to pleadings, that a party has a statutory right to apply for without the court's permission.

amendment on court's own motion. A change to a pleading or other document by the judge without a motion from a party. [Cases: Federal Civil Procedure 826; Pleading 232. C.J.S. Pleading § 326.]

nunc pro tunc amendment (n<<schwa>>ngk proh t<<schwa>>ngkornuungk proh tuungk). An amendment that is given retroactive effect, usu. by court order. [Cases: Judgment 326; Motions 56(2). C.J.S. Judgments § 299; Motions and Orders §§ 51, 61.]

3. Parliamentary law. A motion that changes another motion's wording by striking out text, inserting or adding text, or substituting text. See AMEND (2). Cf. BLANK(2).

amendment by adding. An amendment that places new wording at the end of a motion or of a paragraph or other readily divisible part within a motion. • Some authorities treat amendment by adding as a form of amendment by inserting. Cf. amendment by inserting.

amendment by inserting. An amendment that places new wording within or around a motion's current wording. • Some authorities distinguish amendment by adding, which places new wording after the current wording, from amendment by inserting. Cf. amendment by adding.

amendment by striking out. An amendment that removes wording from a motion's current wording.

amendment by striking out and inserting. An amendment that removes wording and replaces it with alternative wording. • The motion can properly apply only to inserting wording in place of the wording being struck out; it cannot strike out some wording and insert new wording in a different place. See amendment by substituting; CREATE A BLANK.

amendment by substituting. 1. A special type of amendment by striking out and inserting that replaces an entire main motion or a paragraph or other readily divisible part within a main motion; an amendment of greater scope than a perfecting amendment. Cf. perfecting amendment. 2. An amendment by striking out and inserting. See amendment by striking out and inserting. — Also

termed amendment in the nature of a substitute (in sense 1); substitute; substitution; substitute amendment. • Parliamentary writers differ on when an amendment by striking out and inserting qualifies as an amendment by substituting. Some manuals treat the two as equivalent and apply the same rules to them. Others maintain that an amendment is not a substitute unless it replaces the entire main motion — or at least a readily divisible part within the main motion — and apply different rules to an amendment by substituting than to a less drastic amendment.

amendment in the nature of a substitute. See amendment by substituting (1).

amendment of the first degree. See primary amendment.

amendment of the first rank. See primary amendment.

amendment of the second degree. See secondary amendment.

amendment of the second rank. See secondary amendment.

amendment to the amendment. See secondary amendment.

amendment to the main question. See primary amendment.

amendment to the text. See primary amendment.

committee amendment. An amendment to a motion reported by a committee to which the motion was referred.

first-degree amendment. See primary amendment.

floor amendment. An amendment offered from the floor by an individual member, as distinguished from a committee amendment. Cf. committee amendment.

friendly amendment. An amendment that the mover of the motion being amended supports, and to which no other member objects.

“The term ‘friendly amendment’ is often used to describe an amendment offered by someone who is in sympathy with the purposes of the main motion, in the belief that the amendment will either improve the statement or effect of the main motion, presumably to the satisfaction of its maker, or will increase the chances of the main motion's adoption. Regardless of whether or not the maker of the main motion ‘accepts’ the amendment, it must be opened to debate and voted on formally (unless adopted by unanimous consent) and is handled under the same rules as amendments generally.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 12, at 154 (10th ed. 2000).

“Often, such an amendment is proposed as a ‘friendly amendment,’ simply indicating that the member proposing the amendment feels it will be acceptable to the maker of the main motion. If the maker of the original motion does not wish to accept the amendment, the amendment must then receive a second to come before the assembly, and will receive the usual consideration by the assembly. However, even the acceptance of the proposed amendment by the maker of the motion is simply a statement of support, and every member of the assembly retains the right to object to the amendment's adoption by general consent, and to debate and vote on the amendment.” Alice

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Sturgis, *The Standard Code of Parliamentary Procedure* 53 (4th ed. 2001).

hostile amendment. An amendment that is opposed by the supporters of the main motion.

killer amendment. An amendment that has the effect, intended or not, of ensuring the defeat of the main motion.

nongermane amendment. An amendment that adds an unrelated rider. • A nongermane amendment is out of order in most ordinary assemblies and many legislative bodies. But some legislative bodies, in jurisdictions where legislation may embrace more than one subject, allow nongermane amendments to a bill. See RIDER.

perfecting amendment. An amendment that merely edits the form of a main motion or a primary amendment but does not substantially change its content; an amendment of lesser scope than an amendment by substituting. Cf. amendment by substituting (1).

primary amendment. An amendment that directly amends the main motion. Cf. secondary amendment.

pro forma amendment. An amendment moved solely for the purpose of obtaining the floor and treated as withdrawn once the mover has spoken. • The customary pro forma amendment in Congress is a motion “to strike the last word.”

secondary amendment. An amendment that alters a pending primary amendment. Cf. primary amendment.

second-degree amendment. See secondary amendment.

substitute amendment. 1. A secondary amendment that substantially replaces rather than edits a primary amendment. 2. See amendment by substituting.

#### AMENDMENT AFTER ALLOWANCE

amendment after allowance. See PATENT-APPLICATION AMENDMENT.

#### AMENDMENT AFTER APPEAL

amendment after appeal. See PATENT-APPLICATION AMENDMENT.

#### AMENDMENT AFTER FINAL ACTION

amendment after final action. See PATENT-APPLICATION AMENDMENT.

#### AMENDMENT AFTER PAYMENT OF ISSUE FEE

amendment after payment of issue fee. See PATENT-APPLICATION AMENDMENT.

#### AMENDMENT BEFORE FIRST ACTION

amendment before first action. See preliminary amendment under PATENT-APPLICATION AMENDMENT T.

#### AMENDMENT BY IMPLICATION

amendment by implication. A rule of construction that allows a person to interpret a repugnant provision in a statute as an implicit modification or abrogation of a provision that appears before it. • Amendments by implication are not favored. See *United States v. Welden*, 377 U.S. 95, 102 n.12, 84 S.Ct. 1082, 1087 n.12 (1964).

#### AMENDMENT IN EXCESS OF FILING FEE

amendment in excess of filing fee. See PATENT-APPLICATION AMENDMENT.

#### AMENDMENT OF INDICTMENT

amendment of indictment. The alteration of the charging terms of an indictment, either literally or in effect, after the grand jury has made a decision on it. • The indictment usu. cannot be amended at trial in a way that would prejudice the defendant by having a trial on matters that were not contained in the indictment. To do so would violate the defendant's Fifth Amendment right to indictment by grand jury. [Cases: Indictment and Information 159. C.J.S. Indictments and Informations § 193.]

constructive amendment of indictment. The admission of evidence that modifies the indictment by modifying the elements of a charged offense or by establishing an offense different from or in addition to those in the indictment.

#### AMENDMENT OF MARK IN REGISTRATION

amendment of mark in registration. See amendment of registration under TRADEMARK-APPLICATION AMENDMENT.

#### AMENDMENT OF REGISTRATION

amendment of registration. See TRADEMARK-APPLICATION AMENDMENT.

#### AMENDMENT ON COURT'S OWN MOTION

amendment on court's own motion. See AMENDMENT(2).

#### AMENDMENT TO ALLEGE USE

amendment to allege use. See TRADEMARK-APPLICATION AMENDMENT.

#### AMENDMENT TO DIFFERENT REGISTER

amendment to different register. See TRADEMARK-APPLICATION AMENDMENT.

#### AMENDS

amends, n. Compensation given for a loss or injury; reparation.

#### AMENITY

amenity. [fr. Latin *amoenitas* "pleasantness"] Something tangible or intangible that increases the enjoyment of real property, such as location, view, landscaping, security, or access to recreational facilities.



## A MENSA ET THORO

a mensa et thoro (ay men-s<<schwa>> et thor-oh). [Latin “from board and hearth”] (Of a divorce decree) ef-fecting a separation of the parties rather than a dissolution of the marriage <a separation a mensa et thoro was the usual way for a couple to separate under English law up until 1857>. • Not all states provide for such a proceeding. See divorce a mensa et thoro under DIVORCE; SEPARATION; A VINCULO MATRIMONII. [Cases: Divorce 155.C.J.S. Divorce §§ 223–225.]

## AMERCE

amerce (<<schwa>>-m<<schwa>>rs), vb.1. To impose a fine or penalty that is not fixed but is left to the court's discretion; to punish by amercement. 2. To fine or punish in any manner. — amerceable (<<schwa>>-m<<schwa>>r-s<<schwa>>-b<<schwa>>l), amerciable (<<schwa>>-m<<schwa>>r-see-<<schwa>>-b<<schwa>>l), adj.

“There were two more aspects to this financial scheme of permitting suitors to use the royal courts — for a con-sideration. The practice developed of ‘amercing’ or fining those who were ‘in the mercy of the king’ because they had put forward a false claim, or had made a false defense. In other words the loser of the suit had to pay a fine for his supposedly unjust effort to deny or resist the claim of his opponent.” Charles Herman Kinnane, *A First Book on Anglo-American Law* 272 (2d ed. 1952).

## AMERCEMENT

amercement (<<schwa>>-m<<schwa>>rs-m<<schwa>>nt), n.[fr. Law French estre à merci “to be at the mercy (of another),” fr. Latin merces “payment”] 1. The imposition of a discretionary fine or penalty by a court, esp. on an official for misconduct <an amercement proceeding>.2. The fine or penalty so imposed <an amercement charged to the sheriff for failing to return the writ of execution>. — Also termed cashlite; (archaically) amer-ciament; merciament. [Cases: Sheriffs and Constables 125. C.J.S. Sheriffs and Constables §§ 335–385.]

## AMERICAN ACADEMY OF ACTUARIES

American Academy of Actuaries.A national organization of actuaries who must meet specified educational requirements and have at least three years of actuarial work experience. • Created in 1965, the Academy promotes public awareness of the actuarial profession, represents the profession before federal and state governments, and sponsors continuing-education conferences. — Abbr. AAA. See ACTUARY.

## AMERICAN ACCOUNTING ASSOCIATION

American Accounting Association.An organization of accounting practitioners, educators, and students. • The Association, founded in 1916, promotes accounting as an academic discipline by sponsoring research projects and continuing-education seminars. — Abbr. AAA. [Cases: Accountants 3.1.]

## AMERICAN ARBITRATION ASSOCIATION

American Arbitration Association. A national organization that maintains a panel of arbitrators to hear labor and commercial disputes. — Abbr. AAA. [Cases: Arbitration 26; Labor Relations 453. C.J.S. Arbitration §§ 60, 62; Labor Relations §§ 464–465.]

#### AMERICAN BANKERS ASSOCIATION

American Bankers Association. A voluntary trade association of banking institutions, including banks, trust companies, and savings banks and associations, whose members represent the vast majority of banking deposits in the United States. • The association was founded in 1875. — Abbr. ABA.

#### AMERICAN BAR ASSOCIATION

American Bar Association. A voluntary national organization of lawyers organized in 1878. • Among other things, it participates in law reform, law-school accreditation, and continuing legal education in an effort to improve legal services and the administration of justice. — Abbr. ABA. [Cases: Attorney and Client 31. C.J.S. Attorney and Client §§ 8–9.]

#### AMERICAN BAR FOUNDATION

American Bar Foundation. An outgrowth of the American Bar Association involved with sponsoring and funding projects in law-related research, education, and social studies. [Cases: Attorney and Client 31. C.J.S. Attorney and Client §§ 8–9.]

#### AMERICAN BUREAU OF SHIPPING

American Bureau of Shipping. An organization of marine underwriters, shipbuilders, and marine carriers charged with conducting research, technological development, officer training, and standards of building, maintaining, and operating seagoing vessels and stationary offshore facilities. • The organization was founded in 1862 as the American Shipbuilders' Association. Its name was changed in 1898, and it was formally recognized in the Merchant Marine Act of 1920. Its core mission is to promulgate rules for evaluating the design of new vessels and structures and for maintaining all existing vessels and structures. — Abbr. ABS. See ABS RULES .

#### AMERICAN CIVIL LIBERTIES UNION

American Civil Liberties Union. A national organization whose primary purpose is to help enforce and preserve individual rights and liberties guaranteed by federal and state constitutions. — Abbr. ACLU.

#### AMERICAN CLAUSE

American clause. Marine insurance. A policy provision that prevents an insurer from claiming contribution from a policy later purchased by the insured. [Cases: Insurance 2247. C.J.S. Insurance § 1207.]

#### AMERICAN COMMON LAW

American common law. See COMMON LAW(2).

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**AMERICAN DEPOSITORY RECEIPT**

American depository receipt. A receipt issued by an American bank as a substitute for stock shares in a for-foreign-based corporation. • ADRs are the most common method by which foreign companies secure American shareholders. Companies that offer ADRs maintain a stock listing in their domestic market in their domestic currency, while the ADRs are held in U.S. dollars and listed on a U.S. stock exchange, usu. the New York Stock Exchange. — Abbr. ADR. — Also termed American depository receipt. [Cases: Corporations 94. C.J.S. Corporations § 172.]

**AMERICAN EXPERIENCE TABLE OF MORTALITY**

American Experience Table of Mortality. Insurance. A chart developed by insurers in the 1860s to predict mortality rates and thereby more accurately set insurance rates. • The Table was widely used by insurers to establish rates until the 1950s.

**AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORG.**

American Federation of Labor and Congress of Industrial Organizations. A voluntary affiliation of more than 100 labor unions that operate autonomously yet benefit from the affiliation's political activities and its establishment of broad policies for the national labor movement. — Abbr. AFL-CIO.

**AMERICAN FEDERATION OF MUSICIANS**

American Federation of Musicians. A labor union composed of musicians, orchestra leaders, contractors, copyists, orchestrators, composers, and arrangers. • In the recording industry, artists hired by record companies that have agreements with the union must be paid according to the union's set scale. — Abbr. AF of M.

**AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS**

American Federation of Television and Radio Artists. A labor union composed of actors, announcers, narrators, and vocalists. • In the entertainment industry, performers hired by producers that have agreements with the union must be paid according to the union's set scale. It is affiliated with the AFL-CIO. — Abbr. AFTRA.

**AMERICAN FORCES INFORMATION SERVICE**

American Forces Information Service. An agency in the U.S. Department of Defense responsible for operating the Armed Forces Radio and Television Service, the Armed Forces Press and Publications Service, and a Broadcast Center. • Established in 1977, the Service publishes various periodicals and pamphlets and the Stars and Stripes newspapers. — Abbr. AFIS.

**AMERICAN GUILD OF VARIETY ARTISTS**

American Guild of Variety Artists. A labor union composed of performers in nightclubs, cabarets, theaters, and other areas of live entertainment. • The Guild regulates its members' contracts with agents through an agreement with the Artists' Representatives Association. — Abbr. AGVA.

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**AMERICAN INDIAN LAW**

American Indian law. See NATIVE AMERICAN LAW.

**AMERICAN INNS OF COURT FOUNDATION**

American Inns of Court Foundation. See INN OF COURT(2).

**AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION**

American Intellectual Property Law Association. A national bar association of lawyers who practice patent, trademark, copyright, trade-secret, and unfair-competition law. • The association was formerly known as the American Patent Law Association. Membership is also open to law students who are interested in intellectual-property law. — Abbr. AIPLA.

**AMERICAN INVENTORS PROTECTION ACT**

American Inventors Protection Act. Patents. A 1999 statute designed to (1) curb deceptive practices by invention-promotion companies, (2) reduce patent fees, (3) provide a defense against infringement for a party who in good faith reduced a patented invention to practice at least one year before a patent's effective filing date, (4) extend the patent term when the PTO is responsible for a delay in issuance, and (5) require publication of a patent application 18 months after its filing unless the applicant requests otherwise. Pub. L. No. 106–113, 113 Stat. 1501. — Abbr. AIPA.

**AMERICAN JUDICATURE SOCIETY**

American Judicature Society. An organization made up of judges, lawyers, and lay people for the purpose of improving the administration of justice. • The AJS was founded in 1913. Its interests include ensuring the judiciary's independence, improving judicial selection and the performance of juries, and educating the public about the justice system. — Abbr. AJS.

**AMERICAN LAW INSTITUTE**

American Law Institute. An organization of lawyers, judges, and legal scholars who promote consistency and simplification of American law by publishing restatements of the law and other model codes and treatises, as well as promoting continuing legal education. — Abbr. ALI.

**AMERICAN LAW INSTITUTE TEST**

American Law Institute test. See SUBSTANTIAL-CAPACITY TEST.

**AMERICAN LLOYD'S**

American Lloyd's. See LLOYD'S UNDERWRITERS.

**AMERICAN NATIONAL STANDARDS INSTITUTE**

American National Standards Institute. A private nonprofit organization, founded in 1918, that administers the U.S. standardization- and conformity-assessment system and coordinates voluntary participants in the system. — Abbr. ANSI.

**AMERICAN OPTION**

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American option. See OPTION.

#### AMERICAN PATENT LAW ASSOCIATION

American Patent Law Association. See AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION .

#### AMERICAN PRINTING HOUSE FOR THE BLIND

American Printing House for the Blind. A federally aided institution that assists blind children by distributing Braille books, talking books, and educational aids without charge. • The printing house was incorporated in Kentucky in 1858. — Abbr. APH.

#### AMERICAN RULE

American rule. 1. The general policy that all litigants, even the prevailing one, must bear their own attorney's fees. • The rule is subject to bad-faith and other statutory and contractual exceptions. Cf. ENGLISH RULE. [Cases: Costs 194.16; Federal Civil Procedure 2737.1. C.J.S. Costs § 125.] 2. The doctrine that a witness cannot be questioned on cross-examination about any fact or circumstance not connected with the matters brought out in the direct examination. [Cases: Witnesses 269. C.J.S. Witnesses §§ 471–476.]

#### AMERICAN SHARE

American share. See SHARE(2).

#### AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS

American Society of Composers, Authors, and Publishers. Copyright. One of the U.S. performing-rights societies that license and police the public performance of nondramatic musical works on behalf of the copyright owners. — Abbr. ASCAP.

#### AMERICAN SOCIETY OF WRITERS ON LEGAL SUBJECTS

American Society of Writers on Legal Subjects. The formal name for Scribes, an association of lawyers dedicated to the improvement of legal writing. Founded in 1953, it sponsors annual writing competitions and publishes *The Scribes Journal of Legal Writing*, the first journal devoted exclusively to legal writing.

#### AMERICAN STOCK EXCHANGE

American Stock Exchange. An organized stock exchange and self-regulating organization under the Securities Exchange Act of 1934, located in New York City and engaged in national trading of corporate stocks. • It often trades in the securities of young or small companies because its listing requirements are less strict than those of the New York Stock Exchange. — Abbr. AMEX; ASE. [Cases: Exchanges 1–15; Securities Regulation 40.10–40.16. C.J.S. Exchanges §§ 2–43; Securities Regulation §§ 154–163, 165–168.]

#### AMERICAN-STYLE OPTION

American-style option. See American option under OPTION.

#### AMERICANS WITH DISABILITIES ACT

Americans with Disabilities Act. A federal statute that prohibits discrimination — in employment, public services, and public accommodations — against any person with a disability (“a physical or mental impairment that substantially limits one or more of the major life activities”). 42 USCA §§ 12101–12213. • Under the ADA, major life activities include any activity that an average person in the general population can perform with little or no difficulty, such as seeing, hearing, sleeping, eating, walking, traveling, and working. The statute applies to both private and governmental entities, but not to a private employer having fewer than 15 employees. 42 USCA § 12111(5)(A). — Abbr. ADA. See DISABILITY. [Cases: Civil Rights 1016, 1053, 1215. C.J.S. Civil Rights §§ 2, 6–7, 9–10, 19, 21, 61, 85.]

#### AMEX

AMEX (am-eks). abbr. AMERICAN STOCK EXCHANGE.

#### AMI

ami (<<schwa>>-mee), n. [Law French, fr. Latin amicus] A friend. • This term appears in several traditional legal phrases, such as *prochein ami* (“next friend”). — Also spelled amy. See NEXT FRIEND.

#### AMIABLE COMPOSITOR

amiable compositor. Int'l law. An unbiased third party, often a head of state or high government official, who suggests a solution that disputing countries might accept of their own volition. — Also termed *aimable compo-siteur*.

#### AMICABLE ACTION

#### AMICABLE COMPOUNDER

amicable compounder. See COMPOUNDER(1).

#### AMICABLE SCIRE FACIAS TO REVIVE A JUDGMENT

amicable scire facias to revive a judgment. See SCIRE FACIAS.

#### AMICABLE SUIT

amicable suit. See test case (1) under CASE.

#### AMICUS

amicus. 1. AMICUS CURIAE. 2. See amicus brief under BRIEF(1).

#### AMICUS BRIEF

amicus brief. See BRIEF(1).

#### AMICUS CURIAE

amicus curiae (<<schwa>>-mee-k<<schwa>>s kyoor-ee-Ior <<schwa>>-mI-k<<schwa>>s kyoor-ee-ee al-soam-i-k<<schwa>>s). [Latin "friend of the court"] A person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter. — Often shortened to amicus. — Also termed friend of the court. Pl. amici curiae (<<schwa>>-mee-kee or <<schwa>>-mI-sIor <<schwa>>-mI-kI). [Cases: Amicus Curiae 1–3. C.J.S. Amicus Curiae §§ 2–14.]

#### AMISH EXCEPTION

Amish exception. An exemption of the Amish from compulsory-school-attendance laws under the Free Exercise Clause of the First Amendment. • In *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526 (1972), the Supreme Court held that Amish children could not be compelled to attend high school even though they were within the age range of the state's compulsory-attendance law. The Court has very narrowly construed the Amish exception and has refused to extend it to non-Amish children. See COMPULSORY-ATTENDANCE LAW; FREE EXERCISE CLAUSE.

#### AMITA

amita (am-<<schwa>>-t<<schwa>>). [Latin] Civil law. The sister of one's father; an aunt on the father's side. Pl. amitae.

#### AMITINA

amitina (am-<<schwa>>-tI-n<<schwa>>). [Latin] Civil law. The daughter of a paternal aunt or maternal uncle; a female first cousin. Pl. amitinae.

#### AMITINUS

amitinus (am-<<schwa>>-tI-n<<schwa>>s). [Latin] Civil law. The son of a paternal aunt or maternal uncle; a male first cousin. Pl. amitini.

#### AMITTERE CURIAM

amittere curiam (<<schwa>>-mit-<<schwa>>-ree kyoor-ee-<<schwa>>m), vb. [Law Latin] Hist. To lose the privilege of attending court.

#### AMITTERE LEGEM TERRAE

amittere legem terrae (<<schwa>>-mit-<<schwa>>-ree lee-j<<schwa>>m ter-ee). See LIBERAM LEGEM AMITTERE.

#### AMITTERE LIBERAM LEGEM

amittere liberam legem (<<schwa>>-mit-<<schwa>>-ree lib-<<schwa>>r-<<schwa>>m lee-j<<schwa>>m). See LIBERAM LEGEM AMITTERE.

#### AMNESTY

amnesty, n. A pardon extended by the government to a group or class of persons, usu. for a political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted <the 1986 Immigration Reform and Control

Act provided amnesty for undocumented aliens already present in the country>. • Unlike an ordinary pardon, amnesty is usu. addressed to crimes against state sovereignty — that is, to political offenses with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punishment. Amnesty is usu. general, addressed to classes or even communities. — Also termed general pardon. See PARDON. [Cases: Pardon and Parole 26. C.J.S. Pardon and Parole §§ 3, 31.] — amnesty,vb.

“Amnesty... derives from the Greek *amnestia* (‘forgetting’), and has come to be used to describe measures of a more general nature, directed to offenses whose criminality is considered better forgotten.” Leslie Sebba, “Amnesty and Pardon,” in 1 *Encyclopedia of Crime and Justice* 59, 59 (Sanford H. Kadish ed., 1983).

express amnesty.Amnesty granted in direct terms.

implied amnesty.Amnesty indirectly resulting from a peace treaty executed between contending parties.

#### AMNESTY CLAUSE

amnesty clause.A clause, esp. one found in a peace treaty, that wipes out past offenses such as treason, sedition, rebellion, and even war crimes. • A sovereign may grant amnesty to all guilty persons or only to certain categories of offenders.

#### AMNESTY INTERNATIONAL

Amnesty International.An international nongovernmental organization founded in the early 1960s to protect human rights throughout the world. • Its mission is to “secure throughout the world the observance of the Universal Declaration of Human Rights.” Amnesty Int’l Statute, art. 1.

#### A MORTE TESTATORIS

a morte testatoris (ay mor-tee tes-t<<schwa>>-tor-is). [Latin] Hist. From the death of the testator. • The phrase appeared in reference to the moment when a legacy vests in the beneficiary.

#### AMORTIZATION

amortization (am-<<schwa>>r-t<<schwa>>-zay-sh<<schwa>>n), n.1. The act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due.

negative amortization.An increase in a loan's principal balance caused by monthly payments insufficient to pay accruing interest.

2. The act or result of apportioning the initial cost of a usu. intangible asset, such as a patent, over the asset's useful life. Cf. DEPRECIATION. — Sometimes also termed amortizement.

#### AMORTIZATION RESERVE

amortization reserve.See RESERVE.

#### AMORTIZATION SCHEDULE



amortization schedule. A schedule of periodic payments of interest and principal owed on a debt obligation; specif., a loan schedule showing both the amount of principal and interest that is due at regular intervals over the loan term and the remaining unpaid principal balance after each scheduled payment is made.

#### AMORTIZE

amortize, vb. 1. To extinguish (a debt) gradually, often by means of a sinking fund. 2. To arrange to extinguish (a debt) by gradual increments. 3. Hist. To alienate or convey lands to a corporation (that is, in mortmain). — Also spelled amortise. See MORTMAIN.

#### AMORTIZED LOAN

amortized loan. See LOAN.

#### AMORTIZED MORTGAGE

amortized mortgage. See MORTGAGE.

#### AMORTIZEMENT

amortizement. See AMORTIZATION.

#### AMOTION

amotion. 1. A turning out, as the eviction of a tenant or the removal of a person from office. [Cases: Landlord and Tenant 275; Officers and Public Employees 70. C.J.S. Landlord and Tenant §§ 716–718, 724; Officers and Public Employees § 175.] 2. The common-law procedure available to shareholders to remove a corporate director for cause. [Cases: Corporations 294. C.J.S. Corporations §§ 454–457.]

“The cases do not distinguish clearly between disfranchisement and amotion. The former applies to members, and the latter only to officers; and if an officer be removed for good cause, he may still continue to be a member of the corporation. Disfranchisement is the greater power, and more formidable in its application; and in joint stock or moneyed corporations no stockholder can be disfranchised, and thereby deprived of his property or interest in the general fund, by any act of the corporation, without at least an express authority for that purpose.” 2 James Kent, Commentaries on American Law \*298 (George Comstock ed., 11th ed. 1866).

3. The wrongful moving or carrying away of another's personal property.

#### AMOUNT IN CONTROVERSY

amount in controversy. The damages claimed or relief demanded by the injured party in a lawsuit. • For a federal court to have diversity jurisdiction, the amount in controversy must exceed \$75,000. 28 USCA § 1332(a). — Also termed jurisdictional amount; matter in controversy. See DIVERSITY OF CITIZENSHIP ; AGGREGATION DOCTRINE. [Cases: Courts 119, 167; Federal Courts 335.]

#### AMOUNT REALIZED

amount realized. Tax. The amount received by a taxpayer for the sale or exchange of an asset, such as cash, property, services received, or debts assumed by a buyer. Cf. GAIN(3); LOSS(2). [Cases: Internal Revenue 3194; Taxation 996. C.J.S. Internal Revenue § 113; Taxation §§ 1732–1733.]

#### AMOVE

amove, vb. To remove (a person) from an office or position.

#### AMOVEAS MANUS

amoveas manus (ay-moh-vee-<<schwa>>s man-<<schwa>>s). [Law Latin “that you remove your hands”] Hist. 1. A judgment ordering the Crown to relinquish possession of land to the complainant. • The judgment is so called from the emphatic words quod manus domini regis amoveantur (“that the hands of the king be removed”). 2. The writ issued on the judgment.

#### AMPLIATIO

ampliatio (am-plee-ay-shee-oh), n. [Latin] Roman law. 1. The act of deferring or reserving judgment. 2. In a criminal trial before a comitia, the repeating of evidence at the jury's request. Pl. ampliaciones (am-plee-ay-shee-oh-nee-z).

#### AMPLIATION

ampliation (am-plee-ay-sh<<schwa>>n). Civil law. An extending; a postponement of the decision in a case.

#### AMPLIUS

amplius (am-plee-<<schwa>>s), adj. & adv. [Latin] Hist. More; further.

#### AMS

AMS. abbr. AGRICULTURAL MARKETING SERVICE.

#### AMT

AMT. abbr. See alternative minimum tax under TAX.

#### AMTRAK

Amtrak. See NATIONAL RAILROAD PASSENGER CORPORATION.

#### A MULTO FORTIORI

a multo fortiori (ay m<<schwa>>l-toh for-shee-or-I). [Latin] By far the stronger reason. Cf. A FORTIORI.

#### AMUSEMENT TAX

amusement tax. See TAX.

#### AMY

amy (<<schwa>>-mee), n.[Law French] A friend. • This is an alternative spelling of ami. See AMI.

#### ANACONDA CLAUSE

anaconda clause.See MOTHER HUBBARD CLAUSE(1).

#### ANACRISIS

anacrisis (an-<<schwa>>-krI-sis).Civil law. An investigation or inquiry, esp. one conducted by torture.

#### ANALOG

analog.Patents. A different material, usu. a chemical or DNA sequence, that produces the same result as the specified material when used in a certain way. • To prevent others from free-riding on their innovations without technically infringing their exclusive rights, patent applicants often include analogs in their claims. — Also spelled analogue. — Also termed functional analog; equivalent.

#### ANALOGOUS ART

analogous art. See ART.

#### ANALOGOUS USE

analogous use. 1.Patents. The application of a process already known in one field of art to produce a similar result in another field. • Unless the fields are so unrelated or the outcomes so different as to produce a novel, useful, and nonobvious result, an analogous use is not patentable. 2.Trademarks. The use of a mark in marketing and advertising a product or service before the actual sale of the product or service, in order to establish the mark's use in commerce. • For the owner to take advantage of the analogous-use doctrine, the marketing campaign must be substantial and the product or service must be available soon after the campaign. An owner who files an in-tent-to-use application may tack on the period of analogous use for purposes of priority and incontestability.

#### ANALYTICAL JURISPRUDENCE

analytical jurisprudence.See JURISPRUDENCE.

#### ANARCHIST

anarchist,n. One who advocates the overthrow of organized government by force or who believes in the absence of government as a political ideal. — anarchism (the philosophy), n.

#### ANARCHY

anarchy,n.1. Absence of government; lawlessness. 2. A sociopolitical theory holding that the only legitimate form of government is one under which individuals govern themselves voluntarily, free from any collective power structure enforcing compliance with social order. — anarchic,adj.

criminal anarchy. A doctrine advocating the overthrow of organized government by force or violence, by assassinating a head of government, or by some other unlawful act. • Most states have laws limiting speech that incites criminal anarchy. The laws do not apply to abstract philosophical expressions or predictions or like expressions protected by the First and Fourteenth Amendments. Criminal-anarchy statutes (e.g., 18 USCA § 2385) apply only to speech that is calculated to induce forceful and violent activity, such as attempts to incite people to riot, or that otherwise generates some “clear and present danger” that the advocated violent overthrow may be attempted or accomplished. See *Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 630 (1925).

#### ANATHEMA

anathema (<<schwa>>-nath-<<schwa>>-m<<schwa>>), n. An ecclesiastical curse that prohibits a person from receiving communion (as in excommunication) and bars the person from contact with members of the church. — anathematize, vb.

#### ANATOCISM

anatocism (<<schwa>>-nat-<<schwa>>-siz-<<schwa>>m), n. [fr. Greek anatokismos “to lend on interest again”] Rare. 1. Compound interest. See compound interest under INTEREST(3). 2. The practice of compounding interest.

#### ANATOMICAL GIFT

anatomical gift. See GIFT.

#### ANCESTOR

ancestor, n. A person from whom an estate has passed; ASCENDANT. • This word is the correlative of heir. Cf. HEIR(1).

common ancestor. A person to whom the ancestry of two or more persons is traced.

#### ANCESTRAL DEBT

ancestral debt. See DEBT.

#### ANCESTRAL ESTATE

ancestral estate. See ESTATE(1).

#### ANCESTRY

ancestry. A line of descent; lineage.

#### ANCHORAGE

anchorage. Maritime law. 1. An area where ships anchor. 2. A duty paid by shipowners for the use of a port; a toll for anchoring. [Cases: Shipping 7. C.J.S. Shipping §§ 18–20.]

#### ANCIENT

ancient, adj. Evidence. Having existed for a long time without interruption, usu. at least 20 to

30 years <ancient deed> <ancient map>. • Ancient items are usu. presumed to be valid even if proof of validity cannot be made. Fed. R. Evid. 901(b)(8). [Cases: Evidence 372. C.J.S. Evidence §§ 1010–1012, 1014–1015.]

ancient, n. A senior member of an Inn of Court or of Chancery.

#### ANCIENT DEMESNE

ancient demesne. See DEMESNE.

#### ANCIENT DOCUMENT

ancient document. See DOCUMENT.

#### ANCIENT FACT

ancient fact. See FACT.

#### ANCIENT HOUSE

ancient house. See HOUSE.

#### ANCIENT LAW

ancient law. The law of antiquity, considered esp. either from an anthropological standpoint or from the stand-point of tracing precursors to modern law.

“Ancient law uniformly refuses to dispense with a single gesture, however grotesque; with a single syllable, however its meaning may have been forgotten; with a single witness, however superfluous may be his testimony. The entire solemnities must be scrupulously completed by persons legally entitled to take part in them, or else the conveyance is null, and the seller is re-established in the rights of which he had vainly attempted to divest himself.” Henry S. Maine, *Ancient Law* 225–26 (17th ed. 1901).

#### ANCIENT-LIGHTS DOCTRINE

ancient-lights doctrine. The common-law principle by which a landowner acquired, after 20 years of uninter-rupted use, an easement preventing a neighbor from building an obstruction that blocks light from passing through the landowner's window. • The window (or other opening) is termed an ancient light. This doctrine has rarely been applied in the United States. — Also termed ancient-windows doctrine. [Cases: Easements 11. C.J.S. Easements § 51.]

“[A] notice ‘Ancient Lights,’ which is often seen affixed to the wall of a building, only denotes a claim by or on behalf of the owner that he has acquired, by prescription or otherwise, a right to a reasonable amount of light, free from interruption, over adjoining land; but it must not be supposed that such a notice is necessary in order to protect a legal right.” 2 Stephen's *Commentaries on the Laws of England* 347 (Crispin Warmington ed., 21st ed. 1950).

“Under the English doctrine of ancient lights, which has been soundly repudiated in this country, if a landowner had received sunlight across adjoining property for a specified period of time, the landowner was entitled to continue to receive unobstructed access to sunlight across the

adjoining property; the landowner acquired a negative prescriptive easement and could prevent the adjoining landowner from obstructing access to light.” 1 Am. Jur. 2d Adjoining Landowners § 90, at 889 (1994).

#### ANCIENT READINGS

ancient readings.Hist. Lectures on ancient English statutes, formerly having substantial legal authority.

#### ANCIENT RENT

ancient rent.Hist. The rent reserved at the time the lease is made, if the estate was not then under lease.

#### ANCIENTS

ancients.Hist. Certain members of seniority in the Inns of Court and Chancery. • In Gray's Inn, the society con-sisted of benchers, ancients, barristers, and students under the bar, with the ancients being the oldest barristers. In the Middle Temple, those who passed the readings were termed ancients. The Inns of Chancery consisted of both ancients and students or clerks.

#### ANCIENT SERJEANT

ancient serjeant.Hist. English law. The eldest of the Crown's serjeants. • The last serjeant to hold this office died in 1866.

#### ANCIENT WALL

ancient wall.See WALL.

#### ANCIENT WATERCOURSE

ancient watercourse.See WATERCOURSE.

#### ANCIENT-WINDOWS DOCTRINE

ancient-windows doctrine.See ANCIENT-LIGHTS DOCTRINE.

#### ANCIENT WRITING

ancient writing.See ancient document under DOCUMENT.

#### ANCILLA

ancilla (an-sil-<<schwa>>), n.[Latin] Hist. A female auxiliary or assistant.

#### ANCILLARY

ancillary (an-s<<schwa>>-ler-ee), adj. Supplementary; subordinate <ancillary claims>. — ancillarity (an-s<<schwa>>-la[i]r-<<schwa>>-tee), n.

#### ANCILLARY ADMINISTRATION

ancillary administration.See ADMINISTRATION.

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**ANCILLARY ADMINISTRATOR**

ancillary administrator. See ADMINISTRATOR(2).

**ANCILLARY ATTACHMENT**

ancillary attachment. See ATTACHMENT(3).

**ANCILLARY BILL**

ancillary bill. See ancillary suit under SUIT.

**ANCILLARY CLAIM**

ancillary claim. See CLAIM(4).

**ANCILLARY GUARDIANSHIP**

ancillary guardianship. See GUARDIANSHIP.

**ANCILLARY JURISDICTION**

ancillary jurisdiction. See JURISDICTION.

**ANCILLARY LEGISLATION**

ancillary legislation. See LEGISLATION.

**ANCILLARY LETTERS TESTAMENTARY**

ancillary letters testamentary. See LETTERS TESTAMENTARY.

**ANCILLARY PROCEEDING**

ancillary proceeding. See ancillary suit under SUIT.

**ANCILLARY PROCESS**

ancillary process. See ancillary suit under SUIT.

**ANCILLARY RECEIVER**

ancillary receiver. See RECEIVER.

**ANCILLARY RECEIVERSHIP**

ancillary receivership. See RECEIVERSHIP.

**ANCILLARY SUIT**

ancillary suit. See SUIT.

**ANCILLARY TO PRIORITY**

ancillary to priority. Patents. An issue that is so logically related to the issue of priority of invention that it cannot be separated from the issue of priority. • The question whether an issue is

ancillary to priority was once used to challenge the jurisdiction of the U.S. Patent and Trademark Office, but the Board of Patent Appeals and Interferences now has explicit jurisdiction over ancillary issues. [Cases: Patents 90(1). C.J.S. Patents §§ 120–122.]

#### ANCIPITIS USUS

ancipitis usus. See conditional contraband under CONTRABAND.

#### ANDERS<TT> BRIEF

Anders brief. Criminal procedure. A brief filed by a court-appointed defense attorney who wants to withdraw from the case on appeal based on a belief that the appeal is frivolous. • In an Anders brief, the attorney seeking to withdraw must identify anything in the record that might arguably support the appeal. The court then decides whether the appeal is frivolous and whether the attorney should be permitted to withdraw. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967). — Also termed no-merit brief. [Cases: Criminal Law 1077.3. C.J.S. Criminal Law §§ 1689–1694.]

“Anders requires an attorney to assume two somewhat contradictory roles when filing a no-merit brief. The first, and most important, role is that of an advocate. Anders makes clear that the first duty of appellate counsel is to study the record and to consult with the defendant to ascertain whether there is anything in the record to support an appeal. Counsel should not consider the case with a view toward finding no merit or of acting as a neutral party. Only if counsel can find no issue of even arguable merit does he change hats and become an *amicus curiae*.” Jonathan M. Purver & Lawrence E. Taylor, *Handling Criminal Appeals* § 138, at 285 (1980).

#### AND HIS HEIRS

and his heirs. See HEIR.

#### AND OTHER GOOD AND VALUABLE CONSIDERATION

and other good and valuable consideration. See other consideration under CONSIDERATION.

#### ANDROLEPSY

androlepsy (an-dr<<schwa>>-lep-see). [fr. Greek “seizure of men”] Hist. The taking by one nation of citizens or subjects of another nation either in reprisal or to enforce some claim (as to surrender or punish a fugitive). — Also termed androlepsia (an-dr<<schwa>>-lep-see-<<schwa>>).

#### ANECIUS

anecius (<<schwa>>-nee-shee-<<schwa>>s), n. [Law Latin] Hist. The eldest; the firstborn; the senior, as contrasted with *puisne* (“the younger”).

#### ANGARIA

angaria (ang-gair-ee-<<schwa>>). [Greek] 1. ANGARY. 2. Roman law. (ital.) A compulsory



service consisting in the transport of goods or persons for the imperial post; a public Pony Express rider. 3.Hist. A service exacted by a lord beyond what is due. Pl. *angariae*.

#### ANGARY

*angary* (ang-g<<schwa>>-ree).Int'l law.A country's right, in war or other urgent circumstances, to seize — for temporary use — neutral merchant ships in its inland or territorial waters as well as aircraft within its territory, with full indemnity by the country. — Also termed right of *angary*; *jus angariae*; *angaria*.

“In many respects the content and scope of the right of *angary* remain unclear and there is little evidence of State practice on several controversial questions. In practice, the right has been exercised mainly in wartime. Never-theless, several writers consider it to be applicable in times of peace and in cases of absolute necessity, such as the evacuation of the population in the event of a national emergency.” Rainer Lagoni, “*Angary, Right of,*” in 1 *Encyclopedia of Public International Law* (1992).

#### ANGLICÉ

*Anglicé* (ang-gl<<schwa>>-see), adv.[French] In English. • This term formerly appeared in pleadings to signal an English translation or restatement of a previous Latin word or phrase <panis, *Anglicé*, bread>.

#### ANGLO-AMERICAN COMMON LAW

Anglo-American common law.See *American common law* under *COMMON LAW*(2).

#### ANGLO-SAXON LAW

Anglo-Saxon law.The body of royal decrees and customary laws developed by the Germanic peoples who dominated England from the 5th century to 1066.

#### ANHLOTE

*anhote*,n. Hist. A single tribute or tax paid according to custom, such as *scot and lot*. See *SCOT AND LOT*.

#### ANIENTE

*aniente* (an-ee-<<schwa>>nt or an-ee-ent), adj.[Law French] (Of a law, etc.) having no force or effect; void. — Also spelled *anient*. — Also termed *aniens*.

#### ANIMAL

*animal*. Any living creature other than a human being. — Also termed *creature*.

*domestic animal*. 1. An animal that is customarily devoted to the service of humankind at the time and in the place where it is helped. See *DOMITAE NATURAE*; *MANSUETAE NATURAE*. 2. Any animal that is statutorily so designated.

*feral animal*.A domestic animal that has returned to a wild state. • Feral animals, unlike others

of their species, are usu. unsocialized to people.

vicious animal. 1. An animal that has shown itself to be dangerous to humans. 2. Loosely, one belonging to a breed or species that is known or reputed to be dangerous. • A vicious animal may be domestic, feral, or wild. See VICIOUS PROPENSITY.

wild animal. 1. An animal that, as a matter of common knowledge, is naturally untamable, unpredictable, dan-gerous, or mischievous. See FERAЕ NATURAE. 2. Any animal not statutorily designated as a domestic animal. — Also termed wild creature.

“Wild creatures, such as game, are part of the land and pass with it, though it cannot be said that they are within the ownership of any particular person. Wild creatures which have been tamed belong to the person who has tamed them, and animals too young to escape belong to the owner of the land on which they are, but in each case the owner has only a qualified property in them, for the moment they gain or regain their natural liberty the ownership is lost.” G.C. Cheshire, *Modern Law of Real Property* 118 (3d ed. 1933).

#### ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Animal and Plant Health Inspection Service. An agency in the U.S. Department of Agriculture responsible for controlling or eliminating pests and plant diseases by regulating the shipment of agricultural products within the United States. • Established in 1977, some of its functions were transferred to the U.S. Department of Homeland Security in 2003. — Abbr. APHIS.

#### ANIMAL LAW

animal law, n. The field of law dealing with vertebrates other than humans. • The field cuts across many traditional doctrinal areas (e.g., contracts, torts, administrative law) as well as jurisprudence. Topics include wild-life-management law, laws concerning treatment of laboratory animals, and laws relating to companion animals.

#### ANIMO

animo (an-<<schwa>>-moh). [Latin] See ANIMUS(2).

#### ANIMO ET CORPORE

animo et corpore (an-<<schwa>>-moh et kor-p<<schwa>>-ree), adv. [Latin] By the mind and by the body; by the intention and by the physical act of control < possession is acquired animo et corpore >.

#### ANIMO ET FACTO

animo et facto (an-<<schwa>>-moh et fak-toh). [Latin] Hist. By act and intention.

“Thus, for example, in acquiring a domicile, mere residence is not sufficient, if there be not the intention to acquire it, as domicile can only be acquired animo et facto.” John Trayner, *Trayner's Latin Maxims* 21 (4th ed. 1894).

#### ANIMO FELONICO

animus felonico (an-<<schwa>>-moh f<<schwa>>-lon-<<schwa>>-koh), adv.[Latin] With felonious intent; with the intention to commit a felony.

#### ANIMUS

animus (an-<<schwa>>-m<<schwa>>s). [Latin] 1. Ill will; animosity.

class-based animus. A prejudicial disposition toward a discernible, usu. constitutionally protected, group of persons. • A class-based animus is an essential element of a civil-rights conspiracy case. [Cases: Civil Rights 1033(1), 1137. C.J.S. Civil Rights §§ 18, 20, 23–24, 34, 39–40.]

2. Intention. • All the following Latin “animus” phrases have analogous adverbial forms beginning with “animus” (the definition merely needing “with” at the outset). For example, animus furandi means “with the intention to steal,” animus testandi means “with testamentary intention,” etc.

animus adimendi (an-<<schwa>>-m<<schwa>>s ad-i-men-dI). [Latin] The intention to adeem.

animus belligerendi (an-<<schwa>>-m<<schwa>>s b<<schwa>>-lij-<<schwa>>-ren-d I). [Latin] The intention to wage war.

animus cancellandi (an-<<schwa>>-m<<schwa>>s kan-s<<schwa>>-lan-dI). [Latin] The intention to cancel. • This phrase usu. refers to a will.

animus capiendi (an-<<schwa>>-m<<schwa>>s kap-ee-en-dI). [Latin] The intention to take or capture.

animus contrahentium (an-<<schwa>>-m<<schwa>>s kon-tr<<schwa>>-hen-shee-<<schwa>>m). [Latin] The intention of the contracting parties.

animus dedicandi (an-<<schwa>>-m<<schwa>>s ded-<<schwa>>-kan-dI). [Latin] The intention to donate or dedicate.

animus defamandi (an-<<schwa>>-m<<schwa>>s def-<<schwa>>-man-dI). [Latin] The intention to defame. [Cases: Libel and Slander 2. C.J.S. Libel and Slander; Injurious Falsehood § 43.]

animus derelinquendi (an-<<schwa>>-m<<schwa>>s dee-rel-ing-kwen-dI). [Latin] The intention to abandon.

animus deserendi (an-<<schwa>>-m<<schwa>>s des-<<schwa>>-ren-dI). [Latin] The intention to desert (usu. a spouse, child, etc.). [Cases: Divorce 37(3). C.J.S. Divorce § 52.]

animus differendi (an-<<schwa>>-m<<schwa>>s dif-<<schwa>>-ren-dI). [Latin] The intention to obtain a delay. • The phrase animus differendi (“with the intention to obtain a delay”) appeared in reference to a presumption that certain actions of a defendant were designed to obtain a delay.

animus domini (an-<<schwa>>-m<<schwa>>s dom-<<schwa>>-nI). [Latin] Roman law. The intent to exercise dominion over a thing; the intent to own something. Cf. animus possidendi.

“All possession has two elements, a physical and a mental, which the Romans distinguish as corpus and animus. The first is the physical relation of the possessor to the object. The second is his sense of that relation. If he is minded to deal with the thing as his own (animus domini — animus sibi habendi), no matter whether rightfully or wrongfully, he possesses in the fullest sense.” R.W. Lee, *The Elements of Roman Law* 179–80 (4th ed. 1956).

animus donandi (an-<<schwa>>-m<<schwa>>s doh-nan-dI). [Latin] The intention of donating; the intention to give. [Cases: Gifts 15.]

animus et factum (an-<<schwa>>-m<<schwa>>s et fak-t<<schwa>>m). [Latin “mind and deed”] The intention and the deed. • This phrase can refer to a person's intent to reside in a given country permanently or for an inde-finite period.

animus felonius (an-<<schwa>>-m<<schwa>>s fe-loh-ni-k<<schwa>>s). [Latin] The intention to commit a felony. [Cases: Criminal Law 20. C.J.S. Criminal Law §§ 31–33, 35–39; Negligence § 913.]

animus furandi (an-<<schwa>>-m<<schwa>>s fyuu-ran-dI). [Latin] The intention to steal. • In Roman law, the focus was on the unauthorized use of property rather than an intent to permanently deprive the owner of it. [Cases: Larceny 1, 3. C.J.S. Larceny §§ 1(1, 2), 9, 25–29.]

“[An] intent to deprive the owner of his property permanently, or an intent to deal with another's property un-lawfully in such a manner as to create an obviously unreasonable risk of permanent deprivation, [is] all that is required to constitute the animus furandi—or intent to steal.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 332–33 (3d ed. 1982).

animus gerendi (an-<<schwa>>-m<<schwa>>s j<<schwa>>-ren-dI). [Latin] The intention to act as heir.

animus immiscendi et adeundi hereditatem (an-<<schwa>>-m<<schwa>>s im-i-sen-d I et ad-ee-<<schwa>>-n-dI h<<schwa>>-red-i-tay-t<<schwa>>m). [Latin] The intention to meddle with and take up a succession.

animus indorsandi (an-<<schwa>>-m<<schwa>>s in-dor-san-dI). [Law Latin] Hist. The intention of indorsing. • One who indorsed a check animo indorsandi would be liable for the amount if the check was dishonored.

animus injuriandi (an-<<schwa>>-m<<schwa>>s in-joor-ee-an-dI). [Latin] The intention to injure, esp. to insult.

animus lucrandi (an-<<schwa>>-m<<schwa>>s loo-kran-dI). [Latin] The intention to make a gain or profit.

animus malus (an-<<schwa>>-m<<schwa>>s mal-<<schwa>>s). [Latin] Evil intent.

animus manendi (an-<<schwa>>-m<<schwa>>s m<<schwa>>-nen-dI). [Latin “will to

remain”] The intention to remain; the intention to establish a permanent residence. — Also termed *animus remandendi*. [Cases: Domicile 4(2). C.J.S. Domicile §§ 11–19, 25–27, 29–34, 37–40.]

*animus morandi* (an-⟨schwa⟩-m⟨schwa⟩s m⟨schwa⟩-ran-dI). [Latin “will to tarry”] The intention to remain. • Although *animus morandi* is broadly synonymous with *animus manendi*, *morandi* suggests less per-manency.

*animus nocendi* (an-⟨schwa⟩-m⟨schwa⟩s noh-sen-dI). [Latin] The intention to harm.

*animus obligandi* (an-⟨schwa⟩-m⟨schwa⟩s ahb-li-gan-dI). [Latin] The intention to enter into an obligation.

*animus occidendi* (an-⟨schwa⟩-m⟨schwa⟩s ahk-si-den-dI). [Latin] The intention to kill.

*animus possidendi* (an-⟨schwa⟩-m⟨schwa⟩s pah-s⟨schwa⟩-den-dI). [Latin] Roman law. The intent to possess a thing. Cf. *animus domini*.

*animus quo* (an-⟨schwa⟩-m⟨schwa⟩s kwoh). [Latin] The intent with which; motive.

*animus recipiendi* (an-⟨schwa⟩-m⟨schwa⟩s ri-sip-ee-en-dI). [Latin] The intention to receive.

*animus recuperandi* (an-⟨schwa⟩-m⟨schwa⟩s ri-k[y]oo-p⟨schwa⟩-ran-dI). [Latin] The intention to recover.

*animus remanendi* (an-⟨schwa⟩-m⟨schwa⟩s rem-⟨schwa⟩-nen-dI). [Latin] See *animus manendi*.

*animus republicandi* (an-⟨schwa⟩-m⟨schwa⟩s ree-pub-l⟨schwa⟩-kan-dI). [Latin] The intention to republish.

*animus restituendi* (an-⟨schwa⟩-m⟨schwa⟩s r⟨schwa⟩-sti-tyoo-en-dI). [Latin] The intention to restore.

*animus revertendi* (an-⟨schwa⟩-m⟨schwa⟩s ree-v⟨schwa⟩r-ten-dI). [Latin] The intention to return (to a place). • In Roman law, this intent was a factor in deciding whether animals, such as doves and bees, remained in a person's ownership.

*animus revocandi* (an-⟨schwa⟩-m⟨schwa⟩s rev-oh-kan-dI). [Latin] The intention to revoke (a will) <her destruction of the will indicated that she had *animus revocandi*>. [Cases: Wills 170. C.J.S. Wills §§ 390, 393, 413–414.]

*animus signandi* (an-⟨schwa⟩-m⟨schwa⟩s sig-nan-dI). [Latin] The intention to sign. [Cases: Wills 72. C.J.S. Wills §§ 169–170.]

*animus testandi* (an-⟨schwa⟩-m⟨schwa⟩s tes-tan-dI). [Latin] Testamentary intention.

*animus ulciscendi* (an-⟨schwa⟩-m⟨schwa⟩s ⟨schwa⟩l-si-sen-dI). [Latin] The intention to take revenge.

## ANNATES

annates (an-ayts oran-its), n.[fr. Law Latin annata] See FIRST FRUITS(2).

## ANNATS

annats (an-*<<schwa>>*ts). See FIRST FRUITS(2).

## ANNEX

annex,n. Something that is attached, such as a document to a report or an addition to a building.

## ANNEXATION

annexation,n.1. The act of attaching; the state of being attached. 2.Property. The point at which a fixture becomes a part of the realty to which it is attached. [Cases: Fixtures 6.] 3. A formal act by which a nation, state, or municipality incorporates land within its dominion. • In international law, the usual formalities of announcing annexation involve having specially commissioned officers hoist the national flag and read a proclamation. [Cases: Municipal Corporations 29. C.J.S. Municipal Corporations §§ 45–46, 54.] 4. The annexed land itself. Cf. ACCESSION (5). — annex,vb.

cherry-stem annexation. 1. Annexed land that resembles (on a map) a cherry because the annexed territory — the cherry — is not contiguous to the acquiring municipality, and the narrow corridor of annexed land leading to the targeted area resembles a stem. [Cases: Municipal Corporations 29(4). C.J.S. Municipal Corporations §§ 48–51.] 2. The process of annexing land with this configuration.

## ANNIVERSARY DATE

anniversary date.Insurance. The annually recurring date of the initial issuance of a policy. Cf. POLICY YEAR.

## ANN, JOUR, ET WAST

ann, jour, et wast (an, zhoor, ay wayst). [Law French] See YEAR, DAY, AND WASTE .

## ANNO ANTE CHRISTUM&lt;TT&gt;

anno ante Christum (an-oh an-tee kris-t*<<schwa>>*m), adv.[Latin] In the year before Christ. — Abbr. A.A.C.

## ANNO ANTE CHRISTUM NATUM&lt;TT&gt;

anno ante Christum natum (an-oh an-tee kris-t*<<schwa>>*m nay-t*<<schwa>>*m), adv.[Latin] In the year before the birth of Christ. — Abbr. A.A.C.N.

## ANNO DOMINI

Anno Domini (an-oh dom-*<<schwa>>*-nIor -nee). [Latin “in the year of the Lord”] Of the modern era. • This phrase denotes the method of calculating time from the birth of Christ <A.D.

1776>. — Abbr. A.D. — Also termed Year of Our Lord.

#### ANNONAE CIVILES

annona civiles (<<schwa>>-noh-nee s<<schwa>>-vI-leez), n.[Latin] Hist. Yearly rents issuing out of particular lands and payable to certain monasteries.

#### ANNO ORBIS CONDITI

anno orbis conditi (an-oh or-bis kon-di-tI), n.[Latin] The year of the creation of the world. — Abbr. AOC.

#### ANNO REGNI

Anno Regni (an-oh reg-nI). [Latin] In the year of the reign. • A.R.V.R. 22, for example, is an abbreviated reference to Anno Regni Victoriae Reginae vicesimo secundo (“in the twenty-second year of the reign of Queen Victoria”). — Abbr. A.R.

#### ANNOTATIO

annotatio (an-oh-tay-shee-oh). [Latin] RESCRIPT(3).

#### ANNOTATION

annotation (an-<<schwa>>-tay-sh<<schwa>>n), n.1. A brief summary of the facts and decision in a case, esp. one involving statutory interpretation. 2. A note that explains or criticizes a source of law, usu. a case. • Annotations appear, for example, in the United States Code Annotated (USCA). 3. A volume containing such explanatory or critical notes. 4.RESCRIPT(3). Cf. NOTE(2). — annotate (an-<<schwa>>-tayt), vb. — annotative (an-<<schwa>>-tay-tiv), adj. — annotator (an-<<schwa>>-tay-t<<schwa>>r), n.

“One of the most important classes of Search Books is those included in the category of Annotations. They are important and valuable, in that they often purport to give, in very condensed form, some indication of the law, deduced from the cases or statutes, as well as to point out where similar cases can be found.” William M. Lile et al., *Brief Making and the Use of Law Books* 84 (3d ed. 1914).

#### ANNOUNCE

announce, vb. To make publicly known; to proclaim formally <the judge announced her decision in open court>.

#### ANNOYANCE

annoyance. See NUISANCE(1).

#### ANNUAL ACCOUNT

annual account. See intermediate account under ACCOUNT.

#### ANNUAL CROPS

annual crops. See CROPS.

#### ANNUAL DEPRECIATION

annual depreciation. See DEPRECIATION.

#### ANNUAL EXCLUSION

annual exclusion. See EXCLUSION(1).

#### ANNUAL GIFT-TAX EXCLUSION

annual gift-tax exclusion. See annual exclusion under EXCLUSION.

#### ANNUAL MEETING

annual meeting. See MEETING.

#### ANNUAL MESSAGE

annual message. See MESSAGE.

#### ANNUAL PERCENTAGE RATE

annual percentage rate. See INTEREST RATE.

#### ANNUAL PERMIT

annual permit. A permit, required by some states, that must be paid each year by a corporation that does business in the state. • In some states, the permit fee is set according to the corporation's capitalization.

#### ANNUAL REPORT

annual report. A yearly corporate financial report for shareholders and other interested parties. • The Securities Exchange Act of 1934 requires registered corporations to file an annual report on the SEC's Form 10-K. An annual report includes a balance sheet, income statement, statement of changes in financial position, reconciliation of changes in owners' equity accounts, a summary of significant accounting principles, other explanatory notes, the auditor's report, and comments from management about prospects for the coming year. — Also termed annual statement; financial report.

#### ANNUAL VALUE

annual value. See VALUE(2).

#### ANNUA PENSIONE

annua pensione. See DE ANNUA PENSIONE.

#### ANNUITANT

annuitant (<<schwa>>-n[y]oo-<<schwa>>-t<<schwa>>nt), n. A beneficiary of an annuity. [Cases: Annuities 1. C.J.S. Annuities §§ 2-4, 6-9, 21.]



## ANNUITY

annuity (<<schwa>>-n[y]oo-<<schwa>>-tee). 1. An obligation to pay a stated sum, usu. monthly or annually, to a stated recipient. • These payments terminate upon the death of the designated beneficiary. [Cases: Annuities 1.C.J.S. Annuities §§ 2–4, 6–9, 21.] 2. A fixed sum of money payable periodically. 3. A right, often acquired under a life-insurance contract, to receive fixed payments periodically for a specified duration. Cf. PENSION. 4. Patents. See MAINTENANCE FEE. 5. A savings account with an insurance company or investment company, usu. established for retirement income. • Payments into the account accumulate tax-free, and the account is taxed only when the annuitant withdraws money in retirement.

annuity certain. An annuity payable over a specified period, regardless of whether the annuitant dies. — Also termed term annuity.

annuity due. An annuity that makes payments at the beginning of each pay period. Cf. ordinary annuity.

cash-refund annuity. An annuity providing for a lump-sum payment after the annuitant's death of the difference between the total received and the price paid.

constituted annuity. Louisiana law. An annuity that has a maximum duration of ten years and, under some circumstances, can be redeemed before the term's expiration. La. Civ. Code art. 2796.

contingent annuity. 1. An annuity that begins making payments when some future event occurs, such as the death of a person other than the annuitant. 2. An annuity that makes an uncertain number of payments, depending on the outcome of a future event.

continuing annuity. See survivorship annuity.

deferred annuity. An annuity that begins making payments on a specified date if the annuitant is alive at that time. — Also termed deferred-payment annuity. Cf. immediate annuity.

fixed annuity. An annuity that guarantees fixed payments, either for life or for a specified period.

group annuity. An annuity payable to members of a group, esp. employees, who are covered by a single annuity contract, such as a group pension plan.

immediate annuity. An annuity paid for with a single premium and that begins to pay benefits within the first payment interval. Cf. deferred annuity.

joint annuity. An annuity payable to two annuitants until one of them dies, at which time the annuity terminates for the survivor (unless the annuity also provides for survivorship rights). See survivorship annuity.

life annuity. An annuity payable only during the annuitant's lifetime, even if the annuitant dies prematurely.

life-income period-certain annuity. An annuity that pays a specified number of payments even if the annuitant dies before the minimum amount has been paid.

nonrefund annuity. An annuity with guaranteed payments during the annuitant's life, but with no refund to anyone at death. — Also termed straight life annuity; pure annuity.

ordinary annuity. An annuity that makes payments at the end of each pay period. Cf. annuity due.

private annuity. An annuity from a private source rather than from a public or life-insurance company.

pure annuity. See nonrefund annuity.

refund annuity. An annuity that, upon the annuitant's death, pays to the annuitant's estate the difference between the purchase price and the total payments received during the annuitant's lifetime.

retirement annuity. An annuity that begins making payments only after the annuitant's retirement. • If the annuitant dies before retirement, an agreed amount will usu. be refunded to the annuitant's estate.

single-premium deferred annuity. An annuity for which a party pays a lump-sum premium in exchange for receiving a specified sum at a future date. • The income earned on the investment is tax-free until it is withdrawn. — Abbr. SPDA.

straight annuity. An annuity that makes payments in fixed amounts at periodic intervals. Cf. variable annuity.

straight life annuity. See nonrefund annuity.

survivorship annuity. An annuity providing for continued payments to a survivor, usu. a spouse, after the original annuitant dies. — Also termed continuing annuity.

tax-deferred annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

tax-sheltered annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

term annuity. See annuity certain.

variable annuity. An annuity that makes payments in varying amounts depending on the success of investment strategy. See variable annuity contract under CONTRACT. Cf. straight annuity.

#### ANNUITY BOND

annuity bond. See BOND(3).

#### ANNUITY DEPRECIATION METHOD

annuity depreciation method. See DEPRECIATION METHOD.

#### ANNUITY INSURANCE

annuity insurance. See INSURANCE.

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 ANNUITY POLICY

annuity policy. An insurance policy providing for monthly or periodic payments to the insured to begin at a fixed date and continue through the insured's life.

## ANNUITY TRUST

annuity trust. See TRUST.

## ANNULMENT

annulment (<<schwa>>-n<<schwa>>l-m<<schwa>>nt), n. 1. The act of nullifying or making void; VOIDANCE. 2. A judicial or ecclesiastical declaration that a marriage is void. • An annulment establishes that the marital status never existed. So annulment and dissolution of marriage (or divorce) are fundamentally different: an annulment renders a marriage void from the beginning, while dissolution of marriage terminates the marriage as of the date of the judgment of dissolution. Although a marriage terminated by annulment is considered never to have occurred, in most states today a child born during the marriage is not considered illegitimate after the annulment. Cf. DI-VORCE. [Cases: Marriage 56. C.J.S. Marriage § 63.] 3. A rescission. See RESCIND(3). — annul (<<schwa>>-n<<schwa>>l), vb.

## ANNULMENT OF ADOPTION

annulment of adoption. See ABROGATION OF ADOPTION.

## ANNULMENT OF JUDGMENT

annulment of judgment. A retroactive obliteration of a judicial decision, having the effect of restoring the parties to their pretrial positions. • Types of annulment include reversal and vacation. See REVERSE; VACATE(1).

## ANNUM LUCTUS

annum luctus (an-<<schwa>>m l<<schwa>>k-t<<schwa>>s), n. [Latin “year of mourning”] Roman law. The year following the death of a married man during which his widow could not remarry, because of the confusion that would ensue in determining the parentage of a child born a few months after a second marriage within that year. — Also sometimes termed year in mourning.

## ANNUS

annus (an-<<schwa>>s). [Latin] A year.

## ANNUS CONTINUUS

annus continuus (an-<<schwa>>s k<<schwa>>n-tin-yoo-<<schwa>>s). [Latin “a continuous year”] Roman law. A straight 365-day period, without interruption. Cf. ANNUS UTILIS.

## ANNUS DELIBERANDI

annus deliberandi (an-<<schwa>>s d<<schwa>>-lib-<<schwa>>-ran-di). [Latin “the year for deliberating”] Scots law. The year during which an heir could determine whether to enter an

inheritance and represent an ancestor. The period was later shortened to six months. See DAMNOSA AUT LUCROSA.

“The entry of an heir infers serious responsibilities, and therefore the year is allowed for consideration. The annus deliberandi commences on the death of the ancestor, unless in the case of a posthumous heir, in which case the year runs from the heir's birth.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 47 (George Watson ed., 7th ed. 1890).

#### ANNUS, DIES, ET VASTUM

annus, dies, et vastum (an-⟨⟨schwa⟩⟩s, dI-eez, et vas-t⟨⟨schwa⟩⟩m). [Law Latin] See YEAR, DAY, AND WASTE.

#### ANNUS ET DIES

annus et dies (an-⟨⟨schwa⟩⟩s et dI-eez). [Law Latin] A year and a day. See YEAR-AND-A-DAY RULE.

#### ANNUS UTILIS

annus utilis (an-⟨⟨schwa⟩⟩s yoo-t⟨⟨schwa⟩⟩-lis). [Latin “a year that can be used”] Roman law. A 365-day period during which legal rights could be exercised, not including days when the courts were closed or when a person could not otherwise pursue those rights; a year made up of the available days for conducting legal business. Cf. ANNUS CONTINUUS.

#### ANNUUS REDITUS

annuus reditus (an-⟨⟨schwa⟩⟩s red-⟨⟨schwa⟩⟩-t⟨⟨schwa⟩⟩s). [Law Latin] A yearly rent.

#### ANOMALOUS INDORSEMENT

anomalous indorsement. See irregular indorsement under INDORSEMENT.

#### ANOMALOUS JURISDICTION

anomalous jurisdiction. See JURISDICTION.

#### ANOMALOUS-JURISDICTION RULE

anomalous-jurisdiction rule (⟨⟨schwa⟩⟩-nom-⟨⟨schwa⟩⟩-l⟨⟨schwa⟩⟩s). The principle that a court of appeals has provisional jurisdiction to review the denial of a motion to intervene in a case, and if the court of appeals finds that the denial was correct, then its jurisdiction disappears — and it must dismiss the appeal for want of jurisdiction — because an order denying a motion to intervene is not a final, appealable order. • This rule has been criticized by courts and commentators. Many appellate courts, upon finding that the trial court properly denied a motion to intervene, will affirm the denial instead of dismissing the appeal for want of jurisdiction. — Sometimes shortened to anomalous rule. [Cases: Appeal and Error 329, 782; Federal Courts 555, 587. C.J.S. Appeal and Error §§ 32, 241–242.]

#### ANOMALOUS PLEA

anomalous plea. See PLEA(3).

#### ANOMALOUS PLEADING

anomalous pleading. See PLEADING(1).

#### ANOMALOUS RULE

anomalous rule. See ANOMALOUS-JURISDICTION RULE.

#### A NON DOMINO

a non domino (ay non dom-*<<schwa>>-noh*). [Law Latin] Hist. From one who is not the proprietor.

#### A NON HABENTE POTESTATEM

a non habente potestatem (ay non ha-ben-tee poh-tes-tay-t*<<schwa>>m*). [Latin] Scots law. From one not having power. • This phrase appeared most commonly in a conveyance in reference to a seller who was not the owner.

“If A. disposed ground, which he held on a personal title, to B., he could not grant warrant for the infeftment of B., himself being uninfeft; but he could assign to B. the unexecuted precept of sasine in his (A.'s) own favour, and on it B. could complete his feudal title. If, instead of thus assigning a valid precept, A. himself granted a precept for the infeftment of B., such a precept was a non habente potestatem, and ineffectual. This was a defect, however, which was remedied by prescription.” John Trayner, *Trayner's Latin Maxims* 5 (4th ed. 1894).

#### ANONYMOUS

anonymous, adj. Not named or identified *<the police arrested the defendant after a tip from an anonymous informant>*. — anonymity (an-*<<schwa>>-nim-*<<schwa>>-tee**), n.

#### ANONYMOUS CASE

anonymous case. A reported case in which the word “anonymous” is substituted for at least one party's name to conceal the party's identity. See, e.g., *Anonymous v. Anonymous*, 735 N.Y.S.2d 26 (App. Div. 2001).

#### ANONYMOUS WORK

anonymous work. See WORK(2).

#### ANOYSANCE

anoysance (*<<schwa>>-noy-z<<schwa>>nts*), n. [Law French] Hist. An annoyance or nuisance. See NUISANCE.

#### ANSI

ANSI. abbr. AMERICAN NATIONAL STANDARDS INSTITUTE.

#### ANSWER

answer,n.1. A defendant's first pleading that addresses the merits of the case, usu. by denying the plaintiff's allegations. • An answer usu. sets forth the defendant's defenses and counterclaims. [Cases: Pleading 76–87. C.J.S. Pleading §§ 159–162, 164, 168–173.]

false answer.A sham answer in a pleading. See sham pleading under PLEADING (1). [Cases: Pleading 359. C.J.S. Pleading §§ 653–654.]

2. A person's, esp. a witness's, response to a question posed.

evasive answer.A response that neither directly admits nor denies a question. • In discovery, this is considered a failure to answer. Fed. R. Civ. P. 37(a)(3).

unresponsive answer.Evidence. A response from a witness (usu. at a deposition or hearing) that is irrelevant to the question asked. — Also termed nonresponsive answer. [Cases: Witnesses 248. C.J.S. Witnesses § 430.]

3.Patents. A patent applicant's response to an office action.

answer,vb.1. To respond to a question, a pleading, or a discovery request < the company failed to answer the interrogatories within 30 days>. [Cases: Pleading 76–100; Pretrial Procedure 301–306. C.J.S. Discovery §§ 63–70; Pleading §§ 159–162, 164, 166, 168–178, 202, 764, 769.] 2. To assume the liability of another <a guarantor answers for another person's debt>.3. To pay (a debt or other liability) <she promised to answer damages out of her own estate>.

#### ANSWER DATE

answer date.See answer day under DAY.

#### ANSWER DAY

answer day.See DAY.

#### ANSWER IN SUBSIDIUM

answer in subsidium.Hist. In equity pleading, an answer supporting a plea.

#### ANTAPOCHA

antapocha (ant-ap-<<schwa>>-k<<schwa>>). [Latin “counter-receipt”] Roman & civil law. A counterpart to a receipt (i.e., an apocha), signed by the debtor and delivered to the creditor as proof of payment. Cf. APOCHA.

#### ANTE<TT>

ante (an-tee), prep. [Latin] Before. Cf. POST.

#### ANTEA

antea (an-tee-<<schwa>>), adv.[Latin] Formerly; heretofore.

#### ANTECEDENT

antecedent (an-t<<schwa>>-seed-<<schwa>>nt), adj. Earlier; preexisting; previous. —

antecedent (preceding thing), n. — antecedenence (quality or fact of going before), n.

#### ANTECEDENT BASIS

antecedent basis. Patents. A general word or phrase in a patent claim or description to which a later specific word or phrase must refer. • Claims will be rejected as impermissibly vague or indefinite if the latter word is not clearly connected to its antecedent because the wording becomes ambiguous. In general, a term is first introduced with an indefinite article and is later referred to with the definite article (or said). [Cases: Patents 101(6).]

#### ANTECEDENT CLAIM

antecedent claim. A preexisting claim. • Under the UCC, a holder takes an instrument for value if it is taken for an antecedent claim. UCC § 3-303(a)(3).

#### ANTECEDENT DEBT

antecedent debt. See DEBT.

#### ANTECESSOR

antecessor (an-t<<schwa>>-ses-<<schwa>>r oran-t<<schwa>>-ses-<<schwa>>r), n. [Latin]  
1. Roman law. A professor of law. 2. Hist. An ancestor. 3. Hist. A predecessor to an office.

#### ANTEDATE

antedate (an-ti-dayt), vb. 1. To affix with a date earlier than the true date; BACKDATE(1) <antedate a check>. 2. To precede in time <the doctrine antedates the Smith case by many years>. — Also termed predate. Cf. POSTDATE. — antedate, n.

#### ANTEDATING OF A PRIOR-ART REFERENCE

antedating of a prior-art reference. Patents. The removal of a publication, a U.S. patent, or a foreign patent cited as prior art against the application by filing an affidavit or declaration establishing the applicant's completion of the invention in this country, or in another NAFTA or WTO member country, before the effective date of the cited reference. • The term applies only to U.S. patent applications. An issued patent may also antedate a prior-art reference if the conception predates the prior art and the inventor used due diligence in reducing the concept to practice. — Also termed antedating a reference; swearing behind a prior-art reference; carrying back the date of invention. [Cases: Patents 62(1).]

#### ANTE EXHIBITIONEM BILLAE<TT>

ante exhibitionem billae (an-tee ek-si-bish-ee-oh-n<<schwa>>m bil-ee). Before the exhibition of the bill; i.e., before a suit has begun.

#### ANTE<TT> FACTUM

ante factum. A thing done before; a previous act or fact. — Also spelled ante-factum.

#### ANTE LITEM MOTAM<TT>

ante litem motam (an-tee II-tem moh-t<<schwa>>m). [Law Latin “before the lawsuit was started”] Hist. Before an action has been raised; before a legal dispute arose — i.e., at a time when the declarant had no motive to lie. • This phrase was generally used in reference to the evidentiary requirement that the acts upon which an action is based occur before the action is brought. In Scotland, the phrase also referred to the obligation of an estate intromitter to become confirmed as executor of the estate before a creditor could sue the estate. Otherwise, the intromitter could be held personally liable for the decedent's debts. — Sometimes shortened to ante litem.

ANTE MERIDIEM<TT>

ante meridiem (an-tee m<<schwa>>-rid-ee-<<schwa>>m). [Latin] Before noon. — Abbr. a.m.; A.M.

ANTE<TT> MORTEM

ante mortem. [Latin] Before death.

ANTE<TT> MORTEM INTEREST

ante mortem interest (an-tee mor-t<<schwa>>m). [Latin] An interest existing before (but not after) a transferor's death.

ANTE<TT> MORTEM STATEMENT

ante mortem statement. See dying declaration under DECLARATION(6).

ANTENATUS

antenatus (an-tee-nay-t<<schwa>>s). [Law Latin] A person born before a certain political event that affected the person's political rights; esp., a person born before the signing of the Declaration of Independence. Cf. POST-NATUS. Pl. antenati.

ANTENUPTIAL

antenuptial (an-ti-n<<schwa>>p-sh<<schwa>>l), adj. See PRENUPTIAL.

ANTENUPTIAL AGREEMENT

ANTENUPTIAL CONTRACT

antenuptial contract. See PRENUPTIAL AGREEMENT.

ANTENUPTIAL GIFT

antenuptial gift. See prenuptial gift under GIFT.

ANTENUPTIAL WILL

antenuptial will. See prenuptial will under WILL.

ANTE OMNIA<TT>

ante omnia (an-tee ahm-nee-<<schwa>>). [Latin] Hist. 1. Before anything else is done; first



of all. • Objections that could bar the litigation were usu. discussed ante omnia. 2. Above all other things.

#### ANTE REDDITAS RATIONES

ante redditas rationes (an-tee red-<<schwa>>-tas ray-shee-oh-nis or rash-ee). [Law Latin] Scots law. Before accounts are rendered. • A tutor could not file an action against a minor to recover payments unless the tutor first provided an accounting of the ward's estate.

#### ANTHROPOMETRY

anthropometry (an-thr<<schwa>>-pom-<<schwa>>-tree). A system of measuring the human body, esp. the size relationships among the different parts. • Before the advent of fingerprinting, minute measurements of the human body — taken and compared to other persons' measurements — were used to identify criminals and deceased persons. Cf. BERTILLON SYSTEM. — anthropometric,adj.

#### ANTI-ASSIGNMENT ACT

Anti-Assignment Act.A federal statute prohibiting the assignment or transfer of claims against the United States. 31 USCA § 3727.

#### ANTI-ASSIGNMENT-IN-GROSS RULE

anti-assignment-in-gross rule.Trademarks. The doctrine that an assignment of a mark without the goodwill symbolized by the mark is invalid. • Although trademark rights are not destroyed when a mark is assigned in gross, the failure of the assignor to continue to use the mark, coupled with an ineffective transfer, may result in abandonment. — See assignment in gross under ASSIGNMENT. [Cases: Trade Regulation 101.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 205.]

#### ANTIBOOTLEG

antibootleg,adj. Copyright. Of or pertaining to an effort to combat or discourage illegal recording, distribution, and sale of unauthorized reproductions of live and broadcast performances. • The federal antibootleg statute, 18 USCA § 2319A, and the antibootleg statutes of several states criminalize bootlegging activities. — antibootleg-ging,n. See ANTIBOOTLEG STATUTE .

#### ANTIBOOTLEG STATUTE

antibootleg statute.Copyright. A law, esp. a state law, that prohibits making, distributing, or selling an unauthorized recording of a live performance.

#### ANTICHRESIS

antichresis (an-ti-kree-sis). [Latin “in place of interest”] Roman & civil law. A mortgage in which the mortgagee retains possession of the mortgaged property and takes the fruits (such as rents) of the property in lieu of interest on the debt. La. Civ. Code art. 3176. [Cases: Mortgages 1. C.J.S. Mortgages §§ 2–6.]

“Under the Civil Code of Louisiana, taken from the Code Napoleon, there are two kinds of pledges: the pawn, when a movable is given as security, and the antichresis, when the security given consists in immovables or real estate. Under the latter the creditor acquires the right to take the rents and profits of the land, and to credit, annually, the same to the interest, and the surplus to the principal of the debt, and is bound to keep the estate in repair, and to pay the taxes. Upon default upon the part of the debtor, the creditor may prosecute the debtor, and obtain a decree for selling the land pledged.” 3 James Kent, *Commentaries on American Law* \*403–04 (George Comstock ed., 11th ed. 1866).

#### ANTICHURNING RULE

antichurning rule.Tax. A statutory or regulatory provision that denies certain tax advantages, esp. accelerated depreciation and amortization schedules, to taxpayers who acquire property in a transaction that does not result in a significant change in the property's ownership or use. See *CHURNING*(2).

#### ANTICIPATED

anticipated,adj. Patents. (Of a patent claim) having all the same elements of a prior-art reference. • If a claim is anticipated by a previous invention or publication, that claim is not allowable; if a patent has already been issued, it will be declared invalid. — Also termed fully met.

#### ANTICIPATED COMPROMIS

anticipated compromis.See general compromis under *COMPROMIS*.

#### ANTICIPATION

anticipation. 1. The distribution or receipt of trust income before it is due. 2.Patents. The prior invention or disclosure of the claimed invention by another, or the inventor's own disclosure of the claimed invention by publication, sale, or offer to sell if that disclosure predates the date of the patent-application filing by more than one year. • By disproving the claim's novelty, anticipation bars the allowance of a claim and provides a defense to an action for infringement based on that claim. See *NOVELTY*(2). [Cases: Patents 50.1. C.J.S. Patents §§ 37, 40.] — anticipate,vb.

“Anticipation implies spoiling something for someone, by getting in ahead; obviously this can only be done by a device (or description of a device), and only to a patent.” Roger Sherman Hoar, *Patent Tactics and the Law* 51 (3d ed. 1950).

#### ANTICIPATORY BREACH

anticipatory breach.See *BREACH OF CONTRACT*.

#### ANTICIPATORY FILING

anticipatory filing.The bringing of a lawsuit or regulatory action against another with the expectation that the other party is preparing an action of its own. • If properly brought, an anticipatory filing may determine procedural matters such as jurisdiction and venue. See

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**FIRST-TO-FILE RULE; RACE TO THE COURTHOUSE.****ANTICIPATORY NUISANCE**

anticipatory nuisance. See NUISANCE.

**ANTICIPATORY OFFENSE**

anticipatory offense. See inchoate offense under OFFENSE(1).

**ANTICIPATORY REPLICATION**

anticipatory replication. See REPLICATION.

**ANTICIPATORY REPUDIATION**

anticipatory repudiation. See REPUDIATION.

**ANTICIPATORY SEARCH WARRANT**

anticipatory search warrant. See SEARCH WARRANT.

**ANTIRCUMVENTION DEVICE**

anticircumvention device. Copyright. An apparatus designed to prevent bypassing, avoiding, removing, deactivating, or impairing a technological measure that controls access to a work protected by copyright; an apparatus in a media player or receiver, such as a DVD player or a TV satellite dish, designed to prevent unauthorized use or duplication of copyrighted material.

**ANTICOMPETITIVE CONDUCT**

anticompetitive conduct. Antitrust. An act that harms or seeks to harm the market or the process of competition among businesses, and that has no legitimate business purpose.

**ANTICONTEST CLAUSE**

anticontest clause. See NO-CONTEST CLAUSE.

**ANTICOUNTERFEITING CONSUMER PROTECTION ACT**

Anticounterfeiting Consumer Protection Act. Copyright & trademarks. A federal law to discourage counterfeiting of trademarks and copyrighted merchandise such as computer programs, phonorecords, and motion pictures. • The law imposes criminal liability for trafficking in counterfeit goods and services (18 USCA § 2318), provides for the seizure of counterfeit goods (15 USCA § 1116(d)(9)), and provides enhanced statutory civil penalties (15 USCA § 1117(c)). — Abbr. ACPA.

**ANTICYBERSQUATTING CONSUMER PROTECTION ACT**

Anticybersquatting Consumer Protection Act. Trademarks. A 1999 federal law authorizing a trademark owner to obtain a federal-court order transferring ownership of a domain name from a cybersquatter to the trademark owner. • A mark's owner must show that (1) the mark and the domain name are identical or confusingly similar; (2) the mark was distinctive when the domain

name was first registered; (3) the trademark's owner used the mark commercially before the domain name was registered; and (4) the domain registrant acted in bad faith and intended to profit from the trademark's use. Registering a domain name with the intent to sell it to the trademark owner is presumptively an act of bad faith. But if a defendant can prove a legitimate reason for the domain-name registration, the defendant may be allowed to keep the name. — Abbr. ACPA. — Also termed Trademark Cy-berpiracy Prevention Act. [Cases: Trade Regulation 628. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 298.]

#### ANTIDEFICIENCY LEGISLATION

antideficiency legislation. See LEGISLATION.

#### ANTIDEFICIENCY STATUTE

antideficiency statute. See antideficiency legislation under LEGISLATION.

#### ANTIDESTRUCTIBILITY STATUTE

antidestructibility statute. See DESTRUCTIBILITY OF CONTINGENT REMAINDERS.

#### ANTIDESTRUCION CLAUSE

antidestruction clause. A provision in a security protecting a shareholder's conversion rights, in the event of a merger, by granting the shareholder a right to convert the securities into the securities that will replace the company's stock when the merger is complete. See convertible security under SECURITY.

#### ANTIDILUTION ACT

antidilution act. Trademarks. A statute prohibiting actions that are likely to lessen, diminish, or erode a famous mark's capacity to identify and distinguish goods and services, without regard to whether the action creates a likelihood of confusion, mistake, or deception. • The Federal Trademark Dilution Act provides relief against another's commercial use of a mark or tradename that dilutes the distinctive quality of a famous mark. More than half the states also have antidilution statutes, which are based on the International Trademark Association's 1964 Model State Trademark Bill. — Also termed antidilution statute. [Cases: Trade Regulation 366. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 79.]

#### ANTIDILUTION PROVISION

antidilution provision. A convertible-security provision that safeguards the conversion privilege from share splits, share dividends, or other transactions that might affect the conversion ratio. See CONVERSION RATIO; DILUTION(2). [Cases: Corporations 66, 116. C.J.S. Corporations §§ 177–179, 233–240, 242.]

#### ANTIDISSECTION RULE

antidissection rule. Trademarks. A rule, applied in comparing potentially conflicting marks, that requires that the marks be compared as a whole or as they are viewed by consumers in the marketplace, not broken down into their component parts. • The antidissection rule does not

preclude an analysis of the dominant and subordinate features of a mark to determine which features make the most significant impression on consumers, but the mark must still be considered in its entirety. See TOUT ENSEMBLE. [Cases: Trade Regulation 346.]

#### ANTIDUMPING LAW

antidumping law. A statute designed to protect domestic companies by preventing the sale of foreign goods at less than fair value, as defined in the statute (for example, at a price below that of the domestic market). See DUMPING. [Cases: Customs Duties 21.5. C.J.S. Customs Duties §§ 135–152.]

#### ANTIDUMPING TARIFF

antidumping tariff. See TARIFF(2).

#### ANTI-EVOLUTION STATUTE

anti-evolution statute. Hist. A law that forbids the teaching of the theory of evolution in schools. • Such statutes were held unconstitutional as violative of the Establishment Clause in *Epperson v. Arkansas*, 393 U.S. 97, 89 S.Ct. 266 (1968). — Also termed evolution statute. See CREATIONISM.

#### ANTIFRAUD RULE

antifraud rule. See RULE10b-5.

#### ANTIGRAPH

antigraph (an-ti-graf). Archaic. A copy or counterpart of an instrument.

#### ANTIGRAPHUS

antigraphus (an-tig-r<<schwa>>-f<<schwa>>s), n. [Law Latin] Hist. An officer who maintains tax revenues; a comptroller.

#### ANTIHAZING STATUTE

antihazing statute. A (usu. criminal) law that prohibits an organization or members of an organization from requiring a prospective member, as a condition of membership, to do or submit to any act that presents a substantial risk of physical or mental harm. • In 1874 Congress passed the first antihazing statute, directed at stopping hazing by midshipmen at the United States Naval Academy. Most states have passed their own antihazing statutes. — Also termed hazing statute.

#### ANTI-HEARTBALM STATUTE

anti-heartbalm statute. See HEARTBALM STATUTE.

#### ANTI-INJUNCTION ACT

Anti-Injunction Act. A federal statute providing that a federal court may not enjoin state-court proceedings unless an injunction is (1) expressly authorized by Congress, (2) necessary for the federal court's in rem jurisdiction, or (3) necessary to prevent relitigation of a judgment rendered

by the federal court. 28 USCA § 2283. See NORRIS–LA GUARDIA ACT. [Cases: Courts 508. C.J.S. Courts §§ 216, 218–219.]

#### ANTI-JOHN LAW

anti-john law. A criminal-law statute punishing prostitutes' customers. [Cases: Prostitution 1. C.J.S. Prostitution and Related Offenses §§ 2–4, 8–13, 17, 21–24.]

#### ANTILAPSE STATUTE

antilapse statute. Wills & estates. A statute that substitutes certain heirs of some types of testamentary beneficiaries when the beneficiary has predeceased the testator and permits them to take the gift, which would otherwise fail and thus pass to the residuary beneficiary (if any) or to the intestate heirs. • Under the common law and the laws of all states, a testamentary beneficiary must survive a testator or else the gift is said to lapse. Although most states have enacted antilapse statutes, their terms vary from state to state. — Also termed lapse statute; nonlapse statute. [Cases: Wills 774–777. C.J.S. Wills §§ 1791–1808.]

#### ANTIMANIFESTO

antimanifesto. Int'l law. A proclamation in which a belligerent power asserts that the war is a defensive one for that power.

#### ANTIMARITAL-FACTS PRIVILEGE

antimarital-facts privilege. See marital privilege (2) under PRIVILEGE(3).

#### ANTINOMIA

antinomia (an-ti-noh-mee-⟨schwa⟩). [Greek] Roman law. An ambiguity in the law. See ANTINOMY.

#### ANTINOMY

antinomy (an-tin-⟨schwa⟩-mee), n. A contradiction in law or logic; esp., a conflict of authority, as between two decisions <antinomies in the caselaw>. — antinomic (an-ti-nom-ik), adj.

#### ANTIPIRACY

antipiracy, adj. Copyright & trademarks. Of or pertaining to an effort to combat or discourage illegal reproduction, distribution, or use of copyrighted or trademarked products <an antipiracy group>.

#### ANTIQUA CUSTUMA

antiqua custuma (an-ti-kw-⟨schwa⟩ k-⟨schwa⟩s-t[y]oo-m-⟨schwa⟩). [Law Latin “ancient customs”] Hist. A tax on wool, woolfells, and leather, under St. 3 Edw. • The distinction between antiqua custuma and nova custuma arose when the king imposed new taxes on the same articles in the 22nd year of his reign. Cf. NOVA CUSTUMA.

## ANTIQUA ET NOVA

antiqua et nova (an-tī-kw<<schwa>> et noh-v<<schwa>>). [Latin] Hist. Old and new (rights).

“Antiqua et nova .... The technical terms in our law equivalent to these Latin terms are, heritage and conquest; heritage (antiqua) being that estate to which any one succeeds as heir; conquest (nova) that which he succeeds to or acquires by purchase, gift, or any singular title. The distinction between heritage and conquest is now abolished, 37 & 38 Vict. cap. 94, § 37.” John Trayner, Trayner's Latin Maxims 50 (4th ed. 1894).

## ANTIQUARE

antiquare (an-ti-kwair-ee), vb.[Latin] Roman law. 1. To reject a proposal for a new law. • Those who voted against a proposed law wrote on their ballots the letter “A” for antiquo (“I am for the old law”).2. To repeal a law.

## ANTIQUA STATUTA

antiqua statuta (an-tī-kw<<schwa>> st<<schwa>>-t[y]oo-t<<schwa>>). See VETERA STATUTA .

## ANTIQUUM DOMINICUM

antiquum dominicum (an-tī-kw<<schwa>>m d<<schwa>>-min-i-k<<schwa>>m). [Law Latin] Ancient demesne. See DEMESNE.

## ANTIQUUS ET NOVUS EXTENTUS

antiquus et novus extentus (an-tī-kw<<schwa>>s et noh-v<<schwa>>s ek-sten-t<<schwa>>s). [Law Latin] Scots law. Old and new extent. • The phrase appeared in reference to the valuation of land for tax purposes, with old valuations assessed in the year 1280, and new valuations assessed several times after that date. Cf. QUANTUM NUNC VALENT; QUANTUM VALUERUNT TEMPORE PACIS.

## ANTISHELVING CLAUSE

antishelving clause.Patents. A provision in a patent-licensing contract, usu. one in which payment is based on royalties, requiring the licensee to put the patented article into commercial use within a specified time and to notify the patentee if the licensee decides to stop selling or manufacturing it. • The licensee generally agrees to commercially exploit the patent or else risk losing the license or exclusivity. Antishelving clauses are also used in trademark licenses. — Also termed antishelving provision; shelving clause; shelving provision. [Cases: Patents 211(1). C.J.S. Patents § 348.]

## ANTISOCIAL PERSONALITY DISORDER

antisocial personality disorder.See PSYCHOPATH.

## ANTISPAMMING LAW

antispamming law. A statute enacted to combat or criminalize the sending of unsolicited commercial e-mail. • Many states have such a law. See SPAM.

#### ANTISUBROGATION RULE

antissubrogation rule (an-tee-s<<schwa>>b-roh-gay-sh<<schwa>>n). Insurance. The principle that an insurance carrier has no right of subrogation — that is, no right to assert a claim on behalf of the insured or for payments made under the policy — against its own insured for the risk covered by the policy. See SUBROGATION. [Cases: Insurance 3510. C.J.S. Insurance §§ 1465–1466, 1489.]

#### ANTITAKEOVER STATUTE

antitakeover statute. A state law designed to protect companies based in the state from hostile takeovers.

#### ANTITHETARIUS

antithetarius (an-tith-<<schwa>>-tair-ee-<<schwa>>s). [Law Latin] Hist. An accused person who asserts that his or her accuser is guilty of the crime. Cf. APPROVER(1).

#### ANTITRUST CIVIL PROCESS ACT

Antitrust Civil Process Act. A federal law prescribing the procedures for an antitrust action by way of a petition in U.S. district court. 15 USCA §§ 1311 et seq.

#### ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY

Antitrust Guidelines for the Licensing of Intellectual Property. A set of criteria, jointly issued by the Antitrust Division of the U.S. Justice Department and the FTC, that those agencies apply in deciding whether to initiate an investigation or enforcement action as a result of restrictions in patent, copyright, trade-secret, and know-how licenses. 4 Trade Reg. Rep. (CCH) ¶ 13,132 (Apr. 6, 1995).

#### ANTITRUST LAW

antitrust law. 1. The body of law designed to protect trade and commerce from restraints, monopolies, price-fixing, and price discrimination. • The principal federal antitrust laws are the Sherman Act (15 USCA §§ 1–7) and the Clayton Act (15 USCA §§ 12–27).

“As legislative history and case law both disclose, the general objective of the antitrust laws is the maintenance of competition. Competition per se thus becomes a goal of the legal order. Yet, competition is not a concept which defines itself; notions about the desirability of competition may shape judgments about how the law should apply, at least at its indistinct edges.” Lawrence A. Sullivan, *Handbook of the Law of Antitrust* § 5, at 20 (1977).

#### 2. (cap.) SHERMAN ANTITRUST ACT.

#### ANTLIKE PERSISTENCY

antlike persistency. Patents. Slang. The steady tenacity of a patent solicitor who tries to wear



down the U.S. Patent and Trademark Office by prosecuting patent claims until the PTO eventually relents. • Judge Learned Hand coined this pejorative expression in *Lyon v. Boh*, 1 F.2d 48, 49–50 (S.D.N.Y. 1924).

## AO

AO.abbr.ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

## AOC

AOC.abbr.1.ANNO ORBIS CONDITI. 2. And other consideration. See other consideration under CONSID-ERATION.

## AOD

AOD.abbr.ACTION ON DECISION.

## AOGI

AOGI.abbr.See adjusted ordinary gross income under INCOME.

## AOUSC

AOUSC.abbr. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

## APA

APA.abbr. 1.ADMINISTRATIVE PROCEDURE ACT. 2.ADVANCE PRICING AGREEMENT.

## A PAIS

a pais (ah payorpais). [Law French] Hist. At or to the country; at issue.

## A PARI

a pari (ay par-I). [Law Latin] Hist. Equally; in like manner.

## APARTHEID

apartheid (<<schwa>>-pahrt-hayt or <<schwa>>-pahr-tIt). Racial segregation; specif., a comprehensive go-vernmental policy of racial discrimination and segregation, as it was practiced in South Africa.

## APERTUM BREVE

apertum breve.See BREVE.

## APERTUM FACTUM

apertum factum (<<schwa>>-p<<schwa>>r-t<<schwa>>m fak-t<<schwa>>m). [Latin “open deed”] An overt act.

## APERTURA TESTAMENTI

apertura testamenti (ap-<<schwa>>r-t[y]oor-<<schwa>> tes-t<<schwa>>-men-tI). [Latin “opening of the tes-tament”] Roman law. A procedure for proving a will by which the witnesses acknowledged their signatures and seal before a magistrate and the will was opened and publicly read.

#### APEX DEPOSITION

apex deposition. See DEPOSITION.

#### APEX JURIS

apex juris (ay-peks joor-is). [Latin “summit of law”] An extreme point or subtlety of law, such as a merely technical objection in pleading or an extreme interpretation of a doctrine. Cf. APICES LITIGANDI.

#### APEX RULE

apex rule. Mining law. The principle that a vein of ore may be mined if it extends beyond the vertical boundaries of the surface claim on which the vein apexes. — Also termed extralateral right. Cf. INTRALIMINAL RIGHT. [Cases: Mines and Minerals 30. C.J.S. Mines and Minerals § 69.]

#### APH

APH. abbr. AMERICAN PRINTING HOUSE FOR THE BLIND.

#### APHIS

APHIS. abbr. ANIMAL AND PLANT HEALTH INSPECTION SERVICE.

#### APICES LITIGANDI

apices litigandi (ay-pi-seez lit-i-gan-dI). [Law Latin] Extremely fine points (or subtleties) of litigation. Cf. APEX JURIS.

#### APJ

APJ. abbr. See administrative patent judge under JUDGE.

#### APOCHA

apocha (ap-<<schwa>>-k<<schwa>>). Roman & civil law. A receipt acknowledging payment.

- An apocha discharges only the obligation represented by the payment, in contrast to an acceptilation, which discharges an entire debt. — Also spelled apoca. Cf. ACCEPTILATION; ANTAPOCHA.

#### APOCHAE ONERATORIAE

apochae oneratoriae (ap-<<schwa>>-kee oh-n<<schwa>>r-ay-tor-ee-ee). [Law Latin “cargo receipt”] Hist. Bills of lading.

#### APOCHA TRIUM ANNORUM

apocha trium annorum (ap-⟨⟨schwa⟩⟩-k⟨⟨schwa⟩⟩ trɪ-⟨⟨schwa⟩⟩m ⟨⟨schwa⟩⟩-nor-⟨⟨schwa⟩⟩m). [Latin “receipt for three years”] Scots law. Hist. Receipts for three consecutive periodic payments, the production of which gave rise to a presumption that prior installments had been properly paid.

“The production by the debtor of receipts for the last three consecutive installments of a termly payment, such as feu-duty, rent, wages or interest, raises a presumption, the apocha trium annorum, rebuttable by parol evidence, that all prior instalments have been duly paid. The same inference is not justified by one receipt, even for three or more instalments. Nor do receipts for three instalments justify an inference that a bill, granted for earlier arrears, has been paid.” 2 David M. Walker, *Principles of Scottish Private Law* 143 (4th ed. 1988).

#### APOCRISARIUS

apocrisarius (⟨⟨schwa⟩⟩-pok-ri-sair-ee-⟨⟨schwa⟩⟩s), n.[Latin] Hist. Eccles. law. 1. An ambassador; a mes-senger, such as a Pope's legate. 2. One who answers for another; esp., an officer who presented church matters to the emperor and conveyed the answers to the petitioners. 3. One who, upon consultation, gives advice in eccle-siastical matters. — Also termed responsalis; a responsis; secretarius; consiliarius; referendarius; a consiliis.

#### APOGRAPHA

apographa (⟨⟨schwa⟩⟩-pog-r⟨⟨schwa⟩⟩-f⟨⟨schwa⟩⟩), n. pl.[fr. Greek apographein “to copy”] 1.Civil law. An examination and enumeration of things possessed; an inventory. 2. Copies; transcripts. — apographal,adj.

#### APOSTASY

apostasy (⟨⟨schwa⟩⟩-pos-t⟨⟨schwa⟩⟩-see).1.Hist. A crime against religion consisting in the total renunciation of Christianity by one who had previously embraced it. 2.Eccles. law. Abandonment of religious vows without dispensation.

#### APOSTATA CAPIENDO

apostata capiendo.See DE APOSTATA CAPIENDO.

#### APOSTATE

apostate (⟨⟨schwa⟩⟩-pos-tayt). A person who has forsaken religion or a particular religion. — Also termed (archaically) apostata (ap-⟨⟨schwa⟩⟩-stay-t⟨⟨schwa⟩⟩).

#### A POSTERIORI

a posteriori (ay pos-teer-ee-or-Ior ah pos-teer-ee-or-ee), adv.[Latin “from what comes after”] Inductively; from the particular to the general, or from known effects to their inferred causes <as a legal analyst, she reasoned a posteriori — from countless individual cases to generalized rules that she finally applied>. Cf. A PRIORI. — a posteriori,adj.

#### APOSTILLE

apostille (<<schwa>>-pos-til). [French “postscript, footnote”] Int'l law. A marginal note or observation; esp., a standard certification provided under the Hague Convention for authenticating documents used in foreign countries. — Also spelled apostil. See CERTIFICATE OF AUTHORITY(1).

#### APOSTLE

apostle (<<schwa>>-pos-<<schwa>>l), n. Civil & maritime law. 1. A letter sent from a trial court to an appellate court, stating the case on appeal. 2. The record or papers sent up on appeal. — Also termed apostoli. 3.DIMISSORY LETTERS .

#### APOSTOLUS

apostolus (<<schwa>>-pos-t<<schwa>>-l<<schwa>>s), n.[fr. Greek apostolos “one sent from another”] Hist. A messenger, ambassador, legate, or nuncio. Pl. apostoli (<<schwa>>-pos-t<<schwa>>-ll).

#### APOTHECA

apotheca (ap-<<schwa>>-thee-k<<schwa>>), n.[fr. Greek apotheke “store”] Civil law. A repository, as for wine or books. Pl. apothecae.

#### APPARATUS

apparatus. See MACHINE.

#### APPARATUS CLAIM

apparatus claim.See PATENT CLAIM.

#### APPARATUS LIMITATION

apparatus limitation.Patents. The inclusion of a structure or physical apparatus in a method or process claim. • An apparatus limitation, while not objectionable, carries little weight toward establishing the patentability of a method or process claim.

#### APPARENT

apparent,adj.1. Visible; manifest; obvious. 2. Ostensible; seeming.

#### APPARENT AGENCY

apparent agency.See agency by estoppel under AGENCY(1).

#### APPARENT AGENT

apparent agent.See AGENT(2).

#### APPARENT ASSENT

apparent assent.See ASSENT.

#### APPARENT AUTHORITY

apparent authority. See AUTHORITY(1).

#### APPARENT DANGER

apparent danger. See DANGER.

#### APPARENT DEFECT

apparent defect. See patent defect under DEFECT.

#### APPARENT EASEMENT

apparent easement. See EASEMENT.

#### APPARENT HEIR

apparent heir. See heir apparent under HEIR.

#### APPARENT PRINCIPAL

apparent principal. See PRINCIPAL(1).

#### APPARENT SERVITUDE

apparent servitude. See SERVITUDE(2).

#### APPARENT TITLE

apparent title. See COLOR OF TITLE.

#### APPARITOR

apparitor (<<schwa>>-par-<<schwa>>-t<<schwa>>r or -tor). 1. Roman law. (ital.) An officer who served a court, esp. as secretary, messenger (viator), or herald. — Also termed viator. 2. Civil law. An officer who attends court to execute judicial orders. 3. Eccles. law. An officer who executes orders and decrees, esp. by serving summonses.

#### APPARLEMENT

apparlement (<<schwa>>-pahrl-m<<schwa>>nt), n. [Law French] Hist. Likelihood, as in the apparlement of war.

#### APPARURA

apparura (ap-<<schwa>>-ruur-<<schwa>>), n. [fr. Law Latin apparare “to furnish”] Hist. Furniture, apparel, implements, or tackle.

#### APPEAL

appeal, n. 1. A proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal <the case is on appeal>. — Also termed petition in error; (in Scots law) falsing of dooms. See CERTIORARI. [Cases: Appeal and Error 1. C.J.S. Appeal and Error §§ 2, 14.]

appeal as of right. See appeal by right.

appeal by application. An appeal for which permission must first be obtained from the reviewing court. — Also termed appeal by leave. [Cases: Appeal and Error 358. C.J.S. Appeal and Error §§ 63, 81, 298–299, 312.]

appeal by right. An appeal to a higher court from which permission need not be first obtained. — Also termed appeal as of right; appeal of right. [Cases: Appeal and Error 358. C.J.S. Appeal and Error §§ 63, 81, 298–299, 312.]

appeal de novo. An appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings. — Also termed de novo review; de novo judicial review. [Cases: Appeal and Error 892. C.J.S. Appeal and Error § 756.]

appeal from the decision of the chair. Parliamentary law. A motion by which a member invokes the assembly's right of reviewing its chair's decision on a point of order. — Also termed appeal from the ruling of the chair.

appeal from the ruling of the chair. See appeal from the decision of the chair.

appeal in forma pauperis (in for-m<<schwa>> paw-p<<schwa>>r-is). An appeal by an indigent party, for whom court costs are waived. Fed. R. App. P. 24. See IN FORMA PAUPERIS. [Cases: Appeal and Error 389. C.J.S. Appeal and Error §§ 322–323.]

consolidated appeal. An appeal in which two or more parties, whose interests were similar enough to make a joinder practicable, proceed as a single appellant. [Cases: Appeal and Error 325, 328, 816. C.J.S. Appeal and Error §§ 234–235, 238, 671.]

cross-appeal. An appeal by the appellee, usu. heard at the same time as the appellant's appeal. [Cases: Appeal and Error 14(4). C.J.S. Appeal and Error § 27.]

delayed appeal. An appeal that takes place after the time for appealing has expired, but only when the reviewing court has granted permission because of special circumstances. [Cases: Appeal and Error 356, 357. C.J.S. Appeal and Error §§ 264, 288–290.]

devolutive appeal (di-vol-y<<schwa>>-tiv). An appeal that does not suspend the execution of the underlying judgment.

direct appeal. An appeal from a trial court's decision directly to the jurisdiction's highest court, thus bypassing review by an intermediate appellate court. • Such an appeal may be authorized, for example, when the case involves the constitutionality of a state law.

duplicious appeal. An appeal from two separate judgments, from a judgment and an order, or from two orders. [Cases: Appeal and Error 422. C.J.S. Appeal and Error §§ 371, 375, 380.]

frivolous appeal. An appeal having no legal basis, usu. filed for delay to induce a judgment creditor to settle or to avoid payment of a judgment. • Federal Rule of Appellate Procedure 38 provides for the award of damages and costs if the appellate court determines that an appeal is frivolous. Fed. R. App. P. 38. [Cases: Federal Civil Procedure 2839, 2840.]

interlocutory appeal. An appeal that occurs before the trial court's final ruling on the entire case. 28 USCA § 1292(b). • Some interlocutory appeals involve legal points necessary to the determination of the case, while others involve collateral orders that are wholly separate from the merits of the action. See INTERLOCUTORY APPEALS ACT; FINAL-JUDGMENT RULE. [Cases: Appeal and Error 68. C.J.S. Appeal and Error §§ 82–84.]

judgment-roll appeal. An appeal based only on the pleadings, the findings of the court, and the judgment.

limited appeal. An appeal from only certain portions of a decision, usu. only the adverse or unfavorable portions.

precautionary appeal. See protective appeal.

protective appeal. A precautionary appeal filed by counsel when the client might otherwise lose an effective right to appeal. • A protective appeal is typically filed when (1) a client's motion to intervene has been denied, and the trial court is entering other orders that the client wants to appeal, (2) counsel has doubts about where to appeal, (3) counsel has doubts about the length of the appeal period, or (4) the client must preserve uncertain or contingent rights. — Also termed precautionary appeal.

suspensive appeal. An appeal that stays the execution of the underlying judgment. [Cases: Appeal and Error 458. C.J.S. Appeal and Error § 411.]

2.Hist. The charging of someone with a crime; specif., an accusation of a crime, esp. treason or a felony.

appeal, vb. 1. To seek review (from a lower court's decision) by a higher court <petitioner appeals the conviction>. 2.Hist. To charge with a crime; accuse. — appealability, n.

#### APPEALABLE DECISION

appealable decision. See DECISION.

#### APPEAL AS OF RIGHT

appeal as of right. See appeal by right under APPEAL.

#### APPEAL BOND

appeal bond. See BOND(2).

#### APPEAL BRIEF

appeal brief. See BRIEF.

#### APPEAL BY LEAVE

appeal by leave. See appeal by application under APPEAL.

#### APPEAL BY RIGHT

appeal by right. See APPEAL.

#### APPEAL COURT

appeal court. See appellate court under COURT.

#### APPEAL DE NOVO

appeal de novo. See APPEAL.

#### APPEALER

appealer. Archaic. APPELLANT.

#### APPEAL FROM THE CHAIR

appeal from the chair. Parliamentary law. An assembly member's formal objection to a decision made by the chair. • If the appeal is seconded, the chair must state what question was answered and explain the reasons for the chair's decision, then allow the members present to vote in support of or against that decision.

#### APPEAL IN FORMA PAUPERIS

appeal in forma pauperis. See APPEAL.

#### APPEAL OF FELONY

appeal of felony. Hist. A procedure by which a person accused another of a crime, demanded proof of innocence by wager of battle, or informed against an accomplice. — Also termed *appellum de felonia*.

#### APPEAL OF RIGHT

appeal of right. See appeal by right under APPEAL.

#### APPEALS COUNCIL

appeals council. A commission that hears appeals of rulings by administrative-law judges in social-security matters. [Cases: Social Security and Public Welfare 8.15, 142.5. C.J.S. Social Security and Public Welfare §§ 14–15, 73–74.]

#### APPEALS COURT

appeals court. See appellate court under COURT.

#### APPEARANCE

appearance, n. Procedure. A coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person; esp., a defendant's act of taking part in a lawsuit, whether by formally participating in it or by an answer, demurrer, or motion, or by taking postjudgment steps in the lawsuit in either the trial court or an appellate court. [Cases: Appearance 1–29; Federal Civil Procedure 561–574. C.J.S. Appearances §§ 2–59.] — appear, vb.



“The English courts did not, until modern times, claim jurisdiction over the person of the defendant merely by service of summons upon him. It was deemed necessary to resort to further process by attachment of his property and arrest of his person to compel ‘appearance,’ which is not mere presence in court, but some act by which a person who is sued submits himself to the authority and jurisdiction of the court. Any steps in the action, such as giving bail upon arrest, operated as an appearance or submission.” Benjamin J. Shipman, *Handbook of Com-mon-Law Pleading* § 5, at 24 (Henry Winthrop Ballantine ed., 3d ed. 1923).

“The term ‘appearance’ is used particularly to signify or designate the overt act by which one against whom suit has been commenced submits himself to the court’s jurisdiction, although in a broader sense it embraces the act of either plaintiff or defendant in coming into court .... An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court’s jurisdiction.” 4 Am. Jur. 2d *Appearance* § 1, at 620 (1995).

appearance de bene esse. See special appearance.

appearance pro hac vice (proh hak vI-see or proh hahk vee-chay). [Latin] An appearance made by an out-of-state lawyer for one particular case, usu. by leave of court. • For more on the pronunciation of this term, see PRO HAC VICE. [Cases: Attorney and Client 10. C.J.S. Attorney and Client §§ 26–28.]

appearance under protest. English & Canadian law. See special appearance.

compulsory appearance. An appearance by one who is required to appear by having been served with process. [Cases: Appearance 1. C.J.S. Appearances §§ 2–4, 6.]

general appearance. A general-purpose appearance that waives a party’s ability later to dispute the court’s au-thority to enter a binding judgment against him or her. [Cases: Appearance 8(1), 19(1); Federal Civil Pro-cedure 566. C.J.S. Appearances §§ 6, 13, 18–19, 21–22, 24, 30, 34, 39, 53.]

initial appearance. A criminal defendant’s first appearance in court to hear the charges read, to be advised of his or her rights, and to have bail determined. • The initial appearance is usu. required by statute to occur without undue delay. In a misdemeanor case, the initial appearance may be combined with the arraignment. See ARRAIGNMENT. [Cases: Arrest 70; Criminal Law 261–264. C.J.S. Arrest §§ 61–64; Criminal Law §§ 355, 357–360, 362–363.]

limited appearance. See special appearance.

special appearance. 1. A defendant’s pleading that either claims that the court lacks personal jurisdiction over the defendant or objects to improper service of process. 2. A defendant’s showing up in court for the sole purpose of contesting the court’s assertion of personal jurisdiction over the defendant. • Special appearances have been abolished in federal court. Fed. R. Civ. P. 12(b). — Also termed limited appearance; appearance de bene esse; (in English & Canadian law) appearance under protest. [Cases: Appearance 9(2, 3); Federal Civil Procedure 565. C.J.S. Appearances §§ 4, 7, 23, 25–28.]

voluntary appearance. An appearance entered by a party's own will, without the service of process. [Cases: Ap-pearance 1. C.J.S. Appearances §§ 2–4, 6.]

#### APPEARANCE BOND

appearance bond. See bail bond under BOND(2).

#### APPEARANCE DATE

appearance date. See answer day under DAY.

#### APPEARANCE DAY

appearance day. See answer day under DAY.

#### APPEARANCE DE BENE ESSE

appearance de bene esse. See special appearance under APPEARANCE.

#### APPEARANCE DOCKET

appearance docket. See DOCKET(1).

#### APPEARANCE DOCTRINE

appearance doctrine. In the law of self-defense, the rule that a defendant's use of force is justified if the defendant reasonably believed it to be justified. [Cases: Assault and Battery 67; Homicide 795. C.J.S. Assault and Battery §§ 87–92.]

#### APPEARANCE PRO HAC VICE

appearance pro hac vice. See APPEARANCE.

#### APPEARANCE TERM

appearance term. See TERM(5).

#### APPEARANCE TICKET

appearance ticket. See CITATION(2).

#### APPEARANCE UNDER PROTEST

appearance under protest. English & Canadian law. See special appearance under APPEARANCE.

#### APPELLANT

appellant (<<schwa>>-pel-<<schwa>>nt). A party who appeals a lower court's decision, usually seeking reversal of that decision. — Formerly also termed *appealer*. Cf. APPELLEE. [Cases: Appeal and Error 321. C.J.S. Appeal and Error §§ 232–233.]

#### APPELLATE

appellate (<<schwa>>-pel-it), adj. Of or relating to an appeal or appeals generally.

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**APPELLATE BRIEF**

appellate brief. See BRIEF(1).

**APPELLATE COUNSEL**

appellate counsel. See COUNSEL.

**APPELLATE COURT**

appellate court. See COURT.

**APPELLATE DIVISION**

appellate division. A department of a superior court responsible for hearing appeals; an intermediate appellate court in some states, such as New York and New Jersey. [Cases: Courts 50. C.J.S. Courts § 106.]

**APPELLATE JURISDICTION**

appellate jurisdiction. See JURISDICTION.

**APPELLATE RECORD**

appellate record. See RECORD ON APPEAL.

**APPELLATE REVIEW**

appellate review. See REVIEW.

**APPELLATE RULES**

appellate rules. A body of rules governing appeals from lower courts. [Cases: Courts 80(4).]

**APPELLATIO**

appellatio (ap-*<<schwa>>*-lay-shee-oh), n. [Latin] Roman law. An appeal from a lower court. Pl. appellationes (ap-*<<schwa>>*-lay-shee-oh-nee).

**APPELLATION OF ORIGIN**

appellation of origin. Trademarks. Representation of a product's geographic origin by use of a mark — such as a symbol, word, phrase, or graphic element such as a map — whose use is regulated to ensure that the product so marked reflects some well-known feature peculiar to the region. • This term usu. applies to a product whose quality or some characteristic feature has been gained by natural means, such as by the nature of the local climate or soil, or by the nature of the way it is made, such as by local customs of production. For example, the appellation burgundy can be used only for wines made from certain types of varietal grapes from particular regions of France. [Cases: Trade Regulation 32.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 55.]

**APPELLATOR**

appellator (ap-<<schwa>>-lay-t<<schwa>>r), n. [Latin] Roman & civil law. An appellant.

#### APPELLEE

appellee (ap-<<schwa>>-lee). A party against whom an appeal is taken and whose role is to respond to that appeal, usu. seeking affirmance of the lower court's decision. See RESPONDENT. Cf. APPELLANT. [Cases: Appeal and Error 326. C.J.S. Appeal and Error §§ 232–233, 238.]

#### APPELLO

appello (<<schwa>>-pel-oh), vb. [Latin] Roman law. I appeal. • This was the form of making an appeal apud acta (in the presence of the judge).

#### APPELLOR

appellor (<<schwa>>-pel-or or ap-<<schwa>>-lor).Hist. English law. A person who formally accuses another of a crime, challenges a jury, or informs against an accomplice.

#### APPELLUM DE FELONIA

appellum de felonia.See APPEAL OF FELONY.

#### APPENDANT

appendant (<<schwa>>-pen-d<<schwa>>nt), adj. Attached or belonging to property as an additional but sub-sidiary right. — appendant,n.

#### APPENDANT CLAIM

appendant claim.See dependent claim under PATENT CLAIM.

#### APPENDANT EASEMENT

appendant easement.See easement appurtenant under EASEMENT.

#### APPENDANT POWER

appendant power.See POWER(5).

#### APPENDITIA

appenditia (ap-en-dish-ee-<<schwa>>), n.[Law Latin] Hist. The appendages or appurtenances of an estate.

#### APPENDIX

appendix,n.1. A supplementary document attached to the end of a writing <the brief includes an appendix of exhibits>. • For the requirements of an appendix to a federal appellate brief, see Fed. R. App. P. 30. 2.English law. A volume that contains material documents and other evidence presented in a lower court. • The volume is used by the House of Lords or Privy Council when functioning as an appellate tribunal. Pl. appendixes, appendices.

#### APPENSURA

appensura (ap-en-s[y]oor-<<schwa>>), n.[fr. Latin appendere “to weigh out”] Hist. The payment of money by weight rather than by count.

#### APPLICABLE EXCLUSION AMOUNT

applicable exclusion amount.Tax. The dollar value of an estate that is exempt from federal estate and gift taxes. See unified estate-and-gift-tax credit under TAX CREDIT.

#### APPLICABLE EXCLUSION CREDIT

applicable exclusion credit.See unified estate-and-gift-tax credit under TAX CREDIT .

#### APPLICANDO SINGULA SINGULIS

applicando singula singulis (ap-li-kan-doh sing-gy<<schwa>>-l<<schwa>> sing-gy<<schwa>>-lis). [Law Latin] Hist. By applying each to each; to apply each condition to. • The phrase was used in deed constructions.

#### APPLICANT

applicant. 1. One who requests something; a petitioner, such as a person who applies for letters of administration. 2.ACCOUNT PARTY.

#### APPLICATION

application. 1. A request or petition. See COPYRIGHT APPLICATION; PATENT APPLICATION ; TRADEMARK APPLICATION. 2.MOTION.

ex parte application.See ex parte motion under MOTION(1).

interlocutory application.A motion for equitable or legal relief sought before a final decision.

3.Bankruptcy. A request for an order not requiring advance notice and an opportunity for a hearing before the order is issued. [Cases: Bankruptcy 2156. C.J.S. Bankruptcy § 26.]

#### APPLICATION DIVISION

Application Division.Patents. The part of the U.S. Patent and Trademark Office that is responsible for accepting patent applications, assigning them serial numbers, checking them for completeness and formalities, placing them in file wrappers, and assigning them to appropriate art groups based on class and subclass of technology.

#### APPLICATION FOR A REISSUE PATENT

application for a reissue patent.See PATENT APPLICATION.

#### APPLICATION FOR LEAVE TO APPEAL

application for leave to appeal.A motion requesting an appellate court to hear a party's appeal from a judgment when the party has no appeal by right or when the party's time limit for an appeal by right has expired. • The reviewing court has discretion whether to grant or reject such a motion. [Cases: Appeal and Error 361; Federal Courts 660. C.J.S. Appeal and Error §§ 300–302, 304.]

## APPLICATION NUMBER

application number. Patents & trademarks. The eight-digit sequential number assigned by the U.S. Patent and Trademark Office to a patent or trademark application. • Applications are typically referred to by application number, which consists of a two-digit series code, a slash, and a six-digit serial number. References to patent applications also include the filing date < application no. 08/944,183, filed September 20, 1978>. — Also termed serial number.

## APPLICATION SERVICE PROVIDER

application service provider. A business that hosts software on its computers and gives subscribers access as needed. • The subscriber does not need to purchase a license to use the software before the provider sends it to the subscriber's computer, usu. over the Internet or a private electronic network. — Abbr. ASP.

## APPLIED-ART DOCTRINE

applied-art doctrine. Copyright. The rule that a pictorial, graphic, or sculptural work that has an inherent use apart from its appearance, and is also an expressive work apart from its utility, may qualify for copyright protection. • Examples have included bookends, lamps, and sundials. In contrast to applied art, industrial designs are not copyrightable, although they may be protected by design patents instead. — Also termed useful-article doctrine. [Cases: Copyrights and Intellectual Property 4. C.J.S. Copyrights and Intellectual Property §§ 9–10, 16.]

## APPLIED COST

applied cost. See COST(1).

## APPLY

apply, vb. 1. To make a formal request or motion <apply for a loan> <apply for injunctive relief>. 2. To employ for a limited purpose <apply payments to a reduction in interest>. 3. To put to use with a particular subject matter < apply the law to the facts> <apply the law only to transactions in interstate commerce>.

## APPOINTED COUNSEL

appointed counsel. See assigned counsel under COUNSEL.

## APPOINTEE

appointee. 1. One who is appointed. 2. One who receives the benefit of a power of appointment. See POWER OF APPOINTMENT. [Cases: Powers 1. C.J.S. Powers § 2.]

permissible appointee. A person to whom appointive property may be assigned under a power of appointment. — Also termed object of the power of appointment; object of the power; object of a power.

## APPOINTIVE ASSET

appointive asset. See ASSET.

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**APPOINTIVE PROPERTY**

appointive property. See PROPERTY.

**APPOINTMENT**

appointment, n. 1. The designation of a person, such as a nonelected public official, for a job or duty; esp., the naming of someone to a nonelected public office <Article II of the U.S. Constitution grants the President the power of appointment for principal federal officials, subject to senatorial consent>. [Cases: Officers and Public Employees 8; United States 35. C.J.S. Officers and Public Employees § 47; United States §§ 23, 53, 56–57.]

public appointment. An appointment to a public office. [Cases: Officers and Public Employees 8. C.J.S. Officers and Public Employees § 47.]

2. An office occupied by someone who has been appointed <a high appointment in the federal government>. 3. Parliamentary law. The naming of an officer, the members of a committee, or the holder of any other title in an organization by means other than the organization's election. 4. The act of disposing of property, in exercise of a power granted for that purpose <the tenant's appointment of lands>. See POWER OF APPOINTMENT. [Cases: Powers 1. C.J.S. Powers § 2.] — appoint, vb. — appointer (for senses 1–3), n. — appointor (for sense 4), n.

illusory appointment. A nominal, unduly restrictive, or conditional transfer of property under a power of appointment. [Cases: Powers 36(3). C.J.S. Powers § 21.]

“Like many other theories which are very plausible in the abstract, experience has shown that the doctrine of illusory appointments is difficult in application, since the term ‘illusory’ is vague and indefinite. And, because of the difficulty of formulating rules for determining what is an illusory appointment and the evils resulting from attempts to substitute the judicial will for the intent of the donor and donee of the power, the doctrine has been condemned or rejected by many courts.” 62 Am. Jur. 2d Powers of Appointment § 186 (1990).

**APPOINTMENTS CLAUSE**

Appointments Clause. The clause of the U.S. Constitution giving the President the power to nominate federal judges and various other officials. U.S. Const. art. II, § 2. [Cases: United States 35. C.J.S. United States §§ 23, 53, 56–57.]

**APPORT**

apport (<<schwa>>-port), n. [Law French] Hist. A tax, expense, tribute, or payment.

**APPORTIONMENT**

apportionment, n. 1. Division into proportionate shares; esp., the division of rights and liabilities between two or more persons or entities. 2. Tax law. The act of allocating or attributing moneys or expenses in a given way, as when a taxpayer allocates part of profits to a particular tax year or part of the use of a personal asset to a business. [Cases: Taxation 1005. C.J.S. Taxation § 1719.] 3. Distribution of legislative seats among districts; esp., the allocation of congressional

representatives among the states based on population, as required by the 14th Amendment. • The claim that a state is denying the right of representation to its citizens through improper ap-portionment presents a justiciable issue. — Also termed legislative apportionment. See REAPPORTIONMENT. [Cases: Elections 12(6).] 4. The division (by statute or by the testator's instruction) of an estate-tax liability among persons interested in an estate. — apportion,vb.

#### APPORTIONMENT CLAUSE

apportionment clause.Insurance. A policy provision that distributes insurance proceeds in proportion to the total coverage. [Cases: Insurance 2193.C.J.S. Insurance § 1117.]

#### APPORTIONMENT OF LIABILITY

apportionment of liability.Torts. The parceling out of liability for an injury among multiple tortfeasors, and possibly the plaintiff as well. • Apportionment of liability encompasses such legal doctrines as joint and several liability, comparative responsibility, indemnity, and settlements. See Restatement (Third) of Torts: Apportionment of Liability (1999). [Cases: Negligence 484, 549; Torts 22. C.J.S. Negligence §§ 154–156, 262–264; Torts §§ 39–44.]

#### APPORTIONMENT RULE

apportionment rule.Oil & gas. The minority doctrine that royalties accrued under an oil-and-gas lease on land that is subdivided during the lease term must be shared by the landowners in proportion to their interests in the land. • For example, if Grey granted a lease to Simms, then sold one-half of the land to Metcalfe, Simms and Metcalfe would each be entitled to one-half of any royalty from the land, no matter where the producing well was located. Only California, Mississippi, and Pennsylvania follow this rule. Cf. NONAPPORTIONMENT RULE.

#### APPORTUM

apportum (<<schwa>>-por-t<<schwa>>m), n.[Law Latin] Hist. The revenue, profit, or emolument that something brings to its owner. • This was often used in reference to a pension.

#### APPOSE

appose (<<schwa>>-pohz), vb. Hist. 1.To interrogate, esp. with difficult questions. 2. To confront (someone) with objections to something. 3. To examine the books and accounts of; audit.

#### APPOSER

apposer (<<schwa>>-pohz-<<schwa>>r).Hist. 1. A questioner; interrogator. 2. An Exchequer officer who ex-aminated sheriffs' accounts; specif., an officer responsible for examining the sheriff's estreat (book of fines), comparing the entries with those in court records, and apposing (interrogating) the sheriff on each sum in the estreat. • This office was abolished in England in 1833. — Also termed foreign apposer.

#### APPOSITE

apposite (ap-<<schwa>>-zit), adj. Suitable; appropriate.



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**APPRAISAL**

appraisal,n.1. The determination of what constitutes a fair price; valuation; estimation of worth. 2. The report of such a determination. — Also termed appraisement. Cf. ASSESSMENT(3). — appraise,vb.

**APPRAISAL CLAUSE**

appraisal clause.An insurance-policy provision allowing either the insurer or the insured to demand an independent estimation of a claimed loss. [Cases: Insurance 3249. C.J.S. Insurance §§ 1379–1380.]

**APPRAISAL REMEDY**

appraisal remedy.The statutory right of corporate shareholders who oppose some extraordinary corporate action (such as a merger) to have their shares judicially appraised and to demand that the corporation buy back their shares at the appraised value. — Also termed appraisal right; dissenters' right; right of dissent and appraisal. [Cases: Corporations 182.4(5), 584. C.J.S. Corporations §§ 348, 799–801.]

**APPRAISAL TRINITY**

appraisal trinity.The three most commonly accepted methods of appraising real property: the market approach, the cost approach, and the income approach. See MARKET APPROACH; COST APPROACH; INCOME APPROACH. [Cases: Evidence 601(4). C.J.S. Evidence §§ 1338, 1346–1350.]

**APPRAISEMENT**

appraisement. 1.APPRAISAL. 2. An ADR method used for resolving the amount or extent of liability on a contract when the issue of liability itself is not in dispute. • Unlike arbitration, appraisement is not a quasi-judicial proceeding but instead an informal determination of the amount owed on a contract. [Cases: Arbitration 1. C.J.S. Arbitration §§ 2–3.]

**APPRAISER**

appraiser. An impartial person who estimates the value of something, such as real estate, jewelry, or rare books. — Also termed valuer.

merchant appraiser.See MERCHANT APPRAISER.

**APPRECIABLE**

appreciable,adj. Capable of being measured or perceived.

**APPRECIATE**

appreciate,vb.1. To understand the significance or meaning of. 2. To increase in value.

**APPRECIATION**

appreciation,n. An increase in an asset's value, usu. because of inflation. Cf.

DEPRECIATION. — appreciate,vb. — appreciable,adj.

#### APPRECIATION SURPLUS

appreciation surplus.See revaluation surplus under SURPLUS.

#### APPRECIATION TEST

appreciation test.Criminal law. A test for the insanity defense requiring proof by clear and convincing evidence that at the time of the crime, the defendant suffered from a severe mental disease or defect preventing him or her from appreciating the wrongfulness of the conduct. • This test, along with the accompanying plea of not guilty by reason of insanity, was established by the Insanity Defense Reform Act of 1984. 18 USCA § 17. — Also termed Insanity Defense Reform Act of 1984 test. See INSANITY DEFENSE. [Cases: Criminal Law 48.]

#### APPREHENSIO

apprehensio (ap-ri-hen-see-oh). [Latin] 1.APPREHENSION(1).2.Civil law. Seizure; a procedure for acquiring something that belongs to no one. • It is a type of occupatio.

#### APPREHENSION

apprehension,n.1. Seizure in the name of the law; arrest <apprehension of a criminal>. [Cases: Arrest 68(4). C.J.S. Arrest § 45.] 2. Perception; comprehension; belief <the tort of assault requires apprehension by the plaintiff of imminent contact>.3. Fear; anxiety <most people approach public speaking with some apprehension>. — apprehend,vb.

#### APPRENTICE

apprentice. 1.Hist. A person bound by an indenture to work for an employer for a specified period to learn a craft, trade, or profession.

“Apprentices, in the strict legal sense, are servants, usually but not necessarily infants, who agree to serve their masters with a view to learning some trade or business, and whose masters on their part agree to instruct them. The contract is usually for a term of years and is normally embodied in a deed, in which case the apprentice is said to be bound by an indenture of apprenticeship. It is customary for the father of the apprentice (or some person standing in loco parentis), as well as the apprentice himself to execute the deed or other instrument, and thus become liable for the due observance by the apprentice of his obligations thereunder. When an apprentice deliberately misconducts himself in such a way that, in the case of any other servant, his behaviour would amount to a repudiation of the agreement, and thereupon the master decides to accept the repudiation and dismisses him, the apprentice's repudiation is not effective, and the contract is not terminated, unless the Court find that such a course would be for the infant's benefit. Otherwise the infant could do indirectly what he could not do directly — namely, bring about a rescission of the contract.” 2 Stephen's Commentaries on the Laws of England 133–34 (L. Crispin Warmington ed., 21st ed. 1950).

2. A learner in any field of employment or business, esp. one who learns by hands-on experience or technical on-the-job training.

## APPRENTICE OF THE LAW

apprentice of the law.Hist. 1.A law student. 2. A barrister of junior status. — Also termed apprentice en la ley; apprenticius ad legem.

## APPRENTICIUS AD LEGEM

apprenticius ad legem (a-pren-tish-ee-<<schwa>>s ad lee-j<<schwa>>m). [Law Latin]  
APPRENTICE OF THE LAW.

## APPRIZE

apprize,vb. To appraise; to assign a value to.

## APPROACH, RIGHT OF

approach, right of.See RIGHT OF APPROACH.

## APPROPRIATED RETAINED EARNINGS

appropriated retained earnings.See EARNINGS.

## APPROPRIATED SURPLUS

appropriated surplus.See SURPLUS.

## APPROPRIATION

appropriation,n.1. The exercise of control over property; a taking of possession. Cf. EXPROPRIATION; MI-SAPPROPRIATION. 2. A legislative body's act of setting aside a sum of money for a public purpose. • If the sum is earmarked for a precise or limited purpose, it is sometimes called a specific appropriation. [Cases: States 129. C.J.S. States §§ 230, 232.] 3. The sum of money so voted. 4.Torts. An invasion of privacy whereby one person takes the name or likeness of another for commercial gain. [Cases: Torts 8.5(6). C.J.S. Right of Pri-vacy and Publicity §§ 9–16, 40–43, 45.] 5. The transfer of a benefice, together with all its interests, to a spiritual corporation. See spiritual corporation under CORPORATION. Cf. IMPROPRIATION. 6. The benefice so transferred. — appropriate,vb. — appropriable,adj. — appropriator,n.

## APPROPRIATIONS BILL

appropriations bill.See BILL(3).

## APPROPRIATOR

appropriator,n. Hist. Eccles. law. The corporate possessor of an appropriated benefice — that is, a benefice that has been perpetually annexed to a spiritual corporation, often a monastic house.

## APPROVAL SALE

approval sale.See sale on approval under SALE.

## APPROVE

approve, vb. 1. To give formal sanction to; to confirm authoritatively. 2. Parliamentary law. To adopt. See ADOPTION(5). — approval, n.

#### APPROVED DRUG PRODUCTS WITH THERAPEUTIC EQUIVALENCE EVALUATIONS

Approved Drug Products with Therapeutic Equivalence Evaluations. See ORANGE BOOK .

#### APPROVED INDORSED NOTE

approved indorsed note. See NOTE(1).

#### APPROVED LIST

approved list. See LEGAL LIST.

#### APPROVEMENT

approvement. 1. English law. The right of an owner of common lands to enclose them partially and receive income arising from them. • This right — originally granted by the Statute of Merton (1235) — is still available, but a landowner seeking to approve land must receive the government's consent to do so. 2. Hist. The act of avoiding a capital conviction by accusing an accomplice; turning king's evidence.

#### APPROVER

approver (<<schwa>>-proo-v<<schwa>>r), n. Hist. 1. One who offers proof; esp., a criminal who confesses and testifies against one or more accomplices. See relative confession under CONFESSION. Cf. ANTITHETARIUS. 2. An agent or bailiff; esp., one who manages a farm or estate for another.

#### APPROXIMATION, DOCTRINE OF

approximation, doctrine of. See DOCTRINE OF APPROXIMATION.

#### APPRUARE

appruare (ap-roo-air-ee), vb. [Law Latin] Hist. To obtain a benefit from land by making improvements.

#### APPURTENANCE

appurtenance (<<schwa>>-p<<schwa>>rt-[<<schwa>>-]n<<schwa>>nts), n. Something that belongs or is attached to something else <the garden is an appurtenance to the land>.

“The word ‘appurtenances’ which in former times at least was generally employed in deeds and leases is derived from the word *apparentir* which is Norman French and means to belong to. Speaking broadly, the word means anything corporeal or incorporeal which is an incident of, and belongs to some other thing as principal. At a time when the construction of conveyances was of a more technical character than it is at present the word was considered of much greater importance than it is now and it was considered that in its absence from a lease or other conveyance a very

restricted meaning should attach to the words of the description of the premises conveyed.” 1 H.C. Underhill, *A Treatise on the Law of Landlord and Tenant* § 291, at 442–43 (1909).

#### APPURTENANT

appurtenant,adj. Annexed to a more important thing. — Also termed (in Scots law) part and pertinent.

#### APPURTENANT EASEMENT

appurtenant easement.See easement appurtenant under EASEMENT.

#### APR

APR.abbr.See annual percentage rate under INTEREST RATE.

#### À PRENDRE

à prendre (ah prawn-dr<<schwa>> or -d<<schwa>>r). [French] For taking; for seizure. See PROFIT à PRENDRE.

#### A PRIORI

a priori (ay prI-or-Ior ah pree-or-ee), adv.[Latin “from what is before”] Deductively; from the general to the particular <as an analyst, he reasoned a priori — from seemingly self-evident propositions to particular conclu-sions>. Cf. A POSTERIORI. — a priori,adj.

#### A PROVISIONE VIRI

a provisione viri (ay pr<<schwa>>-vzh-ee-oh-nee vI-rI). [Latin] By the provision of a man (i.e., a husband).

#### APS

APS.abbr.1.ADULT PROTECTIVE SERVICES. 2.AUTOMATED PATENT SYSTEM.

#### APUD ACTA

apud acta (ap-<<schwa>>d ak-t<<schwa>>). [Latin] Roman & civil law. Among the acts; among the judicial proceedings recorded in writing. • This phrase refers to appeals taken orally in the presence of the judge.

#### APUD JUDICEM

apud judicem.See IN JUDICIO.

#### APV

APV.abbr.See adjusted present value under PRESENT VALUE.

#### A QUA

a qua (ay kwayorkwah). [Latin] See A QUO.

## AQUA

aqua (ak-w<<schwa>>), n.[Latin] Roman law. 1. Water. 2. A watercourse. Pl. aquae (ak-wee).

aqua aestiva (ak-w<<schwa>> es-ti-v<<schwa>>). Summer water; water used only in the summer.

aqua currens (ak-w<<schwa>> k<<schwa>>r-enz). See aqua profluens.

aqua dulcis (ak-w<<schwa>> d<<schwa>>l-sis). Fresh water. — Also termed aqua frigida.

aqua fontanea (ak-w<<schwa>> fon-tay-nee-<<schwa>>). Springwater.

aqua frigida (ak-w<<schwa>> fris-k<<schwa>>). See aqua dulcis.

aqua profluens (ak-w<<schwa>> prof-loo-enz). Flowing or running water. — Also termed aqua currens.

aqua quotidiana (ak-w<<schwa>> kwoh-tid-ee-ay-n<<schwa>>). Daily water; water that can be drawn at all times of the year. — Also spelled aqua cottidiane.

aqua salsa (ak-w<<schwa>> sal-s<<schwa>>). Salt water.

## AQUAEDUCTUS

aquaeductus (ak-wee-d<<schwa>>k-t<<schwa>>s), n.[Latin “conveying of water”] See servitus aquae ducendae under SERVITUS.

## AQUAE FERVENTIS JUDICIUM

aquae ferventis iudicium.[Latin] Eccles. law. See ordeal by water (2) under ORDEAL.

## AQUAE FRIGIDAE JUDICIUM

aquae frigidae iudicium.[Latin] Eccles. law. See ordeal by water (1) under ORDEAL.

## AQUAEHAUSTUS

aquaehaustus (ak-wee-haws-t<<schwa>>s), n.[Latin “drawing of water”] A servitude granting the right to draw water from a well, pool, spring, or stream on another's land. — Also termed jus aquaehaustus; servitus aquae-haustus; servitus aquae hauriendae.

## AQUAE IMMITTENDAE

aquae immittendae (ak-wee im-<<schwa>>-ten-dee). [Latin “waters to be discharged”] A servitude consisting in the right of one whose house is surrounded by other buildings to discharge wastewater on the neighboring roofs or yards. • This is similar to common-law drip rights. — Also termed stillicidium. Cf. servitus stillicidii under SERVITUS; DRIP RIGHTS.

## AQUA FONTANEA

aqua fontanea. See AQUA.

## AQUA FRISCA

aqua frisca. See aqua dulcis under AQUA.

#### AQUAGIUM

aquagium (<<schwa>>-kway-jee-<<schwa>>m), n. [Law Latin] Hist. 1. A canal for draining water, esp. from marshy land. 2. A payment for supplying water to a mill or carrying goods by water.

#### AQUA PROFLUENS

aqua profluens. See AQUA.

#### AQUA QUOTIDIANA

aqua quotidiana. See AQUA.

#### AQUA SALSIA

aqua salsa. See AQUA.

#### AQUATIC RIGHT

aquatic right. See WATER RIGHT.

#### AQUILIAN LAW

Aquilian law. See LEX AQUILIA.

#### A QUO

a quo (ah or ay kwoh), adv. [Latin] From which. — Also termed a qua. See AD QUEM ; court a quo under COURT.

#### A QUO INVITO ALIQUID EXIGI POTEST

a quo invito aliquid exigi potest (ay kwoh in-vI-toh al-i-kwid ek-s<<schwa>>-jIpoh-test). [Latin] Scots law. From whom something may be exacted against his will. • The phrase appeared in reference to the position of a debtor under a legal obligation, as distinguished from his position under a natural, voluntary obligation.

A.R.

A.R. abbr. ANNO REGNI.

#### ARABANT

arabant (<<schwa>>-ray-b<<schwa>>nt). [Latin] They plowed. • This term was applied to those who held by the tenure of plowing and tilling the lord's lands within the manor.

#### ARABLE LAND

arable land. See LAND.

#### ARALIA

aralia (<<schwa>>-ray-lee-<<schwa>>), n. See arable land under LAND.

#### ARATIA

aratia (<<schwa>>-ray-shee-<<schwa>>), n. See arable land under LAND.

#### ARATOR

arator (<<schwa>>-ray-t<<schwa>>r), n.[Law Latin] Hist. A farmer of arable land.

#### ARATRUM TERRAE

aratrum terrae (<<schwa>>-ray-tr<<schwa>>m ter-ee), n.[Law Latin] Hist. The amount of land that can be plowed with a single plow; plowland.

#### ARATURIA

araturia (ar-<<schwa>>-t[y]oor-ee-<<schwa>>), n.[Law Latin] See arable land under LAND.

#### ARB

ARB.abbr.ACCOUNTING RESEARCH BULLETIN.

#### ARBITER

arbiter (ahr-b<<schwa>>-t<<schwa>>r). One with the power to decide disputes, such as a judge <the Supreme Court is the final arbiter of legal disputes in the United States>. Cf. ARBITRATOR.

#### ARBITRAGE

arbitrage (ahr-b<<schwa>>-trahzh), n. The simultaneous buying and selling of identical securities in different markets, with the hope of profiting from the price difference in those markets. — Also termed space arbitrage. [Cases: Securities Regulation 53.17(4). C.J.S. Securities Regulation § 153.] — arbitrageur (ahr-b<<schwa>>-trahzh-<<schwa>>r), arbitrageur (ahr-b<<schwa>>-trah-zh<<schwa>>r), n.

covered-interest arbitrage.The simultaneous investment in a currency and execution of spot- and forward-rate foreign-exchange contracts to take advantage of exchange-rate and interest-rate differentials between currencies without assuming foreign-exchange risk.

currency arbitrage.The simultaneous purchase of a currency in one market and sale of it in another to take advantage of differences or fluctuations in exchange rates.

kind arbitrage.Purchase of a security that, having no restriction other than the payment of money, is exchangeable or convertible within a reasonable time to a second security, with a simultaneous offsetting sale of the second security. — Also termed convertible arbitrage.

risk arbitrage.Arbitrage of assets that are probably, but not necessarily, equivalent; esp., arbitrage of corporate stock in a potential merger or takeover, whereby the target company's stock is bought and the acquiring company's stock is sold simultaneously.



time arbitrage.Purchase of a commodity against a present sale of the identical commodity for a future delivery; esp., the simultaneous buying and selling of securities for immediate delivery and future delivery, with the hope of profiting from the difference in prices.

#### ARBITRAGE BOND

arbitrage bond.See BOND(3).

#### ARBITRAMENT

arbitrament (ahr-bi-tr<<schwa>>-m<<schwa>>nt).1. The power to decide for oneself or others; the power to decide finally and absolutely. 2. The act of deciding or settling a dispute that has been referred to arbitration. [Cases: Arbitration 48. C.J.S. Arbitration §§ 91, 95, 107.] 3.AWARD. — Also spelled (archaically) ar-bitrement.

#### ARBITRAMENT AND AWARD

arbitrament and award.A plea that the same matter has already been decided in arbitration. [Cases: Arbitration 81–82. C.J.S. Arbitration §§ 124–129, 148, 150–155.]

#### ARBITRARY

arbitrary,adj.1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures, or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. • This type of decision is often termed arbitrary and capricious. Cf. CAPRICIOUS.

#### ARBITRARY MARK

arbitrary mark.See arbitrary trademark under TRADEMARK.

#### ARBITRARY NAME

arbitrary name.See arbitrary trademark under TRADEMARK.

#### ARBITRARY TRADEMARK

arbitrary trademark.See TRADEMARK.

#### ARBITRATION

arbitration,n. A method of dispute resolution involving one or more neutral third parties who are usu. agreed to by the disputing parties and whose decision is binding. — Also termed (redundantly) binding arbitration. Cf. MEDIATION(1). [Cases: Arbitration 1. C.J.S. Arbitration §§ 2–3.] — arbitrate,vb. — arbitral,adj.

ad hoc arbitration.Arbitration of only one issue.

adjudicative-claims arbitration.Arbitration designed to resolve matters usu. handled by courts (such as a tort claim), in contrast to arbitration of labor issues, international trade, and other fields traditionally associated with arbitration.

compromissory arbitration. An international arbitration grounded on a mutual promise to define the scope of the dispute and abide by the arbitrator's decision. See COMPROMIS.

compulsory arbitration. Arbitration required by law or forced by law on the parties.

final-offer arbitration. Arbitration in which each party must submit a "final offer" to the arbitrator, who may choose only one. • This device gives each party an incentive to make a reasonable offer or risk the arbitrator's accepting the other party's offer. The purpose of this type of arbitration is to counteract arbitrators' tendency to make compromise decisions halfway between the two parties' demands.

grievance arbitration. 1. Arbitration that involves the violation or interpretation of an existing contract. • The arbitrator issues a final decision regarding the meaning of the contractual terms. 2. Labor law. Arbitration of an employee's grievance, usu. relating to an alleged violation of the employee's rights under a collective-bargaining agreement. • The arbitration procedure is set out in the collective-bargaining agreement. Grievance arbitration is the final step in grievance procedure. — Also termed rights arbitration. See GRIEVANCE PROCEDURE. [Cases: Labor Relations 434.5.]

"The great majority of today's collective bargaining agreements provide for an impartial arbitrator to hear and decide grievances under the bargaining agreement. The details of grievance arbitration vary considerably among agreements." Douglas L. Leslie, *Labor Law in a Nutshell* 264 (3d ed. 1992).

interest arbitration. Arbitration that involves settling the terms of a contract being negotiated between the parties; esp., in labor law, arbitration of a dispute concerning what provisions will be included in a new collective-bargaining agreement. • When the parties cannot agree on contractual terms, an arbitrator decides. This type of arbitration is most common in public-sector collective bargaining.

judicial arbitration. Court-referred arbitration that is final unless a party objects to the award.

rights arbitration. See grievance arbitration.

voluntary arbitration. Arbitration by the agreement of the parties.

#### ARBITRATION ACT

arbitration act. A federal or state statute providing for the submission of disputes to arbitration. [Cases: Arbitration 2. C.J.S. Arbitration § 4.]

#### ARBITRATION AND AWARD

arbitration and award. An affirmative defense asserting that the subject matter of the action has already been settled in arbitration.

#### ARBITRATION BOARD

arbitration board. A panel of arbitrators appointed to hear and decide a dispute according to the rules of arbitration. [Cases: Arbitration 26. C.J.S. Arbitration §§ 60, 62.]

**ARBITRATION BOND**

arbitration bond. A performance bond executed by the parties in an arbitration. See **PERFORMANCE BOND**(1).

**ARBITRATION CLAUSE**

arbitration clause. A contractual provision mandating arbitration — and thereby avoiding litigation — of disputes about the contracting parties' rights, duties, and liabilities. [Cases: Arbitration 1.1. C.J.S. Arbitration §§ 2, 6.]

**ARBITRATION OF EXCHANGE**

arbitration of exchange. The simultaneous buying and selling of bills of exchange in different international markets, with the hope of profiting from the price difference of the currencies in those markets. See **ARBITRAGE**; **DRAFT**(1).

**ARBITRATOR**

arbitrator, n. A neutral person who resolves disputes between parties, esp. by means of formal arbitration. **ME-DIATOR**; **ARBITER**. — Also termed (in Latin) *compromissarius*. [Cases: Arbitration 26, 29. C.J.S. Arbitration §§ 58, 60, 62, 68, 107, 109.] — **arbitratorship**, n.

**ARBITREMENT**

arbitrement. Archaic. See **ARBITRAMENT**.

**ARBITRIUM**

arbitrium (ahr-bi-tree-<<schwa>>m). [Law Latin] An award; a decision of an arbitrator.

**ARBOR CIVILIS**

arbor civilis (ahr-b<<schwa>>r siv-<<schwa>>-lis). [Latin “civil tree”] A genealogical tree. — Also termed *arbor consanguinitatis*.

**ARBOR CONSANGUINITATIS**

arbor consanguinitatis. See **ARBOR CIVILIS**.

**ARBOR FINALIS**

arbor finalis (ahr-b<<schwa>>r fi-nay-lis). [Latin] Hist. A boundary tree; a tree used for marking a boundary line.

**ARBORUM FURTIM CAESARUM**

arborum furtim caesarum (ahr-bor-<<schwa>>m f<<schwa>>r-tim si-sair-<<schwa>>m or si-zair-). [Latin] Roman law. A civil action in tort for secretly cutting down trees on another's land.

**ARCANA IMPERII**

arcana imperii (ahr-kay-n<<schwa>> im-peer-ee-I). [Latin] State secrets.

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**ARCARIUS**

arcarius (ahr-kair-ee-*<<schwa>>*s). [Latin] Hist. A treasurer; a keeper of public money.

**ARCHAIONOMIA**

Archaionomia (ahr-kee-*<<schwa>>*-noh-mee-*<<schwa>>*). A Latin translation of Saxon laws, published in 1568 by William Lambarde.

**ARCHBISHOP**

archbishop.Eccles. law. A church officer who has authority over all ecclesiastical matters within a province. • Within the Church of England, the Archbishop of Canterbury is superior in rank to but does not control the Archbishop of York, who has supreme authority in the province of York. Both are appointed for life by England's monarch (as head of the Church of England), on the advice of the Prime Minister, and are members of the House of Lords.

**ARCHBISHOPRIC**

archbishopric.Eccles. law. An archbishop's jurisdiction or province.

**ARCHDEACONRY**

archdeaconry.Eccles. law. 1. An archdeacon's jurisdiction. 2. The office or rank of an archdeacon.

**ARCHDEACON'S COURT**

Archdeacon's Court.See COURT OF ARCHDEACON.

**ARCHDIACONAL COURT**

Archdiaconal Court.See COURT OF ARCHDEACON.

**ARCHES COURT OF CANTERBURY**

Arches Court of Canterbury.See COURT OF ARCHES.

**ARCHICAPPELLANUS**

archicapellanus (ahr-kee-kap-*<<schwa>>*-lay-n-*<<schwa>>*s). [Law Latin] Hist. A chief or high chancellor.

**ARCHITECT OF THE CAPITOL**

Architect of the Capitol.The officer in the legislative branch of the federal government responsible for main-taining the buildings and grounds of the U.S. Capitol, the Supreme Court, and the Library of Congress. • The Architect also plans and supervises new building construction. The office was established in 1876. 2 USCA §§ 1801, 1811.

**ARCHITECT'S LIEN**

architect's lien.See LIEN.

**ARCHITECTURAL REVIEW**

architectural review. See DESIGN REVIEW.

**ARCHITECTURAL WORK**

architectural work. See WORK(2).

**ARCHIVAL COPY**

archival copy. Copyright. A copy of an original piece of software, made by the consumer for backup. • An owner may make archival copies of software without infringing its copyright. But if the owner transfers the original software, all archival copies must also be transferred or else destroyed. 17 USCA § 117.

**ARCHIVE**

archive, n. (usu. pl.) 1. A place where public, historical, or institutional records are systematically preserved. 2. Collected and preserved public, historical, or institutional papers and records. 3. Any systematic compilation of materials, esp. writings, in physical or electronic form. — archive, vb.

**ARCHIVIST OF THE UNITED STATES**

Archivist of the United States. The federal officer in charge of the National Archives and Records Administration.

**ARCIFINIOUS**

arcifinious (ahr-s<<schwa>>-fin-ee-<<schwa>>s), adj. [fr. Latin arcifinius “having irregular boundaries”] Civil law. 1. (Of a landed estate) having natural boundaries such as woods, mountains, or rivers. 2. (Of a country) having a frontier that forms a natural defense.

**ARCTA ET SALVA CUSTODIA**

arcta et salva custodia (ahrk-t<<schwa>> et sal-v<<schwa>>k<<schwa>>-stoh-dee-<<schwa>>). [Law Latin] Hist. In close and safe custody. • A defendant arrested under the writ of *capias ad satisfaciendum* was said to be kept *arcta et salva custodia*.

**ARDOUR**

ardour. [Law French] Hist. An arsonist.

**AREA BARGAINING**

area bargaining. Negotiation of collective-bargaining agreements by a union with several employers in a particular geographic area.

**AREA-RATE CLAUSE**

area-rate clause. Oil & gas. A price-escalation provision in a long-term gas contract permitting an automatic increase in the contract price if any regulatory agency prescribes or allows a higher

price on gas sold in the area. — Also termed FPC clause.

#### AREA-STANDARDS PICKETING

area-standards picketing. Labor law. The practice that a union undertakes to protect its members in a particular region by picketing employers that may undercut the market through the potentially lower labor costs of a non-union workforce.

#### AREA VARIANCE

area variance. See VARIANCE(2).

#### AREEDA–TURNER TEST

Areeda–Turner test. Antitrust. An economic test for predatory pricing whereby a price below average variable cost is presumed to be predatory and therefore illegal. • This test is widely accepted by federal courts. Its name derives from the coauthors of an influential law-review article: Phillip Areeda & Donald F. Turner, *Predatory Pricing and Practices Under Section 2 of the Sherman Act*, 88 Harv. L. Rev. 692 (1975). They reformulated their test in 3 Phillip Areeda & Donald F. Turner, *Antitrust Law* ¶¶ 710–722 (1978). See PREDATORY PRICING.

#### À RENDRE

à rendre (ah rawn-dr<<schwa>> or -d<<schwa>>r). [Law French] To render; to yield.

#### ARENTARE

arentare (ar-<<schwa>>n-tair-ee). [Law Latin] To rent out; to let out at a certain rent.

#### A REORGANIZATION

A reorganization. See REORGANIZATION(2).

#### ARERE

arere (<<schwa>>-reer), adj. [Law French] Behind in payment (as of rent); in arrears.

#### A RESPONSIS

a responsis (ay ri-spon-sis), n. [Law Latin] See APOCRISARIUS.

#### ARG

arg. abbr. ARGUENDO.

#### ARGENTARIUS

argentarius (ahr-j<<schwa>>n-tair-ee-<<schwa>>s), n. [Latin] Roman law. A moneylender; a banker.

#### ARGENTARIUS MILES

argentarius miles (ahr-j<<schwa>>n-tair-ee-<<schwa>>s mI-leez), n. [Law Latin] Hist. A money porter who carries money from the lower to the upper Exchequer to be examined and

tested.

#### ARGENTUM

argentum (ahr-jen-t<<schwa>>m), n.[Latin] Silver; esp., silver coinage.

#### ARGENTUM DEI

argentum Dei (ahr-jen-t<<schwa>>m dee-I), n.[Law Latin] See DENARIUS DEI.

#### ARGUENDO

arguendo (ahr-gyoo-en-doh). [Latin “in arguing”] 1. For the sake of argument < assuming arguendo that discovery procedures were correctly followed, the court still cannot grant the defendant's motion to dismiss>.2. During the course of argument <counsel mentioned arguendo that the case has been followed in three other decisions>. — Abbr. arg.

#### ARGUMENT

argument. 1. A statement that attempts to persuade; esp., the remarks of counsel in analyzing and pointing out or repudiating a desired inference, for the assistance of a decision-maker. 2. The act or process of attempting to persuade. See ORAL ARGUMENT; CLOSING ARGUMENT.

#### ARGUMENTATIVE

argumentative,adj.1. Of or relating to argument or persuasion <an argumentative tone of voice>.2. Stating not only facts, but also inferences and conclusions drawn from facts <the judge sustained the prosecutor's objection to the argumentative question>.

#### ARGUMENTATIVE INSTRUCTION

argumentative instruction.See JURY INSTRUCTION.

#### ARGUMENTATIVE PLEADING

argumentative pleading.See PLEADING(1).

#### ARGUMENTATIVE QUESTION

argumentative question.A question in which the examiner interposes a viewpoint under the guise of asking a question. • This is considered an abuse of interrogation. [Cases: Witnesses 236. C.J.S. Witnesses § 406.]

#### ARGUMENTUM

argumentum (ahr-gyoo-men-t<<schwa>>m), n.[Latin] An argument. Pl. argumenta.

argumentum ab auctoritate (ahr-gyoo-men-t<<schwa>>m ab awk-tor-<<schwa>>-tay-tee). [Latin] An argument from authority (of a statute or case).

argumentum ab impossibili (ahr-gyoo-men-t<<schwa>>m ab im-pah-sib-<<schwa>>-l I). [Latin] An argument from impossibility.

argumentum ab inconvenienti (ahr-gyoo-men-t<<schwa>>m ab in-k<<schwa>>n-vee-nee-en-tl). [Latin] An argument from inconvenience; an argument that emphasizes the harmful consequences of failing to follow the position advocated.

argumentum a contrario (ahr-gyoo-men-t<<schwa>>m ay k<<schwa>>n-trair-ee-oh). [Latin] An argument for contrary treatment.

argumentum ad baculum (ahr-gyoo-men-t<<schwa>>m ad bak-y<<schwa>>-l<<schwa>>m). [Latin] An argument depending on physical force to back it up.

argumentum ad captandum (ahr-gyoo-men-t<<schwa>>m ad kap-tan-d<<schwa>>m). [Latin] An argument appealing to the emotions of a crowd.

argumentum ad crumenam (ahr-gyoo-men-t<<schwa>>m ad kroo-mee-n<<schwa>>m). [fr. Latin crumena "purse"] An argument appealing to the purse (or one's desire to save money).

argumentum ad hominem (ahr-gyoo-men-t<<schwa>>m ad hom-<<schwa>>n<<schwa>>m). [Latin "argument to the man"] An argument based on disparagement or praise of another in a way that obscures the real issue.

argumentum ad ignorantiam (ahr-gyoo-men-t<<schwa>>m ad ig-n<<schwa>>-ran-shee-<<schwa>>m). [Latin] An argument based on an adversary's ignorance of the matter in dispute.

argumentum ad invidiam (ahr-gyoo-men-t<<schwa>>m ad in-vid-ee-<<schwa>>m). [Latin] An argument appealing to one's hatreds or prejudices.

argumentum ad iudicium (ahr-gyoo-men-t<<schwa>>m ad joo-dish-ee-<<schwa>>m). [Latin] An argument addressed to the judgment; a proof based on knowledge or probability.

argumentum ad misericordiam (ahr-gyoo-men-t<<schwa>>m ad miz-<<schwa>>-ri-kor-dee-<<schwa>>m). [Latin] An argument appealing to pity.

argumentum ad populum (ahr-gyoo-men-t<<schwa>>m ad pop-y<<schwa>>-l<<schwa>>m). [Latin] An argument appealing to the crowd.

argumentum ad rem (ahr-gyoo-men-t<<schwa>>m ad rem). [Latin] An argument on the point at issue.

argumentum ad verecundiam (ahr-gyoo-men-t<<schwa>>m ad ver-<<schwa>>-k<<schwa>>n-dee-<<schwa>>m). [Latin] An argument appealing to the listener's modesty; an argument based on the opinions of people who are considered authorities.

argumentum a simili (ahr-gyoo-men-t<<schwa>>m ay sim-<<schwa>>-li). [Latin "argument from a like case"] An argument by analogy or similarity.

argumentum baculinum (ahr-gyoo-men-t<<schwa>>m bak-y<<schwa>>-li-n<<schwa>>m). [fr. Latin baculus "a rod or scepter"] An argument appealing to force.

argumentum ex concessio (ahr-gyoo-men-t<<schwa>>m eks k<<schwa>>n-ses-oh). [Latin]



An argument based on an earlier admission by the adversary.

argumentum ex silentio (ahr-gyoo-men-t<<schwa>>m eks si-len-shee-oh). [Latin] An argument from silence — i.e., based on the absence of express evidence to the contrary.

#### ARIMANNI

arimanni (ar-<<schwa>>-man-I), n.[Law Latin] Hist. A fine for not joining the army when summoned.

#### ARISE

arise,vb.1. To originate; to stem (from) <a federal claim arising under the U.S. Constitution>. 2.To result (from) <litigation routinely arises from such accidents>.3. To emerge in one's consciousness; to come to one's attention <the question of appealability then arose>.4. (Of a court) to adjourn; to suspend sitting.

#### ARISING-IN JURISDICTION

arising-in jurisdiction.See JURISDICTION.

#### ARISTOCRACY

aristocracy. 1. A privileged class of persons, esp. the hereditary nobility. 2. A government ruled by a privileged class.

#### ARISTODEMOCRACY

aristodemocracy. A government consisting of both democratic and aristocratic elements; a government in which power is divided between the nobility (or more powerful group) and the rest of the people.

#### ARKANSAS RULE

Arkansas rule.Secured transactions. The principle that the collateral securing a loan is presumed to be worth at least as much as the loan's balance, and that the creditor has the burden to prove that a sale of the collateral would not satisfy the loan amount. Norton v. National Bank of Commerce, 398 S.W.2d 538 (Ark. 1966). [Cases: Secured Transactions 229, 240.C.J.S. Secured Transactions §§ 161, 164–166, 168–169, 172, 174–175, 180–183.]

#### ARM

ARM.abbr.See adjustable-rate mortgage under MORTGAGE.

#### ARMA

arma (ahr-m<<schwa>>), n. pl.[Latin] Roman law. 1. Arms; weapons. 2. Military service.

arma moluta (ahr-m<<schwa>> m<<schwa>>-loo-t<<schwa>>). [Law Latin] Sharp weapons that cut, as con-trasted with blunt instruments that bruise or break.

arma reversata (ahr-m<<schwa>> ree-v<<schwa>>r-say-t<<schwa>>). [Law Latin]

Reversed arms. • This was a punishment for a felon or traitor.

#### ARMARIA

armaria. See ALMARIA.

#### ARMATA VIS

armata vis (ahr-may-t<<schwa>> vis). See VIS ARMATA.

#### ARMED

armed,adj.1. Equipped with a weapon <an armed robber>.2. Involving the use of a weapon <armed robbery>.

#### ARMED CONFLICT

armed conflict.Int'l law. 1. A state of open hostility between two nations, or between a nation and an aggressive force. • A state of armed conflict may exist without a formal declaration of war by either side. 2. A military action taken under Article 42 of the United Nations Charter. — Also termed police action.

#### ARMED NEUTRALITY

armed neutrality.See NEUTRALITY.

#### ARMED PEACE

armed peace.See PEACE.

#### ARMED ROBBERY

armed robbery.See ROBBERY.

#### ARMED SERVICES BOARD OF CONTRACT APPEALS

Armed Services Board of Contract Appeals.A quasi-judicial board that reviews appeals from final decisions of contracting officers involving disputes relating to contracts made by elements of the Department of Defense and designated civilian agencies. • Its decisions are subject to judicial review.

#### ARMIGER

armiger (ahr-m<<schwa>>-j<<schwa>>r), n.[Latin fr. arma “arms” + gerere “to bear”] Hist. 1.One who bears arms; an armor-bearer; an esquire. 2. A servant who carried the armor of a knight. 3. A tenant by scutage; a valet.

#### ARM-IN-ARM

arm-in-arm,adj. Of, relating to, or involving a transaction between parties whose personal interests are involved. Cf. ARM'S-LENGTH.

#### ARMISCARA

armiscara (ahr-m<<schwa>>-skair-<<schwa>>), n.[Law Latin] Hist. 1.A punishment consisting of carrying a saddle on one's back as a sign of subjection. 2. A fine.

#### ARMISTICE

armistice. See TRUCE.

#### ARM OF THE COURT

arm of the court.An officer of the court who performs tasks or duties related to the court's functions.

#### ARM OF THE SEA

arm of the sea.The portion of a river or bay in which the tide ebbs and flows. • It may extend as far into the interior as the water of the river is propelled backward by the tide. [Cases: Navigable Waters 1(4).C.J.S. Navigable Waters § 4.]

#### ARM OF THE STATE

arm of the state.An entity created by a state and operating as an alter ego or instrumentality of the state, such as a state university or a state department of transportation. • The 11th Amendment of the U.S. Constitution generally bars suits in federal court by individuals against states. The Amendment has been interpreted as protecting arms of the state as well as the state itself. Cities and local school districts have been held not to be arms of the state. [Cases: States 45. C.J.S. States §§ 79, 82, 136.]

#### ARMS, LAW OF

arms, law of. 1. Rules concerning conditions of war, such as the treatment of prisoners. 2. The law relating to the right to bear arms. [Cases: Weapons 1. C.J.S. Weapons §§ 1–8, 61–62.] 3. The law relating to armorial bearings, i.e., coats of arms granted by the College of Heralds in England, Lord Lyon King of Arms in Scotland, and corresponding officers in some other countries.

#### ARMS, RIGHT TO BEAR

arms, right to bear.See RIGHT TO BEAR ARMS.

#### ARMS CONTROL

arms control.Int'l law.A policy of minimizing instabilities in the military field by lessening the possibility of the outbreak of war while reducing in number a country's weapons of mass destruction. Cf. DISARMAMENT.

#### ARM'S-LENGTH

arm's-length,adj. Of or relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship <an arm's-length transaction does not create fiduciary duties between the parties>. Cf. ARM-IN-ARM M. [Cases: Contracts 1; Fraud 7. C.J.S. Contracts §§ 2–3, 9, 12.]

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**ARM'S-LENGTH PRICE**

arm's-length price. See PRICE.

**ARM'S-LENGTH TRANSACTION**

arm's-length transaction. See TRANSACTION.

**ARMY**

army. 1. A military force, esp. of ground troops. [Cases: Armed Services 4. C.J.S. Armed Services §§ 14, 16–17, 19, 37.] 2. Any substantial group of individuals armed for combat. 3. A vast, organized group.

regular army. The permanent military establishment, maintained during both war and peacetime.

**ARRA**

arra (ar-⟨schwa⟩), n. [Latin “earnest, deposit”] Roman & civil law. Earnest money; money given as evidence of a completed bargain. Also spelled arrha. See DENARIUS DEI. Cf. GOD'S PENNY. — Pl. arrae.

**ARRAIGNMENT**

arraignment, n. The initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea. Fed. R. Crim. P. 10. Cf. PRELIMINARY HEARING; initial appearance under APPEARANCE. [Cases: Criminal Law 261–264. C.J.S. Criminal Law §§ 355, 357–360, 362–363.] — arraign, vb.

**ARRANGEMENT IN ORDER OF BREADTH**

arrangement in order of breadth. Patents. The placement of claims in a patent application in order of scope so that the first claim in the application or patent is the broadest and later claims are progressively narrower. [Cases: Patents 98. C.J.S. Patents §§ 137–139.]

**ARRANGEMENTS COMMITTEE**

arrangements committee. See COMMITTEE.

**ARRANGEMENT WITH CREDITORS**

arrangement with creditors. Bankruptcy. A debtor's agreement with creditors for the settlement, satisfaction, or extension of time for payment of debts. See BANKRUPTCY PLAN. [Cases: Bankruptcy 3661.100–3661.115.]

**ARRANGER FOR DISPOSAL**

arranger for disposal. Environmental law. An entity that owns or possesses hazardous substances, and either disposes of them or has an obligation to control them. • An arranger for disposal can be held liable for environmental cleanup costs under CERCLA. [Cases: Environmental Law 445(1).]

## ARRAY

array,n.1. A panel of potential jurors; VENIRE(1) <the array of mostly wealthy professionals seemed to favor the corporate defendant>. [Cases: Jury 66, 114. C.J.S. Juries §§ 271, 312, 355, 359, 443–444.] 2. The jurors actually empaneled <the array hearing the case consisted of seven women and five men>.3. A list or roster of empaneled jurors <the plaintiff obtained a copy of the array to help prepare for voir dire>. [Cases: Jury 69. C.J.S. Juries §§ 282, 316.] 4. Order; arrangement <the array of jurors from oldest to youngest>.5. A militia <the array organized antigovernment rallies>.6. A series of statistics or a group of elements <a mathematical array>.

array,vb.1. To empanel a jury for trial. 2. To call out the names of jurors, one by one, as they are empaneled.

## ARREAR

arrear,n. (usu. pl.) 1. The state of being behind in the payment of a debt or the discharge of an obligation <the creditor filed a lawsuit against the debtor who was in arrears>. — Also termed arrearage. 2. An unpaid or overdue debt <the creditor reached an agreement with the debtor on settling the arrears>.3. An unfinished duty <the arrears of work have accumulated>. See IN ARREARS.

## ARREARAGE

arrearage. See ARREAR(1).

## ARRENT

arrent (<<schwa>>-rent), vb. Hist. To let at a fixed rent; specif., to give royal permission to enclose (a portion of public land) in exchange for annual rent.

## ARREST

arrest,n.1. A seizure or forcible restraint. 2. The taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge; specif., the apprehension of someone for the purpose of securing the administration of the law, esp. of bringing that person before a court. [Cases: Arrest 68(3). C.J.S. Arrest §§ 43–44.] — arrest,vb.

“The question of what constitutes an arrest is a difficult one. On one end of the spectrum, it seems apparent that detention accompanied by handcuffing, drawn guns, or words to the effect that one is under arrest qualifies as an ‘arrest’ and thus requires probable cause. At the other end, a simple questioning on the street will often not rise to the level of an arrest. Somewhere in between lie investigative detentions at the stationhouse ....” Charles H. Whitebread, *Criminal Procedure* § 3.02, at 61 (1980).

arrest by warrant.See lawful arrest under ARREST.

arrest in execution.See arrest on final process.

arrest in quarters.Military law. A nonjudicial punishment that can be given to officers and

warrant officers only by a general, a flag officer in command, or an officer exercising general court-martial jurisdiction. See BREACH OF ARREST. [Cases: Military Justice 525. C.J.S. Military Justice §§ 24–27.]

arrest on final process.Hist. Arrest in a civil case after the conclusion of a trial. — Also termed arrest in execution.

arrest on mesne process (meen).Hist. Arrest in a civil case before trial takes place.

citizen's arrest.An arrest of a private person by another private person on grounds that (1) a public offense was committed in the arrester's presence, or (2) the arrester has reasonable cause to believe that the arrestee has committed a felony. [Cases: Arrest 64. C.J.S. Arrest §§ 12–15.]

civil arrest.Hist. An arrest and detention of a civil-suit defendant until bail is posted or a judgment is paid. • Civil arrest is prohibited in most states.

false arrest.An arrest made without proper legal authority. Cf. FALSE IMPRISONMENT.

house arrest.See HOUSE ARREST.

lawful arrest.The taking of a person into legal custody either under a valid warrant or on probable cause that the person has committed a crime. Cf. unlawful arrest. — Also termed arrest by warrant; warrant arrest.

malicious arrest.An arrest made without probable cause and for an improper purpose; esp., an abuse of process by which a person procures the arrest (and often the imprisonment) of another by means of judicial process, without any reasonable cause. • Malicious arrest can be grounds for an action for abuse of process, false imprisonment, or malicious prosecution.

parol arrest (p<<schwa>>-rohlorpar-<<schwa>>l). An arrest ordered by a judge or magistrate from the bench, without written complaint, and executed immediately, such as an arrest of a person who breaches the peace in open court. See CONTEMPT.

pretextual arrest.An arrest of a person for a minor offense for the opportunity to investigate the person's in-volvement in a more serious offense for which there are no lawful grounds to make an arrest. — Also termed pretext arrest.

rearrest. A warrantless arrest of a person who has escaped from custody, violated parole or probation, or failed to appear in court as ordered.

subterfuge arrest.An arrest of a suspect for the stated purpose of obtaining evidence of one crime but with the underlying intent to search the suspect for evidence of a different crime.

unlawful arrest.The taking of a person into custody either without a valid warrant or without probable cause to believe that the person has committed a crime. Cf. lawful arrest.

warranted arrest.An arrest made under authority of a warrant.

warrantless arrest.A legal arrest, without a warrant, based on probable cause of a felony, or for a misdemeanor committed in a police officer's presence. — Also termed arrest without a

warrant. See WARRANT. [Cases: Arrest 62. C.J.S. Arrest §§ 10–11.]

3.Maritime law. The taking of a ship and sometimes its cargo into custody by virtue of a court's warrant. [Cases: Admiralty 48. C.J.S. Admiralty §§ 157, 239.]

#### ARRESTABLE OFFENSE

arrestable offense.See OFFENSE(1).

#### ARRESTANDIS BONIS NE DISSIPENTUR

arrestandis bonis ne dissipentur.See DE ARRESTANDIS BONIS NE DISSIPENTUR.

#### ARRESTANDO IPSUM QUI PECUNIAM RECEPIT

arrestando ipsum qui pecuniam recepit.See DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT .

#### ARRESTATIO

arrestatio (ar-<<schwa>>-stay-shee-oh), n.[Law Latin] Hist. An arrest.

#### ARREST BY WARRANT

#### ARRESTEE

arrestee. 1. A person who has been taken into custody by legal authority; a person who has been arrested. 2.Scots law. One who holds property attached by arrestment.

#### ARRESTER

arrestor. One who arrests. — Also spelled arrestor.

#### ARREST IN EXECUTION

arrest in execution.See arrest on final process under ARREST.

#### ARREST IN QUARTERS

arrest in quarters.See ARREST.

#### ARRESTMENT

arrestment. 1. The arrest of a person or of personal effects. 2.Scots law. The taking or attachment of property belonging to another person but in the possession of a third party, either to obtain security or to found jurisdiction. • The process of attachment is similar to garnishment: the property holder is ordered to withhold the property from the debtor. The court may order that the property be transferred to the creditor.

arrestment in execution.Postjudgment arrestment to preserve property on which to collect the judgment.

arrestment in security.See arrestment on the dependence.

arrestment on the dependence. Prejudgment arrestment to secure payment of a judgment against a debtor who is likely to leave the country to escape the creditor. • The arrestment may be ordered even though the creditor has not begun an action on the debt or an action is still pending. — Also termed arrestment in security.

arrestment to found jurisdiction. Arrestment for the purpose of conferring legitimate legal authority on a court, esp. when the debtor is a foreigner who is not present in and does not own land in a given place.

3. The action of checking or stopping something.

#### ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM

arresto facto super bonis mercatorum alienigenorum (<<schwa>>-res-toh fak-toh s [y]oo-p<<schwa>>r boh-nis m<<schwa>>r-k<<schwa>>-tor-<<schwa>>m ay-lee-ee-nI-j<<schwa>>-nor-<<schwa>>m or al-ee-). [Latin “seizure of the goods of foreign merchants”] Hist. A writ to seize the goods of an alien, taken in recompense of goods taken from an English subject living abroad.

#### ARREST OF INQUEST

arrest of inquest. A plea that a matter proposed for inquiry has already been investigated and should therefore not be reexamined.

#### ARREST OF JUDGMENT

arrest of judgment. The staying of a judgment after its entry; esp., a court's refusal to render or enforce a judgment because of a defect apparent from the record. • At common law, courts have the power to arrest judgment for intrinsic causes appearing on the record, as when the verdict differs materially from the pleadings or when the case alleged in the pleadings is legally insufficient. Today, this type of defect must typically be objected to before trial or before judgment is entered, so that the motion in arrest of judgment has been largely superseded. — Also termed allocutus. [Cases: Criminal Law 966–976; Judgment 259–269. C.J.S. Criminal Law §§ 1453–1457; Judgments §§ 95–105.]

“An arrest of judgment [under common law] was the technical term describing the act of a trial judge refusing to enter judgment on the verdict because of an error appearing on the face of the record that rendered the judgment invalid.” *United States v. Sisson*, 399 U.S. 267, 280–81, 90 S.Ct. 2117, 2125 (1970).

#### ARREST ON FINAL PROCESS

arrest on final process. See ARREST.

#### ARREST ON MESNE PROCESS

arrest on mesne process. See ARREST.

#### ARREST RECORD



arrest record. 1. A form completed by a police officer when a person is arrested. 2. A cumulative list of the instances when a person has been arrested. — Also termed police blotter; (in sense 2) bench blotter; blotter; log.

#### ARRESTUM JURISDICTIONIS FUNDANDAE CAUSA

arrestum jurisdictionis fundandae causa (<<schwa>>-res-t<<schwa>>m juur-is-dik-shee-oh-nis fun-dan-dee kaw-z<<schwa>>). [Law Latin “an arrestment for the purpose of founding jurisdiction”] Scots law. An arrestment to bring a foreigner under the jurisdiction of Scottish courts. • This type of arrestment originated in Dutch law. See JURISDICTIONIS FUNDANDAE.

#### ARREST WARRANT

arrest warrant. See WARRANT(1).

#### ARREST WITHOUT A WARRANT

arrest without a warrant. See warrantless arrest under ARREST(1).

#### ARRÊT

arrêt (ah-retor -ray). [French] Civil law. 1. A judgment, sentence, or decree of a court with competent jurisdiction. 2. A sovereign's decree. Pl. arrêts.

#### ARRÊT DE RÈGLEMENT

arrêt de règlement (<<schwa>>-re d<<schwa>> re-gl<<schwa>>-mahn), n. [French] Hist. Civil law. A decision issued by Parliament to establish a rule of procedure, civil law, or custom.

#### ARRETTED

arretted (<<schwa>>-ret-id), adj. [Law French] (Of an accused) brought before a judge and charged with a crime.

#### ARRHA

arrha (ar-<<schwa>>). See ARRA.

#### ARRHA SPONSALITIA

arrha sponsalitia (ar-ee spon-s<<schwa>>-lish-ee-<<schwa>>). [Latin] Roman law. A payment made to guarantee fulfillment of a promise to marry.

#### ARRIAGE AND CARRIAGE

arriage and carriage (ar-ij). Hist. Indefinite services formerly demandable from tenants, but prohibited by statute in the 18th century.

#### ARRIÈRE-BAN

arrière-ban (ah-ree-air-bahn or-ar-ee-air-ban), n. [French] Hist. 1. A king's proclamation summoning vassals to military service. 2. The group of vassals so summoned.

**ARRIERE FEE**

arriere fee.FEE(2).

**ARRIERE FIEF**

arriere fief.See arriere fee under FEE(2).

**ARRIERE VASSAL**

arriere vassal.See VASSAL.

**ARROGATIO**

arrogatio. See ADROGATION.

**ARROGATION**

arrogation (ar-<<schwa>>-gay-sh<<schwa>>n), n.1. The act of claiming or taking something without the right to do so <some commentators argue that limited military actions unilaterally ordered by the President are an arrogation of Congress's power to declare war>.2.Roman & civil law. The adoption of an adult; specif., the adoption of a person sui juris, as a result of which the adoptee loses independence and comes within the paternal power (patria potestas) of the adopting father. [Cases: Adoption 5. C.J.S. Adoption of Persons §§ 18–24.] — arrogate,vb.

**ARS**

ARS.abbr. AGRICULTURAL RESEARCH SERVICE.

**ARSER IN LE MAIN**

arser in le main (ahr-say an l<<schwa>> man or an l<<schwa>> man), n.[French “burning in the hand”] Hist. A punishment of burning or branding the left thumb of a lay offender who falsely claimed and was allowed the benefit of clergy, so that the offender would be distinguished if he tried to claim the benefit again. — Also termed arsure en le main (ahr-soor awn l<<schwa>> man or awn l<<schwa>> man).

**ARSON**

arson,n.1. At common law, the malicious burning of someone else's dwelling house or outhouse that is either appurtenant to the dwelling house or within the curtilage. [Cases: Arson 1. C.J.S. Arson §§ 2–3.]

“The thing that is burnt must be a ‘house’, but this word has a large meaning; already in 1220 we find the burning of a barn that was full of corn treated as a felony.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 492 (2d ed. 1899).

“The burning of one's own dwelling to collect insurance did not constitute common-law arson. It was generally assumed in early England that one had the legal right to destroy his own property in any manner he chose.” Denis Binder, “Arson: Legal Aspects,” in 1 *Encyclopedia of Crime and Justice* 80, 80 (Sanford H. Kadish ed., 1983).

“At common law, arson is the wilful and malicious burning of the dwelling house of another. It may occur during the nighttime or the daytime, and it is an offense against the security of habitation or occupancy, rather than against ownership or property.” 3 Charles E. Torcia, *Wharton's Criminal Law* § 334, at 324–25 (15th ed. 1995).

2. Under modern statutes, the intentional and wrongful burning of someone else's property (as to destroy a building) or one's own property (as to fraudulently collect insurance). See Model Penal Code § 220.1(1). — Also termed (in Latin) *crimen incendii*; (in sense 2) statutory arson. Cf. HOUSEBURNING; CRIMINAL DAMAGE TO PROPERTY. “The term ‘statutory arson’ is employed to designate the entire area of statutory proscription which is analogous to, but does not constitute, common-law arson. It is important to have mutually exclusive labels here not only for the reasons mentioned in the preceding section, but because some of the state statutes provide a penalty for arson without defining the word and hence adopt the common-law definition.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 287 (3d ed. 1982).

“(1) Arson. A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of: (a) destroying a building or occupied structure of another; or (b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be an affirmative defense to prosecution under this paragraph that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.” Model Penal Code § 220.1 (1997).

aggravated arson. Arson accompanied by some aggravating factor, as when the offender foresees or anticipates that one or more persons will be in or near the property being burned. [Cases: Arson 12. C.J.S. Arson § 19.]

#### ARSONABLE

arsonable, adj. (Of property) of such a nature as to give rise to a charge of arson if maliciously burned <only real property, and not personal property, is arsonable>. [Cases: Arson 5. C.J.S. Arson §§ 4–5, 12–14.]

#### ARSON CLAUSE

arson clause. Insurance. An insurance-policy provision that excludes coverage of a loss due to fire if the insured intentionally started the fire. [Cases: Insurance 2166(3). C.J.S. Insurance § 922.]

#### ARSONIST

arsonist. One who commits arson; INCENDIARY(1).

#### ARSONOUS

arsonous, adj. Of, relating to, or involving arson <an arsonous purpose>.

#### ARSURA

arsura (ahr-s[y]oor-<<schwa>>), n. [Law Latin] Hist. 1. The trial of money by heating it after

it is coined. 2. The loss in weight from this process.

#### ARSURE EN LA MAIN

arsure en la main (ahr-soor awn lah man), n.[Law French] See ARSER IN LE MAIN .

#### ART

ART.abbr.ASSISTED REPRODUCTIVE TECHNOLOGY.

art. 1. Creative expression, or the product of creative expression. 2. An occupation or business that requires skill; a craft. 3.Patents. A field of useful endeavor; the methodical application of knowledge or skill in creating something new. [Cases: Patents 5. C.J.S. Patents §§ 13–14, 16.]

analogous art.Patents. A technique, product, application, machine, or method that is reasonably related to the problem addressed by the invention, and with which the inventor is assumed to be familiar. — Also termed per-tinent art. See NONOBVIOUSNESS. [Cases: Patents 16(3).]

nuisance prior art.Patents. Information that appears to anticipate or obviate an invention, but does not actually do so because the earlier described invention was neither reduced to practice nor adequately disclosed in any documents. • Nuisance prior art does not bar a patent's issuance, but it may prolong the prosecution. The term does not apply to efforts that are not prior art at all, such as descriptions of unsuccessful attempts to reduce an invention to practice, or to writings that do not disclose real inventions or technology, such as science fiction.

pertinent art. 1. See analogous art. 2. See relevant art.

prior art.Patents. Knowledge that is publicly known, used by others, or available on the date of invention to a person of ordinary skill in an art, including what would be obvious from that knowledge. • Prior art includes (1) information in applications for previously patented inventions; (2) information that was published more than one year before a patent application is filed; and (3) information in other patent applications and inventor's certificates filed more than a year before the application is filed. The U.S. Patent and Trademark Office and courts analyze prior art before deciding the patentability of a comparable invention. 35 USCA § 102. [Cases: Patents 16(2). C.J.S. Patents § 69.]

relevant art.Patents. Art to which one can reasonably be expected to look for a solution to the problem that a patented device tries to solve. • The term includes not only knowledge about a problem in a particular industry, but also knowledge accumulated in scientific fields whose techniques have been commonly employed to solve similar problems. — Also termed pertinent art.

4.Hist. In a seduction case, the skillful and systematic coaxing of another to engage in sexual activity.

#### ART AND PART

art and part,adj. & adv. English & Scots law. Aiding in or contributing to the commission of a crime <the lookout was involved in the burglary on an art-and-part basis> <the baker acted art and part in the prisoner's escape by producing a cake with a file in it>. See ACCESSORY(2).

art and part,n. Scots law. Participation in or encouragement of a crime; criminal guilt by assisting, advising, or participating in the crime. Cf. OPE ET CONSILIO .

“Scots law never distinguished between degrees of participation in a crime, between what English law distinguished as accession before the fact, concomitant accession, and accession after the fact. In treason all participants were treated as principal offenders and indictments in other cases charged the accused as ‘actor or art and part’. The Criminal Procedure (Scotland) Act 1887 made this an unnecessary but implied charge in all indictments.” 6 David M. Walker, *A Legal History of Scotland* 397 (2001).

#### ARTFUL PLEADING

artful pleading.See PLEADING(2).

#### ART GROUP

art group.Patents. A collection of art units in the U.S. Patent and Trademark Office, led by a group director.

#### ARTICLE

article,n.1. Generally, a particular item or thing <article of clothing>.

proprietary article.(often pl.) A product manufactured under an exclusive right to sell it.

2. A separate and distinct part (as a clause or stipulation) of a writing, esp. in a contract, statute, or constitution <Article III>.3. (pl.) An instrument containing a set of rules or stipulations <articles of war> < articles of incorporation>.4. A nonfictional literary composition forming an independent part of a publication, such as a law review or journal <a well-researched article>.5.Patents. A workpiece, product, or thing that is operated on, modified, or changed by a machine or process. 6.Patents. An article of manufacture. See MANUFACTURE. 7.Eccles. law. In an ecclesiastical court, one of a plaintiff's complaints or charges against the defendant. • The complaint or charge may be presented by oral declaration or by a written document.

article,vb.1. To bring charges against by an exhibition of articles. 2. To be an article clerk.

#### ARTICLE OF MANUFACTURE

article of manufacture.See MANUFACTURE.

#### ARTICLE OF MERCHANDISE

article of merchandise.1.MERCHANDISE(1).MERCHANDISE(2).

#### ARTICLE I COURT

Article I court. 1. See legislative court under COURT. 2. A type of federal legislative court

that is not bound by the requirements of or protected under U.S. Const. art. III, § 2, and that performs functions similar to those of an administrative agency, such as issuing advisory opinions. U.S. Const. art. I, § 8. Cf. ARTICLE III COURT.

“Congress also has the power, within certain limits, to create what are called ...Article I tribunals .... These Article I tribunals are really akin to administrative agencies; that is, the ‘judges’ do not have any constitutionally guaranteed lifetime tenure and protection from salary diminution; they are not governed by the case or controversy limitation of Article III... At the present time, Article I courts include territorial courts, certain courts in the District of Columbia, courts martial, and legislative courts and administrative agencies that adjudicate ‘public rights.’ ” John E. Nowak & Ronald D. Rotunda, *Constitutional Law* 22–23 (4th ed. 1991).

#### ARTICLE II JUDGE

Article II judge.A U.S. bankruptcy judge or magistrate judge appointed for a term of years as authorized by Congress under Article II of the U.S. Constitution.28 USCA §§ 151 et seq., 631 et seq. [Cases: Bankruptcy 2123; United States Magistrates 11. C.J.S. Bankruptcy § 7; United States Commissioners §§ 2–6.]

#### ARTICLE III COURT

Article III Court.A federal court that, deriving its jurisdiction from U.S. Const. art. III, § 2, hears cases arising under the Constitution and the laws and treaties of the United States, cases in which the United States is a party, and cases between the states and between citizens of different states. — Also termed constitutional court. Cf. ARTICLE I COURT. [Cases: Federal Courts 1.1.]

#### ARTICLE III JUDGE

Article III judge.A U.S. Supreme Court, Court of Appeals, or District Court judge appointed for life under Article III of the U.S. Constitution. [Cases: Judges 1. C.J.S. Judges §§ 2–7.]

#### ARTICLE 15

Article 15.See nonjudicial punishment under PUNISHMENT.

#### ARTICLED CLERK

articled clerk.English law. A clerk who works for a solicitor in exchange for learning the profession; a clerk bound by articles of apprenticeship.

#### ARTICLES OF AGREEMENT

articles of agreement.A writing that records matters that the parties agreed on when forming a partnership or business or transferring real property. • Unlike a contract, articles of agreement usu. contain only agreements and not express promises of performance, e.g., “the parties agree that it is not possible to guarantee delivery within ten days.” Articles of agreement often supplement a contract. They may be informal or detailed.

#### ARTICLES OF AMENDMENT

articles of amendment.A document filed to effectuate an amendment or change to a corporation's articles of incorporation. [Cases: Corporations 40.C.J.S. Corporations § 38.]

#### ARTICLES OF APPRENTICESHIP

articles of apprenticeship.Hist. A contract under which a minor agrees to work for a master for a specified time in exchange for learning a trade.

#### ARTICLES OF ASSOCIATION

articles of association. 1.ARTICLES OF INCORPORATION. 2. A governing document — similar to articles of incorporation — that legally creates a nonstock or nonprofit organization. — Also termed articles of organization. — Often shortened (informally) to articles. See governing document under DOCUMENT(1). [Cases: Corporations 18. C.J.S. Corporations §§ 26, 33–35, 41, 559.]

#### ARTICLES OF CONFEDERATION

Articles of Confederation.The instrument that governed the association of the 13 original states from March 1, 1781 until the adoption of the U.S. Constitution. • They were prepared by the Continental Congress, submitted to the states in 1777, and later ratified by representatives of the states empowered by their respective legislatures for that purpose.

#### ARTICLES OF DISSOLUTION

articles of dissolution.A document that a dissolving corporation must file with the appropriate governmental agency, usu. the secretary of state, after the corporation has settled all its debts and distributed all its assets. [Cases: Corporations 610(1). C.J.S. Corporations §§ 835–837.]

#### ARTICLES OF IMPEACHMENT

articles of impeachment.A formal document alleging the specific charges against a public official and the rea-sons for removing that official from office. • It is similar to an indictment in a criminal proceeding. See IM-PEACHMENT(1). [Cases: United States 35. C.J.S. United States §§ 23, 53, 56–57.]

#### ARTICLES OF INCORPORATION

articles of incorporation.A governing document that sets forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the corporation. • In most states, the articles of incorporation are filed with the secretary of state as part of the process of forming the corporation. In some states, the articles serve as a certificate of incorporation and are the official recognition of the corporation's existence. In other states, the government issues a certificate of incorporation after approving the articles and other required documents. — Also termed articles of association; articles of organization; certificate of incorporation. — Often shortened (informally) to articles. Cf. BYLAW(1); CHARTER(5). See governing document under DOCUMENT(1). [Cases: Corporations 18. C.J.S. Corporations §§ 26, 33–35, 41, 559.]

## ARTICLES OF ORGANIZATION

articles of organization.1.ARTICLES OF INCORPORATION. 2.ARTICLES OF ASSOCIATION(2).

## ARTICLES OF PARTNERSHIP

articles of partnership.See PARTNERSHIP AGREEMENT.

## ARTICLES OF THE CLERGY

Articles of the Clergy.Hist. A statute enacted in 1315 to settle the jurisdictions of the ecclesiastical and temporal courts. — Also termed *Articuli Cleri*.

## ARTICLES OF THE EYRE

articles of the eyre (air).Hist. A series of questions put to the members of a community by the justices in eyre to discover what breaches of the law had occurred during the court's absence. • The inquiry enabled the justices to fine criminal behavior and to raise revenue for the Crown through the levying of penalties. See EYRE. Cf. CHAPTER. — Also termed *capitula itineris*.

## ARTICLES OF THE PEACE

articles of the peace.English law. A sworn complaint in which a person alleges that a named person poses a threat to the complainant's person, family, or property.

## ARTICLES OF UNION

Articles of Union.Hist. The 25 articles agreed to by the English and Scottish parliaments in 1707 for the union of the two kingdoms.

## ARTICLES OF WAR

articles of war. 1. The rules and regulations that govern the activities of an army and navy. 2. (cap.) The body of laws and procedures that governed the U.S. military until replaced in 1951 by the Uniform Code of Military Justice.

## ARTICULATED PLEADING

articulated pleading.See PLEADING(1).

## ARTICULI

articuli (ahr-tik-y<<schwa>>-II), n.[Latin] Articles; items. • This term was applied to several English statutes and treatises.

## ARTICULI CLERI

Articuli Cleri (ahr-tik-y<<schwa>>-IIkleer-I). [Law Latin] See ARTICLES OF THE CLERGY .

## ARTICULI MAGNAE CHARTAE



articuli magnae chartae (ahr-tik-y<<schwa>>-lImag-nee kahr-tee), n.[Latin] Hist. The 49 preliminary articles on which Magna Carta was founded.

#### ARTICULI SUPER CARTAS

Articuli super Cartas (ahr-tik-y<<schwa>>-lIs[y]oo-p<<schwa>>r kahr-t<<schwa>>s). [Law Latin “articles upon the charters”] Hist. A statute passed in 1300 to confirm and enlarge many particulars of Magna Carta and the Forest Charter.

#### ARTICULO MORTIS

articulo mortis.See IN ARTICULO MORTIS.

#### ARTIFICE

artifice (ahr-t<<schwa>>-fis). A clever plan or idea, esp. one intended to deceive.

#### ARTIFICER

artificer. 1. A skilled worker, such as a mechanic or craftsman; an artisan. 2. One who builds or contrives; an inventor.

#### ARTIFICIAL

artificial,adj.1. Existing only by virtue of or in consideration of the law < artificial presumption>. • This term is often used in reference to a company or a corporation. See artificial person under PERSON(3).2. Made or pro-duced by a human or human intervention rather than by nature <artificial condition>.3. Of or relating to artifice <an artificial demeanor>.

#### ARTIFICIAL CONDITION

artificial condition.See CONDITION(4).

#### ARTIFICIAL DAY

artificial day.See DAY.

#### ARTIFICIAL FORCE

artificial force.Patents. A natural force that is so transformed in character or energies by human power as to become something new.

#### ARTIFICIAL INSEMINATION

artificial insemination.Family law. A process for achieving conception, whereby semen is inserted into a woman's vagina by some means other than intercourse. • If the woman is married when the artificial insemination and the birth occur, and her husband has consented to the insemination, and the insemination is performed by a licensed physician, the husband is considered the father of the child. If the woman is unmarried at the time of the insemination, several factors, varying from jurisdiction to jurisdiction, determine whether the donor is considered the father of the child. Cf. IN VITRO FERTILIZATION ; GAMETE INTRAFALLOPIAN TRANSFER; ZYGOTE INTRAFALLOPIAN TRANSFER .

artificial insemination by donor. Artificial insemination in which the semen donor is someone other than the recipient's husband. — Abbr. AID. — Also termed heterologous artificial insemination; exogamous insemination.

artificial insemination by husband. Artificial insemination in which the semen donor is the recipient's husband. — Abbr. AIH. — Also termed homologous insemination; endogenous insemination.

endogenous insemination. See artificial insemination by husband.

exogamous insemination. See artificial insemination by donor.

heterologous artificial insemination. See artificial insemination by donor.

homologous artificial insemination. See artificial insemination by husband.

#### ARTIFICIAL PERSON

artificial person. See PERSON(3).

#### ARTIFICIAL PRESUMPTION

artificial presumption. See presumption of law under PRESUMPTION.

#### ARTIFICIAL SUCCESSION

artificial succession. See SUCCESSION(4).

#### ARTIFICIAL WATERCOURSE

artificial watercourse. See WATERCOURSE.

#### ARTISAN

artisan. 1. An artist; esp., a skilled crafter. 2. Patents. A person of ordinary skill in an art, for purposes of determining whether a patent application meets the enablement requirement of 35 USCA § 112. • In patent-law terms, the disclosure in the application must teach the artisan how to practice the invention. — Also termed skilled artisan.

#### ARTISAN'S LIEN

artisan's lien. See mechanic's lien under LIEN.

#### ARTISTIC LICENSE

artistic license. See LICENSE.

#### ARTISTIC WORK

artistic work. See WORK(2).

#### ART UNIT

art unit. Patents. A group of patent examiners in the U.S. Patent and Trademark Office

specializing in a particular field of technology. • Each art unit is led by a senior patent examiner.

#### A RUBRO AD NIGRUM

a rubro ad nigrum (ay roo-broh ad nI-gr<<schwa>>m). [Latin] From the red to the black — i.e., from the title of a statute (formerly often printed in red letters) to its body (often printed in black letters).

#### AS

as (as), n.[Latin] 1.Roman law. A pound weight or a coin weighing a pound, divisible into 12 parts, called unciae. • As and the multiples of its unciae were used to denote interest rates. See UNCIA. 2.Roman & civil law. A whole inheritance; the whole of an asset. Pl. asses.

#### AS-APPLIED CHALLENGE

as-applied challenge.See CHALLENGE(1).

#### ASCAP

ASCAP.abbr. AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS.

#### ASCENDANT

ascendant (<<schwa>>-sen-d<<schwa>>nt), n. One who precedes in lineage, such as a parent or grandparent. — Also termed ancestor. Cf. DESCENDANT. — ascendant,adj.

collateral ascendant.Loosely, an aunt, uncle, or other relative who is not strictly an ancestor. — Also termed collateral ancestor.

lineal ascendant.A blood relative in the direct line of ascent; ancestor. • Parents, grandparents, and great-grandparents are lineal ascendants.

#### ASCENT

ascent. The passing of an estate upwards to an heir in the ascending line. Cf. DESCENT.

#### ASCRIPITICIUS

ascripticius. See ADSCRIPTITIOUS.

#### ASCRIPITIOUS

ascriptitious (as-krip-tish-ee-<<schwa>>s), n. See ADSCRIPTITIOUS.

#### ASCRIPITUS

ascriptus. See ADSCRIPTUS.

#### ASE

ASE.abbr.AMERICAN STOCK EXCHANGE.

#### AS EFFEIRS

as effeirs.See EFFEIRS, AS.

#### AS-EXTRACTED COLLATERAL

as-extracted collateral.See COLLATERAL.

#### ASEXUALIZATION

asexualization. See STERILIZATION.

#### ASEXUALLY REPRODUCING PLANT

asexually reproducing plant.Patents. A plant that reproduces other than by seeds. • Examples of asexual re-production include cutting, grafting, and budding. Only new, distinctive, and nonobvious species of asexually reproducing plants may be protected under the Plant Patent Act. 35 USCA § 161. [Cases: Patents 14. C.J.S. Patents § 22.]

#### ASFA

ASFA.abbr.ADOPTION AND SAFE FAMILIES ACT.

#### ASHWANDER<TT> RULES

Ashwander rules. A set of principles outlining the U.S. Supreme Court's policy of deciding constitutional questions only when necessary, and of avoiding a constitutional question if the case can be decided on the basis of another issue. • These rules were outlined in Justice Brandeis's concurring opinion in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 56 S.Ct. 466 (1936). They include the policy that the court should not decide a constitutional question in a friendly suit, should not anticipate a question of constitutional law, should not create a rule of constitutional law that is broader than that called for by the facts of the case, should not decide a constitutional issue if the case can be decided on another ground, should not rule on the constitutionality of a statute unless the plaintiff is harmed by the statute or if the plaintiff has accepted the benefits of the statute, and should not rule on the constitutionality of an act of Congress without first analyzing whether the act can be fairly construed in a way that would avoid the constitutional question. — Also termed Brandeis rules. [Cases: Constitutional Law 46(1). C.J.S. Constitutional Law §§ 88–89, 92.]

#### AS IS

as is,adv. & adj. In the existing condition without modification <the customer bought the car as is>. • Under UCC § 2-316(3)(a), a seller can disclaim all implied warranties by stating that the goods are being sold “as is” or “with all faults.” Generally, a sale of property “as is” means that the property is sold in its existing condition, and use of the phrase as is relieves the seller from liability for defects in that condition. — Also termed with all faults. [Cases: Contracts 205.30; Sales 267. C.J.S. Contracts § 359; Sales §§ 238, 263–270.]

#### AS-IS WARRANTY

as-is warranty.See WARRANTY(2).

**ASKED PRICE**

asked price. See PRICE.

**ASKING PRICE**

asking price. See PRICE.

**AS OF RIGHT**

as of right. By virtue of a legal entitlement <the case is not one triable to a jury as of right>.

**ASP**

ASP. abbr. APPLICATION SERVICE PROVIDER.

**AS PER**

as per. In accordance with; PER(3). • This phrase has traditionally been considered a barbarism, per being the preferred form in commercialese <per your request>. But even per can be improved on <as you requested>.

**ASPIRIN WARS**

aspirin wars. Slang. A series of false-advertising lawsuits between makers of over-the-counter pain relievers in the 1980s, all regarding the boundaries of comparative advertising.

**ASPORTATION**

asportation (as-p<<schwa>>r-tay-sh<<schwa>>n), n. The act of carrying away or removing (property or a person). • Asportation is a necessary element of larceny. — Also termed carrying away. See LARCENY. [Cases: Kidnapping 1; Larceny 17; Robbery 10. C.J.S. Kidnapping §§ 1–2; Larceny § 6; Robbery § 5.] — asport, vb. — asportative, adj.

“There is no larceny unless the personal goods of another which have been taken by trespass are ‘carried away,’ but this technical requirement may be satisfied by a very slight movement. There must be ‘asportation,’ to use the word commonly found in the early cases, but the slightest start of the carrying-away movement constitutes asportation.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 323 (3d ed. 1982).

“To constitute larceny, there must be a taking or caption and carrying away or asportation of the property of another. There is a caption when the defendant takes possession. He takes possession when he exercises dominion and control over the property. There is an asportation when he carries away the property; any carrying away movement, however slight, is sufficient. An asportation presupposes a prior caption; therefore, there can be no asportation unless there has first been a caption.” 3 Charles E. Torcia, *Wharton's Criminal Law* § 357, at 412–13 (15th ed. 1995).

**ASPORTAVIT**

asportavit (as-por-tay-vit). [Law Latin] He carried away.

**ASR**

ASR.abbr.ACCOUNTING SERIES RELEASE.

### ASSAILANT

assailant. 1. One who physically attacks another; one who commits an assault. 2. One who attacks another using nonphysical means; esp., one who attacks another's position or feelings, as by criticism, argument, or abusive language.

### ASSART

assart.Hist. 1. The action of pulling up trees and bushes in a forest to make the land arable. • This was a crime if done without a license. 2. A piece of land made arable by clearing a forest.

### ASSASSINATION

assassination,n. The act of deliberately killing someone, esp. a public figure, usu. for hire or for political reasons. — assassinate,vb. — assassin,n.

### ASSAULT

assault,n.1.Criminal & tort law. The threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact; the act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery. [Cases: Assault and Battery 2, 48. C.J.S. Assault and Battery §§ 2–4, 6–8, 62, 64–66, 81.] 2.Criminal law. An attempt to commit battery, requiring the specific intent to cause physical injury. — Also termed (in senses 1 & 2) simple assault; common assault. 3. Loosely, a battery. 4. Popularly, any attack. Cf. BATTERY. — assault,vb. — assaultive,adj.

“Ordinary usage creates a certain difficulty in pinning down the meaning of ‘assault.’ Etymologically, the word is compounded of the Latin *ad* + *saltare*, to jump at. In popular language, it has always connoted a physical attack. When we say that D assaults V, we have a mental picture of D attacking V, by striking or pushing or stabbing him. In the middle ages, however, the terms ‘assault’ and ‘battery’ were given technical meanings which they have retained ever since. It became settled that though an assault could be committed by physical contact, it did not require this, since a show of force raising an apprehension in the mind of the victim was sufficient. Also, a ‘battery’ did not require an actual beating; the use of any degree of force against the body would suffice. The acts of spitting on a person and kissing without consent are both batteries.” Glanville Williams, *Textbook of Criminal Law* 135–36 (1978).

“In addition to the classic definitions of assault, some jurisdictions have used assault as a generic term to describe either assault or battery. Thus, a defendant who intentionally injures somebody may be convicted of assault rather than battery.” Arnold H. Loewy, *Criminal Law in a Nutshell* 57 (2d ed. 1987).

aggravated assault.Criminal assault accompanied by circumstances that make it more severe, such as the intent to commit another crime or the intent to cause serious bodily injury, esp. by using a deadly weapon. See Model Penal Code § 211.1(2). [Cases: Assault and Battery 54. C.J.S.

Assault and Battery §§ 72–74, 80–81.]

“The common law did not include any offense known as ‘aggravated assault.’ However, it did make provision for certain situations in this field, under other names. If, for example, the intended application of force to the person would have resulted in murder, mayhem, rape or robbery, if successful, and the scheme proceeded far enough to constitute an attempt the prosecution was for an attempt to commit the intended felony.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 180 (3d ed. 1982).

assault purpensé (<<schwa>>-sawlt poor-pawn-say). [French] Hist. Premeditated assault. — Also termed assultus premeditatus (<<schwa>>-s<< schwa>>l-t<<schwa>>s pree-med-<<schwa>>-tay-tis).

“Even before the conquest, ... deliberately planned assassinations came to be distinguished and put into the list of Crown pleas as forsteal. The original sense of this word was lying in wait to ambush the victim. After the conquest this is expressed in various terms in French and Latin, but frequently takes the form of assault purpensé, or assultus premeditatus. In time this yields before malitia excogitata, and so introduces us to the very troublesome word ‘malice.’” Theodore F.T. Plucknett, *A Concise History of the Common Law* 444 (5th ed. 1956).

assault to rape. See assault with intent to commit rape.

assault with a deadly weapon. An aggravated assault in which the defendant, using a deadly weapon, threatens the victim with death or serious bodily injury. — Also termed assault with a dangerous weapon. [Cases: Assault and Battery 56. C.J.S. Assault and Battery §§ 77–79.]

assault with intent. Any of several assaults that are carried out with an additional criminal purpose in mind, such as assault with intent to murder, assault with intent to rob, assault with intent to rape, and assault with intent to inflict great bodily injury. • These are modern statutory inventions that are often found in state criminal codes. [Cases: Homicide 725; Rape 16; Robbery 13. C.J.S. Rape §§ 32, 36–43; Robbery §§ 78–79, 82.]

assault with intent to commit rape. An assault carried out with the additional criminal purpose of raping the victim. — Also termed assault to rape. [Cases: Rape 6. C.J.S. Rape § 19.]

atrocious assault. An assault that causes severe wounding or maiming.

attempted assault. An attempt to commit an assault; an attempted battery that has not progressed far enough to be an assault, as when a person intends to harm someone physically but is captured while or after trying to locate the intended victim in his or her place of employment. • Traditionally, most commentators held that an attempted assault could not exist because assault was in itself an attempt to commit a crime. Many modern authorities, however, assert that an attempted assault can occur, and that it should be punishable. — Also termed attempt to assault. See ATTEMPT TO ATTEMPT. [Cases: Assault and Battery 61. C.J.S. Assault and Battery § 82.]

“[I]t is apparent that reference may be made to an ‘attempt to assault’ without logical absurdity. There is nothing absurd in referring to an attempt to frighten, which would constitute, if successful, a criminal assault in most jurisdictions.... It is not surprising, therefore, that there is a

tendency to break away from the ancient view that there is no such offense known to the law as an attempt to commit an assault.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 168 (3d ed. 1982).

“By far the most interesting cases in this area are the attempted assault cases. Where assault is defined as intentionally putting another in fear of a battery, there is of course no basis for denying the possibility of an attempt. Where, however, assault is defined as an attempted battery, attempted assault looks very much like the forbidden ‘attempt to attempt’ a battery. For this reason some courts have held that there is no such crime as attempted assault. Other courts, however, have held that an attempted assault can exist, defining it as an attempted battery which has not progressed far enough to be an assault.” Arnold H. Loewy, *Criminal Law in a Nutshell* 223–24 (2d ed. 1987).

**civil assault.**An assault considered as a tort and not as a crime. • Although the same assaultive conduct can be both a tort and a crime, this term isolates the legal elements that give rise to civil liability. [Cases: Assault and Battery 2. C.J.S. Assault and Battery §§ 2–4, 6–8.]

**conditional assault.**An assault expressing a threat on condition, such as “your money or your life.”

**criminal assault.**An assault considered as a crime and not as a tort. • This term isolates the legal elements that give rise to criminal liability even though the act might also have been tortious. [Cases: Assault and Battery 48. C.J.S. Assault and Battery §§ 2–3, 62, 64–66, 81.]

**excusable assault.**An assault committed by accident or while doing a lawful act by lawful means, with ordinary caution and without any unlawful intent.

**felonious assault.**An assault that is of sufficient severity to be classified and punished as a felony. See aggravated assault; assault with a deadly weapon. [Cases: Assault and Battery 60. C.J.S. Assault and Battery § 63.]

**indecent assault.**See sexual assault (2).

**malicious assault with a deadly weapon.**An aggravated assault in which the victim is threatened with death or serious bodily harm from the defendant's use of a deadly weapon. • Malice is inferred from both the nature of the assault and the weapon used. [Cases: Assault and Battery 56. C.J.S. Assault and Battery §§ 77–79.]

**sexual assault.** 1. Sexual intercourse with another person who does not consent. • Several state statutes have abolished the crime of rape and replaced it with the offense of sexual assault. [Cases: Rape 1. C.J.S. Rape §§ 1–3, 15.] 2. Offensive sexual contact with another person, exclusive of rape. • The Model Penal Code lists eight circumstances under which sexual contact results in an assault, as when the offender knows that the victim is mentally incapable of appreciating the nature of the conduct, either because of a mental disease or defect or because the offender has drugged the victim to prevent resistance. See Model Penal Code § 213.4. — Also termed (in sense 2) indecent assault. Cf. RAPE. [Cases: Assault and Battery 59. C.J.S. Assault and Battery § 74.]



simple assault.1. See ASSAULT(1).2. See ASSAULT(2).

“(1) Simple Assault. A person is guilty of assault if he: (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear of imminent serious bodily injury.” Model Penal Code § 211.1 (1997).

#### ASSAULT AND BATTERY

assault and battery.Loosely, a criminal battery. See BATTERY.

“Although the term assault and battery is frequently used when a battery has been committed, one who commits a battery cannot also be punished for committing an assault, since the lesser offense of assault blends into the actual battery.” Paul Marcus, “Assault and Battery,” in 1 Encyclopedia of Crime and Justice 88, 88 (Sanford H. Kadish ed., 1983).

#### ASSAULTEE

assaultee. A person who is assaulted.

#### ASSAULTER

assaulter. A person who assaults another.

#### ASSAULT WITH A DANGEROUS WEAPON

assault with a dangerous weapon.See assault with a deadly weapon under ASSAULT.

#### ASSAY

assay,n.1. A proof or trial, by chemical experiments, of the purity of metals, esp. gold and silver. 2. An examination of weights and measures. [Cases: Weights and Measures 3. C.J.S. Weights and Measures § 3.]

#### ASSAYATOR REGIS

assayator regis.See ASSAYER OF THE KING.

#### ASSAYER

assayer. One who makes assays of precious metals.

#### ASSAYER OF THE KING

assayer of the king.Hist. An officer of the royal mint, appointed by St.2 Hen. 6, ch. 12, who receives and tests bullion taken in for coining. — Also termed assayator regis.

#### ASSECURARE

assecurare (<<schwa>>-sek-y<<schwa>>-rair-ee), vb.[Law Latin] Hist. To make secure, as by pledges.

#### ASSECURATION

assecurator (<<schwa>>-sek-y<<schwa>>-ray-sh<<schwa>>n).Marine insurance. Insurance.

#### ASSECURATOR

assecurator (<<schwa>>-sek-y<<schwa>>-ray-t<<schwa>>r).Marine insurance. An insurer.

#### ASSEMBLY

assembly. 1. A group of persons organized and united for some common purpose.

delegate assembly.See CONVENTION(4).

deliberative assembly.Parliamentary law. A body that transacts business according to parliamentary law. • A deliberative assembly typically has several distinctive characteristics: (1) it is a group of people who meet all together to propose, discuss, and possibly vote on courses of action to be undertaken in the group's name; (2) participants are free to use their own judgment; (3) enough people participate that a certain degree of formality in proceedings is desirable; (4) each participant has one vote and may dissent without fear of expulsion; and (5) when some members are absent, the members actually present have the authority to act for the entire group (subject to quorum and other requirements). See Henry M. Robert, *Robert's Rules of Order Newly Revised* § 1, at 2 (10th ed. 2000).

ordinary assembly.Parliamentary law. A deliberative assembly other than a legislative body.

riotous assembly.Hist. An unlawful assemblage of 12 or more persons causing a disturbance of the peace. See RIOT. [Cases: Riot 1. C.J.S. Riot; Insurrection §§ 2–10.]

unlawful assembly.A meeting of three or more persons who intend either to commit a violent crime or to carry out some act, lawful or unlawful, that will constitute a breach of the peace. Cf. RIOT. [Cases: Unlawful Assembly 1. C.J.S. Unlawful Assembly §§ 2–5, 9–13.]

“In order that the assembly may be ‘unlawful,’ it is not necessary that the object of the meeting should itself be illegal. The test is, not the illegality of the purpose for which the persons are met, but the danger to the peace which their meeting involves. The mere fact, therefore, that the purpose is unlawful is not enough; it must be shown that it involves reasonable apprehension of a breach of the peace. Thus, if a number of persons meet to plan a fraud, they may be guilty of a conspiracy, but their meeting is not an unlawful assembly.” 4 Stephen's Commentaries on the Laws of England 135–36 (L. Crispin Warmington ed., 21st ed. 1950).

“An unlawful assembly differs from a riot in that if the parties assemble in a tumultuous manner, and actually execute their purpose with violence, it is a riot; but if they merely meet on a purpose, which, if executed, would make them rioters, and, having done nothing, they separate without carrying their purpose into effect, it is an unlawful assembly.” 77 C.J.S. Riot; Insurrection § 2, at 565 (1994).

2. In many states, the lower house of a legislature. 3.Parliamentary law. CONVENTION(4).4.Patents. In a patent claim, a collection of parts used to form a structure.

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**ASSEMBLY, RIGHT OF**

assembly, right of. See **RIGHT OF ASSEMBLY**.

**ASSENSIO MENTIUM**

assensio mentium (<<schwa>>-sen-see-oh men-shee-<<schwa>>m). [Latin "assent of minds"] See **MEETING OF THE MINDS**.

**ASSENT**

assent, n. Agreement, approval, or permission; esp., verbal or nonverbal conduct reasonably interpreted as willingness. See **CONSENT**. — assent, vb.

"The requirement of 'assent,' which is fundamental to the formation of a binding contract, implies in a general way that both parties to an exchange shall have a reasonably clear conception of what they are getting and what they are giving up." Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* 66 (1990).

actual assent. Assent given by words or conduct intended to express willingness.

apparent assent. Assent given by language or conduct that, while not necessarily intended to express willingness, would be understood by a reasonable person to be so intended and is actually so understood.

constructive assent. Assent imputed to someone based on conduct.

express assent. Assent clearly and unmistakably communicated.

implied assent. Assent inferred from one's conduct rather than from direct expression.

mutual assent. Agreement by both parties to a contract, usu. in the form of offer and acceptance. • In modern contract law, mutual assent is determined by an objective standard — that is, by the apparent intention of the parties as manifested by their actions. Cf. **MEETING OF THE MINDS**. [Cases: **Contracts** 15. C.J.S. **Contracts** §§ 35–36, 38.]

**ASSENTED STOCK**

assented stock. See **STOCK**.

**ASSENTING-SILENCE DOCTRINE**

assenting-silence doctrine. The principle that an accusation will be taken as true, despite silence by the accused, if the accusation was made under circumstances in which silence can be fairly said to be an agreement. • This doctrine is usu. held to be invalid as a measure of a criminal defendant's guilt. [Cases: **Criminal Law** 407. C.J.S. **Criminal Law** § 887.]

**ASSERT**

assert, vb. 1. To state positively. 2. To invoke or enforce (a legal right). — assertor, n.

**ASSERTION**

assertion,n.1. A declaration or allegation. 2. A person's speaking, writing, acting, or failing to act with the intent of expressing a fact or opinion; the act or an instance of engaging in communicative behavior. See assertive conduct under CONDUCT.

#### ASSERTIVE CONDUCT

assertive conduct.See CONDUCT.

#### ASSERTIVE QUESTION

assertive question.Civil law. A question asked of a witness at a criminal trial, by which inadmissible evidence is sought, to provide the jury with details regarding another crime. Cf. INTERROGATIVE QUESTION.

#### ASSERTORY COVENANT

assertory covenant.See COVENANT(1).

#### ASSERTORY OATH

assertory oath (<<schwa>>-s<<schwa>>r-t<<schwa>>-ree). See OATH.

#### ASSESSABLE INSURANCE

assessable insurance.1.INSURANCE. 2. See assessable policy (1) under INSURANCE POLICY.

#### ASSESSABLE POLICY

assessable policy.1.INSURANCE POLICY. 2. See assessable insurance (1) under INSURANCE.

#### ASSESSABLE SECURITY

assessable security.See SECURITY.

#### ASSESSABLE STOCK

assessable stock.See STOCK.

#### ASSESSED VALUATION

assessed valuation.See VALUATION.

#### ASSESSEE

assessee (as-<<schwa>>-see), n. A person against whom a payment is assessed.

#### ASSESSMENT

assessment,n.1. Determination of the rate or amount of something, such as a tax or damages <assessment of the losses covered by insurance>. [Cases: Damages 95–126; Internal Revenue 4520; Taxation 308.C.J.S. Damages §§ 105–153, 163–164; Internal Revenue § 641; Parent and Child § 344; Taxation § 1673.] 2. Imposition of something, such as a tax or fine, according to an

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established rate; the tax or fine so imposed < assessment of a luxury tax>. [Cases: Internal Revenue 4520; Taxation 308. C.J.S. Internal Revenue § 641; Taxation § 1673.]

“There is a distinction between public improvements, which benefit the entire community, and local improve-ments, which benefit particular real estate or limited areas of land. The latter improvements are usually financed by means of special, or local, assessments. These assessments are, in a certain sense, taxes. But an assessment differs from a general tax in that an assessment is levied only on property in the immediate vicinity of some local municipal improvement and is valid only where the property assessed receives some special benefit differing from the benefit that the general public enjoys.” Robert Kratovil, *Real Estate Law* 465 (6th ed. 1974).

assessment for benefits. See special assessment.

deficiency assessment. An assessment by the IRS — after administrative review and tax-court adjudication — of additional tax owed by a taxpayer who underpaid. See DEFICIENCY(2). [Cases: Internal Revenue 4520. C.J.S. Internal Revenue § 641.]

double assessment. The act of requiring that tax be paid twice for the same property. See double taxation under TAXATION.

erroneous assessment. An assessment that deviates from the law and creates a jurisdictional defect, and that is therefore invalid.

excessive assessment. A tax assessment that is grossly disproportionate as compared with other assessments. [Cases: Taxation 40(7). C.J.S. Taxation § 35.]

frontage assessment. A municipal tax charged to a property owner for local improvements that abut a street or highway, such as sidewalks, pavements, or sewage lines. [Cases: Municipal Corporations 469. C.J.S. Mu-nicipal Corporations §§ 1281–1283, 1285.]

jeopardy assessment. An assessment by the IRS — without the usual review procedures — of additional tax owed by a taxpayer who underpaid, based on the IRS's belief that collection of the deficiency would be jeopardized by delay. IRC (26 USCA) §§ 6811 et seq. [Cases: Internal Revenue 4548. C.J.S. Internal Revenue § 651.]

local assessment. A tax to pay for improvements (such as sewers and sidewalks) in a designated area, levied on property owners who will benefit from the improvements. — Also termed local-improvement assessment. [Cases: Municipal Corporations 405. C.J.S. Municipal Corporations §§ 1116–1118.]

“Since there is [an] important and fundamental distinction between the tax in the more limited sense and the local assessment, the question often arises whether provisions in constitutions and statutes which refer by name to taxes, include also local assessments. This is primarily a question of legislative intention. In the absence of anything to show the specific intention of the legislature, the general rule is that the local assessment possesses such marked peculiarities differentiating it from the tax in the more limited sense of the term, that the use of the term ‘tax’ does not prima facie show an intention to include local assessments.” 1 William H. Page & Paul Jones, *A Treatise on the Law of Taxation by Local and Special Assessments* § 39, at 67

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(1909).

maintenance assessment. See MAINTENANCE FEE(2).

political assessment. Hist. A charge levied on officeholders and political candidates by a political party to defray the expenses for a political canvass.

special assessment. The assessment of a tax on property that benefits in some important way from a public improvement. — Also termed assessment for benefits. [Cases: Municipal Corporations 405. C.J.S. Municipal Corporations §§ 1116–1118.]

3. Official valuation of property for purposes of taxation <assessment of the beach house>. — Also termed tax assessment. Cf. APPRAISAL. [Cases: Taxation 309. C.J.S. Taxation §§ 478–480.] 4. An audit or review < internal financial assessment> <environmental site assessment>. — assess, vb.

#### ASSESSMENT BOND

assessment bond. See BOND(3).

#### ASSESSMENT COMPANY

assessment company. An association that offers its members life insurance, and then pays for death losses by levying an assessment on the surviving members of the association.

#### ASSESSMENT CONTRACT

assessment contract. See CONTRACT.

#### ASSESSMENT DISTRICT

assessment district. See DISTRICT.

#### ASSESSMENT FOR BENEFITS

assessment for benefits. See special assessment under ASSESSMENT.

#### ASSESSMENT FUND

assessment fund. The balance of the assessments of a mutual-benefit association, minus expenses, from which beneficiaries are paid. [Cases: Beneficial Associations 17. C.J.S. Beneficial Associations § 28.]

#### ASSESSMENT INSURANCE

assessment insurance. See INSURANCE.

#### ASSESSMENT LIST

assessment list. See ASSESSMENT ROLL.

#### ASSESSMENT PERIOD

assessment period. A taxable period.

**ASSESSMENT RATIO**

assessment ratio. For property-tax purposes, the ratio of assessed value to fair market value.

**ASSESSMENT ROLL**

assessment roll. A record of taxable persons and property, prepared by a tax assessor. — Also termed assessment list. [Cases: Taxation 408. C.J.S. Taxation § 580.]

**ASSESSMENT WORK**

assessment work. Mining law. The annual labor (such as improvements) that must be performed on an unpatented mining claim to continue to hold the claim. [Cases: Mines and Minerals 23. C.J.S. Mines and Minerals §§ 84, 96.]

**ASSESSOR**

assessor. 1. One who evaluates or makes assessments, esp. for purposes of taxation. — Also termed (specif.) tax assessor. [Cases: Taxation 309, 312. C.J.S. Taxation §§ 455–457, 459–461, 478–480.] 2. A person who advises a judge or magistrate about scientific or technical matters during a trial. See MASTER(2). 3. ADSESSOR. — assessorial (as-*<<schwa>>-sor-ee-<<schwa>>l*), adj. — assessorship, n.

**ASSET**

asset. 1. An item that is owned and has value. 2. (pl.) The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill. 3. (pl.) All the property of a person (esp. a bankrupt or deceased person) available for paying debts or for distribution.

accrued asset. An asset arising from revenues earned but not yet due.

admitted asset. An asset that by law may be included in evaluating the financial condition of an insurance company. Cf. nonadmitted asset. [Cases: Insurance 1363. C.J.S. Insurance § 168.]

appointive asset. An asset distributed under a power of appointment.

assets by descent. The portion of an estate that passes to an heir and is sufficient to charge the heir with the decedent's specialty debts. — Also termed assets per descent.

assets in hand. The portion of an estate held by an executor or administrator for the payment of debts chargeable to the executor or administrator. — Also termed assets *entre main*; assets *entre mains*.

assets per descent. See assets by descent.

asset under management. A securities portfolio for which an investment adviser provides ongoing, regular supervisory or management services.

capital asset. 1. A long-term asset used in the operation of a business or used to produce goods or services, such as equipment, land, or an industrial plant. — Also termed fixed asset. 2.

For income-tax purposes, any of most assets held by a taxpayer except those assets specifically excluded by the Internal Revenue Code. • Excluded from the definition are, among other things, stock in trade, inventory, and property held by the taxpayer primarily for sale to customers in the ordinary course of trade or business. [Cases: Internal Revenue 3230.1–3261. C.J.S. Internal Revenue §§ 127–145, 490–491, 671.]

commercial assets.The aggregate of available property, stock in trade, cash, and other assets belonging to a merchant.

current asset.An asset that is readily convertible into cash, such as a marketable security, a note, or an account receivable. — Also termed liquid asset; quick asset; near money; financial asset.

“Current assets are assets expected to be converted to cash, sold, or consumed during the next twelve months, or within the business's normal operating cycle if the cycle is longer than a year. The operating cycle is the period from the time that cash is used to acquire goods and services, these goods and services are sold to customers, and the accounts receivable from these customers are collected in cash. For a small retail store, the operating cycle may be only a few weeks or months. For a shipbuilding company, however, the normal operating cycle could run several years.” Jay Alix & Elmer E. Heupel, *Financial Handbook for Bankruptcy Professionals* § 9.2, at 354 (1991).

dead asset.A worthless asset that has no realizable value, such as an uncollectible account receivable.

earning asset.(usu. pl.) An asset (esp. of a bank) on which interest is received. • Banks consider loans to be earning assets.

equitable asset.An asset that is subject to payment only in a court of equity.

financial asset.See current asset.

fixed asset.See capital asset (1).

frozen asset.An asset that is difficult to convert into cash because of court order or other legal process.

hard asset.See real asset.

hidden asset.An asset carried on the books at a substantially reduced or understated value that is considerably less than market value.

illiquid asset.An asset that is not readily convertible into cash, usu. because of (1) the lack of demand, (2) the absence of an established market, or (3) the substantial cost or time required for liquidation (such as for real property, even when it is desirable).

individual asset.(usu. pl.) Property belonging to a member of a partnership as personal property, apart from the firm's property. [Cases: Partnership 67. C.J.S. Partnership §§ 70–72.]

intangible asset.Any nonphysical asset or resource that can be amortized or converted to cash,



such as patents, goodwill, and computer programs, or a right to something, such as services paid for in advance.

legal asset. A decedent's asset that by law is subject to the claims of creditors or legacies. — Also termed probate asset. [Cases: Executors and Administrators 38. C.J.S. Executors and Administrators §§ 2, 121, 130.]

liquid asset. See current asset.

mass asset. An intangible asset, such as a dominant market position, that is made up of several components but that is considered a single entity for purposes of depreciation, because the loss of any component of the asset is replaced by new components, so that the whole asset has little or no fluctuation in value. • An entity with a dominant market position might lose a vendor but, because of its dominant market position, still be able to replace the loss with a new vendor. The market position is therefore considered a mass asset.

net assets. See net worth under WORTH.

net quick assets. The excess of quick assets less current liabilities. See QUICK-ASSET RATIO.

new asset. Wills & estates. In the administration of a decedent's estate, property that the administrator or executor receives after the time has expired to file claims against the estate.

nominal asset. An asset whose value is difficult to assess, such as a judgment or claim.

nonadmitted asset. An asset that by law may not be included in evaluating the financial condition of an insurance company because it cannot be converted quickly into cash without a financial loss. Cf. admitted asset. [Cases: Insurance 1363. C.J.S. Insurance § 168.]

nonprobate asset. Property that passes to a named beneficiary upon the owner's death according to the terms of some contract or arrangement other than a will. • Such an asset is not a part of the probate estate and is not ordinarily subject to the probate court's jurisdiction (and fees), though it is part of the taxable estate. Examples include life-insurance contracts, joint property arrangements with right of survivorship, pay-on-death bank accounts, and inter vivos trusts. — Also termed nonprobate property. Cf. WILL SUBSTITUTE.

personal asset. An asset in the form of money or chattels.

premarital asset. Property that a spouse owned before marrying. • In most jurisdictions, this is part of the spouse's separate property. See SEPARATE PROPERTY. Cf. COMMUNITY PROPERTY.

probate asset. See legal asset.

quick asset. 1. Cash and other current assets other than inventory. 2. See current asset.

real asset. 1. An asset in the form of land. 2. Loosely, any tangible asset. — Also termed hard asset.

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tangible asset. An asset that has a physical existence and is capable of being assigned a value.

wasting asset. An asset exhausted through use or the loss of value, such as an oil well or a coal deposit.

#### ASSET ACQUISITION

asset acquisition. Acquisition of a corporation by purchasing all its assets directly from the corporation itself, rather than by purchasing shares from its shareholders. — Also termed asset purchase. Cf. SHARE ACQUISITION.

#### ASSET ALLOCATION

asset allocation. The spreading of funds between different types of investments with the intention of decreasing risk and increasing return.

#### ASSET-BACKED SECURITY

asset-backed security. See SECURITY.

#### ASSET-BASED FINANCING

asset-based financing. See FINANCING.

#### ASSET-COVERAGE TEST

asset-coverage test. Accounting. A bond-indenture restriction that permits additional borrowing only if the ratio of assets (typically net tangible assets) to debt (typically long-term debt) does not fall below a specified minimum.

#### ASSET-DEPRECIATION RANGE

asset-depreciation range. Tax. The IRS's range of depreciation lifetimes allowed for assets placed in service between 1970 and 1980 and for assets depreciated under the Modified Accelerated Cost Recovery System under the Tax Reform Act of 1986. — Abbr. ADR. See ACCELERATED COST RECOVERY SYSTEM. [Cases: Internal Revenue 3476. C.J.S. Internal Revenue §§ 230, 234, 239, 249.]

#### ASSET DIVIDEND

asset dividend. See DIVIDEND.

#### ASSET-PROTECTION TRUST

asset-protection trust. See self-settled trust under TRUST.

#### ASSET PURCHASE

asset purchase. See ASSET ACQUISITION.

#### ASSETS BY DESCENT

assets by descent. See ASSET.

**ASSETSENTE MAIN**

assets entre main. See assets in hand under ASSET.

**ASSETS IN HAND**

assets in hand. See ASSET.

**ASSETS PER DESCENT**

assets per descent. See assets by descent under ASSET.

**ASSET UNDER MANAGEMENT**

asset under management. See ASSET.

**ASSET VALUE**

asset value. See NET ASSET VALUE.

**ASSEVERATE**

asseverate (<<schwa>>-sev-<<schwa>>-rayt), vb. To state solemnly or positively; to aver. See AVERMENT. — asseveration (<<schwa>>-sev-<<schwa>>-ray-sh<< schwa>>n), n.

**ASSIGN**

assign, n. (usu. pl.) See ASSIGNEE.

assign, vb. 1. To convey; to transfer rights or property <the bank assigned the note to a thrift institution>. 2. To assert; to point out <the appellant assigned as errors two of the trial court's rulings>. See ASSIGNMENT OF ERROR .

**ASSIGNABLE**

assignable, adj. That can be assigned; transferable from one person to another, so that the transferee has the same rights as the transferor had <assignable right>. Cf. NEGOTIABLE. [Cases: Assignments 1. C.J.S. Assignments §§ 2–7; Right of Privacy and Publicity § 42.]

**ASSIGNABLE LEASE**

assignable lease. See LEASE.

**ASSIGNATION**

assignment (as-ig-nay-sh<<schwa>>n), n. 1. Archaic. An appointment of a time and place to meet, esp. for en-gaging in illicit sex. 2. Eccles. law. A specific allegation in a defendant's counterpleading. 3. French law. A plaintiff's complaint; a writ of summons.

**ASSIGNATION HOUSE**

assignment house. See DISORDERLY HOUSE.

**ASSIGN DOWER**

assign dower.To set out the legal description of a widow's share of her deceased husband's estate. See DOWER.

#### ASSIGNED ACCOUNT

assigned account.See ACCOUNT.

#### ASSIGNED COUNSEL

assigned counsel.See COUNSEL.

#### ASSIGNED ERROR

assigned error.See ERROR.

#### ASSIGNED RISK

assigned risk.See RISK.

#### ASSIGNEE

assignee (<<schwa>>-sI-neeor as-<<schwa>>-nee). One to whom property rights or powers are transferred by another. • Use of the term is so widespread that it is difficult to ascribe positive meaning to it with any specificity. Courts recognize the protean nature of the term and are therefore often forced to look to the intent of the assignor and assignee in making the assignment — rather than to the formality of the use of the term assignee — in defining rights and responsibilities. — Also termed assign. [Cases: Assignments 90. C.J.S. Assignments §§ 73, 84, 88.]

absolute assignee.A person who is assigned an unqualified interest in property in a transfer of some or all of the incidents of ownership.

assignee ad interim.An assignee appointed between the time of bankruptcy and the appointment of a regular assignee.

assignee for value.An assignee who has paid for or otherwise given consideration for the assignment.

collateral assignee.A lender who is assigned an interest in property (usu. real property) as security for a loan.

gratuitous assignee.An assignee under an assignment not given for value.

subassignee. A person to whom a right is assigned by one who is a previous assignee of the right.

#### ASSIGNEE CLAUSE

assignee clause.A provision of the Judiciary Act of 1789 that prevented a litigant without diversity of citizenship from assigning a claim to another who did have the required diversity. • In 1948 the assignee clause was replaced by 28 USCA § 1359, which denies federal jurisdiction when a party is improperly or collusively joined, by as-signment or otherwise, merely to invoke

jurisdiction.

#### ASSIGNER

assigner. See ASSIGNOR.

#### ASSIGNMENT

assignment. 1. The transfer of rights or property <assignment of stock options>. [Cases: Assignments 31. C.J.S. Assignments §§ 43, 46.] 2. The rights or property so transferred <the aunt assigned those funds to her niece, who promptly invested the assignment in mutual funds>.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected. In these senses the word is variously applied in law.” Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

“Negotiability differs from assignment, with which it has obvious affinities, in at least two respects. In the first place no notice need be given of the transfer of a negotiable instrument, and in the second place the transfer of such an instrument is not subject to equities. Thus whereas an assignor only transfers his rights subject to any defences which could be pleaded against him, a transfer of a negotiable instrument to someone in good faith passes a good title, free from any such defences. For instance a person who receives a cheque in good faith obtains a good title, even though the cheque may have been stolen. It is not, of course, any document which has the attributes of negotiability. Only those documents recognized by the custom of trade to be transferable by delivery (or endorsement) are negotiable. Other documents can only be transferred by assignment.” P.S. Atiyah, *An Introduction to the Law of Contract* 278–79 (3d ed. 1981).

absolute assignment. An assignment that leaves the assignor no interest in the assigned property or right. [Cases: Assignments 71. C.J.S. Assignments § 73.]

assignment by operation of law. A transfer of a right or obligation as a necessary consequence of a change in legal status, regardless of the affected party's intent. • For example, a right and a corresponding obligation may disappear if they vest in the same person, as might happen in a merger or acquisition.

assignment for value. An assignment given in exchange for consideration.

assignment in gross. A transfer of a company's trademark separately from the goodwill of the business. • Courts often hold that such an assignment passes nothing of value to the transferee. — Also termed naked assignment. See ANTI-ASSIGNMENT-IN-GROSS RULE. [Cases: Trade Regulation 93, 101.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 9, 205.]

assignment of account. An assignment that gives the assignee the right to funds in an account, usu. to satisfy a debt. [Cases: Assignments 10. C.J.S. Assignments §§ 19–21.]

assignment of application. 1. Patents. The U.S. Patent and Trademark Office's formal routing of a patent or trademark application to the examining group to which it appears to belong based on

subject matter. 2. The transfer of the right to prosecute a patent or register a trademark. • The assignee must show ownership in the property to be patented or registered and, if less than absolute, the extent of ownership. See 37 CFR § 3.73. [Cases: Patents 183.]

assignment of dower (dow-<<schwa>>r). The act of setting apart a widow's share of her deceased husband's real property. [Cases: Dower and Curtesy 65–112. C.J.S. Dower §§ 75–129, 169–170.]

assignment of income. See assignment of wages.

assignment of lease. An assignment in which a lessee transfers the entire unexpired remainder of the lease term, as distinguished from a sublease transferring only a portion of the remaining term. [Cases: Landlord and Tenant 74. C.J.S. Landlord and Tenant §§ 30, 53.]

assignment of realty. A transfer of a real-property interest that is less than a freehold. • The term includes debt-security interests in land.

assignment of wages. A transfer of the right to collect wages from the wage-earner to a creditor. — Also termed assignment of income. [Cases: Assignments 11.1.]

assignment pro tanto. An assignment that results when an order is drawn on a third party and made payable from a particular fund that belongs to the drawer. • The drawee becomes an assignee with respect to the drawer's interest in that fund. [Cases: Assignments 49. C.J.S. Assignments § 55.]

collateral assignment. An assignment of property as collateral security for a loan. [Cases: Secured Transactions 181. C.J.S. Secured Transactions §§ 25, 134–136.]

common-law assignment. An assignment for the benefit of creditors made under the common law, rather than by statute. [Cases: Debtor and Creditor 1. C.J.S. Assignments for Benefit of Creditors §§ 2, 4; Creditor and Debtor §§ 2–3.]

conditional assignment. An assignment of income (such as rent payments or accounts receivable) to a lender, made to secure a loan. • The lender receives the assigned income only if the assignor defaults on the underlying loan. [Cases: Mortgages 199(2); Secured Transactions 181. C.J.S. Mortgages §§ 301–302; Secured Transactions §§ 25, 134–136.]

effective assignment. An assignment that terminates the assignor's interest in the property and transfers it to the assignee.

equitable assignment. An assignment that, although not legally valid, will be recognized and enforced in equity — for example, an assignment of a chose in action or of future acquisitions of the assignor. • To accomplish an “equitable assignment,” there must be an absolute appropriation by the assignor of the debt or fund sought to be assigned. [Cases: Assignments 48. C.J.S. Assignments §§ 2, 53.]

fly-power assignment. A blank written assignment that, when attached to a stock certificate, renders the stock transferable. [Cases: Corporations 125. C.J.S. Corporations § 229.]

foreign assignment. An assignment made in a foreign country or in another jurisdiction.

general assignment. Assignment of a debtor's property for the benefit of all the assignor's creditors, instead of only a few. — Also termed voluntary assignment. See ASSIGNMENT FOR THE BENEFIT OF CREDITORS. [Cases: Debtor and Creditor 1. C.J.S. Assignments for Benefit of Creditors §§ 2, 4; Creditor and Debtor §§ 2–3.]

gratuitous assignment. An assignment not given for value; esp., an assignment given or taken as security for — or in total or partial satisfaction of — a preexisting obligation. [Cases: Assignments 54. C.J.S. Assignments § 60.]

mesne assignment (meen). A middle or intermediate assignment; any assignment before the last one.

naked assignment. See assignment in gross.

partial assignment. The immediate transfer of part but not all of the assignor's right. [Cases: Assignments 30. C.J.S. Assignments §§ 10–12.]

preferential assignment. See PREFERENTIAL TRANSFER.

total assignment. An assignment empowering the assignee to enforce the entire right for the benefit of the assignor or others. • Examples are assignment to secure an obligation and assignment to a trustee.

voluntary assignment. See general assignment.

wage assignment. An assignment by an employee of a portion of the employee's pay to another (such as a creditor). [Cases: Assignments 11.1.]

3. The instrument of transfer <the assignment was appended to the contract>. [Cases: Assignments 31. C.J.S. Assignments §§ 43, 46.] 4. A welfare recipient's surrender of his or her rights to child support (both current and past due) in favor of the state as a condition of receiving governmental financial assistance <the assignment made economic sense to her because her child support amounted to \$200 a month, while she received \$400 a month in welfare>. 5. A task, job, or appointment <the student's math assignment> <assignment as ambassador to a foreign country>. 6. The act of assigning a task, job, or appointment <the assignment of various duties>.

assignment of the floor. Parliamentary law. The process by which the chair recognizes who is entitled to speak.

7. In litigation practice, a point that a litigant advances <the third assignment of error>.

new assignment. Hist. A plaintiff's restatement of a claim because the first complaint did not contain sufficient details. • The purpose was to allow a plaintiff to reply to a defendant's responsive plea that did not address the plaintiff's specific claim because the complaint was too general. New assignment has been replaced by amended pleadings. — Also termed novel assignment.

“A new assignment is a restatement in the replication of the plaintiff's cause of action. Where

the declaration in an action is ambiguous and the defendant pleads facts which are literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course is to reply by way of new assignment; that is, to allege that he brought his action, not for the cause supposed by the defendant, but for some other cause, to which the plea has no application." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 214, at 370 (Henry Winthrop Ballantine ed., 3d ed. 1923).

#### ASSIGNMENT CLAUSE

assignment clause.Oil & gas. See CHANGE-OF-OWNERSHIP CLAUSE.

#### ASSIGNMENT DIVISION

Assignment Division.The section of the U.S. Patent and Trademark Office that is responsible for recording as-signments and other documents affecting title to patent and trademark applications, patents, and registrations.

#### ASSIGNMENT FOR THE BENEFIT OF CREDITORS

assignment for the benefit of creditors.Assignment of a debtor's property to another person in trust so as to consolidate and liquidate the debtor's assets for payment to creditors, any surplus being returned to the debtor. • This procedure serves as a state-law substitute for federal bankruptcy proceedings. The debtor is not discharged from unpaid debts by this procedure since creditors do not agree to any discharge. [Cases: Debtor and Creditor 1. C.J.S. Assignments for Benefit of Creditors §§ 2, 4; Creditor and Debtor §§ 2–3.]

#### ASSIGNMENT OF DOWER

assignment of dower (dow-<<schwa>>r). See ASSIGNMENT(2).

#### ASSIGNMENT OF ERROR

assignment of error.A specification of the trial court's alleged errors on which the appellant relies in seeking an appellate court's reversal, vacation, or modification of an adverse judgment. Pl. assignments of error.See ER-ROR. Cf. WRIT OF ERROR. [Cases: Appeal and Error 718; Criminal Law 1129. C.J.S. Appeal and Error § 578; Criminal Law § 1688.]

#### ASSIGNMENT OF INCOME

assignment of income.See assignment of wages under ASSIGNMENT(2).

#### ASSIGNMENT-OF-INCOME DOCTRINE

assignment-of-income doctrine.Family law. The common-law principle that the person who has earned income is the person taxed on it, regardless of who receives the proceeds. • Under this doctrine, future income assigned to another is taxable to the assignor. For example, in *Lucas v. Earl*, 281 U.S. 111, 50 S.Ct. 241 (1930), the Court held that a husband who was the sole wage-earner could not assign to his wife half his income and then pay the federal income tax on only the unassigned part.

#### ASSIGNMENT OF LEASE



assignment of lease. See ASSIGNMENT(2).

#### ASSIGNMENT OF PROPERTY

assignment of property. See EQUITABLE DISTRIBUTION.

#### ASSIGNMENT OF REALTY

assignment of realty. See ASSIGNMENT(2).

#### ASSIGNMENT-OF-RENTS CLAUSE

assignment-of-rents clause. A mortgage provision or separate agreement that entitles the lender to collect rents from the mortgaged premises if the borrower defaults. [Cases: Mortgages 199(2). C.J.S. Mortgages §§ 301–302.]

#### ASSIGNMENT OF RIGHTS

assignment of rights. Contracts. The transfer of rights, esp. contractual rights, from one party to another. [Cases: Assignments 17.]

#### ASSIGNMENT OF WAGES

assignment of wages. See ASSIGNMENT(2).

#### ASSIGNMENT PRO TANTO

assignment pro tanto. See ASSIGNMENT(2).

#### ASSIGNOR

assignor (as-<<schwa>>-noror <<schwa>>-sI-n<<schwa>>r or <<schwa>>-sI-nor). One who transfers property rights or powers to another. — Also spelled assigner. [Cases: Assignments 1. C.J.S. Assignments §§ 2–7; Right of Privacy and Publicity § 42.]

#### ASSIGNOR ESTOPPEL

assignor estoppel. See ESTOPPEL.

#### ASSIMILATIVE CRIMES ACT

Assimilative Crimes Act. A federal statute providing that state law applies to a crime committed within a federal enclave in that state (such as a reservation or military installation) if the crime is not punishable under federal law. 18 USCA § 13. • This statute uses local laws as gap-fillers for federal criminal law.

#### ASSISA ARMORUM

assisa armorum (<<schwa>>-sI-z<<schwa>> ahr-mor-<<schwa>>m). [Law Latin “assize of arms”] Hist. A statute requiring the keeping of arms for the common defense. — Also termed assize of arms. See Assize of Arms under ASSIZE(2).

#### ASSISA CADERE

assisa cadere (<<schwa>>-sI-z<<schwa>> kad-<<schwa>>-ree), vb.[Law Latin] Hist. To fail in the assize, as by being nonsuited.

#### ASSISA CONTINUANDA

assisa continuanda (<<schwa>>-sI-z<<schwa>> k<<schwa>>n-tin-yoo-an-d<<schwa>>) [Law Latin] Hist. A writ addressed to the justices of assize for the continuation of a case.

#### ASSISA DE FORESTA

assisa de foresta (<<schwa>>-sI-z<<schwa>> dee for-es-t<<schwa>>), n.[Law Latin “assize of the forest”] Hist. A statute concerning orders to be observed in the royal forest. — Also termed *ordinatio forestae*; *assisa forestae*.

#### ASSISA DE MENSURIS

assisa de mensuris (<<schwa>>-sI-z<<schwa>> dee men-s[y]oor-is), n.[Law Latin “assize of measures”] Hist. A common rule for weights and measures, established by Richard I in the eighth year of his reign.

#### ASSISA DE MORTE ANTECESSORIS

assisa de morte antecessoris. See assize of mort d'ancestor under ASSIZE(6).

#### ASSISA DE NOCUMENTO

assisa de nocumento (<<schwa>>-sI-z<<schwa>> dee nok-y<<schwa>>-men-toh), n.[Law Latin “assize of nuisance”] See assize of nuisance under ASSIZE(8).

#### ASSISA DE UTRUM

assisa de utrum (<<schwa>>-sI-z<<schwa>> dee yoo-tr<<schwa>>m), n.[Law Latin “assize of utrum”] See ASSIZE UTRUM.

#### ASSISA FORESTAE

assisa forestae. See ASSISA DE FORESTAE.

#### ASSISA FRISCAE FORTIAE

assisa friscae fortiae. See assize of fresh force under ASSIZE(8).

#### ASSISA MORTIS D'ANCESTORIS

assisa mortis d'ancestoris (<<schwa>>-sI-z<<schwa>> mor-tis dan-ses-tor-is), n.[Law Latin] See assize of mort d'ancestor under ASSIZE(6).

#### ASSISA NOVAE DISSEYSINAE

assisa novae disseysinae (<<schwa>>-sI-z<<schwa>> noh-vee di-see-zin-ee), n.[Law Latin] See ASSIZE OF NOVEL DISSEISIN.

#### ASSISA PANIS ET CEREVISIAE

assisa panis et cerevisiae (<<schwa>>-sI-z<<schwa>> pan-is et ser-<<schwa>>-vish-ee-ee), n.[Law Latin “assize of bread and ale”] Hist. A statute passed in the 51st year of the reign of Henry III, regulating the sale of bread and ale. — Also termed statute of bread and ale.

#### ASSISA PROROGANDA

assisa proroganda. See DE ASSISA PROROGANDA.

#### ASSISA ULTIMAE PRAESENTATIONIS

assisa ultimae praesentationis (<<schwa>>-sI-z<<schwa>> <<schwa>>l-ti-mee pree-z<<schwa>>n-tay-shee-oh-nis or prez-<<schwa>>n-), n.[Law Latin] See assize of darrein presentment under ASSIZE(8).

#### ASSISA VENALIUM

assisa venalium (<<schwa>>-sI-z<<schwa>> v<<schwa>>-nay-lee-<<schwa>>m), n.[Law Latin] Hist. The assize of salable commodities.

#### ASSISE

assise. See ASSIZE.

#### ASSISER

assiser. See ASSIZER.

#### ASSISTANCE

assistance. Civil law. Compensation for an effort to save a threatened vessel, cargo, or ship personnel at sea. Cf. NO CURE, NO PAY.

#### ASSISTANCE, WRIT OF

assistance, writ of. See WRIT OF ASSISTANCE.

#### ASSISTANCE OF COUNSEL

assistance of counsel. Representation by a lawyer, esp. in a criminal case. • The phrase in its modern uses derives from the Sixth Amendment: “In all criminal prosecutions, the accused shall enjoy the right ... to have the assis-tance of counsel for his defense.” U.S. Const. amend. VI. See RIGHT TO COUNSEL . [Cases: Criminal Law 641.13. C.J.S. Criminal Law §§ 304–305.]

effective assistance of counsel. A conscientious, meaningful legal representation, whereby the defendant is ad-vised of all rights and the lawyer performs all required tasks reasonably according to the prevailing professional standards in criminal cases. See Fed. R. Crim. P. 44; 18 USCA § 3006A.

“The law is in flux on precisely what constitutes the ‘effective’ assistance of counsel. The Supreme Court has yet to set forth a definitive standard, and lower courts have adopted differing ones. Prior to the 1970s the most common standard was the ‘mockery of justice’ standard, under which counsel's assistance was ‘ineffective’ only when it was so inadequate that it reduced the trial

'to a farce' or rendered it a 'mockery of justice.' Since that time, most courts have abandoned this formulation in favor of more stringent requirements, stipulating, for example, that 'counsel must exercise [the] normal skill and knowledge which normally prevails at the time and place' (Moore v. United States, 432 F.2d 730 (3d Cir. 1970)), that counsel must render the 'reasonably competent assistance of an attorney acting as his diligent advocate' (United States v. Decoster, 487 F.2d 1197 (D.C. Cir. 1973)), or that counsel's representation must be 'within the range of competence demanded of attorneys in criminal cases' (Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). All of these new standards beg the questions of what traditional level of practice is to be regarded as 'customary,' 'diligent,' or 'reasonable.' Thus, little has been definitively resolved by the new, higher standards." Arval A. Morris, "Right to Counsel," in 1 Encyclopedia of Crime and Justice 278, 283 (Sanford H. Kadish ed., 1983).

ineffective assistance of counsel. A representation in which the defendant is deprived of a fair trial because the lawyer handles the case unreasonably, usu. either by performing incompetently or by not devoting full effort to the defendant, esp. because of a conflict of interest. • In determining whether a criminal defendant received ineffective assistance of counsel, courts generally consider several factors: (1) whether the lawyer had previously handled criminal cases; (2) whether strategic trial tactics were involved in the allegedly incompetent action; (3) whether, and to what extent, the defendant was prejudiced as a result of the lawyer's alleged ineffectiveness; and (4) whether the ineffectiveness was due to matters beyond the lawyer's control.

"The Sixth Amendment right to assistance of counsel has been held to imply the 'right to the effective assistance of counsel.' The Court has often said that the converse — ineffective assistance of counsel — is a constitutional denial of the Sixth Amendment right, even if the lawyer has been retained by rather than appointed for the defendant. 'Ineffective' does not necessarily mean incompetent or unprepared; it means an inability to perform as an independent lawyer devoted to the defendant.... However, counsel's assistance is not necessarily ineffective because the lawyer made mistakes. Only very serious errors, such as would likely have produced an entirely different outcome at trial, will suffice to require a new trial." Jethro K. Lieberman, *The Evolving Constitution* 263–64 (1992).

#### ASSISTANT COMMISSIONER FOR PATENTS

Assistant Commissioner for Patents. See commissioner for patents under COMMISSIONER.

#### ASSISTANT COMMISSIONER FOR TRADEMARKS

Assistant Commissioner for Trademarks. See commissioner for trademarks under COMMISSIONER.

#### ASSISTANT JURISDICTION

assistant jurisdiction. See JURISDICTION.

#### ASSISTANT UNITED STATES ATTORNEY

Assistant United States Attorney. See UNITED STATES ATTORNEY.

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**ASSISTED CONCEPTION**

assisted conception.Family law. The fertilization of a woman's egg with a man's sperm by some means other than sexual intercourse. See **ARTIFICIAL INSEMINATION ; IN VITRO FERTILIZATION; GAMETE INTRA-FALLOPIAN TRANSFER; ZYGOTE INTRAFALLOPIAN TRANSFER .**

**ASSISTED REPRODUCTIVE TECHNOLOGY**

assisted reproductive technology.Family law. Any medical means of aiding human reproduction, esp. through laboratory procedures. — Abbr. ART. — Also termed assisted reproduction; assisted-reproductive therapy.

**ASSISTED SELF-DETERMINATION**

assisted self-determination.See assisted suicide under **SUICIDE**.

**ASSISTED SUICIDE**

assisted suicide.See **SUICIDE**.

**ASSIZE**

assize (<<schwa>>-sIz), n.1. A session of a court or council.

maiden assize.Hist. 1.An assize in which no prisoner is sentenced to death. 2. An assize in which the sheriff presents the judges with white gloves because there are no prisoners to try. • This practice stemmed from a custom in which a prisoner who was convicted of murder but pardoned by the Crown presented gloves to the judges as a fee.

2. A law enacted by such a body, usu. one setting the measure, weight, or price of a thing.

Assize of Arms.An 1181 statute requiring every man to keep arms suitable to his station in life. See **ASSISA ARMORUM**.

Assize of Clarendon (klar-<<schwa>>n-d<<schwa>>n).Hist. A decree issued in 1166 by Henry II to the justices in eyre and sheriffs concerning criminal procedure. • The Assize expanded the reach of the king's courts by asserting royal jurisdiction over serious crimes. See **CONSTITUTIONS OF CLARENDON**.

Assize of Northampton.Hist. A decree issued in 1176 by Henry II as an expansion and reissue of the Assize of Clarendon, instructing judges esp. on questions of tenure, relief, and dower.

3. The procedure provided for by such an enactment. 4. The court that hears cases involving that procedure. 5. A jury.

grand assize.(often cap.) A sworn panel summoned by judicial writ to resolve disputes concerning real property. • Henry II instituted the Grand Assize in the 12th century as an alternative to trial by battle. — Also termed magna assisa.

petite assize.A jury convened to decide questions of possession.

## 6. A jury trial.

assize of mort d'ancestor (mor[t] dan-ses-t<<schwa>>r). An action for the recovery of land belonging to the claimant's ancestor. • Mort d'ancestor was abolished in the early 19th century. — Also termed *assisa mortis d'ancestoris*; *assisa de morte antecessoris*.

judicial assize. An assize begun by judicial writ and deriving from pleas of gage, mort d'ancestor, and *darrein presentment*.

petty assize. An assize begun by an original writ. • Petty assizes were characterized by the form of the writ, which specified the questions to be put to the panel, and ordered that a panel be assembled. The petty assizes were *novel disseisin*, mort d'ancestor, *utrum*, and *darrein presentment*.

“The word ‘Assisa’ means originally the sitting of a court or assembly. It then comes to denote the things done, the enactments passed, at such a court or assembly. Thus we speak of the Assize of Clarendon, or the Assize of Northampton. Certain of these enactments in Henry II's reign introduced a new procedure for the trial of questions as to the ownership or possession of lands held by free tenure. The Grand Assize introduced this new procedure for the determination of questions of ownership; the possessory assizes for the determination of question of possession.”  
1 William Holdsworth, *A History of English Law* 275 (7th ed. 1956).

7. A jury's finding. 8. A writ. — Also spelled *assise*; *assisa*.

assize of *darrein presentment* (dar-ayn pri-zent-m<<schwa>>nt), n.[fr. French *dernier présentation* “last pre-sentment”] Hist. A writ allowing a person with a right of advowson that had been disturbed by another claimant to have a jury determine who had last presented a clerk to a benefice and then to allow that person to present again and to recover damages for interference. • This was abolished by the Real Property Limitation Act of 1833 and was replaced by the *quare impedit* action. — Also termed *darreign presentment*; *assize of last presentation*; *assisa ultimae praesentationis*; *assize de ultima presentatione*. — Also spelled *darreign*. See *ADVOWSON*; *QUARE IMPEDIT*.

“An assise of *darrein presentment*, or last presentation, lies when a man, or his ancestors, under whom he claims, have presented a clerk to a benefice, who is instituted; and afterwards upon the next avoidance a stranger presents a clerk, and thereby disturbs him that is the real patron. In which case the patron shall have this writ, directed to the sheriff to summon an assise or jury, to enquire who was the last patron that presented to the church now vacant, of which the plaintiff complains that he is deforced by the defendant: and, according as the assise determines that question, a writ shall issue to the bishop; to institute the clerk of that patron, in whose favour the determination is made, and also to give damages ....” 3 William Blackstone, *Commentaries on the Laws of England* 245 (1768).

“[A]t some time or another during his reign Henry gave a possessory action, the assize of *darrein presentment* ... which stands to the writ of right of advowson in somewhat the same relation as that in which the *novel disseisin* stands to the writ of right for land. If the church is vacant and two persons are quarrelling about the advowson, it is very necessary that some

provisional, some possessory judgment should be given .... The principle of the new assize is, simply stated, this: 'He who presented last time, let him present this time also; but this without prejudice to any question of right.' An inquest of neighbours is summoned to declare who it was that presented the last parson." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 148–49 (2d ed. 1898).

assize of fresh force.Hist. A writ available in urban areas to disseise another's land. • This writ is so called because it was available only within the first 40 days after title accrued to the person seeking it. — Also termed *assisa friscae fortiae*.

assize of novel disseisin.Hist. A writ for a tenant who has been disseised of lands and tenements. • This institution of English law flourished for about 300 years — from the 12th century to the 15th. It had become wholly obsolete by the mid-17th century. — Also termed *assisa novae disseysinae*.

"[Up to the 15th century,] 'assize of novel disseisin' was a series of perfectly plain words, as plain as the words 'proceeding in recent ejection,' which translate them into modern English, would be to us. Even to humble contemporaries whose linguistic horizons did not extend beyond English, the institution itself apart from its name was perfectly straightforward. It meant that if a freeholder of land was ejected from his property he could require the sheriff to set up a jury of twelve, have them go look at the land, and bring them before the king's justices when they next came to hold court in the county. The justices asked the jurors whether the freeholder had been illegally put out of his holding, as he complained, and if they said that he had then the court would restore the land to him at once." Donald W. Sutherland, *The Assize of Novel Disseisin* 1–2 (1973).

assize of nuisance.Hist. A writ available to a landowner suffering from a nuisance on another's land; a writ to abate a nuisance. • This writ also entitled a successful plaintiff to damages. — Also termed *assisa de nocumento*.

"The assize of nuisance. — This was supplementary to the famous assize of novel disseisin which was limited to redressing any act of the defendant that interfered with the plaintiff's seisin of land. It was therefore useless if the injury to the plaintiff began wholly on the defendant's land (e.g., if he erected there a dam which diverted water from the plaintiff's land), for the injury was not a disseisin as there was no entry on the plaintiff's land. This gap was filled by the assize of nuisance as early as the thirteenth century. It extended both to injuries to servitudes *stricto sensu* and to common rights." P.H. Winfield, *A Textbook of the Law of Tort* § 130, at 443 (5th ed. 1950).

#### ASSIZER

assizer,n. Hist. 1.A member of a grand assize. See grand assize under ASSIZE(5).2.Scots law. A juror. 3. One having custody of the standards of weight and measure; esp., one who fixes the assize of bread, ale, and other items of general consumption. — Also spelled *assizor*; *assiser*; *assisor*.

#### ASSIZES DE JERUSALEM

Assizes de Jerusalem (<<schwa>>-sIz-<<schwa>>z d<<schwa>> j<<schwa>>-roo-s<<

schwa>>-l<<schwa>>m). A code of feudal law intended to serve as the law of the lands conquered by the Crusaders. • The code was prepared in the 12th century after the 1099 conquest of Jerusalem.

#### ASSIZE UTRUM

assize utrum (yoo-tr<<schwa>>m). [Latin] Hist. A writ to determine whether land claimed by a church was held by lay or spiritual tenure. • This writ is named after its emphatic word, which required the fact-finder to determine whether (utrum) the land belonged to the church. — Also termed (erroneously) assize of utrum; assize de utrum.

“In the assize utrum a jury was summoned to decide whether land was held by lay or spiritual tenure — a pre-liminary question to any litigation about it, for the Church claimed jurisdiction over spiritual land. Later the Church was to lose this jurisdiction, and the assize utrum became the parson's substitute for the writ of right. This curious development was brought about in this way. A parson could not use the writs of right, for, like a life tenant, he could not trace his title back to the seisin of an ancestor. The assize utrum could be made to serve the parson, however, for the question asked in the writ was whether certain land in a parish was ‘the free alms of the Church of X.’ If the answer was ‘yes,’ then it followed that it was the parson of the parish's land.” Brian Simpson, *An Introduction to the History of the Land Law* 30–31 (1961).

“[T]he ‘assize utrum’ ... is important as being the first instance known to us of the general use of the royal procedure by way of inquest in a matter of private litigation. If the answer of the inquest was that this land was held in frankalmoign, then the case went to the ecclesiastical court; if that it was lay fee, then to the appropriate lay tribunal. In the course of the thirteenth century the ecclesiastical courts lost their jurisdiction over land held by spiritual tenure, and the ‘assize utrum’ came to be used not as a merely preliminary procedure but as a mode of deciding in royal courts a question of title to glebe land.” Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 33–34 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

#### ASSIZOR

assizor. See ASSIZER.

#### ASSOCIATE

associate, n. 1. A colleague or companion. 2. A junior member of an organization or profession; esp., a lawyer in a law firm, usu. with fewer than a certain number of years in practice, who may, upon achieving the requisite se-niority, receive an offer to become a partner or shareholder. — Also termed associate attorney. 3. Hist. English law. An officer of a common-law court responsible for maintaining the court's records, attending jury trials, and entering verdicts. • In 1894, associates' duties were taken over by the staff of the Central Office. See CLERK OF ASSIZE; CENTRAL OFFICE.

#### ASSOCIATE AGENT

associate agent. See AGENT(3).



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**ASSOCIATE ATTORNEY**

associate attorney. See ATTORNEY.

**ASSOCIATED PERSON**

associated person. Securities. 1. A partner, officer, director, branch manager of a broker or dealer, or any person performing similar functions or occupying a similar status, any person directly or indirectly controlling, controlled by, or under common control with the broker or dealer, or any employee of the broker or dealer — with two exceptions: (1) those whose functions are solely clerical or ministerial, and (2) those required to register under state law as a broker or dealer solely because they are issuers of securities or associated with an issuer of securities. 15 USCA § 78(a)(21), (49). [Cases: Securities Regulation 40.12. C.J.S. Securities Regulation §§ 157–158, 165.] 2. A natural person who is a partner, officer, director, or employee of: (1) the issuer; (2) a general partner of a limited partnership issuer; or (3) a company or partnership that controls, is controlled by, or is under common control with the issuer. Cf. AFFILIATE(2).

**ASSOCIATE JUDGE**

associate judge. See JUDGE.

**ASSOCIATE JUSTICE**

associate justice. See JUSTICE(2).

**ASSOCIATION**

association. 1. The process of mentally collecting ideas, memories, or sensations. 2. A gathering of people for a common purpose; the persons so joined. 3. An unincorporated organization that is not a legal entity separate from the persons who compose it. • If an association has sufficient corporate attributes, such as centralized management, continuity of existence, and limited liability, it may be classified and taxed as a corporation. — Also termed unincorporated association; voluntary association. [Cases: Associations 1. C.J.S. Associations §§ 2–3, 8.]

beneficial association. See benevolent association.

benefit association. See benevolent association.

benevolent association. An unincorporated, nonprofit organization that has a philanthropic or charitable purpose. — Also termed beneficial association; benefit association; benevolent society; fraternal society; friendly society. [Cases: Charities 39. C.J.S. Charities § 60.]

homeowners' association. 1. An association of people who own homes in a given area and have united to improve or maintain the area's quality. 2. An association formed by a land developer or homebuilder to manage and maintain property in which the developer and the builder own an undivided common interest. • Homeowners' associations — which are regulated by statute in many states — are commonly formed by restrictive covenant or a declaration of restrictions. — Also spelled homeowners association.

nonprofit association. A group organized for a purpose other than to generate income or profit,

such as a scientific, religious, or educational organization. [Cases: Charities 1, 39, 46. C.J.S. Charities §§ 2–3, 60, 62–63.]

owners' association. See OWNERS' ASSOCIATION.

professional association. 1. A group of professionals organized to practice their profession together, though not necessarily in corporate or partnership form. 2. A group of professionals organized for education, social activity, or lobbying, such as a bar association. — Abbr. P.A. [Cases: Attorney and Client 31. C.J.S. Attorney and Client §§ 8–9.]

trade association. An association of business organizations having similar concerns and engaged in similar fields, formed for mutual protection, the interchange of ideas and statistics, and the establishment and maintenance of industry standards. • A trade association may be composed of members of a single industry (e.g., the Chemical Manufacturers Association) or members having a common interest or purpose (e.g., the Consumer Mortgage Coalition). Among the joint actions that a trade association often takes are collecting industry data, advertising, marketing, and engaging in public relations and government relations.

#### ASSOCIATION-IN-FACT ENTERPRISE

association-in-fact enterprise. Under RICO, a group of people or entities that have not formed a legal entity, but that have a common or shared purpose, and maintain an ongoing organizational structure through which the associates function as a continuing unit. • A RICO violation is not shown merely by proving that an enterprise, including an association-in-fact, exists. A pattern of racketeering activity must also be proved. 18 USCA § 1961(4); *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524 (1981). [Cases: Racketeer Influenced and Corrupt Organizations 36.]

#### ASSOCIATION OF AMERICAN LAW SCHOOLS

Association of American Law Schools. An organization of law schools that have each graduated at least three annual classes of students. — Abbr. AALS.

#### ASSOCIATION OF LEGAL WRITING DIRECTORS

Association of Legal Writing Directors. A nonprofit corporation composed of the directors and former directors of law-school legal-writing programs, mostly in the United States. • Created in 1996 to improve those programs, it supports research and scholarship; holds a biennial conference; conducts (with the Legal Writing Institute) an annual survey of the programs; maintains a listserv; represents writing teachers before the American Bar Association; and publishes various resources, including the ALWD Citation Manual. — Abbr. ALWD (al-wid).

#### ASSOIL

assoil (<<schwa>>-soyl), vb. [Law French] Hist. To acquit or absolve; to deliver from excommunication. — Also spelled assoile. — Also termed absoile; assoilyie.

#### ASSULTUS PREMEDITATUS

assultus premeditatus. See assault purpensé under ASSAULT.

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**ASSUMED BOND**

assumed bond. See guaranteed bond under BOND(3).

**ASSUMED NAME**

assumed name. 1. ALIAS(1). 2. The name under which a business operates or by which it is commonly known <Antex Corporation's assumed name is Computer Warehouse>. • Many states require an individual or business operating under an assumed name to file an assumed-name certificate, usu. in the secretary of state's office or the county clerk's office where the principal place of business is located. — Also termed fictitious name. See D/B/A. Cf. corporate name under NAME. [Cases: Corporations 46. C.J.S. Corporations § 99.]

**ASSUME OR REJECT**

assume or reject. Bankruptcy. (Of a debtor-in-possession or a trustee) to make an election under the Bankruptcy Code concerning an executory contract or an unexpired lease within a prescribed period, depending on the chapter of the Code under which the case is proceeding and the subject matter of the contract. • The timing, procedure, and consequences of the election are described in 11 USCA § 365.

**ASSUMPSIT**

assumpsit (<<schwa>>-s<<schwa>>m[p]-sit). [Law Latin “he undertook”] 1. An express or implied promise, not under seal, by which one person undertakes to do some act or pay something to another <an assumpsit to pay a debt>. 2. A common-law action for breach of such a promise or for breach of a contract <the creditor's assumpsit against the debtor>. [Cases: Assumpsit, Action of 1. C.J.S. Assumpsit, Action of §§ 2, 4–6.]

“It was early known as ‘trespass on the case upon promises,’ but in time came to be designated assumpsit (he assumed or promised), and lies for damages for breach of all contracts, parol or simple, whether written or verbal, express or implied.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 9–10 (2d ed. 1899).

“In its origin an action of tort, [assumpsit] was soon transformed into an action of contract, becoming afterwards a remedy where there was neither tort nor contract. Based at first only upon an express promise, it was afterwards supported upon an implied promise, and even upon a fictitious promise. Introduced as a special manifestation of the action on the case, it soon acquired the dignity of a distinct form of action, which superseded Debt, became concurrent with Account, with Case upon a bailment, a warranty, and bills of exchange, and competed with Equity in the case of the essentially equitable quasi-contracts growing out of the principle of unjust enrichment. Surely, it would be hard to find a better illustration of the flexibility and power of self-development of the Common Law.” James Barr Ames, “The History of Assumpsit,” in *3 Select Essays in Anglo-American Legal History* 298 (1909).

general assumpsit. An action based on the defendant's breach of an implied promise to pay a debt to the plaintiff. — Also termed common assumpsit; indebitatus assumpsit. [Cases: Assumpsit, Action of 7. C.J.S. Assumpsit, Action of § 10.]

“General assumpsit is brought for breach of a fictitious or implied promise raised by law from a debt founded upon an executed consideration. The basis of the action is the promise implied by law from the performance of the consideration, or from a debt or legal duty resting upon the defendant.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 59, at 153 (Henry Winthrop Ballantine ed., 3d ed. 1923).

“[T]he word ‘assumpsit’ suggest[s] the making of a promise. While that is true in the case of the action of special assumpsit, the promise alleged in the action of general assumpsit was only a fiction. Accordingly in the latter action, the word ‘assumpsit’ no more means that an obligation exists as the result of making a contract, than that a contract is involved because the obligation is described as quasi-contractual.” Charles Herman Kinnane, *A First Book on Anglo-American Law* 633–34 (2d ed. 1952).

indebitatus assumpsit (in-deb-i-tay-t<<schwa>>s <<schwa>>-s<<schwa>>m[p]-sit). [Latin “being indebted, he undertook”] 1.Hist. A form of action in which the plaintiff alleges that the defendant contracted a debt and, as consideration, had undertaken (i.e., promised) to pay. • The action was equivalent to the common-law action for debt (an action based on a sealed instrument), but could be used to enforce an oral debt. In England, indebitatus assumpsit was abolished in 1873 by the Judicature Act. But it is still used in several American states, such as California. See CONCESSIT SOLVERE. 2. See general assumpsit.

“[I]f I verbally agree to pay a man a certain price for a certain parcel of goods, and fail in the performance, an action of debt lies against me; for this is a determinate contract: but if I agree for no settled price, I am not liable to an action of debt, but a special action on the case, according to the nature of my contract. And indeed actions of debt are now seldom brought but upon special contracts under seal .... [T]he plaintiff must recover the whole debt he claims, or nothing at all. For the debt is one single cause of action, fixed and determined; and which therefore, if the proof varies from the claim, cannot be looked upon as the same ... action of debt .... But in an action on the case, on what is called an indebitatus assumpsit, which is not brought to compel a specific performance of the contract, but to recover damages for its non-performance, the implied assumpsit, and consequently the damages for the breach of it, are in their nature indeterminate; and will therefore adapt and proportion themselves to the truth of the case which shall be proved, without being confined to the precise demand stated in the declaration.” 3 William Blackstone, *Commentaries on the Laws of England* 154 (1768).

special assumpsit.An action based on the defendant's breach of an express contract. — Also termed express assumpsit. [Cases: Assumpsit, Action of 6. C.J.S. Assumpsit, Action of § 4.]

“Special assumpsit lies for the recovery of damages for the breach of simple contract, either express or implied in fact. The term ‘special contract’ is often used to denote an express or explicit contract as contrasted with a promise implied in law.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 58, at 148 (Henry Winthrop Ballantine ed., 3d ed. 1923).

“From the allegations concerning the ‘assumpsit,’ a new action which split off from the action on the case came to be known as the action of assumpsit. Since, however, the plaintiff had to allege and prove a specific or special promise, in order to get a judgment, the action came to be

known as the action of 'special assumpsit.' When the special promise came to be regarded as the basis of the action, the action came to be regarded as a contract action, rather than one based on unclassified 'wrongs.' ” Charles Herman Kinnane, *A First Book on Anglo-American Law* 633–34 (2d ed. 1952).

#### ASSUMPTION

assumption, n. 1. A fact or statement taken for granted; a supposition <a logical assumption>. 2. The act of taking (esp. someone else's debt or other obligation) for or on oneself; the agreement to so take <assumption of a debt>. — assume, vb.

implied assumption. The imposition of personal liability on a land purchaser who buys subject to a mortgage and who deducts the mortgage amount from the purchase price, so that the purchaser is treated as having assumed the debt. [Cases: Mortgages 279. C.J.S. Mortgages § 395.]

#### ASSUMPTION CLAUSE

assumption clause. 1. A mortgage provision that prohibits another from assuming the mortgage without the permission of the mortgagee. [Cases: Mortgages 272. C.J.S. Mortgages §§ 382–383.] 2. A provision by which the transferee of an instrument agrees to assume an obligation of the transferor.

#### ASSUMPTION FEE

assumption fee. A lender's charge for processing records for a new buyer's assumption of an existing mortgage. [Cases: Mortgages 279. C.J.S. Mortgages § 395.]

#### ASSUMPTION OF THE RISK

assumption of the risk. Torts. 1. The act or an instance of a prospective plaintiff's taking on the risk of loss, injury, or damage <the skydiver's assumption of the risk>. — Also termed assumption of risk. [Cases: Negligence 550. C.J.S. Negligence §§ 360–361.]

“[Assumption of risk] has been a subject of much controversy, and has been surrounded by much confusion, because ‘assumption of risk’ has been used by the courts in several different senses, which traditionally have been lumped together under the one name, often without realizing that any differences exist. There are even courts which have limited the use of the term ‘assumption of risk’ to cases in which the parties stand in the relation of master and servant, or at least some other contractual relation; but they have been compelled to invent other names for other cases, such as ‘incurred risk,’ or ‘volenti non fit injuria.’ This appears to be largely a distinction without a difference; and most courts have made general use of the one term.... In its most basic sense, assumption of risk means that the plaintiff, in advance, has given his express consent to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone.” W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 68, at 480–81 (5th ed. 1984).

2. The principle that one who takes on the risk of loss, injury, or damage cannot maintain an

action against a party that causes the loss, injury, or damage <assumption of the risk was not a valid defense>. • Assumption of the risk was originally an affirmative defense, but in most jurisdictions it has now been wholly or largely subsumed by the doctrines of contributory or comparative negligence. The risk assumed by the person was often termed an in-curred risk.

implied assumption of the risk. An assumption based on the plaintiff's conduct that seems to consent to relieve another of liability for negligence. • For this defense to apply, the plaintiff's conduct must suggest (1) open consent to the risk, (2) voluntary participation in the activity, and (3) full understanding of the danger. See *VOLENTI NON FIT INJURIA*.

primary assumption of the risk. A legal conclusion that the defendant was not negligent because the defendant either did not owe a duty of care to the injured party or did not breach any duty owed. • Courts decide questions of duty through policy judgments, which include the relative balance between risks and utilities.

“Primary assumption of risk occurs when the plaintiff voluntarily participates in an activity involving certain inherent risks and encounters one of the inherent risks; the defense is a complete bar to recovery because there is no duty of care to protect another from the risks inherent in a voluntary activity.” 4 Ann Taylor Schwing, *California Affirmative Defenses* 2d § 48:24, at 59 (1996).

“Primary assumption of risk is sometimes viewed as a misnomer. This concept is frequently described as a no-duty rule because the plaintiff, by engaging in a known and potentially risky activity, has relieved the defendant of the duty of care normally owed to the plaintiff. Under the primary-assumption-of-risk/no-duty doctrine, ‘there [would be] no liability because the defendant did not breach a duty of care to the plaintiff.’ [Kenneth S. Abraham, *The Forms and Functions of Tort Law* 155 (1997).] Traditionally, the no-duty rule completely bars a plaintiff's recovery. Courts limit the use of primary assumption of risk in comparative-negligence jurisdictions because of the harshness of this rule. Recently, some comparative-negligence jurisdictions have started to review primary assumption-of-risk claims within the framework of their comparative-fault system, refusing to automatically bar the plaintiff's entire recovery.” Luke Ellis, Note, *Talking About My Generation: Assumption of Risk and the Rights of Injured Concert Fans in the Twenty-First Century*, 80 *Texas L. Rev.* 607, 618 (2002).

secondary assumption of risk. 1. The act or an instance of voluntarily encountering a known unreasonable risk that is out of proportion to any advantage gained. • With secondary assumption of the risk, the fact-finder considers the reasonableness of the plaintiff's conduct in the particular case, balancing the risks and utilities under the circumstances. 2. An affirmative defense to an established breach of a duty, based on a claim that the plaintiff acted unreasonably in encountering a known risk. See contributory negligence under *NEGLIGENCE*.

voluntary assumption of the risk. An intentional and unreasonable exposure of oneself to danger created by another's negligence, when one knows or has reason to know of the danger.

## ASSURANCE

assurance, n. 1. Something that gives confidence; the state of being confident or secure

<self-assurance>.2.English law. See life insurance under INSURANCE <she obtained assurance before traveling abroad, naming her husband as the beneficiary>.3. The act of transferring real property; the instrument by which it is transferred <the owner's assurance of the farm to his son>.4. A pledge or guarantee <adequate assurances of the borrower's solvency>. — assure,vb.

adequate assurance. 1.Contracts. A circumstance or a contractual obligor's act that gives an obligee reason to be confident that the contract will be duly performed. • If the obligee has good reason to feel insecure and justifiably demands assurance, an obligor's failure to provide adequate assurance may constitute a repudiation of the contract. UCC § 2-609. 2.Bankruptcy. Evidence that a debtor will probably be able to perform its obligations under a contract, such as the posting of a bond or a showing that the debtor will generate sufficient income to pay any arrearages and future payment obligations. [Cases: Bankruptcy 2481, 3114. C.J.S. Bankruptcy §§ 103–104, 226.]

collateral assurance.A pledge made in addition to the principal assurance of an agreement.

common assurance.See MUNIMENT OF TITLE.

further assurance.A covenant contained in a warranty deed whereby the grantor promises to execute any document that might be needed in the future to perfect the title that the original deed purported to transfer.

#### ASSURED

assured,n. Insurance. One who is indemnified against loss; INSURED. [Cases: Insurance 2100. C.J.S. Insurance § 389.]

#### ASSURER

assurer. See INSURER.

#### AS THEIR INTERESTS MAY APPEAR

as their interests may appear.See ATIMA.

#### ASTIPULATION

astipulation (as-tip-y<<schwa>>-lay-sh<<schwa>>n).Archaic. Agreement; assent.

#### ASTITUTION

astitution (as-t<<schwa>>-t[y]oo-sh<<schwa>>n).Archaic. See ARRAIGNMENT.

#### ASTRARIUS

astrarius (as-trair-ee-<<schwa>>s), n.[Law Latin “hearth owner”] Hist. The owner or occupant of a house. — Also termed astrer (as-tr<<schwa>>r). See heres astrarius under HERES.

#### ASTRONOMICAL DAY

astronomical day.See solar day (2) under DAY.

#### ASYLEE

asylee (<<schwa>>-sI-lee). A refugee applying for asylum; an asylum-seeker. [Cases: Aliens 53.10(3). C.J.S. Aliens §§ 85, 92, 97, 205, 218.]

#### ASYLUM

asylum. 1. A sanctuary or shelter. 2. Protection of usu. political refugees from arrest by a foreign jurisdiction; a nation or embassy that affords such protection. — Also termed political asylum. [Cases: Aliens 53.10(3). C.J.S. Aliens §§ 85, 92, 97, 205, 218.] 3. An institution for the protection and relief of the unfortunate, esp. the mentally ill. — Also termed (in sense 3) insane asylum. [Cases: Asylums 1–8; Mental Health 31. C.J.S. Asylums and Institutional Care Facilities §§ 2–15; Insane Persons §§ 45, 47, 53.]

#### ATAMITA

atamita (<<schwa>>-tam-i-t<<schwa>>), n.[Latin] Civil law. A great-great-great-grandfather's sister.

#### AT ARM'S LENGTH

at arm's length. See ARM'S-LENGTH.

#### ATAVIA

atavia (<<schwa>>-tay-vee-<<schwa>>), n.[Latin] Roman & civil law. A great-great-great-grandmother.

#### ATAVUNCULUS

atavunculus (at-<<schwa>>-v<<schwa>>ngk-y<<schwa>>-l<<schwa>>s), n.[Latin] Civil law. A great-great-great-grandfather's brother.

#### ATAVUS

atavus (at-<<schwa>>-v<<schwa>>s), n.[Latin] Roman & civil law. The male ascendant in the fifth degree; a great-grandfather's or great-grandmother's grandfather; a fourth grandfather.

#### AT BAR

at bar. Now before the court <the case at bar>. — Also termed at bench; at the bar.

#### AT BENCH

at bench. See AT BAR.

#### AT EQUITY

at equity. According to equity; by, for, or in equity.

#### A TERME

a terme (a tairm). [Law French] For a term.

a terme de sa vie (a tairm d<<schwa>> sa vee). [Law French] For the term of his life.



a terme que n'est mye encore passe (a tairm k<<schwa>> nay mee awn-kor pahs). [Law French] For a term that has not yet passed.

a terme que passe est (a tairm k<<schwa>> pahs ay). [Law French] For a term that has passed.

#### ATF

ATF.abbr. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

#### ATILIAN LAW

Atilian law.See LEX ATILIA.

#### ATIMA

ATIMA (<<schwa>>-tee-m<<schwa>>).abbr. As their interests may appear. • The phrase is sometimes used in insurance policies to show that the named insured has an interest, usu. an unspecified one, in the property covered by the policy and is entitled to benefits to the extent of that interest. The phrase is also used in a policy's mortgage clause to protect the mortgagee's real-property interest. See INSURABLE INTEREST; MORTGAGE CLAUSE. [Cases: Insurance 3450. C.J.S. Insurance §§ 1404, 1520.]

#### ATINIAN LAW

Atinian law.See LEX ATINIA.

#### AT ISSUE

at issue.Taking opposite sides; under dispute; in question <the federal appeals courts are at issue over a question of law>.

#### AT-ISSUE WAIVER

at-issue waiver.An exemption from the attorney–client privilege, whereby a litigant is considered to have waived the privilege by taking a position that cannot be effectively challenged without analyzing privileged information. Cf. OFFENSIVE-USE WAIVER. [Cases: Witnesses 219(3).]

#### ATLANTIC REPORTER

Atlantic Reporter.A set of regional lawbooks, part of the West Group's National Reporter System, containing every published appellate decision from Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont, as well as the decisions of the District of Columbia Municipal Court of Appeals, from 1885 to date. • The first series ran from 1885 to 1938; the second series is the current one. — Abbr. A.; A.2d.

#### AT LARGE

at large. 1. Free; unrestrained; not under control <the suspect is still at large>.2. Not limited to any particular place, person, matter, or question <at-large election>.3. Chosen by the voters of

an entire political entity, such as a state, county, or city, rather than from separate districts within the entity <councilmember at large>.4. Not ordered in a topical way; at random <statutes at large>.5. Fully; in detail; in an extended form <there wasn't time to discuss the issue at large>.

#### AT-LARGE ELECTION

at-large election. See election at large under ELECTION.

#### AT LAW

at law. According to law; by, for, or in law.

#### ATMATERTERA

atmatertera (at-may-t<<schwa>>r-t<<schwa>>r-<<schwa>>), n.[Latin] Civil law. A great-great-great-grandmother's sister. — Also termed abmatertera magna (ab-may-t<<schwa>>r-t<<schwa>>r-<<schwa>> mag-n<<schwa>>).

#### AT MATURITY

at maturity. See date of maturity under DATE.

#### ATORT

atort (a-tor), adv.[Law French] Hist. Wrongfully.

#### A TORT ET A TRAVERS

a tort et a travers (a tor tay a tra-vair). [Law French] Without consideration or discernment.

#### A TORT OU A DROIT

a tort ou a droit (a tor oo a drwah). [Law French] Right or wrong.

#### AT PAR

at par, adj. (Of a stock or bond) issued or selling at face value.

#### ATPATRUUS

atpatruus (at-pa-troo-<<schwa>>s), n.[Latin] Civil law. A brother of a great-great-grandfather.

#### AT-RISK RULES

at-risk rules, n. pl. Statutory limitations of a taxpayer's deductible losses to the amount the taxpayer could actually lose, to prevent the taxpayer from sheltering income. [Cases: Internal Revenue 3389.]

#### ATROCIOUS ASSAULT

atrocious assault. See ASSAULT.

#### ATROCIOUS FELONY

atrocious felony. See FELONY.

#### ATS

ATS.abbr. At the suit of.

#### ATSDR

ATSDR.abbr. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

#### ATTACH

attach, vb. 1. To annex, bind, or fasten <attach the exhibit to the pleading>. 2. To take or seize under legal authority <attach the debtor's assets>. [Cases: Attachment 1; Federal Civil Procedure 581. C.J.S. Attachment §§ 2–4, 7.] 3. To become attributed; to adhere <jeopardy attaches when the jury is sworn>.

#### ATTACHÉ

attaché (at-*<<schwa>>*-shayor a-ta-shay), n. A person who serves as a technical adviser to an embassy. [Cases: Ambassadors and Consuls 3. C.J.S. Ambassadors and Consuls §§ 15–23.]

#### ATTACHIAMENTA BONORUM

attachiamenta bonorum (*<<schwa>>*-tach-ee-*<<schwa>>*-men-t*<<schwa>>* b*<<schwa>>*-nor-*<<schwa>>*m), n. [Law Latin] Hist. A distress taken on goods and chattels by bailiffs, as security to answer an action for debt.

#### ATTACHIAMENTUM

attachiamentum (*<<schwa>>*-tach-ee-*<<schwa>>*-men-t*<<schwa>>*m), n. [Law Latin] An attachment. Pl. at-tachiamenta.

#### ATTACHING CREDITOR

attaching creditor. See CREDITOR.

#### ATTACHMENT

attachment. 1. The seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment. — Also termed (in civil law) provisional seizure. Cf. GARNISHMENT; SEQUESTRATION(1). [Cases: Attachment 1; Federal Civil Procedure 581–590. C.J.S. Attachment §§ 2–4, 7.]

attachment of wages. The attachment by a plaintiff of a defendant's earnings as an employee. • In some jurisdictions, an attachment-of-earnings order requires the defendant's employer to deduct a specified sum or percentage of the defendant's wages or salary and to pay the money into court. The court then sends the money to the plaintiff. Federal law provides a garnishment statute for satisfaction of judgments for child support and alimony. Under this statute, up to 50% of a wage-earner's disposable income can be seized if the wage-earner has another family of dependents and up to 60% if there is only one family. If the obligor is more than three months in

arrears, an additional 5% can be seized until the arrearage is paid. 15 USCA § 1673(b)(2). — Also termed attachment of earnings; wage-withholding; automatic wage-withholding; wage assignment. Cf. GARNISHMENT; INCOME-WITHHOLDING ORDER. [Cases: Execution 420.5; Garnishment 1. C.J.S. Exchanges § 24; Executions § 24.]

provisional attachment. A prejudgment attachment in which the debtor's property is seized so that if the creditor ultimately prevails, the creditor will be assured of recovering on the judgment through the sale of the seized property. • Ordinarily, a hearing must be held before the attachment takes place, and most courts require the creditor to post a bond for any damages that result from the seizure (esp. if the creditor ultimately loses in the lawsuit). [Cases: Attachment 4. C.J.S. Attachment §§ 12, 14.]

2. The arrest of a person who either is in contempt of court or is to be held as security for the payment of a judgment. [Cases: Execution 421. C.J.S. Executions § 24.] 3. A writ ordering legal seizure of property (esp. to satisfy a creditor's claim) or of a person. — Also termed writ of attachment. [Cases: Attachment 140; Federal Civil Procedure 581. C.J.S. Attachment § 156.]

ancillary attachment. An attachment that results in seizure and holding of property pending a resolution of the plaintiff's claim. — Also termed attachment on mesne process. [Cases: Attachment 1. C.J.S. Attachment §§ 2–4, 7.]

4. The creation of a security interest in property, occurring when the debtor agrees to the security, receives value from the secured party, and obtains rights in the collateral. UCC § 9-203. Cf. PERFECTION. [Cases: Secured Transactions 133. C.J.S. Secured Transactions § 34.] 5. The act of affixing or connecting; something (as a document) that is affixed or connected to something else.

#### ATTACHMENT BOND

attachment bond. See BOND(2).

#### ATTACHMENT LIEN

attachment lien. See LIEN.

#### ATTACHMENT OF EARNINGS

attachment of earnings. See attachment of wages under ATTACHMENT(1).

#### ATTACHMENT OF RISK

attachment of risk. The point when the risk of loss of purchased goods passes from the seller to the buyer. UCC § 2-509. [Cases: Sales 198.]

#### ATTACHMENT OF WAGES

attachment of wages. See ATTACHMENT(1).

#### ATTACHMENT ON MESNE PROCESS

attachment on mesne process. See ancillary attachment under ATTACHMENT(3).

#### ATTAINDER

attainder (<<schwa>>-tayn-d<<schwa>>r), n.1. At common law, the act of extinguishing a person's civil rights when that person is sentenced to death or declared an outlaw for committing a felony or treason. 2.Hist. A grand-jury proceeding to try whether a jury has given a false verdict. 3. The conviction of a jury so tried. See BILL OF ATTAINDER. — attain (<<schwa>>-taynt), vb.

“The word attainder is derived from the Latin term *attinctus*, signifying stained or polluted, and includes, in its meaning, all those disabilities which flow from a capital sentence. On the attainder, the defendant is disqualified to be a witness in any court; he can bring no action, nor perform any of the legal functions which before he was admitted to discharge; he is, in short, regarded as dead in law.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 725 (2d ed. 1826).

#### ATTAINT

attaint (<<schwa>>-taynt), adj. Maligned or tarnished reputationally; under an attainder for crime.

attaint, n. Hist. A writ to inquire whether a 12-member jury gave a false verdict. • If it was so found (by a 24-member jury), the judgment based on the verdict was overturned. The writ was abolished in England in 1826.

#### ATTEMPT

attempt, n.1. The act or an instance of making an effort to accomplish something, esp. without success. 2.Criminal law. An overt act that is done with the intent to commit a crime but that falls short of completing the crime. • Attempt is an inchoate offense distinct from the attempted crime. Under the Model Penal Code, an attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for, or following the intended victim or unlawfully entering a building where a crime is expected to be committed. See Model Penal Code § 5.01. — Also termed criminal attempt; offer. See DANGEROUS-PROXIMITY TEST; INDISPENSABLE-ELEMENT TEST ; LAST-PROXIMATE-ACT TEST; PHYSICAL-PROXIMITY TEST; PROBABLE-DESISTANCE TEST ; RES IPSA LOQUITUR TEST. Cf. CONSPIRACY; SOLICITATION(2). [Cases: Criminal Law 44. C.J.S. Criminal Law §§ 114–123.] — attempt, vb.

“An attempt to commit an indictable offence is itself a crime. Every attempt is an act done with intent to commit the offence so attempted. The existence of this ulterior intent or motive is the essence of the attempt.... [Yet] [a]lthough every attempt is an act done with intent to commit a crime, the converse is not true. Every act done with this intent is not an attempt, for it may be too remote from the completed offence to give rise to criminal liability, notwithstanding the criminal purpose of the doer. I may buy matches with intent to burn a haystack, and yet be clear of attempted arson; but if I go to the stack and there light one of the matches, my intent has developed into a criminal attempt.” John Salmond, *Jurisprudence* 387 (Glanville L. Williams ed.,

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10th ed. 1947).

“Attempt ... is the most common of the preliminary crimes. It consists of steps taken in furtherance of an indictable offence which the person attempting intends to carry out if he can. As we have seen there can be a long chain of such steps and it is necessary to have some test by which to decide that the particular link in the chain has been reached at which the crime of attempt has been achieved; that link will represent the actus reus of attempt ....” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 79 (16th ed. 1952).

#### ATTEMPTED ASSAULT

attempted assault.See ASSAULT.

#### ATTEMPTED MARRIAGE

attempted marriage.See void marriage under MARRIAGE(1).

#### ATTEMPTED MONOPOLIZATION

attempted monopolization.See MONOPOLIZATION.

#### ATTEMPTED SUICIDE

attempted suicide.See SUICIDE.

#### ATTEMPT TO ASSAULT

attempt to assault.See attempted assault under ASSAULT.

#### ATTEMPT TO ATTEMPT

attempt to attempt.A first step made toward a criminal attempt of some sort, such as a failed effort to mail someone a note inciting that person to engage in criminal conduct. • As a general rule, courts do not recognize an attempt to commit a crime that is itself an attempt. But some jurisdictions recognize this offense, esp. when the attempted crime is defined to be an independent substantive crime. For example, some jurisdictions recognize an attempted assault if assault is defined as placing a person in apprehension of bodily injury (as opposed to being defined merely as an attempted battery). In this situation, courts have been willing to punish conduct that falls short of the attempted crime but constitutes more than mere preparation to commit it. See attempted assault under ASSAULT.

#### ATTENDANCE OFFICER

attendance officer.See TRUANCY OFFICER.

#### ATTENDANT

attendant,adj. Accompanying; resulting <attendant circumstances>.

#### ATTENDANT CIRCUMSTANCE

attendant circumstance.See CIRCUMSTANCE.

## ATTENDANT TERM

attendant term. See TERM(4).

## ATTENTATE

attentate (<<schwa>>-ten-tayt), n. Hist. 1. A criminal attempt. 2. An assault. 3. An erroneous step taken by a lower-court judge after a case has been stayed or appealed.

## ATTENUATION DOCTRINE

attenuation doctrine (<<schwa>>-ten-y<<schwa>>-way-sh<<schwa>>n). Criminal procedure. The rule providing that evidence obtained by illegal means may nonetheless be admissible if the connection between the evidence and the illegal means is sufficiently attenuated or remote. • This is an exception to the fruit-of-the-poisonous-tree doctrine. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE . [Cases: Criminal Law 394.1(3). C.J.S. Criminal Law §§ 771, 773–775.]

## ATTERMINARE

atterminare (<<schwa>>-t<<schwa>>r-mi-nair-ee), vb. [Law Latin] 1. To put off to a succeeding term; to adjourn. 2. To prolong the time to pay a debt.

## ATTERMINEMENT

atterminement (<<schwa>>-t<<schwa>>r-min-m<<schwa>>nt). 1. The granting of a delay for some purpose; esp., the extension of time to pay a debt. 2. The fixing of a time limit. — attermine, vb.

## ATTERMOIEMENT

attermoiement (at<<schwa>>r-moy-<<schwa>>-m<<schwa>>nt). [Law French] Eccles. law. COMPOSITION(1).

## ATTEST

attest (<<schwa>>-test), vb. 1. To bear witness; testify <attest to the defendant's innocence>. 2. To affirm to be true or genuine; to authenticate by signing as a witness <attest the will>. [Cases: Wills 113. C.J.S. Wills §§ 253–255.] — attestation (a-te-stay-sh<<schwa>>n), n. — attestative (<<schwa>>-tes-t<<schwa>>-tiv), adj.

## ATTESTATION CLAUSE

attestation clause. A provision at the end of an instrument (esp. a will) that is signed by the instrument's witnesses and that recites the formalities required by the jurisdiction in which the instrument might take effect (such as where the will might be probated). • The attestation strengthens the presumption that all the statutory requirements for executing the will have been satisfied. Cf. TESTIMONIUM CLAUSE. [Cases: Wills 113. C.J.S. Wills §§ 253–255.]

## ATTESTED COPY

attested copy. See certified copy under COPY.

#### ATTESTED WILL

attested will. See WILL.

#### ATTESTER

attester (<<schwa>>-tes-t<<schwa>>r). One who attests or vouches for. — Also spelled attestant; attestator; attestor.

#### ATTESTING WITNESS

attesting witness. See WITNESS.

#### AT THE BAR

at the bar. See AT BAR.

#### AT THE COURTHOUSE DOOR

at the courthouse door. (Of the posting of a notice of judicial sale, etc.) on the courthouse door, or in direct proximity to the door, as on a bulletin board that is located just outside the door and that is regularly used for the posting of legal notices. • Some statutes may specify that the notice be actually posted on the door. See POST-ING(5).

#### AT-THE-MARKET PRICE

at-the-market price. See PRICE.

#### ATTORN

attorn (<<schwa>>-t<<schwa>>rn), vb. 1. To agree to be the tenant of a new landlord. [Cases: Landlord and Tenant 15. C.J.S. Landlord and Tenant §§ 21–22, 277, 279.] 2. To transfer (money, goods, etc.) to another.

#### ATTORNATUS

attornatus (at-<<schwa>>r-nay-t<<schwa>>s). [Law Latin] One who is attorned, or put in the place of another; an attorney.

#### ATTORNEY

attorney. 1. Strictly, one who is designated to transact business for another; a legal agent. — Also termed at-torney-in-fact; private attorney. 2. A person who practices law; LAWYER. — Also termed (in sense 2) attor-ney-at-law; public attorney. Cf. COUNSEL. — Abbr. att'y. Pl. attorneys. [Cases: Attorney and Client 63. C.J.S. Attorney and Client §§ 165–166, 179–181, 234.]

associate attorney. 1. See ASSOCIATE(2). 2. Patents. An attorney who is registered to practice before the U.S. Patent and Trademark Office, who has been appointed by a principal attorney, and who is authorized to prosecute a patent application through the filing of a power of attorney.



[Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

attorney ad litem (ad li-tem or -t<<schwa>>m). A court-appointed lawyer who represents a child during the course of a legal action, such as a divorce, termination, or child-abuse case. • The attorney owes to the child the duties of loyalty, confidentiality, and competent representation. A child's right to legal representation in a juvenile proceeding was mandated in *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967). The appointment of an attorney ad litem is a limited one — only for a specific lawsuit. — Also termed child's attorney; attorney for the child. Cf. guardian ad litem under GUARDIAN.

attorney not of record. 1. A lawyer who is not recognized as a party's legal representative. Cf. attorney of record (1). 2. Patents & trademarks. An attorney whose name is not included in a power of attorney on file with the U.S. Patent and Trademark Office for a patent or trademark application. • An attorney not of record may nevertheless prosecute a patent application if registered to practice before the U.S. Patent and Trademark Office and appointed by the principal attorney. 37 CFR § 1.34(a). Cf. attorney not recognized.

attorney not recognized. Patents. An attorney appointed by a patent applicant but not registered to practice before the U.S. Patent and Trademark Office. • A power of attorney appointing an unregistered attorney is void. Cf. attorney not of record.

attorney of record. 1. The lawyer who appears for a party in a lawsuit and who is entitled to receive, on the party's behalf, all pleadings and other formal documents from the court and from other parties. — Also termed counsel of record. See OF RECORD(1). [Cases: Appearance 3. C.J.S. Appearances §§ 9–12.] 2. Patents & trademarks. The attorney or agent whose name is included in the power of attorney filed by an applicant for a patent or a trademark registration. • For a patent application, the attorney of record must be a patent attorney or a patent agent. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

briefing attorney. 1. An attorney who specializes in brief-writing, particularly appellate briefs and legal memo-randa. 2. CLERK(5).

research attorney. 1. An attorney who specializes in providing legal support by researching, by writing memoranda, and by preparing drafts of documents. 2. CLERK(5). • In some jurisdictions, a research attorney is a midlevel law clerk, above a briefing attorney but below a staff attorney.

special attorney. See special counsel under COUNSEL.

staff attorney. 1. A lawyer who works for a court, usu. in a permanent position, on matters such as reviewing motions, screening docketing statements, preparing scheduling orders, and examining habeas corpus petitions. • Staff attorneys do not rule on motions or decide cases, but they review and research factual and legal points, and recommend proposed rulings to judges, as well as drafting the orders implementing those rulings. See CLERK(5). [Cases: Courts 55. C.J.S. Courts §§ 107–109.] 2. An in-house lawyer for an organization, esp. a nonprofit organization but sometimes a corporation. Cf. in-house counsel under COUNSEL.

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**ATTORNEY, POWER OF**

attorney, power of. See POWER OF ATTORNEY.

**ATTORNEY-AT-LAW**

attorney-at-law. See ATTORNEY(2).

**ATTORNEY-CLIENT PRIVILEGE**

attorney-client privilege. See PRIVILEGE(3).

**ATTORNEY-CLIENT RELATIONSHIP**

attorney-client relationship. See RELATIONSHIP.

**ATTORNEY FEES**

attorney fees. See ATTORNEY'S FEES.

**ATTORNEY FOR THE CHILD**

attorney for the child. See attorney ad litem under ATTORNEY.

**ATTORNEY GENERAL**

attorney general. The chief law officer of a state or of the United States, responsible for advising the government on legal matters and representing it in litigation. — Abbr. AG. Pl. attorneys general. [Cases: Attorney General 1. C.J.S. Attorney General §§ 2–3.]

**ATTORNEY GENERAL'S OPINION**

attorney general's opinion. 1. An opinion furnished by the U.S. Attorney General to the President or another executive official on a request concerning a question of law. [Cases: Attorney General 6. C.J.S. Attorney General §§ 7–15.] 2. A written opinion by a state attorney general, usu. given at the request of a public official, interpreting a legal provision.

**ATTORNEY IN CHARGE**

attorney in charge. See lead counsel (1) under COUNSEL.

**ATTORNEY-IN-FACT**

attorney-in-fact. See ATTORNEY(1).

**ATTORNEY MALPRACTICE**

attorney malpractice. See legal malpractice under MALPRACTICE.

**ATTORNEY NOT OF RECORD**

attorney not of record. See ATTORNEY.

**ATTORNEY NOT RECOGNIZED**

attorney not recognized. See ATTORNEY.

#### ATTORNEY OF RECORD

attorney of record. See ATTORNEY.

#### ATTORNEYS AND AGENTS REGISTERED TO PRACTICE

Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office. A PTO publication listing all registered patent attorneys and agents by name and location.

#### ATTORNEY'S FEES

attorney's fees. The charge to a client for services performed for the client, such as an hourly fee, a flat fee, or a contingent fee. — Also spelled attorneys' fees. — Also termed attorney fees. Cf. RETAINER(2). [Cases: Costs 194.10; Federal Civil Procedure 2737. C.J.S. Costs § 125.]

#### ATTORNEY'S LIEN

attorney's lien. See LIEN.

#### ATTORNEY-WITNESS RULE

attorney-witness rule. See LAWYER-WITNESS RULE.

#### ATTORNEY WORK PRODUCT

attorney work product. See WORK PRODUCT.

#### ATTORNEY-WORK-PRODUCT PRIVILEGE

attorney-work-product privilege. See WORK-PRODUCT RULE.

#### ATTORNMENT

attornment (<<schwa>>-t<<schwa>>rn-m<<schwa>>nt), n.1. A tenant's agreement to hold the land as the tenant of a new landlord. [Cases: Landlord and Tenant 15. C.J.S. Landlord and Tenant §§ 21–22, 277, 279.] 2. A constructive delivery involving the transfer of mediate possession while a third person has immediate possession; esp., a bailee's acknowledgment that he or she will hold the goods on behalf of someone other than the bailor. • For the other two types of constructive delivery, see CONSTITUTUM POSSESSORIUM ; TRADITIO BREVI MANU. — attorn, vb.

“[Another] form of constructive delivery is that which is known to English lawyers as attornment.... The mediate possessor of a thing may deliver it by procuring the immediate possessor to agree with the transferee to hold it for the future on his account, instead of on account of the transferor. Thus if I have goods in the warehouse of A and sell them to B, I have effectually delivered them to B so soon as A has agreed with B to hold them for him, and no longer for me.” John Salmond, *Jurisprudence* 306–07 (Glanville L. Williams ed., 10th ed. 1947).

#### ATTRACTIVE NUISANCE

attractive nuisance.See NUISANCE.

#### ATTRACTIVE-NUISANCE DOCTRINE

attractive-nuisance doctrine.Torts. The rule that a person who owns property on which there is a dangerous thing or condition that will foreseeably lure children to trespass has a duty to protect those children from the danger < the attractive-nuisance doctrine imposed a duty on the school to protect the children from the shallow, polluted pond on school property>. — Also termed turntable doctrine; torpedo doctrine. See ALLUREMENT; DANGEROUS INSTRUMENTALITY . [Cases: Negligence 1172–1178. C.J.S. Negligence §§ 399, 476–477, 494–526.]

#### ATTRIBUTION

attribution,n. The process — outlined in the Internal Revenue Code — by which a person's or entity's stock ownership is assigned to a related family member or entity for tax purposes. — Also termed stock attribution. [Cases: Internal Revenue 3626. C.J.S. Internal Revenue §§ 17–18.] — attribute,vb. — attributive,adj.

#### ATTRIBUTION RIGHT

attribution right.Copyright. A person's right to be credited as a work's author, to have one's name appear in connection with a work, or to forbid the use of one's name in connection with a work that the person did not create. • Attribution rights constitute one aspect of the moral rights recognized primarily in civil-law countries. Under the Visual Artists Rights Act of 1990, the creators of a very limited class of works — called works of visual art — have certain statutory attribution rights. 17 USCA § 106A. Under the Berne Convention Implementation Act, attribution rights afforded foreign copyright owners may be enforceable in the U.S. — Also termed rights of attribution; paternity; maternity. Cf. INTEGRITY RIGHT; MORAL RIGHT. [Cases: Copyrights and Intellectual Property 36. C.J.S. Copyrights and Intellectual Property §§ 10, 40–41, 97.]

#### ATT'Y

att'y.abbr.ATTORNEY.

#### ATVEF

ATVEF.abbr. ADVANCED TELEVISION ENHANCEMENT FORUM.

#### AT WILL

at will.Subject to one's discretion; as one wishes or chooses; esp. (of a legal relationship), able to be terminated or discharged by either party without cause <employment at will>.

#### AT-WILL EMPLOYMENT

at-will employment.See employment at will under EMPLOYMENT.

#### AT-WILL TENANCY

at-will tenancy.See tenancy at will under TENANCY.

## ATWOOD&lt;TT&gt; DOCTRINE

Atwood doctrine. The principle that, to the extent an ERISA plan and its summary-plan description conflict regarding the circumstances under which benefits may be denied, the summary-plan description controls. *Atwood v. Newmont Gold Co.*, 45 F.3d 1317 (9th Cir. 1995); 29 USCA § 1022. See SUMMARY-PLAN DESCRIPTION. [Cases: Pensions 47. C.J.S. Pensions and Retirement Plans and Benefits §§ 31–33.]

## AU BESOIN

au besoin (oh b<<schwa>>-zwan). [French “in case of need”] A designation in a bill of exchange stating who is responsible for payment if the drawee fails or refuses to pay. • Au besoin is part of the phrase au besoin, chez Messrs. Garnier et DuCloux (meaning “in case of need, apply to Messrs. Garnier and DuCloux”).

## A.U.C.

A.U.C.abbr.AB URBE CONDITA.

## AUCTION

auction,n. A sale of property to the highest bidder. • Under the UCC, a sale at auction is complete when the auctioneer so announces in a customary manner, as by pounding a hammer. UCC § 2-328. — Also termed auction sale. [Cases: Auctions and Auctioneers 1. C.J.S. Auctions and Auctioneers § 3.] — auction,vb.

auction without reserve.An auction in which the property will be sold to the highest bidder, no minimum price will limit bidding, the owner may not withdraw property after the first bid is received, the owner may not reject any bids, and the owner may not nullify the bidding by outbidding all other bidders. • In an auction without reserve, the owner essentially becomes an offeror, and each successively higher bid creates a contingent contract, the highest bid creating an enforceable agreement. — Also termed absolute auction. See WITHOUT RESERVE. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

auction with reserve.An auction in which the property will not be sold unless the highest bid exceeds a minimum price. See WITH RESERVE. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

Dutch auction. 1. An auction in which property is initially offered at an excessive price that is gradually lowered until the property is sold. 2. An auction in which several identical items are offered simultaneously, one to a bidder, and sold to the highest bidder for the amount of the lowest winning bid. 3.Securities. A method of tendering stock shares whereby a corporation provides a price range, shareholders indicate how many shares they will sell and at what price, and the corporation buys however many shares it wants at the lowest prices offered. — Also termed Dutch-auction tender method.[Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.] 4.Securities. An auction of securities, usu. other than stock, in which a security's price is gradually lowered until it meets an acceptable bid and is sold. 5.Securities. An auction of a new issue of stock in which there is a stated minimum price per share, but bidders

may offer a higher price for any number of shares until the highest price offered becomes the final price at which all the shares issued will be sold. — Also termed (in sense 4) offer for sale by tender.

knock-out auction. An auction at which two or more bidders have agreed in advance not to bid against one another. • At common law, knock-out auctions were not forbidden, on grounds that a person could not be constrained to make an offer. But most jurisdictions now have statutes that (1) forbid dealers (those who buy at auctions with the intention of reselling to others) from giving or offering an inducement to abstain from bidding at an auction, and (2) penalize the person who seeks such an inducement from a dealer.

#### AUCTIONEER

auctioneer, n. A person legally authorized to sell goods or lands of other persons at public auction for a commission or fee. • The auctioneer is the property owner's agent up to the moment when a purchaser's bid is accepted, when the auctioneer becomes the purchaser's agent. — Formerly also termed vendue master. [Cases: Auctions and Auctioneers 3. C.J.S. Auctions and Auctioneers §§ 2–3.]

#### AUCTION MARKET

auction market. See MARKET.

#### AUCTION SALE

auction sale. See AUCTION.

#### AUCTOR

auctor (ahk-tor), n. [Latin “author”] 1. The source of a right or title, such as a grantor; AUTHOR(2). 2. A principal.

#### AUCTORE PRAETORE

auctore praetore (awk-tor-ee pree-tor-ee). [Latin] 1. Roman law. On the authority of the praetor. 2. Scots law. With the sanction of a judge.

#### AUCTOR IN REM SUAM

auctor in rem suam (awk-tor in rem s[y]oo-*<<schwa>>*m). [Latin] Hist. One who acts on one's own behalf; a principal in one's own affairs.

#### AUCTORITATE JUDICIS

auctoritate judicis (awk-tor-*<<schwa>>*-tay-tee joo-di-sis). [Latin] Hist. By judicial authority.

#### AUDIENCE

audience, n. A hearing before judges. See RIGHT OF AUDIENCE.

#### AUDIENCE TEST

audience test.Copyright. A judicial analysis used to determine whether the lay observer or an ordinary, reasonable audience would conclude that the protectable expression in a copyrighted work is substantially similar to the expression in the accused work. — Also termed ordinary-observer test; ordinary-lay-observer test. [Cases: Copyrights and Intellectual Property 53(1).]

#### AUDIO HOME RECORDING ACT

Audio Home Recording Act.Copyright. A 1992 federal law designed to prevent copyright-infringement suits based on the manufacture, importation, distribution, or sale of digital-audio technology. • Manufacturers of digital recording devices must pay royalties on sales of the devices and related media, and build security mechanisms into each device. The security mechanisms allow the owner of a digital-recording device to make a copy from the original medium, but not to make a copy from the copy. 17 USCA §§ 1001–1010. — Abbr. AHRA. [Cases: Copyrights and Intellectual Property 67.2. C.J.S. Copyrights and Intellectual Property § 58.]

#### AUDIOVISUAL WORK

audiovisual work.See WORK(2).

#### AUDIT

audit,n. A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards. See GENERALLY ACCEPTED AUDITING STANDARDS. — audit,vb. — auditor,n.

audit of return.See tax audit.

compliance audit.An audit conducted by a regulatory agency, an organization, or a third party to assess compliance with one or more sets of laws and regulations.

correspondence audit.An IRS audit of a taxpayer's return conducted by mail or telephone. [Cases: Internal Revenue 4443. C.J.S. Internal Revenue §§ 616, 618.]

desk audit.A review of a civil-service position to determine whether its duties and responsibilities fit the prescribed job classification and pay scale. [Cases: Officers and Public Employees 11.8. C.J.S. Officers and Public Employees §§ 74, 77.]

double audit.An audit of the same subject performed separately by two independent auditors.

environmental audit.A company's voluntary self-audit to evaluate its environmental-management programs and to determine whether it is in compliance with environmental regulations.

event-driven audit.An audit that focuses on particular transactions or activities that may raise significant legal issues. • Unlike routine periodic audits, an event-driven audit can focus substantial auditing resources on analyzing a particular event.

field audit.An IRS audit conducted at the taxpayer's business premises or lawyer's offices. [Cases: Internal Revenue 4443. C.J.S. Internal Revenue §§ 616, 618.]

independent audit. An audit conducted by an outside person or firm not connected with the person or organization being audited.

internal audit. An audit performed by an organization's personnel to ensure that internal procedures, operations, and accounting practices are in proper order.

office audit. An IRS audit of a taxpayer's return conducted in the IRS agent's office. [Cases: Internal Revenue 4443. C.J.S. Internal Revenue §§ 616, 618.]

periodic audit. An audit conducted at regular intervals to assess a company's current condition.

post audit. An audit of funds spent on a completed capital project, the purpose being to assess the efficiency with which the funds were spent and to compare expected cash-flow estimates with actual cash flows.

tax audit. The review of a taxpayer's return by the IRS, including an examination of the taxpayer's books, vouchers, and records supporting the return. — Also termed audit of return. [Cases: Internal Revenue 4443. C.J.S. Internal Revenue §§ 616, 618.]

transactional audit. An audit performed for due-diligence purposes to determine whether there are potentially significant problems with a transaction. • Transactional audits are often conducted in real-property transactions to identify any environmental problems. In that context, the audit is sometimes called a site assessment.

#### AUDITA QUERELA

audita querela (aw-dī-t<<schwa>> kw<<schwa>>-ree-l<<schwa>>). [Law Latin “the complaint having been heard”] A writ available to a judgment debtor who seeks a rehearing of a matter on grounds of newly discovered evidence or newly existing legal defenses. [Cases: Audita Querela 1. C.J.S. Audita Querela § 2.]

“The writ of audita querela (= quarrel having been heard) ... , introduced during the time of Edward III, was available to re-open a judgment in certain circumstances. It was issued as a remedy to defendant where an important matter concerning his case had arisen since the judgment. Its issue was based on equitable, rather than common law principles.” L.B. Curzon, *English Legal History* 103 (2d ed. 1979).

“Audita querela is distinguished from coram nobis in that coram nobis attacks the judgment itself, whereas audita querela may be directed against the enforcement, or further enforcement, of a judgment which when rendered was just and unimpeachable.” 7A C.J.S. Audita Querela § 2, at 901 (1980).

#### AUDIT COMMITTEE

audit committee. See COMMITTEE.

#### AUDIT LETTER

audit letter. A written request for an attorney, banker, or someone else to give financial



auditors information about a person or entity being audited, including information about pending or threatened litigation. • The recipient of an audit letter usu. sends the response (called an audit-letter response) directly to the financial auditors. See AUDIT RESPONSE. [Cases: Attorney and Client 106, 112. C.J.S. Attorney and Client §§ 234, 255, 258–260.]

#### AUDIT-LETTER RESPONSE

audit-letter response. See AUDIT RESPONSE.

#### AUDIT OF RETURN

audit of return. See tax audit under AUDIT.

#### AUDIT OPINION

audit opinion. See OPINION(2).

#### AUDITOR

auditor. A person or firm, usu. an accountant or an accounting firm, that formally examines an individual's or entity's financial records or status.

county auditor. An official who examines a county's accounts and financial records.

state auditor. The appointed or elected official responsible for overseeing state fiscal transactions and auditing state-agency accounts. See AUDIT. [Cases: States 76. C.J.S. States § 229.]

#### AUDIT PRIVILEGE

audit privilege. In an intellectual-property license agreement, the right of the licensor to inspect the licensee's books and records. — Also termed audit rights.

#### AUDIT REPORT

audit report. An outside auditor's written statement, usu. accompanying a company's financial statement, ex-pressing the auditor's opinion of the accuracy of the company's financial condition as set forth in the financial statement.

#### AUDIT RESPONSE

audit response. A letter that an attorney provides to a client's financial auditors, usu. at the client's request, re-garding matters such as pending or threatened litigation. • Audit responses should comply with the American Bar Association's Statement of Policy Regarding Lawyer's Responses to Auditors' Requests for Information, published in December 1975. — Also termed audit-letter response. See AUDIT LETTER.

#### AUDIT RIGHTS

audit rights. See AUDIT PRIVILEGE.

#### AUDIT TRAIL

audit trail.The chain of evidence connecting account balances to original transactions and calculations.

#### AUGMENTED ESTATE

augmented estate.See ESTATE(3).

#### AULA REGIS

aula regis (aw-l<<schwa>> ree-jis). [Latin “king's hall”] Hist. See CURIA REGIS .

#### AUNT JEMIMA<TT> DOCTRINE

Aunt Jemima doctrine.Trademarks. The principle that a trademark is protected not only from use on a directly competing product, but also from use on a product so closely related in the marketplace that consumers would be confused into thinking that the products came from a single source.Aunt Jemima Mills Co. v. Rigney & Co., 247 F. 407 (2d Cir. 1917); 15 USCA § 1114. • In the namesake case, the name used on pancake flour was later used on syrup. The issue was not whether a competitor was trying to pass off goods, but whether it was fair to let the name's second user jeopardize the goodwill built up by the first user. See COMPLEMENTARY GOODS. [Cases: Trade Regulation 339, 341. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 81, 84, 86.]

#### AURAL ACQUISITION

aural acquisition.Criminal law. Under the Federal Wiretapping Act, hearing or tape-recording a communication, as opposed to tracing its origin or destination. 18 USCA § 2510(4). [Cases: Telecommunications 494.C.J.S. Telegraphs, Telephones, Radio, and Television §§ 247–249, 254, 264–265.]

#### AUSA

AUSA.abbr.See Assistant United States Attorney under UNITED STATES ATTORNEY.

#### AUSTRALIAN BALLOT

Australian ballot.See BALLOT(4).

#### AUTHENTIC ACT

authentic act.Civil law. 1. A writing signed before a notary public or other public officer. [Cases: Acknowledgment 1. C.J.S. Acknowledgments §§ 2–4.] 2. A certified copy of a writing. [Cases: Evidence 343.C.J.S. Evidence §§ 887–888.]

#### AUTHENTICATE

authenticate,vb.1. To prove the genuineness of (a thing). [Cases: Criminal Law 444; Evidence 366–381.] 2. To render authoritative or authentic, as by attestation or other legal formality. See UCC § 9-102(a)(7). [Cases: Contracts 37. C.J.S. Contracts § 79.]

#### AUTHENTICATION

authentication,n.1. Broadly, the act of proving that something (as a document) is true or genuine, esp. so that it may be admitted as evidence; the condition of being so proved <authentication of the handwriting>. [Cases: Criminal Law 444; Evidence 366–381.] 2. Specif., the assent to or adoption of a writing as one's own.

“The concept of authentication, although continually used by the courts without apparent difficulty, seems almost to defy precise definition. Some writers have construed the term very broadly, as does Wigmore when he states that ‘when a claim or offer involves impliedly or expressly any element of personal connection with a corporeal object, that connection must be made to appear ....’ So defined, ‘authentication’ is not only a necessary preliminary to the introduction of most writings in evidence, but also to the introduction of various other sorts of tangibles.” John W. Strong et al., *McCormick on Evidence* § 218, at 350 (5th ed. 1999)(italics in original).

self-authentication. Authentication without extrinsic evidence of truth or genuineness. • In federal courts, certain writings, such as notarized documents and certified copies of public records, may be admitted into evidence by self-authentication. Fed. R. Evid. 902. [Cases: Criminal Law 444; Evidence 366–381.]

#### AUTHENTIC INTERPRETATION

authentic interpretation.See INTERPRETATION.

#### AUTHENTICUM

authenticum (aw-then-t<<schwa>>-k<<schwa>>m).Roman & civil law. 1. An original instrument. 2. (cap.) A Latin version of 134 Novels promulgated by Justinian mostly in Greek between A.D. 535 and 556. — Also termed *Authenticæ*.

#### AUTHOR

author. 1.Copyright. The person who creates an expressive work, or the person or business that hires another to create an expressive work. • In copyright law, “author” applies to a broad range of occupations, including writers, artists, programmers, choreographers, and translators. [Cases: Copyrights and Intellectual Property 41(1).] 2. One from whom a right or title derives in some way other than by descent. See AUCTOR(1).

#### AUTHORITATIVE PRECEDENT

authoritative precedent.See binding precedent under PRECEDENT.

#### AUTHORITY

authority. 1. The right or permission to act legally on another's behalf; esp., the power of one person to affect another's legal relations by acts done in accordance with the other's manifestations of assent; the power delegated by a principal to an agent <authority to sign the contract>. — Also termed power over other persons. See AGENCY. [Cases: Principal and Agent 96.C.J.S. Agency §§ 148–149.]

“The term ‘authority,’ like the term ‘contract,’ may easily be used in three senses, and is therefore a term to be avoided when accurate reasoning is desirable. It may be used to mean (1) the operative acts of the principal, (2) a physical document executed by the principal, or (3) the legal relations consequent upon the preceding operative facts (1) and (2), and especially the legal power conferred upon the agent to bring the principal into new legal relations without any further action by the principal. The operative facts may be spoken words, a document together with the acts necessary to execute it, or other conduct by the principal apparently expressing an intention to create a power. Hereafter, the word ‘authority’ will be used to denote these operative facts; in other cases the word power will usually be substituted. This latter word is not so likely to be taken in shifting senses, in spite of the fact that ‘power of attorney’ generally means a physical document under seal.” William R. Anson, *Principles of the Law of Contract* 508 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

actual authority. Authority that a principal intentionally confers on an agent or authority that the agent reasonably believes he or she has as a result of the agent's dealings with the principal. • Actual authority can be either express or implied. — Also termed real authority. [Cases: Principal and Agent 96, 99. C.J.S. Agency §§ 148–149, 153–164.]

“Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.” Cal. Civ. Code § 2316.

apparent authority. Authority that a third party reasonably believes an agent has, based on the third party's dealings with the principal, even though the principal did not confer or intend to confer the authority. • Apparent authority can be created by law even when no actual authority has been conferred. — Also termed ostensible authority; authority by estoppel. [Cases: Principal and Agent 99. C.J.S. Agency §§ 153–164.]

“The term ‘apparent authority’ means that a legal power is vested in the agent in the absence of any intention by the principal that it should exist, or even in spite of his intention that it should not exist. The operative facts causing this power to exist are acts of the principal which, considered along with surrounding facts, induce the third person with whom the agent deals to believe reasonably that the principal intended the power to exist. The power is real and not merely apparent. The agent is indeed a wrongdoer in exercising the power. He possesses the power but not the legal privilege of using it. Likewise, the authority (meaning the action of the principal creating the agent's power) is real. It is only the intention of the principal to create such a power that is merely apparent (i.e., non-existent).” William R. Anson, *Principles of the Law of Contract* 510 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“ ‘Apparent authority’ of an insurance agent means such authority as an insurer knowingly permits the agent to assume, or which it holds him out as possessing, that is, such authority as he appears to have by reason of actual authority or such authority as a reasonably prudent man would suppose the agent to possess.” John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 8674 (1981).

authority coupled with an interest. Authority given to an agent for valuable consideration. •

This authority cannot be unilaterally terminated by the principal. [Cases: Principal and Agent 34. C.J.S. Agency §§ 114–119.]

constructive authority. Authority that is inferred because of an earlier grant of authority.

express authority. Authority given to the agent by explicit agreement, either orally or in writing. — Also termed stipulated authority. [Cases: Principal and Agent 96. C.J.S. Agency §§ 148–149.]

general authority. A general agent's authority, intended to apply to all matters arising in the course of business.

implied authority. Authority intentionally given by the principal to the agent as a result of the principal's conduct, such as the principal's earlier acquiescence to the agent's actions. — Also termed presumptive authority. [Cases: Principal and Agent 99. C.J.S. Agency §§ 153–164.]

incidental authority. Authority needed to carry out actual or apparent authority. • For example, the actual authority to borrow money includes the incidental authority to sign commercial paper to bring about the loan. — Also termed inferred authority. [Cases: Principal and Agent 99. C.J.S. Agency §§ 153–164.]

inherent authority. Authority of an agent arising from the agency relationship.

naked authority. Authority delegated solely for the principal's benefit, without giving any consideration to the agent. • This authority can be revoked by the principal at any time.

ostensible authority. See apparent authority.

presumptive authority. See implied authority.

real authority. See actual authority.

special authority. Authority limited to an individual transaction.

stipulated authority. See express authority.

supervisory authority. See SUPERVISORY AUTHORITY.

2. Governmental power or jurisdiction <within the court's authority>. 3. A governmental agency or corporation that administers a public enterprise < transit authority>. — Also termed public authority. [Cases: Municipal Corporations 2. C.J.S. Municipal Corporations §§ 7–9.]

constituted authority. (often pl.) The legislative, executive, and judicial departments officially and rightfully governing a nation, people, municipality, or other governmental unit; an authority properly appointed or elected under organic law, such as a constitution or charter.

examining authority. A self-regulatory organization registered with the Securities and Exchange Commission and vested with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.

4. A legal writing taken as definitive or decisive; esp., a judicial or administrative decision

cited as a precedent <that case is good authority in Massachusetts>. • The term includes not only the decisions of tribunals but also statutes, ordinances, and administrative rulings. [Cases: Courts 88. C.J.S. Courts § 139; Trade-Marks, Trade-Names, and Unfair Competition § 187.]

adverse authority.Authority that is unfavorable to an advocate's position. • Most ethical codes require counsel to disclose adverse authority in the controlling jurisdiction even if the opposing counsel has not cited it.

imperative authority.Authority that is absolutely binding on a court. — Also termed binding authority. Cf. binding precedent under PRECEDENT.

persuasive authority.Authority that carries some weight but is not binding on a court.

“It may be well to call attention to the fact that the word ‘authority’ is used by lawyers in at least two senses, one abstract and the other concrete. The word [in its concrete sense] refer[s] to the book or other repository to which one resorts to find propositions of law, and sometimes the word is used in an even narrower sense to mean reported cases. In its abstract sense, however, ‘authority’ is substantially equivalent to ‘influence’ or ‘power,’ and in this sense ‘authority’ may be divided into two grades, in that the force of a statement of law is either imperative (that is to say, absolutely binding upon the courts) or simply persuasive. The use of the terms ‘primary’ and ‘secondary’ authority, as applied in the concrete sense, must not be confused with the use of the terms ‘imperative’ and ‘persuasive’ authority, as used in the abstract sense. That is to say, a book of primary authority may be either imperative or persuasive, according to the circumstances ... , or it may be of no force at all. Books of secondary authority are, in the nature of things, usually merely of persuasive authority.” William M. Lile et al., *Brief Making and the Use of Law Books* 12 (3d ed. 1914).

primary authority.Authority that issues directly from a law-making body; legislation and the reports of litigated cases.

secondary authority.Authority that explains the law but does not itself establish it, such as a treatise, annotation, or law-review article.

5. A source, such as a statute, case, or treatise, cited in support of a legal argument <the brief's table of authorities>.

#### AUTHORITY BY ESTOPPEL

authority by estoppel.See apparent authority under AUTHORITY(1).

#### AUTHORIZATION CLAUSE

authorization clause.Patents. A Patent Act provision directing that if a person uses or manufactures something protected by a valid U.S. patent, acts on behalf of the U.S. government, and acts with the government's authori-zation or consent, the U.S., not the person, is deemed the infringing user or manufacturer. • If an infringing act is done by a government contractor or subcontractor working for the U.S. and the act is covered by the authorization or consent clause, the patent owner's only recourse is a suit against the U.S. in the U.S. Claims Court for

com-pensation. The authorization or consent clause is in the second paragraph of 28 USCA § 1498(a). — Also termed consent clause. [Cases: United States 97.C.J.S. United States §§ 184–186.]

#### AUTHORIZE

authorize,vb.1. To give legal authority; to empower <he authorized the employee to act for him>.2. To formally approve; to sanction <the city authorized the construction project>. — authorization,n.

#### AUTHORIZED CAPITAL

authorized capital.See nominal capital under CAPITAL.

#### AUTHORIZED CAPITAL STOCK

authorized capital stock.See capital stock (1) under STOCK.

#### AUTHORIZED COMMITTEE

authorized committee.See SPECIAL LITIGATION COMMITTEE.

#### AUTHORIZED SHARES

authorized shares.See capital stock (1) under STOCK.

#### AUTHORIZED STOCK

authorized stock.See capital stock (1) under STOCK.

#### AUTHORSHIP

authorship. See work of authorship under WORK(2).

#### AUTHOR'S RIGHT

author's right.Copyright. The system of protecting the moral and economic rights of the creator of a work, esp. in civil-law countries. — Also termed (in French) droit d'auteur; (in German) Urheberrecht; (in Italian) diritto d' autore; (in Spanish) derecho de autor.

“[O]n almost every point of consequence, the traditions of copyright and author's right are far more alike than they are unlike. One reason is that the Berne Convention bridges the two traditions, with the result that its extensive minimum standards have dictated substantively similar rules for countries in both camps.” Paul Goldstein, *International Copyright: Principles, Law, and Practice* 4 (2001).

#### AUTHOR'S SHARE

author's share.Copyright. An author's portion of royalties, as determined by an agreement with the publisher.

#### AUTOCRACY

autocracy (aw-tok-r<<schwa>>-see), n. Government by one person with unlimited power and authority; unlimited monarchy. — autocratic (aw-t<<schwa>>-krat-ik), adj. — autocrat (aw-t<<schwa>>-krat), n.

#### AUTOGRAPH

autograph, n. A person's own writing or signature; HOLOGRAPH. Cf. ALLOGRAPH.

#### AUTOLIMITATION

autolimitation, n. An authority's establishment of rules that, in effect, limit the authority's own power. — auto-limit, vb.

“The theory of Jellinek (Allgemeine Staatslehre), so far as the writer understands it, is not an explanation either. In his view something which he calls the State, not defined, but, as it seems, a group of persons, finds itself in pos-session of power, and establishes rules. These are the law. This process he calls ‘autolimitation.’ It is true that a body with supreme power does make law. An autocrat, man or group, without rules, may do justice, though it probably will not, but it does not make law — there is no Rechtsstaat. But autolimitation is, as Professor Brierly notes ... , a contradiction in terms. If the State's power is limited, it must be by some superior power. But even accepting the analysis, we are no better off.” W.W. Buckland, *Some Reflections on Jurisprudence* 24 (1945).

#### AUTOMATED BOND SYSTEM

Automated Bond System. The New York Stock Exchange's computerized network that enables subscribers to electronically transmit quotations and execute orders for bond trades. — Abbr. ABS.

#### AUTOMATED PATENT SYSTEM

Automated Patent System. A computerized database of patents, maintained by the U.S. Patent and Trademark Office database. — Abbr. APS. — Also termed automated patent search system.

#### AUTOMATED TRANSACTION

automated transaction. A contract formed or performed, in whole or in part, by electronic means or by electronic messages in which either party's electronic actions or messages establishing the contract are not intended to be reviewed in the ordinary course by an individual. UCITA § 2-102(a)(7), 102:10UC; UETA § 14.

#### AUTOMATIC-ADJUSTMENT CLAUSE

automatic-adjustment clause. A provision in a utility-rate schedule that allows a public utility to increase its rates without a public hearing or state review, if certain operating costs, such as the price of fuel, increase. *Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126 (1982). [Cases: Electricity 11.3(4, 6); Public Utilities 128, 167. C.J.S. Electricity § 33; Public Utilities §§ 36, 44–46, 48, 87, 96.]

#### AUTOMATIC-ASSIGNMENT DOCTRINE



automatic-assignment doctrine. Trademarks. The rule that, absent evidence to the contrary, the sale of an entire business carries with it and transfers to the purchaser any common-law marks used in that business without the need for a written assignment. • For marks registered under the Lanham Act or under some state registration schemes, a written assignment is required to transfer an interest in a registered mark or in a pending application to register a mark. [Cases: Trade Regulation 102. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 205, 207.]

#### AUTOMATIC DISCLOSURE

automatic disclosure. See DISCLOSURE(2).

#### AUTOMATIC PERFECTION

automatic perfection. See PERFECTION.

#### AUTOMATIC STAY

automatic stay. See STAY.

#### AUTOMATIC SUSPENSION

automatic suspension. See automatic stay under STAY.

#### AUTOMATIC-TRANSFER STATUTE

automatic-transfer statute. See TRANSFER STATUTE.

#### AUTOMATIC WAGE-WITHHOLDING

automatic wage-withholding. See attachment of wages under ATTACHMENT(1).

#### AUTOMATISM

automatism (aw-tom-<<schwa>>-tiz-<<schwa>>m), n.1. Action or conduct occurring without will, purpose, or reasoned intention, such as sleepwalking; behavior carried out in a state of unconsciousness or mental dissociation without full awareness. • Automatism may be asserted as a defense to negate the requisite mental state of voluntariness for commission of a crime. [Cases: Criminal Law 46. C.J.S. Criminal Law §§ 96–98, 113.] 2. The state of a person who, though capable of action, is not conscious of his or her actions. — automaton, n.

“How far is automatism a defence? It has been defined as involuntary action performed in a state of unconsciousness not amounting to insanity. Theoretically the defence is that no act in the legal sense took place at all — the plea is that there was no volition or psychic awareness.” George Whitecross Paton, *A Textbook of Jurisprudence* 315 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

ambulatory automatism. Automatism that consists in irresponsible or purposeless wanderings.

#### AUTOMOBILE EXCEPTION

automobile exception. An exception to the warrant requirement in Fourth Amendment search-and-seizure law, holding that the police may, without a warrant, thoroughly search a

movable vehicle for which the individual has a lessened expectation of privacy (such as a car or boat) if probable cause exists. • For purposes of this doctrine, exigent circumstances are presumed to exist. Once the right to conduct a warrantless search arises, the actual search may take place at a later time. *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925); *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982 (1991). See exigent circumstances under CIRCUMSTANCE. [Cases: Controlled Substances 114; Searches and Seizures 60. C.J.S. Searches and Seizures § 79.]

#### AUTOMOBILE EXCLUSION

automobile exclusion. See EXCLUSION(3).

#### AUTOMOBILE-GUEST STATUTE

automobile-guest statute. See GUEST STATUTE.

#### AUTOMOBILE HOMICIDE

automobile homicide. See vehicular homicide under HOMICIDE.

#### AUTOMOBILE INSURANCE

automobile insurance. See INSURANCE.

#### AUTONOMIC LAW

autonomic law (aw-t<<schwa>>-nom-ik). The type of enacted law that has its source in various forms of sub-ordinate and restricted legislative authority possessed by private persons and bodies of persons. • Examples are corporate bylaws, university regulations, and the rules of the International Monetary Fund.

#### AUTONOMOUS TARIFF

autonomous tariff. See TARIFF(2).

#### AUTONOMY

autonomy (aw-tahn-<<schwa>>-mee), n. 1. The right of self-government. 2. A self-governing state. — auto-nomous (aw-tahn-<<schwa>>-m<<schwa>>s), adj.

#### AUTONOMY OF THE PARTIES

autonomy of the parties. See FREEDOM OF CONTRACT.

#### AUTONOMY PRIVACY

autonomy privacy. See PRIVACY.

#### AUTOPSY

autopsy (aw-top-see). 1. An examination of a dead body to determine the cause of death, esp. in a criminal investigation. — Also termed postmortem; necropsy. [Cases: Coroners 14. C.J.S. Coroners and Medical Examiners § 16.] 2. The evidence of one's own senses.

“To a rational man of perfect organization, ... the best and highest proof of which any fact is susceptible is the evidence of his own senses. Hence autopsy, or the evidence of one's own senses, furnishes the strongest probability and indeed the only perfect and indubitable certainty of the existence of any sensible fact.” *Gentry v. McMinnis*, 3 Dana 382 (1835)(as quoted in John H. Wigmore, *A Students' Textbook of the Law of Evidence* 214 (1935)).

#### AUTOPTIC EVIDENCE

autoptic evidence (aw-top-tik). See demonstrative evidence under EVIDENCE.

#### AUTOPTIC PREFERENCE

autoptic preference (proh-f<<schwa>>r-<<schwa>>nts). The presentation of an item for inspection by the court. See demonstrative evidence under EVIDENCE. [Cases: Criminal Law 404.45; Evidence 188. C.J.S. Criminal Law §§ 854–855; Evidence §§ 789–791, 794, 796.]

“Yet another form of proof that may present difficulties in defining evidence is what Wigmore calls ‘autoptic preference.’ By this barbarism, the learned author was referring to those few cases in which it is possible to bring before the jury the material fact itself, rather than evidence of the fact.” 22 Charles Alan Wright & Kenneth W. Graham Jr., *Federal Practice and Procedure* § 5163, at 33 (1978).

#### AUTRE ACTION PENDANT

autre action pendant (oh-tr<<schwa>> ak-see-awn pahni-dahin). [Law French] Another action pending. • This phrase was formerly used in pleas of abatement.

#### AUTRE DROIT

autre droit (oh-tr<<schwa>> drwah). [Law French] In right of another. • This phrase describes the manner in which a trustee holds property for a beneficiary.

#### AUTREFOIS

autrefois (oh-tr<<schwa>>-fwahoroh-t<<schwa>>r-foyz). [Law French] On another occasion; formerly.

autrefois acquit (<<schwa>>-kwitor a-kee). A plea in bar of arraignment that the defendant has been acquitted of the offense. — Also termed former acquittal. See DOUBLE JEOPARDY. [Cases: Criminal Law 289–297; Double Jeopardy 100.1. C.J.S. Criminal Law §§ 381–383.]

“Suppose that a transgressor is charged and acquitted for lack of evidence, and evidence has now come to light showing beyond doubt that he committed the crime. Even so, he cannot be tried a second time. He has what is termed, in legal French, the defence of autrefois acquit. Similarly, if he is convicted, even though he is let off very lightly, he cannot afterwards be charged on fresh evidence, because he will have the defence of autrefois convict. These uncouth phrases have never been superseded, though they might well be called the defence of ‘previous acquittal’ and ‘previous conviction’; and ‘double jeopardy’ makes an acceptable generic name for both.” Glanville Williams, *Textbook of Criminal Law* 24 (1978).

autrefois attain (<<schwa>>-taynt).Hist. A plea in bar that the defendant has already been attainted for one felony and therefore cannot be prosecuted for another.

autrefois convict.A plea in bar of arraignment that the defendant has been convicted of the offense. See DOUBLE JEOPARDY. [Cases: Criminal Law 289–297; Double Jeopardy 105. C.J.S. Criminal Law §§ 240, 381–383.]

#### AUTRE VIE

autre vie (oh-tr<<schwa>> vee). [Law French] Another's life. See PUR AUTRE VIE; VIE.

#### AUXILIARY

auxiliary (awg-zil-y<<schwa>>-ree), adj.1. Aiding or supporting. 2. Subsidiary.

#### AUXILIARY COVENANT

auxiliary covenant.See COVENANT(1).

#### AUXILIARY JURISDICTION

auxiliary jurisdiction.See assistant jurisdiction under JURISDICTION.

#### AUXILIATOR

auxiliator (awg-zil-ee-ay-t<<schwa>>r), n.[Latin] Hist. A helper; an assistant.

#### AUXILIUM

auxilium (awg-zil-ee-<<schwa>>m), n.[Latin] Hist. Aid; esp., compulsory aid such as a tax or tribute to be paid by a vassal to a lord as an incident of the tenure by knight's service.

#### AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM

auxilium ad filium militem faciendum et filiam maritandam (awg-zil-ee-<<schwa>>m ad fil-ee-<<schwa>>m mil-<<schwa>>-tem fay-shee-en-d<<schwa>>m et fil-ee-am mar-<<schwa>>-tan-d<<schwa>>m), n.[Law Latin] Hist. A writ ordering a sheriff to levy a tax toward the knighting of a son and the marrying of a daughter of tenants in capite of the Crown.

#### AUXILIUM CURIAE

auxilium curiae (awg-zil-ee-<<schwa>>m kyoor-ee-Iorkyoor-ee-ee). [Latin] Hist. A court order summoning a party to appear and assist a party already before the court.

#### AUXILIUM REGIS

auxilium regis (awg-zil-ee-<<schwa>>m ree-jis), n.[Latin] Hist. The Crown's tax levied for royal use and public service, such as a tax granted by Parliament.

#### AUXILIUM VICE COMITI

auxilium vice comiti (awg-zil-ee-<<schwa>>m vI-see kom-<<schwa>>-tI), n.[Latin] Hist. An ancient tax paid to sheriffs.

## AVAIL

avail, n. 1. Use or advantage <of little or no avail>. 2. (pl.) Profits or proceeds, esp. from a sale of property <the avails of the trust fund>.

## AVAILABLE

available, adj. Legally valid <available claims> <available defenses>.

## AVAILABLE FOR WORK

available for work, adj. (Of a person) ready, willing, and able to accept temporary or permanent employment when offered.

## AVAILMENT

availment, n. The act of making use or taking advantage of something for oneself <availment of the benefits of public office>. — avail, vb.

## AVAIL OF MARRIAGE

avail of marriage. See VALOR MARITAGII.

## AVER

aver (<<schwa>>-v<<schwa>>r), vb. To assert positively, esp. in a pleading; to allege.

## AVERAGE

average, n. 1. A single value that represents a broad sample of subjects; esp., in mathematics, the mean, median, or mode of a series. 2. The ordinary or typical level; the norm. 3. Maritime law. Accidental partial loss or damage to an insured ship or its cargo during a voyage. [Cases: Shipping 186–202. C.J.S. Shipping §§ 458–470.] — average, vb. & adj.

extraordinary average. A contribution by all the parties concerned in a commercial voyage — whether for vessel or cargo — toward a loss sustained by some of the parties in interest for the benefit of all.

general average. Average resulting from an intentional partial sacrifice of ship or cargo to avoid total loss. • The liability is shared by all parties who had an interest in the voyage. — Abbr. GA. — Also termed gross average; general-average contribution. [Cases: Shipping 186–202. C.J.S. Shipping §§ 458–470.]

“[G]eneral average refers to certain extraordinary sacrifices made or expenses incurred to avert a peril that threatens the entire voyage. In such a case the party sustaining the loss confers a common benefit on all the parties to the maritime venture. As a result the party suffering the loss has a right — apart from contract or tort — to claim contribution from all who participate in the venture. The doctrine of general average is thus an equitable principle derived from the general maritime law. General average is an exception to the principle of particular average that losses lie where they fall; rather the loss becomes ‘general,’ meaning that it is spread ratably among all the parties involved in the maritime adventure. The doctrine of general average is of ancient vintage,

and can be traced back to remotest antiquity.” Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 16-1, at 522–23 (1987).

particular average. Average resulting from an accidental partial loss or damage. • Any average that is not general is termed particular. The liability is borne solely by the person who suffered the loss. — Also termed simple average; partial average; petty average.

4.Hist. A service, esp. one of carriage, due from a feudal tenant to a lord. • The average is mentioned in the *Do-mesday Book*, but the exact nature of the service is unclear. Based on etymological studies, some authorities believe the term referred to the performance of work with or by beasts of burden. But because the term's origin is unclear, this theory is not universally accepted.

#### AVERAGE BOND

average bond. See BOND(2).

#### AVERAGE COST

average cost. See COST(1).

#### AVERAGE DAILY BALANCE

average daily balance. See DAILY BALANCE.

#### AVERAGE GROSS SALES

average gross sales. See SALE.

#### AVERAGE TAX RATE

average tax rate. See TAX RATE.

#### AVERAGE VARIABLE COST

average variable cost. The average cost per unit of output, arrived at by dividing the total cost (fixed cost and variable cost) by output. See COST (1). Cf. LONG-RUN INCREMENTAL COST.

#### AVERAGING DOWN

averaging down. An investment strategy in which shares in the same company are purchased at successively lower prices to achieve a lower average cost than the first purchase.

#### AVERAGING UP

averaging up. An investment strategy in a rising market in which equal numbers of shares are purchased at successively higher prices to reduce the investment's average cost basis. • For example, if an investor buys an equal number of shares at \$10, \$13, \$15, and \$18, the average cost per share is \$14.

#### AVERMENT

averment (<<schwa>>-v<<schwa>>r-m<<schwa>>nt), n. A positive declaration or

affirmation of fact; esp., an assertion or allegation in a pleading <the plaintiff's averment that the defendant ran a red light>. Cf. ASSEVE-RATE.

immaterial averment. An averment that alleges something in needless detail; a statement that goes far beyond what is in issue. • This type of averment may be ordered struck from the pleading. [Cases: Federal Civil Procedure 652, 1125; Pleading 22, 364. C.J.S. Pleading §§ 75–77, 668, 683.]

negative averment. An averment that is negative in form but affirmative in substance and that must be proved by the alleging party. • An example is the statement “she was not old enough to enter into the contract,” which is more than just a simple denial. Cf. TRAVERSE. [Cases: Pleading 78, 119–123. C.J.S. Pleading §§ 160–161, 186–187, 189–190.]

#### AVERMENT OF NOTICE

averment of notice. A statement in a pleading that someone else has been properly notified about some fact. See NOTICE.

#### AVIATION EASEMENT

aviation easement. See avigational easement under EASEMENT.

#### AVIATION INSURANCE

aviation insurance. See INSURANCE.

#### AVIGATIONAL EASEMENT

avigational easement. See EASEMENT.

#### AVIGATION EASEMENT

avigation easement. See avigational easement under EASEMENT.

#### A VINCULO MATRIMONII

a vinculo matrimonii (ay ving-ky<<schwa>>-loh ma-tr<<schwa>>-moh-nee-I). [Latin] From the bond of ma-trimony. — Often shortened to a vinculo. See divorce a vinculo matrimonii under DIVORCE.

#### AVIZANDUM

avizandum (av-i-zan-d<<schwa>>m). [Law Latin] Scots law. Deliberation; advisement. • The judge is said later to “advise” the case — that is, to give an opinion.

“To make avizandum with a process, or part of it, is to take it from the public court to the private consideration of the judge.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 82 (George Watson ed., 7th ed. 1890).

#### AVOID

avoid, vb. To render void <because the restrictive covenant was overbroad, the court avoided

it>. • Because this legal use of avoid can be easily confused with the ordinary sense of the word, the verb to void is preferable.

#### AVOIDABLE

avoidable,adj.1. Not inevitable; subject to prevention <an avoidable accident>.

practically avoidable.(Of harm) capable of being eliminated in whole or substantial part without the incurrance of prohibitive expense or hardship.

2. Capable of being refrained from <avoidable habits>.3. Voidable.

#### AVOIDABLE-CONSEQUENCES DOCTRINE

avoidable-consequences doctrine.See MITIGATION-OF-DAMAGES DOCTRINE.

#### AVOIDABLE COST

avoidable cost.See COST(1).

#### AVOIDANCE

avoidance,n.1. The act of evading or escaping <avoidance of tax liability>. See TAX AVOIDANCE. 2. The act of refraining from (something) <avoidance of an argument>.3.RESCISSION(1).4.VOIDANCE; 5. ANNULMENT(1) <avoidance of the agreement>.6.CONFESSION AND AVOIDANCE <the defendant filed an avoidance in an attempt to avert liability>. — avoid,vb.

#### AVOIDING POWER

avoiding power.See POWER(5).

#### AVOISION

avoision (<<schwa>>-voy-zh<<schwa>>n), n. An ambiguous act that falls between legal avoidance and illegal evasion of the law. • The term, coined by Arthur Seldon, an economist, is a blend of evasion and avoidance. Avoision usu. refers to financial acts that are not clearly legal tax avoidance or illegal tax evasion, but it sometimes appears in other contexts.

“The book is in three parts, divided into tiny chapterlets, forty-two in all. The first part takes up what Katz calls ‘avoision’: a fusion of ‘avoidance’ and ‘evasion’ that denotes cases in which it is unclear whether a person's conduct should be considered lawful avoidance of the law's prohibitions or illegal evasion. Two actresses are vying for the same part. Mildred knows that Abigail has been unfaithful to her husband. If she threatens to tell the husband unless Abigail forgoes the audition, that would be blackmail, and a crime. Instead she tells Abigail that she is mailing a letter addressed to the husband that reveals Abigail's infidelity and that has been timed to arrive the morning of the audition. Knowing that Abigail will stay home to intercept the letter, Mildred will have achieved the same end as she would have done by committing blackmail, yet her conduct is not criminal.” Richard A. Posner, “The Immoralist,” *New Republic*, July 15, 1996, at 38.



## AVOUCHER

avoucher (<<schwa>>-vow-ch<<schwa>>r).Hist. A tenant's calling upon a warrantor of title to the land to help the tenant defend the title.

## AVOUTRY

avoutry. See ADULTERY.

## AVOWAL

avowal (<<schwa>>-vow-<<schwa>>l), n.1. An open declaration. 2.OFFER OF PROOF . — avow,vb.

## AVOWANT

avowant (<<schwa>>-vow-<<schwa>>nt), n. A person who makes avowry in an action of replevin.

## AVOWEE

avowee. See ADVOCATUS.

## AVOWRY

avowry (<<schwa>>-vow-ree), n. Common-law pleading. An acknowledgment — in an answer to a replevin action — that one has taken property, and a justification for that taking <the defendant's avowry was based on alleged damage to the property by the plaintiff>. Cf. COGNIZANCE(4). [Cases: Replevin 64.] — avow,vb.

## AVOWTER

avowter.Hist. An adulterer. • The crime was called avowtry. — Also spelled advouterer; avowterer; avouter; advowter.

## AVOWTRY

avowtry. See ADULTERY.

## AVULSION

avulsion (<<schwa>>-v<<schwa>>l-sh<<schwa>>n), n.1. A forcible detachment or separation. 2. A sudden removal of land caused by change in a river's course or by flood. • Land removed by avulsion remains the property of the original owner. Cf. ALLUVION; ACCRETION(1); DELICTION; EROSION. 3. A tearing away of a body part surgically or accidentally. [Cases: Navigable Waters 45; Waters and Water Courses 94. C.J.S. Navigable Waters §§ 100, 111; Waters §§ 176, 183.] — avulse,vb.

## AVUNCULUS

avunculus (<<schwa>>-v<<schwa>>ngk-y<<schwa>>-l<<schwa>>s), n.[Latin] Roman & civil law. A maternal uncle; one's mother's brother.

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**AVUNCULUS MAXIMUS**

avunculus maximus (mak-s<<schwa>>-m<<schwa>>s). See **ABAVUNCULUS**.

**AVUS**

avus (av-<<schwa>>s oray-v<<schwa>>s), n.[Latin] Roman & civil law. A grandfather.

**AWARD**

award,n. A final judgment or decision, esp. one by an arbitrator or by a jury assessing damages. — Also termed arbitrament.

award,vb. To grant by formal process or by judicial decree <the company awarded the contract to the low bidder> <the jury awarded punitive damages>.

**AWARD IN INTERFERENCE**

award in interference.See **PRIORITY AWARD**.

**AWAY-GOING CROPS**

away-going crops.See **CROPS**.

**AWOL**

**AWOL**.abbr.Absent without leave; missing without notice or permission. [Cases: Armed Services 36; Military Justice 667. C.J.S. Armed Services §§ 153–155, 157; Military Justice §§ 2, 4–11, 13, 57.]

**AXIOM**

axiom (ak-see-<<schwa>>m), n. An established principle that is universally accepted within a given framework of reasoning or thinking <“innocent until proven guilty” is an age-old axiom of criminal law>. — axiomatic (ak-see-<<schwa>>-mat-ik), adj.

**AYANT CAUSE**

ayant cause (ay-<<schwa>>nt).Civil law. 1. One to whom a right has been assigned by will, gift, sale, or exchange; an assignee. 2. One who has a “cause” or standing in one's own right.

**AYE**

aye (I), n. Parliamentary law. An affirmative vote.

**AYEL**

ayel (ay-<<schwa>>l). See **AIEL**.

**AYLE**

ayle (ayl). See **AIEL**.