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

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

Each. A distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned; every one of two or more persons or things, composing the whole, separately considered. The effect of this word, used in the covenants of a bond, is to create a several obligation. The word "any" is equivalent to "each." *Conerty v. Richtsteig*, 308 Ill.App. 321, 31 N.E.2d 351. "Each" is synonymous with "all" and agrees in inclusiveness but differs in stress; "all" collects and "each" distributes. *Knox Jewelry Co., Inc. v. Cincinnati Ins. Co.*, 130 Ga.App. 519, 203 S.E.2d 739, 740.

Eadem causa diversis rationibus coram iudicibus ecclesiasticis et secularibus ventilatur /iyéydám kózà dävársàs rãshiyównábàs kórám juwdísábàs ækliýziy-æstàs èt sèkyalérábàs vèntáléytár/. The same cause is argued upon different principles before ecclesiastical and secular judges.

Eadem est ratio, eadem est lex /iyéydám èst réysh(iy)ow, iyéydám èst léks/. The same reason, the same law.

Eadem mens præsimitur regis quæ est juris et quæ esse debet, præsertim in dubiis /iyéydám ménz præz(y)úwmætár riyjæs kwiy èst júras èt kwiy ésiy débèt, præzårtám in d(y)úwbhíyàs/. The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.

Ea est accipienda interpretatio, quæ vitio caret /iyè èst æksipiyéndà intàrprætéysh(iy)ow kwiy vish(iy)ow káræt/. That interpretation is to be received [or adopted] which is free from fault [or wrong]. The law will not intend a wrong.

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

Ea intentione /iyè intènshiyówniy/. With that intent. Held not to make a condition, but a confidence and trust.

Ealder /éldær/, or **ealding** /éldiŋ/. In old Saxon law, an elder or chief.

Ealderman /éldærmæn/, or **ealdorman** /óldærmæn/. The name of a Saxon magistrate; alderman; analogous to *earl* among the Danes, and *senator* among the Romans. See Alderman.

Ealdor-biscop /éldærbishəp/. An archbishop.

Ealdorburg /éldærbərg/. Sax. The metropolis; the chief city. Obsolete.

Ealhorda /éylhòrdə/. Sax. The privilege of assising and selling beer. Obsolete.

Ea quæ, commendandi causa, in venditionibus dicuntur, si palam appareant, venditorem non obligant /iyè kwiy, kómændánday kózà, in vendishiyównábàs dákántər, sày pælám əpəriyènt, vèndətórəm nòn óbləgənt/. Those things which are said on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller.

Ea quæ dari impossibilia sunt, vel quæ in rerum natura non sunt, pro non adjectis habentur /iyè kwiy déray impòsəbiliyè sənt, vèl kwiy in rírəm nətýúrə nòn sənt pròw nòn əjéktəs hərbéntər/. Those things which are impossible to be given, or which are not in the nature of things, are regarded as not added [as no part of an agreement].

Ea quæ in curia nostra rite acta sunt debita executioni demandari debent /iyè kwiy in kyúriyè nóstrə ráytíy æktə sənt débətiy èkskyúwshiyównay dāmændéray débənt/. Those things which are properly transacted in our court ought to be committed to a due execution.

Ea quæ raro accidunt non temere in agendis negotiis computantur /iyè kwiy rérow æksədənt nòn təmíriy in əjéndàs nəgówshiyəs kómpytántər/. Those things which rarely happen are not to be taken into account in the transaction of business without sufficient reason.

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

but merely confers nobility and an hereditary seat in the house of lords.

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

Earles-penny, or earl's penny. Money given in part payment. See Earnest.

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

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

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

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

To set apart from others.

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

Ear-mark rule. Rule that through the process of commingling money or deposit with the funds of a bank it loses its identity, with the resultant effect of defeating the right of preference over general creditors.

Earn. To acquire by labor, service or performance. Hartford Electric Light Co. v. McLaughlin, 131 Conn. 1, 37 A.2d 361, 363. Earned means to merit or deserve, as for labor or service. To do that which entitles one to a reward, whether the reward is received or not; to acquire by labor, service or performance. Cold Metal Process v. C.I.R., C.A., 247 F.2d 864, 872.

Earned income. Income from services (e.g., salaries, wages, or fees); distinguished from passive, portfolio, and other unearned income. See I.R.C. § 911. In taxation, term generally is meant to include all income not representing return on capital. U.S. v. Van Dyke, C.A. Fed., 696 F.2d 957, 962. See also Earnings; Income.

Earned income credit. A refundable tax credit on earned income up to a certain amount for low income workers who maintain a household for dependent children. The amount of the credit is reduced dollar for dollar if earned income (or adjusted gross income) is greater than a specified amount.

Earned premium. In insurance, that portion of the premium properly allocable to policy period which has expired. An "earned premium" is difference between premium paid by insured and portion returnable to him by insurance company on cancellation of policy during

its term. Price v. Guaranty Nat. Ins. Co., Okl., 456 P.2d 108, 111.

Earned surplus. Retained earnings. That species of surplus which has been generated from profits as contrasted with paid-in surplus. Term relates to net accumulation of profits; it is a part of surplus that represents net earnings, gains or profits, after deduction of all losses, but has not been distributed as dividends, or transferred to stated capital or capital surplus, or applied to other purposes permitted by law. Conine v. Leikam, Okl., 570 P.2d 1156, 1160.

Earnier. One whose personal efforts produce income (e.g. wage earner) or who owns property which produces it, or combination of both. Wells v. Commissioner of Internal Revenue, C.C.A.Min., 63 F.2d 425, 430.

Earnest. The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract. A token or pledge passing between the parties, by way of evidence, or ratification of the sale. See Earnest money.

Earnest money. A sum of money paid by a buyer at the time of entering a contract to indicate the intention and ability of the buyer to carry out the contract. Normally such earnest money is applied against the purchase price. Often the contract provides for forfeiture of this sum if the buyer defaults. A deposit of part payment of purchase price on sale to be consummated in future. Bishop Ryan High School v. Lindberg, N.D., 370 N.W.2d 726, 728. Import of term in real estate contract is that when comparatively small sum is paid down, it is an assurance that party is in earnest and good faith and that if his being in earnest and good faith fails, it will be forfeited. Mortenson v. Financial Growth, Inc., 23 Utah 2d 54, 456 P.2d 181, 184. See also Binder; Down payment.

Earning capacity. Term refers to capability of worker to sell his labor or services in any market reasonably accessible to him, taking into consideration his general physical functional impairment resulting from his accident, any previous disability, his occupation, age at time of injury, nature of injury and his wages prior to and after the injury. Sims v. Industrial Commission, 10 Ariz.App. 574, 460 P.2d 1003, 1006. Term does not necessarily mean the actual earnings that one who suffers an injury was making at the time the injuries were sustained, but refers to that which, by virtue of the training, the experience, and the business acumen possessed, an individual is capable of earning.

"Earning capacity" of husband or wife for purpose of determining amount of support which he or she may be required to pay spouse is not that amount which an individual could theoretically earn but is amount which individual could realistically earn under circumstances, including health, age, mental and physical condition and training. Com. ex rel. Malizia v. Malizia, 229 Pa.Super. 108, 324 A.2d 386, 388.

Fitness, readiness and willingness to work, considered in connection with opportunity to work.

Earning power. See Earning capacity.

Earnings. Income. That which is earned; *i.e.*, money earned from performance of labor, services, sale of goods, etc. Revenue earned by an individual or business. Earnings generally include but are not limited to: salaries and wages, interest and dividends, and income from self-employment. Term is broader in meaning than "wages." *See also* Commissions; Compensation; Dividend; Gross earnings; Income; Premium; Real earnings; Retained earnings; Salary; Wages.

Gross earnings. Total income from all sources without considering deductions, personal exemptions, or other reductions of income in order to arrive at taxable income. *See also* Gross income.

Net earnings. Net earnings (income) is the excess of gross income over expenses incurred in connection with the production of such income. For tax purposes, net earnings is the number used to determine taxable income. For accounting purposes, net earnings is generally determined after deduction of income taxes. *See also* Net income.

Surplus earnings. *See* Surplus.

Earnings and profits. A tax concept peculiar to corporate taxpayers which measures economic capacity to make a distribution to shareholders that is not a return of capital. Such a distribution will result in dividend income to the shareholders to the extent of the corporation's current and accumulated earnings and profits. *See also* Accumulated earnings tax; Accumulated taxable income.

Earnings per share. One common measure of the value of common stock. The figure is computed by dividing the net earnings for the year (after interest and prior dividends) by the number of shares of common stock outstanding.

Earnings report. Businesses' statement of profit and loss; commonly issued quarterly by publically-held companies.

Earth. Soil of all kinds, including gravel, clay, loam, and the like, in distinction from the firm rock.

Ear-witness. In the law of evidence, one who attests or can attest anything as heard by himself. *See also* Voice-print.

Ease. Comfort, consolation, contentment, enjoyment, happiness, pleasure, satisfaction.

Easement. A right of use over the property of another. Traditionally the permitted kinds of uses were limited, the most important being rights of way and rights concerning flowing waters. The easement was normally for the benefit of adjoining lands, no matter who the owner was (an easement appurtenant), rather than for the benefit of a specific individual (easement in gross). The land having the right of use as an appurtenance is known as the dominant tenement and the land which is subject to the easement is known as the servient tenement.

A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a

special purpose not inconsistent with a general property in the owner.

An interest which one person has in the land of another. A primary characteristic of an easement is that its burden falls upon the possessor of the land from which it issued and that characteristic is expressed in the statement that the land constitutes a servient tenement and the easement a dominant tenement. *Potter v. Northern Natural Gas Co.*, 201 Kan. 528, 441 P.2d 802, 805. An interest in land in and over which it is to be enjoyed, and is distinguishable from a "license" which merely confers personal privilege to do some act on the land. *Logan v. McGee*, Miss., 320 So.2d 792, 793.

See also Affirmative easement; Non-continuous easement; Prescriptive easement.

Access easement. *See* Access.

Affirmative easement. One where the servient estate must permit something to be done thereon, as to pass over it, or to discharge water on it.

Apparent easement. One the existence of which appears from the construction or condition of one of the tenements, so as to be capable of being seen or known on inspection.

Appendent easement. *See* Appurtenant easement, below.

Appurtenant easement. An incorporeal right which is attached to a superior right and inheres in land to which it is attached and is in the nature of a covenant running with the land. *Fort Dodge, D. M. & S. Ry. v. American Community Stores Corp.*, 256 Iowa 1344, 131 N.W.2d 515, 521. There must be a dominant estate and servient estate. An easement interest which attaches to the land and passes with it. *First Nat. Bank of Amarillo v. Amarillo Nat. Bank*, Tex.Civ.App., 531 S.W.2d 905, 907. An "incorporeal right" which is attached to and belongs with some greater and superior right or something annexed to another thing more worthy and which passes as incident to it and is incapable of existence separate and apart from the particular land to which it is annexed.

Discontinuing easement. Discontinuous, non-continuous, or non-apparent easements are those the enjoyment of which can be had only by the interference of man, as, a right of way or a right to draw water.

Easement by estoppel. Easement which is created when landlord voluntarily imposes apparent servitude on his property and another person, acting reasonably, believes that servitude is permanent and in reliance upon that belief does something that he would not have done otherwise or refrains from doing something that he would have done otherwise. *U. S. v. Thompson*, D.C. Ark., 272 F.Supp. 774, 784.

Easement by implication. Easement created by law and grounded in court's decision in reference to particular transaction in land where owner of two parcels had so used one parcel to the benefit of other parcel that on selling the benefited parcel purchaser could reasonably have expected, without further inquiries, that these ben-

efits were included in sale. *Boyd v. McDonald*, 81 Nev. 642, 408 P.2d 717, 721.

Easement by prescription. A mode of acquiring an easement in property by immemorial or long-continued enjoyment, and refers to personal usage restricted to claimant and his ancestors or grantors. The uninterrupted use of the land must generally be for the same statutory period of time as for adverse possession.

Easement in gross. An easement in gross is not appurtenant to any estate in land or does not belong to any person by virtue of ownership of estate in other land but is mere personal interest in or right to use land of another; it is purely personal and usually ends with death of grantee. *Shingleton v. State*, 260 N.C. 451, 133 S.E.2d 183, 185.

Easement of access. Right of ingress and egress to and from the premises of a lot owner to a street appurtenant to the land of the lot owner.

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

Easement of natural support. Easement which creates right of lateral support to land in its natural condition entitling the holder thereof to have his land held in place from the sides by neighboring land.

Easement of necessity. One in which the easement is indispensable to the enjoyment of the dominant estate. Such arises by operation of law when land conveyed is completely shut off from access to any road by land retained by grantor or by land of grantor and that of a stranger. *Tarr v. Watkins*, 180 Cal.App.2d 362, 4 Cal. Rptr. 293, 296.

Equitable easements. The special easements created by derivation of ownership of adjacent proprietors from a common source, with specific intentions as to buildings for certain purposes, or with implied privileges in regard to certain uses, are sometimes so called. A name frequently applied to building restrictions in a deed.

Exclusive easement. Grant of "exclusive easement" conveys unfettered rights to owner of easement to use that easement for purposes specified in grant to exclusion of all others. *Latham v. Garner*, 105 Idaho 854, 673 P.2d 1048, 1050.

Flowage easement. Common law right of lower land to allow water from higher land to flow across it.

Implied easement. One which the law imposes by inferring the parties to a transaction intended that result, although they did not express it. *Schwob v. Green*, Iowa, 215 N.W.2d 240, 242. An easement resting upon the principle that, where the owner of two or more adjacent lots sells a part thereof, he grants by implication to the grantee all those apparent and visible easements which are necessary for the reasonable use of the property granted, which at the time of the grant are used by the owner of the entirety for the benefit of the part granted. One not expressed by parties in writing but arises out of existence of certain facts implied from

the transaction. *Wagner v. Fairlamb*, 151 Colo. 481, 379 P.2d 165, 167.

Intermittent easement. One which is usable or used only at times, and not continuously.

Light and air easement. An easement obtained from an adjoining land owner to protect against the obstruction of light and air which would result if a building or structure was constructed on the grantor's property.

Negative easement. Those where the owner of the servient estate is prohibited from doing something otherwise lawful upon his estate, because it will affect the dominant estate (as interrupting the light and air from the latter by building on the former). As to *Reciprocal negative easement*, see that title *below*.

Private or public easements. A private easement is one in which the enjoyment is restricted to one or a few individuals, while a public easement is one the right to the enjoyment of which is vested in the public generally or in an entire community; such as an easement of passage on the public streets and highways or of navigation on a stream.

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

Reciprocal negative easement. If the owner of two or more lots, so situated as to bear the relation, sells one with restrictions of benefit to the land retained, the servitude becomes mutual, and, during the period of restraint, the owner of the lot or lots retained can do nothing forbidden to the owner of the lot sold; this being known as the doctrine of "reciprocal negative easement."

Reserved easement. An easement created by the grantor of property, benefitting the retained property and burdening the granted property.

Secondary easement. One which is appurtenant to the primary or actual easement. Every easement includes such "secondary easements," that is, the right to do such things as are necessary for the full enjoyment of the easement itself.

East. In the absence of other words qualifying its meaning, the word "east" describing boundaries means due east. *Livingston Oil & Gas Co. v. Shasta Oil Co.*, Tex. Civ.App., 114 S.W.2d 378, 381. The general direction of sunrise. Point directly opposite to west. See also *East-erly*.

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

which regulates and determines the times of all the other movable feasts.

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

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

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

Easter term. In English law, formerly one of the four movable terms of the courts, but afterwards a fixed term, beginning on the 15th of April and ending on the 8th of May in every year, though sometimes prolonged so late as the 13th of May, under St. 11 Geo. IV, and 1 Wm. IV, c. 70. From November 2, 1875, the division of the legal year into terms was abolished so far as concerns the administration of justice, and replaced by sittings. *See also* Hilary, Michaelmas and Trinity terms; Session.

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

East India Company. Originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. The company's political affairs became of more importance than their commerce. In 1858, by 21 & 22 Vict., c. 106, the government of the territories of the company was transferred to the crown. The company was finally dissolved in 1874.

Eastinus. An easterly coast or country.

EAT. Abbreviation for *earnings after taxes*.

Eat inde sine die /iyət indiy sáyniy dáy(iy)/. Words used on the acquittal of a defendant, or when a prisoner is to be discharged, *that he may go thence without a day, i.e., be dismissed without any further continuance or adjournment.*

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

Eavesdropping. Eavesdropping is knowingly and without lawful authority: (a) Entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of any other person or persons therein; or (b) Installing or using outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or

comprehensible outside, without the consent of the person or persons entitled to privacy therein; or (c) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication. Such activities are regulated by state and federal statutes, and commonly require a court order.

At common law, the offense of listening under walls or windows, or the *eaves* of a house, and thereupon to frame slanderous and mischievous tales. 4 Bl.Comm. 168. It was a misdemeanor at common law.

See also Invasion of property; Pen register; Wiretapping.

Ebba. In old English law, ebb. *Ebba et fluctus*; ebb and flow of tide; ebb and flood. The time occupied by one ebb and flood was anciently granted to persons essoined as being beyond sea, in addition to the period of forty days.

Ebb and flow. The coming in and going out of tide. An expression used formerly to denote the limits of admiralty jurisdiction.

Ebdomadarius /h)èbdomadériyəs/. In ecclesiastical law, an officer in cathedral churches who supervised the regular performance of divine service, and prescribed the particular duties of each person in the choir.

Eberemorth, eberemors, eberemurder. *See* Aberemurder.

EBIT. Abbreviation for *earnings before interest and taxes* (also called *operating earnings*).

Ebriety /əbráyədiy/. Drunkenness; alcoholic intoxication.

Ecce modo mirum, quod femina fert breve regis, non nominando virum, conjunctum robore legis /éksi y mówdow máyrəm, kwòd fémənə fért bríyviy riyjəs, nòn nòmənəndow vərəm, kənjəŋktəm rówbəriy líyjəs/. Behold, indeed, a wonder! that a woman has the king's writ without naming her husband, who by law is united to her.

Eccentricity. Personal or individual peculiarities of mind and disposition which markedly distinguish the subject from the ordinary, normal, or average types of men, but do not amount to mental unsoundness or insanity.

Ecclesia /əklíyz(i)yə/. Lat. An assembly. A Christian assembly; a church. A place of religious worship. In the law, generally, the word is used to denote a place of religious worship, and sometimes a parsonage.

Ecclesia ecclesiae decimasolvere non debet /əklíyz(i)yə əklíyz(h)(i)yiy désəməs sólvəriy nòn débt/. A church ought not to pay tithes to a church.

Ecclesia est domus mansionalis omnipotentis dei /əklíyz(i)yə èst dówməs mənshənéyləs òmnəpówténtəs diyay/. The church is the mansionhouse of the Omnipotent God.

Ecclesia est infra aetatem et in custodia domini regis, qui tenetur jura et hereditates ejusdem manu ten-

ere et defendere /ækliyz(i)yə èst ìnfrə atéytəm èt in kəstówdiyə dómənay ríyəs kwáy təniytər júərə èt hərədətéyiyt iyjəsdəm mən(y)uw təniriy èt dəféndəriy/. The church is under age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deterioorem nequaquam /ækliyz(i)yə fənjetər váysiy mənórəs; miyliyórəm kəndishiyównəm s(y)úwəm fəsəriy pówtəst, dətiriyrórəm nəkwéykwəm/. The church enjoys the privilege of a minor; it can make its own condition better, but not worse.

Ecclesiæ magis favendum est quam personæ /ækliyz(i)yiy méyjes fəvéndəm èst kwəm pərsówniy/. The church is to be more favored than the parson (or an individual).

Ecclesia non moritur /ækliyz(i)yə nòn mórətər/. The church does not die.

Ecclesiæ sculptura /ækliyz(i)yiy skəlpityúra/. The image or sculpture of a church in ancient times was often cut out or cast in plate or other metal, and preserved as a religious treasure or relic, and to perpetuate the memory of some famous churches.

Ecclesiarch /ækliyziyark/. The ruler of a church.

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

Ecclesiastical /ækliyziyəstəkəl/. Pertaining to anything belonging to or set apart for the church, as distinguished from "civil" or "secular," with regard to the world.

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

Ecclesiastical commissioners. In England, a body corporate, erected by St. 6 & 7 Wm. IV, c. 77, empowered to suggest measures conducive to the efficiency of the established church, to be ratified by orders in council. As a body, Ecclesiastical Commissioners have been dissolved and their functions, rights, property, etc. vested in Church Commissioners.

Ecclesiastical corporation. *See* Corporation.

Ecclesiastical council. In New England, formerly a church court or tribunal, having functions partly judicial and partly advisory, appointed to determine questions relating to church discipline, orthodoxy, standing of ministers, controversies between ministers and their

churches, differences and divisions in churches, and the like.

Ecclesiastical courts (called, also, "Courts Christian"). A generic name for certain courts having cognizance mainly of spiritual matters. A system of courts in England, held by authority of the sovereign, and having jurisdiction over matters pertaining to the religion and ritual of the established church, and the rights, duties, and discipline of ecclesiastical persons as such. They are as follows: The Archdeacon's Court (now practically obsolete), Consistory Court, Provincial Courts (*i.e.* Court of Arches of Canterbury and Chancery Court of York), Court of Faculties, and Court of Final Appeal (Judicial Committee of the Privy Council). Modern jurisdiction is limited to matters of ecclesiastical discipline and church property.

Ecclesiastical division of England. This is a division into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

Ecclesiastical jurisdiction. Jurisdiction over ecclesiastical cases and controversies; such as appertains to the ecclesiastical courts.

Ecclesiastical law. The body of jurisprudence administered by the ecclesiastical courts of England; derived, in large measure, from the canon and civil law. As now restricted, it applies mainly to the affairs, and the doctrine, discipline, and worship, of the established church.

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

Ecclesiastical things. This term, as used in the canon law, includes church buildings, church property, cemeteries, and property given to the church for the support of the poor or for any other pious use.

Ecdicus /ékdəkəs/. The attorney, proctor, or advocate of a corporation.

Échantillon /èyshontiyówn/. In French law, one of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the "tally," the other "*échantillon*."

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

Echolalia /èkowléyliyə/'lélíyə/. The constant and senseless repetition of particular words or phrases, recognized as a sign or symptom of insanity or of aphasia.

Echouement /èyshuwmon/. In French marine law, stranding.

Ecology. In general, the study or science of the relationships between organisms and their environments; study of the environment. *See* Ecosystems.

Economic discrimination. Any form of discrimination within the field of commerce such as a boycott of a particular product or price fixing. *See* Boycott; Price discrimination; Price-fixing.

Economic duress. Defense of "economic duress," or business compulsion, arises where one individual, acting upon another's fear of impending financial injury, unlawfully coerces the latter to perform an act in circumstances which prevent his exercise of free will. *Mancino v. Friedman*, 69 Ohio App.2d 30, 23 O.O.3d 27, 429 N.E.2d 1181, 1186.

Economic life. Useful or profitable life of property, which may be shorter than the physical life. *See also* Economic obsolescence.

Economic loss. In a products' liability action, recovery of damages for "economic loss" includes recovery for costs of repair and replacement of defective property which is the subject of the transaction, as well as commercial loss for inadequate value and consequent loss of profits or use. *Salmon Rivers Sportsman Camps Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 544 P.2d 306, 310.

Economic obsolescence. Loss of desirability and useful life of property due to economic developments (*e.g.* deterioration of neighborhood or zoning change) rather than deterioration (functional obsolescence). Term as used with respect to valuation of property for taxation is a loss of value brought about by conditions that environ a structure such as a declining location or down-grading of a neighborhood resulting in reduced business volume. *Piazza v. Town Assessor of Town of Porter*, 16 A.D.2d 863, 228 N.Y.S.2d 397, 398. *See also* Obsolescence.

Economic strike. Refusal to work because of dispute over wages, hours or working conditions or other conditions of employment. An economic strike is one neither prohibited by law nor by collective bargaining agreement nor caused by employer unfair labor practices, but is typically for purpose of enforcing employer compliance with union collective bargaining demands, and economic strikers possess more limited reinstatement rights than unfair labor practice strikers. *N. L. R. B. v. Transport Co. of Tex.*, C.A.Tex., 438 F.2d 258, 262. *See also* Strike.

Economic waste. An overproduction or excessive drilling of oil or gas.

Economy. Frugality; prudent expenditure of money or use of resources. Not synonymous with "parsimony." Includes that which pertains to the satisfaction of man's needs. *D'Arcy v. Snell*, 162 Or. 351, 91 P.2d 537, 540. Economic structure of country.

E contra /iy kóntrə/. From the opposite; on the contrary.

E converso /iy kónvərsow/. Conversely. On the other hand; on the contrary. Equivalent to *e contra*.

Ecosystems. The totality of cycles and processes which constitute the ecology system.

Ecumenical /ékyəménékəl/iykyəménékəl/. General; universal; as an ecumenical council.

Edderbreche /édərbriych/. In Saxon law, the offense (now obsolete) of hedge-breaking.

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

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

Edicts of Justinian /ydykts əv jəstín(i)yən/. Thirteen constitutions or laws of this prince, found in most editions of the *Corpus Juris Civilis*, after the Novels. Being confined to matters of police in the provinces of the empire, they have long since been of little use.

Edictum /ədiktəm/. In the Roman law, an edict; a mandate, or ordinance. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of *constitutiones principis*. An edict was a mere voluntary constitution of the emperor; differing from a rescript, in not being returned in the way of answer; and from a decree, in not being given in judgment; and from both, in not being founded upon solicitation.

A general order published by the praetor, on entering upon his office, containing the system of rules by which he would administer justice during the year of his office.

Edictum annuum /ədiktəm ənyuwəm/. The annual edict or system of rules promulgated by a Roman praetor immediately upon assuming his office, setting forth the principles by which he would be guided in determining causes during his term of office.

Edictum perpetuum /ədiktəm pərpétywəm/. The perpetual edict. A compilation or system of law in fifty books, digested by Julian, from the praetor's edicts and other parts of the *Jus Honorarium*. All the remains of it which have come down to us are the extracts of it in the Digests.

Edictum provinciale /ədiktəm prəvinshiyéyliy/. An edict or system of rules for the administration of justice, similar to the edict of the praetor, put forth by the proconsuls and proprætors in the provinces of the Roman Empire.

Edictum Theodorici /ədiktəm θiyədəráysay/. This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, king of the Ostrogoths, at Rome in A.D. 500. It consists of 154 chapters, in which we

recognize parts taken from the Code and Novellæ of Theodosius, from the Codices Gregorianus and Hermogenianus, and the Sententiæ of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but, when it made no alteration in the Gothic law, that law was still to be in force.

Edictum tralatitium /ədiktəm trələtɪʃ(ij)əm/. Where a Roman prætor, upon assuming office, did not publish a wholly new edict, but retained the whole or a principal part of the edict of his predecessor (as was usually the case) only adding to it such rules as appeared to be necessary to adapt it to changing social conditions or juristic ideas, it was called "edictum tralatitium."

Edition. The total number of copies of a publication printed from a single typesetting or at one specified time. May also refer to the form which a publication takes such as a hardbound or paperback edition. Also, the means of identifying the various versions of a given publication; e.g. first, second, etc. edition. One of the several issues of a newspaper for a single day.

Editor. One who directs or supervises the policies, content and contributions of a newspaper, magazine, book, work of reference, or the like. The term is held to include not only the person who writes, edits or selects the articles for publication, but he who publishes a paper and puts it in circulation. *Pennoyer v. Neff*, 95 U.S. 721, 24 L.Ed. 565.

Editus /édətəs/. In old English law, put forth or promulgated, when speaking of the passage of a statute; and brought forth, or born, when speaking of the birth of a child.

Edmunds Act. An act of Congress of March 22, 1882, punishing polygamy.

Educate. To give proper moral, as well as intellectual and physical, instruction. To prepare and fit oneself for any calling or business, or for activity and usefulness in life.

Education. Comprehends not merely the instruction received at school or college, but the whole course of training; moral, religious, vocational, intellectual, and physical. Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all. Acquisition of all knowledge tending to train and develop the individual. *See also* Board of education.

Educational expenses. Employees may deduct education expenses as ordinary and necessary business expenses provided such items were incurred for either of two reasons: (1) to maintain or improve existing skills required in present job or (2) to meet the express requirements of the employer or the requirements imposed by law to retain employment status. Such expenses are not deductible if the education is (1) required to meet the minimum educational requirements for the taxpayer's existing job or (2) the education qualifies the

individual for a new trade or business. *Ronald F. Weizmann v. Commissioner of Internal Revenue*, 443 F.2d 29.

Educational institution. A school, seminary, college, university, or other educational establishment, not necessarily a chartered institution. As used in a zoning ordinance, the term may include not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral, and physical development. *Commissioners of District of Columbia v. Shannon & Luchs Const. Co.*, 57 App.D.C. 67, 17 F.2d 219, 220.

Educational purposes. Term as used in constitutional and statutory provisions exempting property so used from taxation, includes systematic instruction in any and all branches of learning from which a substantial public benefit is derived, and is not limited to such school properties as would relieve some substantial educational burden from the state. *McKee v. Evans*, Alaska, 490 P.2d 1226, 1230.

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

Effect, v. To do; to produce; to make; to bring to pass; to execute; enforce; accomplish.

Effect, n. That which is produced by an agent or cause; result; outcome; consequence. *State by Clark v. Wolkoff*, 250 Minn. 504, 85 N.W.2d 401, 410. The result which an instrument between parties will produce in their relative rights, or which a statute will produce upon the existing law, as discovered from the language used, the forms employed, or other materials for construing it. The operation of a law, of an agreement, or an act. The phrases "take effect," "be in force," "go into operation," etc., are used interchangeably.

With effect. With success; as, to prosecute an action with effect.

Effecting loan. To bring about a loan. To accomplish, fulfill, produce or make a loan. It means the result or consequence of bringing into operation a loan; while "renewal" is not a loan, but an extension of the time of payment.

Effective assistance of counsel. Conscientious, meaningful representation wherein accused is advised of his rights and honest, learned and able counsel is given a reasonable opportunity to perform task assigned to him. *State v. Williams*, Iowa, 207 N.W.2d 98, 104. Benchmark for judging any claim of ineffectiveness of counsel must be whether counsel's conduct so undermined proper functioning of adversarial process that trial cannot be relied on as having produced a just result. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. As required by 6th Amendment for criminal defendant, does not mean errorless counsel, and not counsel judged ineffective by hindsight, but counsel reasonably likely to render and rendering reasonably effective assistance; this necessarily involves inquiry into actual performance of counsel in conducting defense, based on totality of circumstances of entire record. Bea-

vers v. Balkcom, C.A.Ga., 636 F.2d 114, 115. 18 U.S.C.A. § 3006A. See Counsel, right to.

Effective date. Date on which contract, law, insurance policy, or the like, takes effect.

Effective possession. See Constructive possession.

Effective procuring cause. The "effective procuring cause" of sale of realty is ordinarily the broker who first secures the serious attention of the customer and is instrumental in bringing the parties together. See Cause; Efficient cause; Proximate cause.

Effects. Personal estate or property; though the term may include both real and personal property. See Personal effects.

Effectus sequitur causam /əfektəs siykwətər kózəm/. The effect follows the cause.

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

Effets mobiliers /əfets mōwbəlɪrɪz/. Funds or stocks. In re Steimes' Estate, 150 Misc. 279, 270 N.Y.S. 339.

Efficient. Causing an effect; particularly the result or results contemplated. Adequate in performance or producing properly a desired effect. Spotts v. Baltimore & O. R. Co., C.C.A.Ind., 102 F.2d 160, 162.

Efficient cause. The working cause; that cause which produces effects or results. An intervening cause, which produces results which would not have come to pass except for its interposition, and for which, therefore, the person who set in motion the original chain of causes is not responsible. Southland-Greyhound Lines v. Cotten, Tex.Civ.App., 55 S.W.2d 1066, 1069. The cause which originates and sets in motion the dominating agency that necessarily proceeds through other causes as mere instruments or vehicles in a natural line of causation to the result. That cause of an injury to which legal liability attaches. The "proximate cause." Hillis v. Home Owners' Loan Corporation, 348 Mo. 601, 154 S.W.2d 761, 764. The phrase is practically synonymous with "procuring cause." Buhrmester v. Independent Plumbing & Heating Supply Co., Mo.App., 151 S.W.2d 509, 513. The immediate agent in the production of an effect. Armijo v. World Ins. Co., 78 N.M. 204, 429 P.2d 904, 906.

The proximate cause of an injury is the efficient cause, the one that necessarily sets the other causes in operation, and, where a wrongful act puts other forces in operation which are natural and which the act would reasonably and probably put in action, the party who puts in force the first efficient cause will be responsible in damages for the injury proved, although immediately resulting from the other force so put in motion.

See also Proximate cause.

Efficient intervening cause. An intervening efficient cause is a new and independent force, which breaks the causal connection between the original wrong and the injury, and is the proximate and immediate cause of the injury. Thus, the original negligent actor is not liable

for an injury that could not have been foreseen or reasonably anticipated as the probable consequence of his negligent act, and would not have resulted from it had not the intervening efficient cause interrupted the natural sequence of events, turned aside their course, and produced the injury. Smith v. Secrest, 590 S.W.2d 386, 389. See also Proximate cause.

Effigy /éfəjij/. The figure or corporeal representation of a person.

Effluent. Liquid waste which is discharged into a lake, river, etc.

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

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

Efforcialiter /əfòrs(h)iyéylətər/. Forcibly; applied to military force.

Effort. An attempt; an endeavor; a struggle directed to the accomplishment of an object. To try.

Effraction /əfrækshən/. A breach made by the use of force.

Effractor /əfráktər/. One who breaks through; one who commits a burglary.

Effusio sanguinis /əfyúwz(h)(i)yow sáŋgwənes/. In old English law, the shedding of blood; the mulct, fine, *wite*, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. See Bloodwit.

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

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

The part of the conscious personality which has the task of balancing the demands of the real world and maintaining harmony between the *id* (instinctual drives) and the *superego* (morality of the conscience); that portion of the total personality noticeable to others which maintains contact with the environment of the outer world.

See also Alter ego.

Ego, talis /iygow, téyləs/. I, such a one. Words used in describing the forms of old deeds.

Egrediens et exeuns /əgriydiyènz èt éksiyànz/. In old pleading, going forth and issuing out of (land).

Egress /iygrès/. The path or opening by which a person goes out; exit. The means or act of going out.

Egyptians. Derivative name in old England for "gypsies"; a wandering, nomadic people without permanent abode, living in tents or other shelters, pretending to tell fortunes of others.

Eia, or Ey. An island.

Eighteenth Amendment. The amendment to the U.S. Constitution added in 1919 which prohibited the manufacture, sale, transportation and exportation of intoxicating liquors in all the States and Territories of the United States and which was repealed in 1933 by the Twenty-first Amendment.

Eighth Amendment. The amendment to the U.S. Constitution added in 1791 which prohibits excessive bail, excessive fines and cruel and unusual punishment.

Eight hour laws. Statutes (*e.g.* Adamson Act; Fair Labor Standards Act) which established eight hours as the length of a day's work, prohibited work beyond this period, and required payment of overtime for work in excess of this period. *See* Wage and hour laws.

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

Eignesse /èynés/. See Esnecy.

Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit /iyay inkəmbət prəbéysh(iy)ow kwəy dīsət, nŃn kwəy nēgət; kām pər rirəm nət(y)úrəm fáktəm nēgántəs prəbéysh(iy)ow nálə sīt/. The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof.

Einacia /əniysiya/. Eldership. See Esnecy.

Einetus /əniysh(iy)əs/. In English law, the oldest; the first-born.

Ei nihil turpe, cui nihil satis /iyay náy(h)əl tárpiy, k(yúw)ay náy(h)əl sətəs/. To him to whom nothing is enough, nothing is base.

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

Eirenarcha /àyrənárkə/. A name formerly given to a justice of the peace. In the Digests, the word is written "irenarcha."

Eisdem modis dissolvitur obligatio quæ nascitur ex contractu, vel quasi, quibus contrahitur /iyáysdəm mŃwədəs dəzŃlvətər Ńbləgáysh(iy)ow kwiy násətər əks kənrəkt(y)uw, vəl kwéysay, kwíbəs kənréy(h)ətər/. An obligation which arises from contract, or quasi contract, is dissolved in the same ways in which it is contracted.

Eisne /éyn/. The senior; the oldest son. Spelled also, "eigne," "einsne," "aisne," "eign."

Eisnetia, einetia /ə(z)niysh(iy)ə/. The share of the oldest son. The portion acquired by primogeniture.

Either. Each of two; the one and the other; one or the other of two alternatives; one of two. Often used, however, with reference to more than two, in which case it may mean "each" or "any"; but does not mean "all". *State v. Davenport, Tex.Civ.App., 417 S.W.2d 337, 340.*

Eject. To cast, or throw out; to oust, or dispossess; to put or turn out of possession. To expel or thrust forcibly, as disorderly patrons.

Ejecta /əjéktə/. In old English law, a woman ravished or deflowered, or cast forth from the virtuous.

Ejection. A turning out of possession.

Ejectione custodiæ /əjékshiyŃwniy kəstŃwdiyiy/. In old English law, ejectment of ward. This phrase, which is the Latin equivalent for the French "ejectment de garde," was the title of a writ which lay for a guardian when turned out of any land of his ward during the minority of the latter. It lay to recover the land or person of his ward, or both.

Ejectione firmæ /əjékshiyŃwniy fərmiy/. Ejection, or ejectment of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger ejected or ousted the lessee of his term, *ferme*, or *farm* (*ipsum a firma ejecit*). In this case the latter might have his writ of *ejection*, by which he recovered at first damages for the trespass only, but it was afterwards made a remedy to recover back the term itself, or the remainder of it, with damages. 3 Bl.Comm. 199. It is the foundation of the modern action of ejectment.

Ejectment. At common law, this was the name of a mixed action (springing from the earlier personal action of *ejectione firmæ*) which lay for the recovery of the possession of land, and for damages for the unlawful detention of its possession. The action was highly fictitious, being in theory only for the recovery of a term for years, and brought by a purely fictitious person, as lessee in a supposed lease from the real party in interest. The latter's title, however, had to be established in order to warrant a recovery, and the establishment of such title, though nominally a mere incident, was in reality the object of the action. Hence this convenient form of suit came to be adopted as the usual method of trying titles to land. 3 Bl.Comm. 199; *French v. Robb, 67 N.J.Law 260, 51 A. 509*. In England, since the Judicature Act of 1852, ejectment has given place to a new action for the recovery of land.

The common law action for ejectment has been materially modified by statute in most states and may come under the title of action to recover possession of land, action for summary process, action for eviction, or forcible entry and detainer action.

Ejectment is an action to restore possession of property to the person entitled to it. Not only must the plaintiff establish a right to possession in himself, but he must also show that the defendant is in wrongful posses-

sion. If the defendant has only trespassed on the land, the action is for trespass (*i.e.* damages).

See also Eviction; Forcible entry and detainer; Process (*Summary process*).

Ejectment bill. A bill in equity brought merely for the recovery of real property, together with an account of the rents and profits, without setting out any distinct ground of equity jurisdiction; hence demurrable.

Equitable ejectment. A proceeding brought to enforce specific performance of a contract for the sale of land, and for some other purposes, which is in form an action of ejectment, but is in reality a substitute for a bill in equity.

Justice ejectment. A statutory proceeding for the eviction of a tenant holding over after termination of the lease or breach of its conditions.

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

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

Ejectum /əjéktəm/. That which is thrown up by the sea. Also jetsam, wreck, etc.

Ejectus /əjéktəs/. In old English law, a whore-monger.

Ejercitoria /eyhèrsiýtóriyə/. In Spanish law, the name of an action lying against a ship's owner, upon the contracts or obligations made by the master for repairs or supplies. It corresponds to the *actio exercitoria* of the Roman law.

Ejidos /eyhíyðows/. In Spanish law, commons; lands used in common by the inhabitants of a city, pueblo, or town, for pasture, wood, threshing-ground, etc.

Ejuration /iyjəreyshən/. Renouncing or resigning one's place.

Ejusdem generis /iyjəsdəm jénərəs/. Of the same kind, class, or nature. In the construction of laws, wills, and other instruments, the "ejusdem generis rule" is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. *U. S. v. LaBrecque*, D.C. N.J., 419 F.Supp. 430, 432. The rule, however, does not necessarily require that the general provision be limited in its scope to the identical things specifically named. Nor does it apply when the context manifests a contrary intention.

Under "ejusdem generis" canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. *Campbell v. Board of Dental Examiners*, 53 Cal.App.3d 283, 125 Cal.Rptr. 694, 696.

Ejus est interpretari cujus est condere /iyjəs èst intərpətəray kyúwjəs èst kóndəriy/. It is his to interpret whose it is to enact.

Ejus est nolle, qui potest velle /iyjəs èst nóliy, kwáy pówtəst véliy/. He who can will [exercise volition], has a right to refuse to will [to withhold consent]. This maxim is sometimes written, *Ejus est non nolle qui potest velle*, and is translated, "He may consent tacitly who may consent expressly."

Ejus est periculum cujus est dominium aut commodum /iyjəs èst pərikyələm kyúwjəs èst dəmíniyəm ót kómədəm/. He who has the dominion or advantage has the risk.

Ejus nulla culpa est, cui parere necesse sit /iyjəs nála kálpə èst, k(yúw)ay pərériy nəsésiy sít/. No guilt attaches to him who is compelled to obey. Obedience to existing laws is a sufficient extenuation of guilt before a civil tribunal.

Elaborare /ələbərəriy/. In old European law, to gain, acquire, or purchase, as by labor and industry.

Elaboratus /ələbərəytəs/. Property which is the acquisition of labor.

Elder brethren. A distinguished body of men, elected as masters of Trinity House, an institution incorporated in the reign of Henry VIII, charged with numerous important duties relating to the marine, such as the superintendence of light-houses. The full title of the corporation is Elder Brethren of the Holy and Undivided Trinity.

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

Eldest. Oldest; first born; one with greatest seniority.

Electa una via, non datur recursus ad alteram /ələktə yuwnə váyə, nòn déytər rəkərsəs əd óltərəm/. He who has chosen one way cannot have recourse to another.

Elected. The word "elected," in its ordinary signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position.

Electio est interna libera et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate /ələksh(iy)ow èst intárnə libərə èt spóntəniyə sèpəreysh(iy)ow yənáyəs riyyə əb éyliyə, sáy-niy kəmpəlsiyówniy, kənsistenz in ənəmow èt vóləntéydiy/. Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.

Election. The act of choosing or selecting one or more from a greater number of persons, things, courses, or rights. The choice of an alternative. The internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will. The selection of one person from a specified class to discharge certain duties in a state, corporation, or society. An expression of choice by the voters of a public

body politic, or as a means by which a choice is made by the electors. *Nelson v. Robinson*, Fla.App., 301 So.2d 508, 510. With respect to the choice of persons to fill public office or the decision of a particular public question or public policy the term means in ordinary usage the expression by vote of the will of the people or of a somewhat numerous body of electors. "Election" ordinarily has reference to a choice or selection by electors, while "appointment" refers to a choice or selection by an individual.

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

The choice, by the prosecution, upon which of several counts in an indictment (charging distinct offenses of the same degree, but not parts of a continuous series of acts) it will proceed.

Obligation imposed upon party to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both. *Lovett v. Stone*, 239 N.C. 206, 79 S.E.2d 479, 484, 60 A.L.R.2d 780.

See also Certificate of election; Equitable election; Free and clear.

Election at large. Election in which a public official is selected from a major election district rather than a minor subdivision within the larger unit.

Election of defenses. The selection of a particular defense on which to rest in contesting a claim or in defending a criminal charge.

Election of remedies. The liberty of choosing (or the act of choosing) one out of several means afforded by law for the redress of an injury, or one out of several available forms of action. An "election of remedies" arises when one having two coexistent but inconsistent remedies chooses to exercise one, in which event he loses the right to thereafter exercise the other. Doctrine provides that if two or more remedies exist which are repugnant and inconsistent with one another, a party will be bound if he has chosen one of them. *Melby v. Hawkins Pontiac, Inc.*, 13 Wash.App. 745, 537 P.2d 807, 810. Under Rule of Civil Procedure 8(a): "Relief in the alternative or of several different types may be demanded." *See also* Alternative pleading; Alternative relief; Equitable election.

General election. One for a definite purpose, regularly reoccurring at fixed intervals without any requirements other than the lapse of time. *Bolin v. Superior Court In and For Maricopa County*, 85 Ariz. 131, 333 P.2d 295, 298. One at which the officers to be elected are such as belong to the general government; that is, the general and central political organization of the whole state, as distinguished from an election of officers for a particular locality only. Also, one held for the selection of an officer after the expiration of the full term of the former officer; thus distinguished from a *special* election, which is one held to supply a vacancy in office occurring before the expiration of the full term for which the incumbent was elected.

One that regularly recurs in each election precinct of the state on a day designated by law for the selection of officers, or is held in such entire territory pursuant to an enactment specifying a single day for the ratification or rejection of one or more measures submitted to the people by the Legislature, and not for the election of any officer. One that is held throughout the entire state or territory. An election for the choice of a national, state, judicial, district, municipal, county or township official, required by law to be held regularly at a designated time, to fill a new office or a vacancy in an office at the expiration of the full term thereof.

In statutes, the term may include a primary election.

See also Popular election; and Regular election, below.

Law of wills. A widow's election is her choice of whether she will take what is provided for her in her husband's will or rather her statutorily prescribed share; that is, whether she will accept the provision made for her in the will, and acquiesce in her husband's disposition of his property, or disregard it and claim what the law allows her. *Logan v. Logan*, Tex.Civ.App., 112 S.W.2d 515, 518. An "election under the will" means that a legatee or devisee under a will is put to the choice of accepting the beneficial interest offered by the donor in lieu of some estate which he is entitled to, but which is taken from him by the terms of the will. *See also* Election by spouse; Equitable election.

Off-year election. Election conducted at a time other than the presidential election year.

Popular election. Election by people as a whole, rather than by a select group.

Presidential election. *See* U.S.Const. Amends. XII, XX, XXII-XXVI.

Primary election. An election by the voters of a ward, precinct, or other small district, belonging to a particular party, of representatives or delegates to a convention which is to meet and nominate the candidates of their party to stand at an approaching municipal or general election. Also, an election to select candidates for office by a political organization, the voters being restricted to the members or supporters of such organization. An election, preliminary in nature, the purpose being to narrow in number the candidates that will appear on the final, official ballot.

Recall election. Election where voters have opportunity to remove public official from elected office.

Regular election. One recurring at stated times fixed by law. A general, usual, or stated election. When applied to elections, the terms "regular" and "general" are used interchangeably and synonymously. The word "regular" is used in reference to a general election occurring throughout the state. *See also* General election, above.

Special election. An election for a particular emergency or need, conducted in the interval between regularly scheduled elections in order to fill a vacancy arising by death of the incumbent of the office, decide a question submitted on an initiative referendum, or recall petition, etc. In determining whether an election is special

or general, regard must be had to the subject-matter as well as date of the election, and, if an election occurs throughout state uniformly by direct operation of law, it is a "general election," but, if it depends on employment of special preliminary proceeding peculiar to process which may or may not occur, and the election is applicable only to a restricted area less than whole state, it is a "special election."

Election board. A board of inspectors or commissioners appointed in each election precinct by government (e.g. county or city) authorities responsible for determining whether individual voters are qualified, supervising the polling, and often ascertaining and reporting the results. Local, city or town agency which is charged with the conduct of elections.

Election by spouse. Statutory provision that a surviving spouse may choose as between taking that which is provided for her in her husband's will, claiming dower or taking her statutorily prescribed share. Such election may be presented if the will leaves the spouse less than she would otherwise receive by statute. This election may also be taken if the spouse seeks to set aside a will which contains a provision to the effect that an attempt to contest the will defeats the rights of one to take under the will. *See also* Election (*Law of wills*); Equitable election.

Election contest. A contest in behalf of one who has failed of success in election against right of one who has been declared or determined by proper authority to have been successful. Election contest involves matter of going behind election returns and inquiring into qualifications of electors, counting of ballots, and other matters affecting validity of ballots. *Vance v. Johnson*, 238 Ark. 1009, 386 S.W.2d 240, 242.

Election district. A subdivision of territory, whether of state, county, or city, the boundaries of which are fixed by law, for convenience in local or general elections.

Election, doctrine of. When a third person has contracted with an agent without knowing of the agency, and thereafter the third person discovers the agency and the identity of the principal, the third person may enforce the contract against the agent or against the principal at his election, but not against both. This is known as the doctrine of election. *See* Election.

Election dower. A name sometimes given to the provision which a law or statute makes for a widow in case she "elects" to reject the provision made for her in the will and take what the statute accords. *Stanton v. Leonard*, 344 Mo. 998, 130 S.W.2d 487, 489. *See* Election (*Law of wills*); Election by spouse.

Electiones fiant rite et libere sine interruptione aliqua /əlékshiyówniyz fáyant ráytiy èt libèriy sáyniy intərəpshiyówniy ələkwa/. Elections should be made in due form, and freely, without any interruption.

Election, estoppel by. An estoppel which arises by a choice between inconsistent remedies. *See* Election (*Election of remedies*).

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

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

Election judges. In English law, judges of the High Court selected in pursuance of Part III of the Representation of the People Act (1983) and the Supreme Court Act (1981) for the trial of election petitions, from the puisne judges of the Queen's Bench Division.

Election of remedies. *See* Election.

Election petitions. In England, petitions for inquiry into the validity of elections of members of parliament when it is alleged that the return of a member is invalid for bribery or any other reason.

Election returns. The report made to the board of canvassers or election board of the number of votes cast for each candidate or proposition voted upon by those charged by law with the duty of counting or tallying the votes for or against the respective candidates or propositions.

Electio semel facta, et placitum testatum non patitur regressum /əléksh(iy)ow séməl fáktə èt plásətam testéytəm nòn pátətər rəgrésəm/. Election once made, and plea witnessed (or intent shown), suffers not a recall.

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

Elective franchise. The right of voting at public elections. The privilege of qualified voters to cast their ballots for the candidates they favor at elections authorized by law as guaranteed by Fifteenth and Nineteenth Amendments to Constitution, and by federal voting rights acts. *See* Voting Rights Act.

Elective office. One which is to be filled by popular election. One filled by the direct exercise of the voters' franchise in contrast to an appointive office.

Elective share. *See* Election (*Law of wills*); Election by spouse.

Electors. A duly qualified voter; one who has a vote in the choice of any officer; a constituent. One who elects or has the right of choice, or who has the right to vote for any functionary, or for the adoption of any measure. In a narrower sense, one who has the general right to vote, and the right to vote for public officers. One

authorized to exercise the elective franchise. *See* Voting Rights Act.

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

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

Sometimes, one who exercises the right of election in equity.

Registered qualified elector. One possessing the constitutional qualifications, and registered under the registration statute.

Electoral. Pertaining to electors or elections; composed or consisting of electors. *See* Electoral college.

Electoral college. The college or body of electors of a state chosen to elect the president and vice-president; also, the whole body of such electors, composed of the electoral colleges of the several states. *See* U.S.Const. Amend. XII.

Electoral process. Generic term for methods by which persons are elected to public office; voting.

Electronic funds transfers. A transaction with a financial institution by means of a computer, telephone or electronic instrument. An electronic funds transfer is typically initiated by a bank customer (the originator) who requests the bank to transfer credit to the account, usually in another bank, of another person (the beneficiary). Such transactions are governed by federal and state laws. *See* 15 U.S.C.A. § 1693 et seq.; U.C.C. Art. 4A.

Electronic surveillance. *See* Eavesdropping; Wiretapping.

Eleemosynæ /èlémósəniy/. Possessions belonging to the church.

Eleemosyna regis, and eleemosyna aratri, or carucarum /èlémósənə riyjəs/°əreytray/°kàrəkérəm/. A penny which King Ethelred ordered to be paid for every plow in England towards the support of the poor.

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

Eleemosynarius /èlémósənəriyəs/. In old English law, an almoner, or chief officer, who received the eleemosynary rents and gifts, and in due method distributed them to pious and charitable uses.

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

Eleemosynary /èlémósənə(h)riy/èliyəmózənə(h)riy/. Relating or devoted to charity; given in charity; having the nature of alms. United Community Services v.

Omaha Nat. Bank, 162 Nev. 786, 77 N.W.2d 576, 582. *See* Charity; Charitable.

Eleemosynary corporation. A private corporation created for charitable and benevolent purposes. Charitable corporation. *See also* Charitable organizations.

Eleemosynary defense. Term used to describe defense available in some jurisdictions for charitable corporations and institutions when they are sued in tort; though such tort immunity has been abrogated or greatly restricted in many states.

Elegant /èlégəntər/. In the civil law, accurately; with discrimination.

Elegit /əliyjət/. (Lat. 'He has chosen.) This was the name, in English practice, of a writ of execution first given by the statute of Westm. 2 (13 Edw. I, c. 18) either upon a judgment for a debt or damages or upon the forfeiture of a recognizance taken in the king's court. It was so called because it was in the choice or election of the plaintiff whether he would sue out this writ or a *fi. fa.* By it the defendant's goods and chattels were appraised and all of them (except oxen and beasts of the plow) were delivered to the plaintiff, at such reasonable appraisal and price, in part satisfaction of his debt. If the goods were not sufficient, then the moiety of his freehold lands, which he had at the time of the judgment given, were also to be delivered to the plaintiff, to hold till out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired. During this period the plaintiff was called "tenant by *elegit*," and his estate, an "estate by *elegit*." Such writ was abolished by Administration of Justice Act of 1956.

Element. Material; substance; ingredient; factor. *See* Elements of crime.

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

Elements. The forces of nature. Violent or severe weather. The ultimate undecomposable parts which unite to form anything. Popularly, fire, air, earth, and water, anciently supposed to be the four simple bodies of which the world was composed. Often applied in a particular sense to wind and water, as "the fury of the elements." Fire and water as elements included in the expression "damages by the elements" means the same thing as "damages by the act of God."

Elements of crime. Those constituent parts of a crime which must be proved by the prosecution to sustain a conviction. *Com. v. Burke*, 390 Mass. 480, 457 N.E.2d 622, 624. A term used by the common law to refer to each component of the *actus reus*, causation, and the *mens rea* that must be proved in order to establish that a given offense has occurred. The term is more broadly defined by the Model Penal Code in § 1.13(9) to refer to each component of the *actus reus*, causation, the *mens rea*, any grading factors, and the negative of any defense.

Eleventh Amendment. The Amendment to the U.S. Constitution, added in 1798, which provides that the judicial power of the U.S. shall not extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Eligible. Fit and proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve. Capable of being chosen, as a candidate for office. Also, qualified and capable of holding office. *See also* Capacity; Competency; Duly qualified; Qualified.

Eligibility. Qualification for an office, position, or specific status. Commonly refers to "legal" qualification. *See also* Eligible.

Elimination. In old English law, the act of banishing or turning out of doors; rejection.

Elinguation /iyliŋwéyʃhən/. The punishment of cutting out the tongue.

Elisors /ə'lyzəz/. Electors or choosers. Persons appointed by the court to execute writs of *venire*, in cases where both the sheriff and coroner are disqualified from acting, and whose duty is to *choose*—that is, name and return—the jury. 3 Bl.Comm. 355.

Persons appointed to execute *any* writ, in default of the sheriff and coroner, are also called "elisors." An elisor may be appointed to take charge of a jury retiring to deliberate upon a verdict, when both sheriff and coroner are disqualified or unable to act.

Elkins Act. Federal Act (1903) which strengthened the Interstate Commerce Act by prohibiting rebates and other forms of preferential treatment to large shippers.

Ell. A measure of length answering to the modern yard. 1 Bl.Comm. 275. *See also* Meter.

Ellenborough's Act /élnbrəz ækt/. An English statute (43 Geo. III, c. 58) punishing offenses against the person.

Ellipsis /ə'lɪpsəs/. Omission of words or clauses necessary to complete the construction, but not necessary to convey the meaning.

Elogium /ə'lɔwjiəm/. In the civil law, a will or testament.

Eloigne /ə'lɔyn/. (Fr. *éloigner*, to remove to a distance; to remove afar off.) A return to a writ of replevin, when the chattels have been removed out of the way of the sheriff.

Eloignment /ə'lɔynmənt/. The getting a thing or person out of the way; or removing it to a distance, so as to be out of reach.

Elongata /ə'lɔŋgétə/yɔlɔŋgétə/. Eloigned; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been *eloigned*; that is, carried to a distance, to places to him unknown. 3 Bl.Comm. 148. The word *eloigne* is sometimes used as synonymous with *elongata*.

Elongatus /iyɔlɔŋgétəs/. Eloigned. A return made by a sheriff to a writ *de homine replegiando*, stating that the

party to be replevied has been eloigned, or conveyed out of his jurisdiction. 3 Bl.Comm. 129.

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

Eloperment. The act of running away, leaving without permission, or escaping from custody. An unmarried couple's act of secretly leaving home for the purpose of getting married.

At common law, the act of a wife who voluntarily deserts her husband to go away with and cohabit with another man. *State v. Hopper*, 186 N.C. 405, 119 S.E. 769.

Elsewhere. In another place; in any other place. The term does not always mean literally any other place whatever, but may be more or less limited by the context.

In shipping articles, this term, following the designation of the port of destination, must be construed either as void for uncertainty or as subordinate to the principal voyage stated in the preceding words.

Eluviation /əl(y)ùwvivyéyshan/. Movement of soil caused by excessive water in soil.

Emanations. The act of coming or flowing forth from something. That which flows or comes forth from something. An effluence.

Emancipated minor. A person under 18 years of age who is totally self-supporting.

Emancipation. The act by which one who was unfree, or under the power and control of another, is rendered free, or set at liberty and made his own master.

A surrender and renunciation of the correlative rights and duties touching the care, custody and earnings of a child. *Schumm v. Schumm*, 122 N.J.Super. 146, 299 A.2d 423, 425. The term is principally used with reference to the emancipation of a minor child by its parents, which involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties. *Glover v. Glover*, 44 Tenn.App. 712, 319 S.W.2d 238, 241. The emancipation may be express, as by voluntary agreement of parent and child, or implied from such acts and conduct as import consent, and it may be conditional or absolute, complete or partial. Complete emancipation is entire surrender of care, custody, and earnings of child, as well as renunciation of parental duties. And a "partial emancipation" frees a child for only a part of the period of minority, or from only a part of the parent's rights, or for some purposes, and not for others.

There is no fixed age when a child becomes emancipated (though it is usually upon reaching majority); it does not automatically occur on reaching majority. *Turner v. McCune*, Mass.App., 357 N.E.2d 942.

In Roman law, the enfranchisement of a son by his father, which was anciently done by the formality of an imaginary sale. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate.

Emancipation proclamation. An executive proclamation, issued January 1, 1863, by Abraham Lincoln, declaring that all persons held in slavery in certain designated states and districts were and should remain free.

Embargo /əmbárgow/. A proclamation or order of government, usually issued in time of war or threatened hostilities, prohibiting the departure of ships or goods from some or all ports until further order. Government order prohibiting commercial trade with individuals or businesses of other specified nations. Legal prohibition on commerce.

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

Embassador. See Ambassador.

Embassy /émbəsiy/ or **Embassage** /émbəsəj/. Mission, function, business, or official residence of an ambassador. Body of diplomatic representatives headed by ambassador. See Ambassador.

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

Embezzlement. The fraudulent appropriation of property by one lawfully entrusted with its possession. To "embezzle" means willfully to take, or convert to one's own use, another's money or property, of which the wrongdoer acquired possession lawfully, by reason of some office or employment or position of trust. The elements of "offense" are that there must be relationship such as that of employment or agency between the owner of the money and the defendant, the money alleged to have been embezzled must have come into the possession of defendant by virtue of that relationship and there must be an intentional and fraudulent appropriation or conversion of the money. *State v. Thyfault*, 121 N.J.Super. 487, 297 A.2d 873, 879. The fraudulent conversion of the property of another by one who has lawful possession of the property and whose fraudulent

conversion has been made punishable by statute. For federal crimes involving embezzlement, see 18 U.S.C.A. § 641 et seq. See also Conversion. Compare Theft.

Emblemata triboniani /emblémətə trəbòwniyéynay/. In the Roman law, alterations, modifications, and additions to the writings of the older jurists, selected to make up the body of the Pandects, introduced by Tribonian and his associates who constituted the commission appointed for that purpose, with a view to harmonize contradictions, excise obsolete matter, and make the whole conform to the law as understood in Justinian's time, were called by this name.

Emblements /émbləmənts/. Crops annually produced by labor of tenant. Corn, wheat, rye, potatoes, garden vegetables, and other crops which are produced annually, not spontaneously, but by labor and industry. *Finley v. McClure*, 222 Kan. 637, 567 P.2d 851, 853. The doctrine of emblements denotes the right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his own care and labor. See Fructus industriales.

Emblers de gentz /émblərz də jénts/. L. Fr. A stealing from the people. The phrase occurs in the old English rolls of parliament: "Whereas divers murders, *emblers de gentz*, and robberies are committed," etc.

Embraceor /əmbrésər/. A person guilty of the offense of embracery (q.v.).

Embracery /əmbrésəriy/. The crime of attempting to influence a jury corruptly to one side or the other, by promises, persuasions, entreaties, entertainments, *douceurs*, and the like. The person guilty of it is called an "embraceor." This is both a state and federal (18 U.S.C.A. §§ 1503, 1504) crime, and is commonly included under the offense of "obstructing justice". See Obstructing justice.

Emenda /əméndə/. Amends; something given in reparation for a trespass; or, in old Saxon times, in compensation for an injury or crime.

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

Emendatio /éməndéysh(iy)ow/. In old English law, amendment, or correction. The power of amending and correcting abuses, according to certain rules and measures.

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

Emendatio panis et cerevisiæ /éməndéysh(iy)ow pánəs èt sərəvız(h)iyiy/. In old English law, the power of supervising and correcting the weights and measures of bread and ale (assising bread and beer).

E mera gratia /iy mírə gréysh(iy)ə/. Out of mere grace or favor.

Emerge /əmərz/. To arise; to come to light.

Emergency. A sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingen-

cy or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. **Emergency** is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation. *State v. Perry*, 29 Ohio App.2d 33, 278 N.E.2d 50, 53. *See also* Emergency doctrine; Sudden emergency doctrine.

Emergency Court of Appeals. Court created during World War II to review orders of the Price Control Administrator. It was abolished in 1953. This court was established again in 1970 under Section 211 of the Economic Stabilization Act to handle primarily wage and price control matters.

Emergency doctrine. Under the doctrine variously referred to as the "emergency," "imminent peril," or "sudden peril" doctrine, when one is confronted with a sudden peril requiring instinctive action, he is not, in determining his course of action, held to the exercise of the same degree of care as when he has time for reflection, and in the event that a driver of a motor vehicle suddenly meets with an emergency which naturally would overpower the judgment of a reasonably prudent and careful driver, so that momentarily he is thereby rendered incapable of deliberate and intelligent action, and as a result injures a third person, he is not negligent, provided he has used due care to avoid meeting such an emergency and, after it arises, he exercises such care as a reasonably prudent and capable driver would use under the unusual circumstances. *Sandberg v. Spoelstra*, 46 Wash.2d 776, 285 P.2d 564, 568.

In an emergency situation when medical service is required for an adult who by virtue of his physical condition is incapable of giving consent, or with respect to a child, whose parent or other guardian is absent, and thus incapable of giving consent, the law implies the consent required to administer emergency medical services. This is a good defense to an action of tort for an alleged battery.

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

Emergent year. The epoch or date whence any people begin to compute their time.

Emigrant /éməgrənt/. One who leaves his country for any reason, with intention to not return, with design to reside elsewhere. *Compare* Immigrant.

Emigrant agent. One engaged in the business of hiring laborers for work outside the country or state.

Emigration. The act of removing from one country to another, with intention to not return. It is to be distinguished from "expatriation" which means the abandonment of one's country and renunciation of one's citizen-

ship in it, while emigration denotes merely the removal of person and property to another country. The former is usually the consequence of the latter. Emigration is also sometimes used in reference to the removal from one section to another of the same country. *See also* Deportation; Immigration.

Emigré. Person forced to emigrate for political reasons. *See also* Deportation.

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

Eminent domain /émənənt dəméyn/. The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character. *Housing Authority of Cherokee National of Oklahoma v. Langley*, Okl., 555 P.2d 1025, 1028. Fifth Amendment, U.S. Constitution.

In the United States, the power of eminent domain is founded in both the federal (Fifth Amend.) and state constitutions. The Constitution limits the power to taking for a public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as "condemnation", or, "expropriation".

The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel. Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it.

See also Adequate compensation; Condemnation; Constructive taking; Damages; Expropriation; Fair market value; Just compensation; Larger parcel; Public use; Taking.

Expropriation. The term "expropriation" (used *e.g.* in Louisiana) is practically synonymous with the term "eminent domain". *Tennessee Gas Transmission Co. v. Violet Trapping Co.*, La.App., 200 So.2d 428, 433.

Partial taking. The taking of part of an owner's property under the laws of eminent domain. Compensation must be based on damages or benefits to the remaining property, as well as the part taken. *See* Condemnation.

Emissary /éməsəri/. A person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propa-

gate opinions favorable to his employer. See Ambassador; Diplomatic agent.

Emission. The discharge, ejection or throwing out of; e.g. a pollutant from a factory or any secretion or other matter from the body.

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

To give forth with authority; to give out or discharge; to put into circulation. See Bill (*Bill of credit*).

Emolument /ə'mɒlyʊmənt/. The profit arising from office, employment, or labor; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites. Any perquisite, advantage, profit, or gain arising from the possession of an office. *McLean v. United States*, 226 U.S. 374, 38 S.Ct. 122, 124, 57 L.Ed. 260; *State ex rel. Todd v. Reeves*, 196 Wash. 145, 82 P.2d 173, 175.

Emotion. A strong feeling of hate, love, sorrow and the like arising within a person and not as a result, necessarily, of conscious activity of the mind.

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

Empalement /əmpɛjlmənt/. In ancient law, a mode of inflicting punishment, by thrusting a sharp pole up the fundament.

Empannel. See *Impanel*.

Empar lance. See *Impar lance*.

Emparnours /əmpárnɔrz/. L. Fr. Undertakers of suits.

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

The title "emperor" seems to denote a power and dignity superior to that of a "king." It appears to be the appropriate style of the executive head of a federal government, constructed on the monarchical principle, and comprising in its organization several distinct kingdoms or other quasi sovereign states; as was the case with the German empire from 1871 to 1918. The proper meaning of *emperor* is the chief of a confederation of states of which kings are members. In general, an *emperor* is the holder of a sovereignty extending over conquered or confederated peoples, a *king* is ruler of a single people.

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

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

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

Emphyteuta /əmfətyúwtə/. In the civil law, the person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis*.

Emphyteuticus /əmfətyúwtəkəs/. In the civil law, founded on, growing out of, or having the character of, an *emphyteusis*; held under an *emphyteusis*. 3 Bl. Comm. 232.

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

Empiric /əmpírək/. A practitioner in medicine or surgery, who proceeds on experience only, without science or legal qualification; a quack.

Empirical. That which is based on experience, experiment, or observation.

Emplazamiento /emplàsimyéntow/. In Spanish law, a summons or citation, issued by authority of a judge, requiring the person to whom it is addressed to appear before the tribunal at a designated day and hour.

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

Emploi /òmplwá/. In French law, equitable conversion. When property covered by the *régime dotal* is sold, the proceeds of the sale must be reinvested for the benefit of the wife. It is the duty of the purchaser to see that the price is so reinvested.

Employ. To engage in one's service; to hire; to use as an agent or substitute in transacting business; to commission and intrust with the performance of certain acts or functions or with the management of one's affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and a contract for a compensation. *Tennessee Coal Iron*

& R. Co. v. Muscoda Local No. 123, Ala., 321 U.S. 590, 64 S.Ct. 698, 703, 705, 88 L.Ed. 949. To make use of, to keep at work, to entrust with some duty. *See also* Employment.

Employed. Performing work under an employer-employee relationship. Term signifies both the act of doing a thing and the being under contract or orders to do it. To give employment to; to have employment.

Employee. A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. *Riverbend Country Club v. Patterson, Tex.Civ.App., 399 S.W.2d 382, 383.* One who works for an employer; a person working for salary or wages.

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

"Servant" is synonymous with "employee". *Tennessee Valley Appliances v. Rowden, 24 Tenn.App. 487, 146 S.W.2d 845, 848.* However, "employee" must be distinguished from "independent contractor," "officer," "vice-principal," "agent," etc.

The term is often specially defined by statutes (*e.g.* workers' compensation acts; Fair Labor Standards Act), and whether one is an employee or not within a particular statute will depend upon facts and circumstances.

In corporation law, "employee" includes an officer but not a director. A director may accept duties that make him also an employee. *Rev. Model Bus.Corp. Act, § 1.40.*

For Executive employees, see that title. *See also* Borrowed employee; Fellow servant; Independent contractor; Servant.

Employee pro hac vice. *See* Borrowed employee.

Employee Retirement Income Security Act. *See* E.R.I.S.A.

Employee Stock Ownership Plan (ESOP). A type of qualified profit sharing plan that invests in securities of the employer. Such plans acquire shares of the employer-corporation for the benefit of employees usually through contributions of the employer to the plan. In a noncontributory ESOP, the employer usually contributes its shares to a trust and receives a deduction for the fair market value of such stock. Generally, the employee recognizes no income until the stock is sold after its distribution to him or her upon retirement or other separation from service. Special tax benefits are provided to companies with such benefits. *See also* Profit-sharing plan.

Employer. One who employs the services of others; one for whom employees work and who pays their wages or salaries. The correlative of "employee." *See also* Master. *Compare* Independent contractor.

Employers' liability acts. Statutes (*e.g.*, Federal Employer's Liability Act; Workers' Compensation Acts) defining or limiting the occasions and the extent to which public and private employers shall be liable in damages (compensation) for injuries to their employees occurring in the course of their employment, and particularly abolishing the common-law rule that the employer is not liable if the injury is caused by the fault or negligence of a fellow servant and also the defenses of contributory negligence and assumption of risk. *See also* Federal Employer's Liability Act; Insurance; Workers' Compensation Acts.

Employment. Act of employing or state of being employed; that which engages or occupies; that which consumes time or attention; also an occupation, profession, trade, post or business. *Hinton v. Columbia River Packers' Ass'n, C.C.A.Or., 117 F.2d 310.* Includes the doing of the work and a reasonable margin of time and space required in passing to and from the place where the work is to be done. *California Casualty Indemnity Exchange v. Industrial Accident Commission, 21 Cal.2d 751, 135 P.2d 158, 161.* Activity in which person engages or is employed; normally, on a day-to-day basis. *See also* Casual employment; Course of employment; Seasonal employment.

Discrimination. *See* Discrimination; Disparate treatment.

Employment agency. Business operated by a person, firm or corporation engaged in procuring, for a fee, employment for others and employees for employers. The fee may be paid by either the employer or the employee, depending upon the terms of the agreement. *See also* Finder.

Employment at will. This doctrine provides that, absent express agreement to contrary, either employer or employee may terminate their relationship at any time, for any reason. *Berry v. Doctor's Health Facilities, Tex.App.-Dallas, 715 S.W.2d 60, 61.* Such employment relationship is one which has no specific duration, and such a relationship may be terminated at will by either the employer or the employee, for or without cause. *Criscione v. Sears, Roebuck and Co., 66 Ill.App.3d 664, 23 Ill.Dec. 455, 384 N.E.2d 91, 95.* *See also* Whistle blower acts; Wrongful discharge.

Employment contract. An agreement or contract between employer and employee in which the terms and conditions of one's employment are provided.

Emporium /əmp'ɔːrɪəm/. A place for wholesale trade in commodities carried by sea. The name is sometimes applied to a seaport town, but it properly signifies only a particular place in such a town.

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

Empresarios /əmp'reɪsəri'ɔʊz/. In Mexican law, undertakers or promoters of extensive enterprises, aided by concessions or monopolistic grants from government; particularly, persons receiving extensive land grants in consideration of their bringing emigrants into the coun-

try and settling them on the lands, with a view of increasing the population and developing the resources of the country. *U. S. v. Maxwell Land-Grant Co.*, 121 U.S. 325, 7 S.Ct. 1015, 30 L.Ed. 949.

Empréstido /èmpreystiðow/. In Spanish law, a loan. Something lent to the borrower at his request.

Emptio /ém(p)sh(iy)ow/. In the Roman and civil law, the act of buying; a purchase.

Emptio bonorum /ém(p)sh(iy)ow bənórəm/. A species of forced assignment for the benefit of creditors; being a public sale of an insolvent debtor's estate whereby the purchaser succeeded to all his property, rights, and claims, and became responsible for his debts and liabilities to the extent of a quota fixed before the transfer.

Emptio et venditio /ém(p)sh(iy)ow èt vèndish(iy)ow/. Purchase and sale; sometimes translated "emption and vendition." The name of the contract of sale in the Roman law. Sometimes made a compound word, *emptio-venditio*.

Emptio rei sperata /ém(p)sh(iy)ow riya spérétyi/. A purchase in the hope of an uncertain future profit; the purchase of a thing not yet in existence or not yet in the possession of the seller, as, the cast of a net or a crop to be grown, and the price of which is to depend on the actual gain. On the other hand, if the price is fixed and not subject to fluctuation, but is to be paid whether the gain be greater or less, it is called *emptio spei*.

Emptor /ém(p)tər/. Lat. A buyer or purchaser. Used in the maxim "*caveat emptor*," let the buyer beware; *i.e.*, the buyer of an article must be on his guard and take the risks of his purchase. *See* Caveat emptor.

Emptor emit quam minimo potest, venditor vendit quam maximo potest /ém(p)tər èmèt kwäm mínəmw pówtəst, véndətər véndət kwäm mæksəmw pówtəst/. The buyer purchases for the lowest price he can; the seller sells for the highest price he can.

Empty chair doctrine. Under this doctrine, a trial justice may charge a jury that it may infer from litigant's unexplained failure to produce an available witness who would be expected to give material testimony in litigant's behalf that witness, had he occupied empty chair, would have testified adversely to litigant. *Myles v. Women and Infants Hosp. of Rhode Island, R.I.*, 504 A.2d 452, 454.

Emtio /ém(p)sh(iy)ow/. In the civil law, purchase. This form of the word is used in the Digests and Code. *See* Emptio.

Emtor /ém(p)tər/. In the civil law, a buyer or purchaser; the buyer.

Emtrix /ém(p)trəks/. In the civil law, a female purchaser; the purchaser.

Enable. To give power to do something; to make able. In the case of a person under disability as to dealing with another, "enable" has the primary meaning of removing that disability; not of conferring a compulsory power as against that other.

Enabling Act. *See* Enabling statute.

Enabling clause. That portion of a statute or constitution which gives to governmental officials the power and authority to put it into effect and to enforce such. *See* Enacting clause; Enforcement powers.

Enabling power. When the donor of a power, who is the owner of the estate, confers upon persons not seized of the fee the right of creating interests to take effect out of it, which could not be done by the donee of the power unless by such authority, this is called an "enabling power." *See also* Power of appointment.

Enabling statute. Term applied to any statute enabling persons or corporations, or agencies to do what before they could not. It is applied to statutes which confer new powers. *See also* Enabling clause.

The English Act of 32 Henry VIII, c. 28, by which tenants in tail, husbands seized in right of their wives, and others were empowered to make leases for their lives or for twenty-one years, which they could not do before. 2 Bl.Comm. 319.

Enach. In Saxon law, the satisfaction for a crime; the recompense for a fault.

Enact. To establish by law; to perform or effect; to decree. The common introductory formula in making statutory laws is, "*Be it enacted*." *See* Enacting clause.

Enacting clause. A clause at the beginning of a statute which states the authority by which it is made. That part of a statute which declares its enactment and serves to identify it as an act of legislation proceeding from the proper legislative authority. Various formulas are used for this clause, such as "Be it enacted by the people of the state of Illinois represented in general assembly," "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled," "The general assembly do enact," etc. *See also* Enabling clause; Preamble.

Enactment. The method or process by which a bill in the Legislature becomes a law.

Enajenación /eynəheynasyówn/. In Spanish and Mexican law, alienation; transfer of property. The act by which the property in a thing, by lucrative title, is transferred, as a donation; or by onerous title, as by sale or barter. In a more extended sense, the term comprises also the contracts of emphyteusis, pledge, and mortgage, and even the creation of a servitude upon an estate.

En arere /èn ərir/. L. Fr. In time past.

En autre droit /ən ówtrə dróyt/òn ówtrə dr(w)ó/. In the right of another. *See* Autre droit.

En banc /ən bæŋk/òn bójk/. L. Fr. In the bench. Full bench. Refers to a session where the entire membership of the court will participate in the decision rather than the regular quorum. In other countries, it is common for a court to have more members than are usually necessary to hear an appeal. In the United States, the Circuit Courts of Appeal usually sit in panels of judges but for important cases may expand the bench to a

larger number, when they are said to be sitting *en banc*. See Fed.R.App.P. 35. Similarly, only one of the judges of the U.S. Tax Court will typically hear and decide on a tax controversy. However, when the issues involved are unusually novel or of wide impact, the case will be heard and decided by the full court sitting *en banc*. An appellate court in which all the judges who are necessary for a quorum are sitting as contrasted with a session of such court presided over by a single justice or panel of justices.

En bloc /ɔ̃n blɔ̃k/. As a unit; as a whole.

Enbrever /ɛ̃nbriyvar/. L. Fr. To write down in short; to abbreviate, or, in old language, *imbreviate*; to put into a schedule.

En brevet /ɔ̃n brəvɛy/. In French law, an *acte* is said to be *en brevet* when a copy of it has not been recorded by the notary who drew it.

Enceinte /ɔ̃nsɛ̃nt/. Pregnant. See Pregnancy.

Encheson /ɛ̃nchiʒɔ̃n/. The occasion, cause, or reason for which anything is done.

Enclose. See Inclose.

Enclosure /ɛ̃ŋklɔ̃wzɔ̃r/. See Inclosure.

Encomienda /ɛ̃nkɔ̃mijɛ̃nda/. In Spanish law, a grant from the crown to a private person of a certain portion of territory in the Spanish colonies, together with the concession of a certain number of the native inhabitants, on the feudal principle of commendation. Also a royal grant of privileges to the military orders of Spain.

Encourage. In criminal law, to instigate; to incite to action; to give courage to; to inspire; to embolden; to raise confidence; to make confident; to help; to forward; to advise. See Aid and abet.

Encroach. To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. To gain or intrude unlawfully upon the lands, property, or authority of another.

Encroachment. An illegal intrusion in a highway or navigable river, with or without obstruction. Hartford Elec. Light Co. v. Water Resources Commission, 162 Conn. 89, 291 A.2d 721, 730. An encroachment upon a street or highway is a fixture, such as a wall or fence, which illegally intrudes into or invades the highway or incloses a portion of it, diminishing its width or area, but without closing it to public travel.

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

Encumbrance. Any right to, or interest in, land which may subsist in another to diminution of its value, but consistent with the passing of the fee by conveyance. Knudson v. Weeks, D.C.Okl., 394 F.Supp. 963, 976. A claim, lien, charge, or liability attached to and binding real property; e.g. a mortgage; judgment lien; mechanics' lien; lease; security interest; easement or right of

way; accrued and unpaid taxes. If the liability relates to a particular asset, the asset is encumbered.

While encumbrances usually relate to real property, a purchaser of personal property is provided with a warranty of title against unknown encumbrances. U.C.C. § 2-312.

Encumbrancer. A lien or mortgage holder; one who has a legal claim against an estate.

End. Object; intent; result; goal; termination point. Things are construed according to the end.

Endeavor. To exert physical and intellectual strength toward the attainment of an object. A systematic or continuous effort. Thompson v. Corbin, Tex.Civ.App., 137 S.W.2d 157, 159. As used in statute relating to corruptly endeavoring to influence, obstruct, or impede due administration of justice, describes any effort or assay to accomplish evil purpose the statute was enacted to prevent. U.S. v. Silverman, C.A.Fla., 745 F.2d 1386, 1393.

En déclaration de simulation /ɔ̃n dɛ̃klarasyɔ̃wn də sim(y)ɛ̃lasyɔ̃wn/. A form of action used in Louisiana. Its object is to have a contract declared judicially a simulation and a nullity, to remove a cloud from the title, and to bring back, for any legal purpose, the thing sold to the estate of the true owner.

En demeure /ɔ̃n dəmyɛ̃r/. In default. Used in Louisiana of a debtor who fails to pay on demand according to the terms of his obligation.

Endenzie, or endenizen /ɛ̃ndɛ̃nɛ̃zɛ̃n/. To make free; to enfranchise.

End lines. In mining law, the end lines of a claim, as platted or laid down on the ground, are those which mark its boundaries on the shorter dimension, where it crosses the vein, while the "side lines" are those which mark its longer dimension, where it follows the course of the vein. But with reference to extra-lateral rights, if the claim as a whole crosses the vein, instead of following its course, the end lines will become side lines and vice versa.

Endocarditis /ɛ̃ndɔ̃wkardáytɛ̃s/. An inflammation of the living membrane of the heart.

End of will. Point in will at which dispositive provisions terminate. In re Coyne's Estate, 349 Pa. 331, 37 A.2d 509, 510. Such is normally followed by attestation clauses.

Endorsement. See Indorsement.

Endorsee. See Indorsee.

Endorser. See Indorser.

Endow. To give a dower; to bestow upon; to make pecuniary provision for.

Endowment. Transfer, generally as a gift, of money or property to an institution for a particular purpose such as a gift to a hospital for medical research. The act of establishing a fund, or permanent pecuniary provision, for the maintenance of a public institution, charity,

college, etc. The bestowment of money as a permanent fund, the income of which is to be used in the administration of a proposed work. In re Hendricks' Will, 1 Misc.2d 904, 148 N.Y.S.2d 245, 253.

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

Endowment insurance. See Insurance.

Endowment policy. See Policy of insurance (*Endowment policy*).

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

Enelow-Ettelson Rule. This Rule provides that an order staying federal court proceedings pending the determination of an equitable defense is an injunction appealable under 28 U.S.C.A. § 1292(a)(1) if the proceeding stayed was an action that could have been maintained as an action at law before the merger of law and equity. *Dias v. Bank of Hawaii, C.A.Hawaii, 764 F.2d 1292, 1294.*

Enemy. Adversary; e.g. military adversary.

Enemy alien. An alien residing or traveling in a country which is at war with the country of which he is a national. Enemy aliens may be interned or restricted.

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

Enemy's property. In international law, and particularly in the usage of prize courts, this term designates any property which is engaged or used in illegal intercourse with the public enemy, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences.

Public enemy. A nation at war with the United States; also every citizen or subject of such nation. Term however does not generally include robbers, thieves, private depredators, or riotous mobs. The term has acquired, in the vocabulary of journalism and civic indignation, a more extended meaning, denoting a particularly notorious offender against the criminal laws, especially one who seems more or less immune from successful prosecution, or a social, health or economic condition or problem affecting the public at large, which is difficult to abate or control.

Energy, Department of. The Department of Energy (DOE) provides the framework for a comprehensive and balanced national energy plan through the coordination and administration of the energy functions of the Federal Government. The Department is responsible for the research, development, and demonstration of energy technology; the marketing of Federal power; energy conservation; the nuclear weapons program; regulation of energy production and use; pricing and allocation;

and a central energy data collection and analysis program.

En eschange il covient que les estates soient egales. In an exchange it is desirable that the estates be equal.

En fait /òn féy/. Fr. In fact; in deed; actually.

Enfeoff /ènfíyf/ènféf/. To invest with an estate by feoffment. To make a gift of any corporeal hereditaments to another. See Feoffment.

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

Enforce. To put into execution; to cause to take effect; to make effective; as, to enforce a particular law, a writ, a judgment, or the collection of a debt or fine; to compel obedience to. See e.g. Attachment; Execution; Garnishment.

Enforcement. The act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command. See also Enforcement powers.

Enforcement of Foreign Judgments Act. One of the uniform laws adopted by several states which gives the holder of a foreign judgment essentially the same rights to levy and execution on his judgment as the holder of a domestic judgment. The Act defines a "foreign judgment" as any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the state. See also Full faith and credit clause.

Enforcement powers. The 13th, 14th, 15th, 19th, 23rd, 24th, and 26th Amendments to U.S.Const. each contain clauses granting to Congress the power to enforce by appropriate legislation the provisions of such Amendments.

Enfranchisement. The act of making free (as from slavery); giving a franchise or freedom to; investiture with privileges or capacities of freedom, or municipal or political liberty. Conferring the privilege of voting upon classes of persons who have not previously possessed such. See also Franchise.

Enfranchisement of copyholds. In English law, the conversion of copyhold into freehold tenure, by a conveyance of the fee-simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, etc., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate.

Engage. To employ or involve one's self; to take part in; to embark on.

Engaged in commerce. To be "engaged in commerce" for purposes of Fair Labor Standards Act and Federal Employers' Liability Act, an employee must be actually engaged in the movement of commerce or the services he performs must be so closely related thereto as to be for all practical purposes an essential part thereof, rather than an isolated local activity. *McLeod v. Threlkeld,*

Tex., 319 U.S. 491, 63 S.Ct. 1248, 1251, 1252, 87 L.Ed. 1538; *Boutell v. Walling*, C.C.A.Mich., 148 F.2d 329, 331. See also *Commerce*.

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

Engagement. A contract or agreement characterized by exchange of mutual promises; e.g. engagement to marry.

Engagement to marry. A promise or undertaking by a man to marry a woman, for breach of which, formerly, there was a cause of action in many jurisdictions. These actions today have lost favor and are not available in most states. Such actions were called heart balm suits. See *Heart balm statutes*.

Engender. To cause, to bring about, to excite, to occasion, to call forth.

Engleshire /ɪŋgləʃhɪrɪ/. A law was made by Canute, for the preservation of his Danes, that, when a man was killed, the hundred or town should be liable to be amerced, unless it could be proved that the person killed was an Englishman. This proof was called "Engleshire."

En gros /ɔ̃n ɡrɔ̃w/ɔ̃j/. Fr. In gross; total; by wholesale.

Engrossment. To copy in final draft. Drafting of resolution or bill just prior to final vote upon same in legislature. Buying up or securing enough of a commodity to obtain a monopoly, so as to resell at higher price; i.e. to corner market in such commodity. Preparing deed for execution.

Enhanced. Made greater; e.g. in value or attractiveness. This word, taken in an unqualified sense, is synonymous with "increased," and comprehends any increase of value, however caused or arising.

Enheritance. L. Fr. Inheritance.

Entia pars /ɛnɪʃ(ij)ə pɑːz/. The share of the eldest. A term of the English law descriptive of the lot or share chosen by the eldest of coparceners when they make a voluntary partition. The first choice (*primer election*) belongs to the eldest.

Entia pars semper præferenda est propter privilegium ætatis /ɛnɪʃ(ij)ə pɑːz sɛmpɛr pɹɛfɛrɛndə ɛst pɹɔptɛr pɹɪvɪlɪjɪjəm ɛtɛjtəs/. The part of the elder sister is always to be preferred on account of the privilege of age.

Enjoin. To require; command; positively direct. To require a person, by writ of injunction, to perform, or to abstain or desist from, some act. See *Injunction*; *Restraining order*.

Enjoy. To have, possess, and use with satisfaction; to occupy or have benefit of.

Enjoyment. The exercise of a right; the possession and fruition of a right, privilege or incorporeal hereditament. Comfort, consolation, contentment, ease, happiness, pleasure and satisfaction. Such includes the bene-

ficial use, interest and purpose to which property may be put, and implies right to profits and income therefrom. In *re Lafayette Houses*, City of New York, 220 N.Y.S.2d 109, 112.

Adverse enjoyment. The possession or exercise of an easement under a claim of right against the owner of the land out of which such easement is derived.

Quiet enjoyment. Covenant for. See *Covenant*.

En juicio /ɛn huwijs(i)yow/. Span. Judicially; in a court of law; in a suit at law.

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

Enlargement of time. Extension of time allowed for performing an act that is otherwise to be done within time specified by court rule or order. See, e.g., *Fed.R. Civil P. 6(b)*.

Enlarger l'estate /ɛnlɑːr jɛr lɛstɛjt/. A species of release which inures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee.

Enlarging. Extending, expanding, or making more comprehensive.

Enlistment. Voluntary entry into one of the armed services other than as a commissioned officer. "Enlistee" voluntarily submits himself to military authority by virtue of his enlistment while "inductee" does not. *Even v. Clifford*, D.C.Cal., 287 F.Supp. 334, 338.

En masse /ɔ̃n mɑːs/ˈmɑːs/. Fr. In a mass; in a lump; in bulk; at wholesale.

En mort mayne /ɛn mɔːt mɛjn/. L. Fr. In a dead hand; in mortmain.

Enoc Arden doctrine. The legal principles involved when a person leaves his spouse under such circumstances and for such a period of time as to make the other spouse believe that he is dead with the result that the remaining spouse marries another only to discover later the return of her first husband. Generally, in most states, it is safer for the remaining spouse to secure a divorce before marrying again.

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

Enormous. Aggravated; excessively large. Written "enormious," in some of the old books. *Enormious* is where a thing is made without a rule or against law.

En owel main /ɛn ɔːwəl mɛjn/. L. Fr. In equal hand. The word "owel" occurs also in the phrase "owelty of partition."

Enpleet /ɛnpliɛt/. Ancient for implead.

Enquête, or **enquest** /ɔ̃ŋkét/əŋkwést/. In canon law, an examination of witnesses, taken down in writing, by or before an authorized judge, for the purpose of gathering testimony to be used on a trial.

En recouvrement /ɔ̃n reykwvvrəmón/. Fr. In French law, an expression employed to denote that an indorsement made in favor of a person does not transfer to him the property in the bill of exchange, but merely constitutes an authority to such person to recover the amount of the bill.

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

Enroll. To register; to record; to enter on the rolls of a court; to transcribe.

Enrolled. Registered; recorded. Generally speaking, terms "registered" and "enrolled" are used to distinguish certificates granted to two classes of vessels; registry is for purpose of declaring nationality of vessel engaged in foreign trade, and enrollment evidences national character of a vessel engaged in coasting trade or home traffic. *R. C. Craig Ltd. v. Ships of the Sea Inc.*, D.C.Ga., 401 F.Supp. 1051, 1056.

Enrolled bill. The final copy of a bill or joint resolution which has passed both houses of a legislature and is ready for signature. In legislative practice, a bill which has been duly introduced, finally passed by both houses, signed by the proper officers of each, approved by the governor (or President) and filed by the secretary of state.

Enrolled bill rule. Under "enrolled bill rule" it is conclusively presumed that statute, as authenticated and deposited in Secretary of State's office, is precisely same as enacted by Legislature and courts will not go behind enrolled bill. *Nueces County v. King*, Tex.Civ. App., 350 S.W.2d 385, 387. Under this rule, once an election which is had on question of adoption of statute is sanctioned by law and is held, it is then too late to question the steps or legal procedure by which the measure got on the ballot.

Enrollment. Act of recording, enrolling, or registering.

Enrollment of vessels. The recording and certification of vessels employed in coastwise or inland navigation; as distinguished from the "registration" of vessels employed in foreign commerce.

En route /ɔ̃n rúwt/. Fr. On the way; in the course of a voyage or journey; in course of transportation.

Enschedule /ənskéjəl/. To insert in a list, account, or writing.

Enseal /ənsíyl/. To seal. *Ensealing* is still used as a formal word in conveyancing.

Enserver /ənsərvər/. L. Fr. To make subject to a service or servitude.

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

Ensue /əns(y)úw/. To follow after; to follow in order or train of events.

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

Entail, *n.* A fee abridged or limited to the issue, or certain classes of issue, instead of descending to all the heirs.

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

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

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

Entailed money. Money directed to be invested in realty to be entailed.

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

Entencion /ənténshən/. In old English law, the plaintiff's count or declaration.

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

Enter. To form a constituent part; to become a part or partaker; to impenetrate; share or mix with, as, tin "enters" into the composition of pewter. *Bedford v. Colorado Fuel & Iron Corporation*, 102 Colo. 538, 81 P.2d 752, 755. To go or come into a place or condition; to make or effect an entrance; to cause to go into or be received into. *Hancock v. State*, Tex.Cr.App., 363 S.W.2d 273, 275.

In the law of real property, to go upon land for the purpose of taking possession of it. In strict usage, the

entering is preliminary to the taking possession but in common parlance the entry is now merged in the taking possession. *See* Entry.

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

Enterceur /ɛntərsyú(wə)r/. L. Fr. A party challenging (claiming) goods; he who has placed them in the hands of a third person.

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

Entering judgments. The formal entry of the judgment on the rolls or records (*e.g.* civil docket) of the court, which is necessary before bringing an appeal or an action on the judgment. The entering of judgment is a ministerial act performed by the clerk of court by means of which permanent evidence of judicial act in rendering judgment is made a record of the court. *Knox v. Long*, 152 Tex. 291, 257 S.W.2d 289, 291. Under some statutes or court rules, the entering consists merely in the filing of a judgment with the clerk, while under others the entry of a judgment consists in the recording of it in the judgment book or civil docket. Fed.R.Civil P. 55, 58, 79.

The "entry" of a judgment consists in recording of it in the judgment book, and there can be no record of a judgment until so entered. *Wilson v. Los Angeles County Emp. Ass'n*, 127 Cal.App.2d 285, 273 P.2d 824, 828.

Entry of judgment differs from rendition of judgment. "Rendition" of a judgment is the judicial act of the court in pronouncing the sentence of the law upon the facts in controversy. The "entry" is a ministerial act, which consists in entering upon the record a statement of the final conclusion reached by the court in the matter, thus furnishing external and incontestable evidence of the sentence given, and designed to stand as a perpetual memorial of its action.

Enterprise. A business venture or undertaking. *William Buchanan Foundation v. Shepperd*, Tex.Civ.App., 283 S.W.2d 325, 333.

As used in the anti-racketeering statute (RICO), it includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. 18 U.S.C.A. § 1961(4). Additionally, it must be an ongoing organization, and an entity separate from the pattern of activity in which it engages. *Town of Kearny v. Hudson Meadows Urban Renewal Corp.*, D.C.N.J., 648 F.Supp. 1412, 1416. *See also* RICO laws.

To find an "enterprise" under the Fair Labor Standards Act, there must be related activities, unified operation or common control, and common business purpose. *Brennan v. Arnheim & Neely, Inc.*, U.S.Pa., 410 U.S.

512, 93 S.Ct. 1138, 1142, 35 L.Ed.2d 463. *See* 29 U.S.C.A. § 203(r).

See also Common enterprise; Joint enterprise.

Enterprise liability. In position of liability upon each member in industry who manufactures or produces product which causes injury or harm to a consumer and apportions liability of each member of industry by reference to that member's share of market for product. *Liability-Namn v. Charles E. Frosst & Co. Inc.*, 178 N.J.Super. 19, 427 A.2d 1121, 1129. Such theory (also known as "industry wide liability), shifts responsibility to industry for causing injury, because of concert of action by manufacturers through their trade association or their collective action, where specific injury-causing product cannot be identified. *Mulcahy v. Eli Lilly & Co.*, Iowa, 386 N.W.2d 67, 72. A defendant may exculpate itself by proving it did not manufacture the particular product at issue. *Shackil v. Lederle Laboratories*, App.Div., 219 N.J.Super. 601, 530 A.2d 1287, 1299.

Term also refers to criminal liability imposed on a corporation, partnership, unincorporated association, or other artificial "person." *See e.g.*, Model Penal Code § 2.07.

Entertainment expenses. Such expenses are deductible only if they are directly related or associated with business. Various restrictions and documentation requirements have been imposed by the Internal Revenue Code and Regulations upon the deductibility of entertainment expenses to prevent abuses.

Entice. To wrongfully solicit, persuade, procure, allure, attract, draw by blandishment, coax or seduce. To lure, induce, tempt, incite, or persuade a person to do a thing. *Berger v. Levy*, 5 Cal.App.2d 544, 43 P.2d 610, 611. Enticement of a child is inviting, persuading or attempting to persuade a child to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the person of said child.

Entire. Whole; without division, separation, or diminution; unmingled; complete in all its parts; not participated in by others.

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

Entire balance of my estate. The residue.

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

Entire contract. *See* Contract.

Entire controversy doctrine. Doctrine requires that a party who has elected to hold back from first proceeding a related component of the controversy among the parties be barred from thereafter raising it in a subsequent proceeding. *Wm. Blanchard Co. v. Beach Concrete Co., Inc.*, 150 N.J.Super. 277, 375 A.2d 675, 683. Under this

doctrine, "entire controversy," rather than its constituent causes of action, is the unit of litigation and joinder of all such causes of action, is compulsory under penalty of forfeiture. *Malaker Corporation Stockholders Protective Committee v. First Jersey Nat. Bank*, 163 N.J.Super. 463, 395 A.2d 222, 238.

Entire day. This phrase signifies an undivided day, not parts of two days. An entire day must have a legal, fixed, precise time to begin, and a fixed, precise time to end. A day, in contemplation of law, comprises all the twenty-four hours, beginning and ending at twelve o'clock at night; *e.g.*, in a statute requiring the closing of all liquor establishments during "the entire day of any election," etc., this phrase means the natural day of twenty-four hours, commencing and terminating at midnight. *See also* Day.

Entire interest. The whole interest or right, without diminution. *See* Fee simple.

Entire loss of sight. In respect of one eye, or both, means substantial blindness, not necessarily absolute. *See* Blindness.

Entirely without understanding. Inability to comprehend nature and effect of transaction involved, not necessarily absolute imbecility, idiocy or mental incapacity.

Entire output contract. Promise to deliver one's entire output (*i.e.* production) to the other. If no other detriment can be located, it will be found in the promisor's having surrendered his privilege of selling elsewhere. Such agreements are governed by U.C.C. § 2-306.

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

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

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

Entire use, benefit, etc. These words in the *habendum* of a trust-deed for the benefit of a married woman are equivalent to the words "sole use," or "sole and separate use," and consequently her husband takes nothing under such deed.

Entitle. In its usual sense, to entitle is to give a right or legal title to. *Schmidt v. Gibbons*, 101 Ariz. 222, 418 P.2d 378, 380. To qualify for; to furnish with proper grounds for seeking or claiming. In ecclesiastical law, to entitle is to give a title or ordination as a minister.

Entitlement. Right to benefits, income or property which may not be abridged without due process.

Entity. A real being; existence. An organization or being that possesses separate existence for tax purposes. Examples would be corporations, partnerships, estates and trusts. The accounting entity for which accounting statements are prepared may not be the same as the entity defined by law.

"Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government. Rev. Model Bus.Corp. Act, § 1.40.

An existence apart, such as a corporation in relation to its stockholders.

Entity includes person, estate, trust, governmental unit. Bankruptcy Code, § 101.

See also Legal entity.

Entrance. Door, opening or passage for entering.

Entrap. To catch, to entrap, to ensnare; hence, to catch by artifice. To involve in difficulties or distresses; to catch or involve in contradictions.

Entrapment. The act of officers or agents of the government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him. According to the generally accepted view, a law enforcement official, or an undercover agent acting in cooperation with such an official, perpetrates an entrapment when, for the purpose of obtaining evidence of a crime, he originates the idea of the crime and then induces another person to engage in conduct constituting such a crime when the other person is not otherwise disposed to do so. *Sorrells v. U. S.*, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413; *Sherman v. U. S.*, 356 U.S. 369, 78 S.Ct. 819, 2 L.Ed.2d 848.

A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either: (a) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or (b) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it. Model Penal Code, § 2.13.

See also Predisposition.

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

Entreat. L. Fr. An intruder or interloper.

Entrega /entréyga/. Span. Delivery.

Entrepôt /òntəpów/òntəpów/. A warehouse or magazine for the deposit of goods. In France, a building or

place where goods from abroad may be deposited, and from whence they may be withdrawn for exportation to another country, without paying a duty.

Entrepreneur /'ɒntɹəprənər/'n(y)u(wə)r/. One who, on his own, initiates and assumes the financial risks of a new enterprise and who undertakes its management.

Entrust. To give over to another something after a relation of confidence has been established. To deliver to another something in trust or to commit something to another with a certain confidence regarding his care, use or disposal of it. *Humphries v. Going*, D.C.N.C., 59 F.R.D. 583, 587.

Entrusting. The transfer of possession of goods to a merchant who deals in goods of that type and who may in turn transfer such goods and all rights therein to a purchaser in the ordinary course of business. U.C.C. § 2-403(2)(3).

Entry. The act of making or entering a record; a setting down in writing of particulars; or that which is entered; an item. Generally synonymous with "recording." In *re Labb*, D.C.N.Y., 42 F.Supp. 542, 544. *See also* Enroll.

Enter, in practice, means to place anything before court, or upon or among records, and is nearly equivalent to setting down formally in writing, either in full or abridged form but it may be used as meaning simply to file or duly deposit. *Neiman v. City of Chicago*, 37 Ill.App.2d 309, 185 N.E.2d 358, 365. *See also* Docket.

Passage leading into a house or other building or to a room; a vestibule.

The act of a merchant, trader, or other businessman in recording in his account-books the facts and circumstances of a sale, loan, or other transaction. The books in which such memoranda are first (or originally) inscribed are called "books of original entry," and are *prima facie* evidence for certain purposes.

In copyright law, depositing with the register of copyrights the printed title of a book, pamphlet, etc., for the purpose of securing copyright on the same. Copyright Act, § 408 (17 U.S.C.A.).

In immigration law, any coming of an alien into the U.S., from a foreign part or place or from an outlying possession, whether voluntary or otherwise. 8 U.S.C.A. § 1101.

In criminal law, entry is the unlawful making one's way into a dwelling or other house, for the purpose of committing a crime therein. In cases of burglary, the least entry with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offense. *See also* Breaking.

In customs law, the entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon.

See also False entry; Forcible entry; Illegal entry; Journal entry.

Entry of judgment. *See* Entering judgments.

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

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

Right of entry. *See* Right of entry.

Entry ad communem legem /'ɛntri əd kəmyúwnəm líyǰəm/. Entry at common law. The name of a writ of entry which lay for a reversioner after the alienation and death of the particular tenant for life, against him who was in possession of the land.

Entry ad terminum qui præterit /'ɛntri əd tɹmənəm kwàý prətéhriyət/. The writ of entry *ad terminum qui præterit* lies where a man leases land to another for a term of years, and the tenant holds over his term. And if lands be leased to a man for the term of another's life, and he for whose life the lands are leased dies, and the lessee holds over, then the lessor shall have this writ.

Entry for marriage in speech. A writ of entry *causa matrimonii præloquuti* existed in old English law where lands or tenements were given to a man upon condition that he would take the donor to be his wife within a certain time, and he did not espouse her within the said term, or espoused another woman, or made himself priest.

Entry in casu consimili /'ɛntri in kéyz(y)uw kənsíməlay/. In old English law, a writ of entry *in casu consimili* existed where a tenant for life or by the curtesy alienated in fee.

Entry in regular course of business. A record setting forth a fact or transaction made by one in the ordinary and usual course of one's business, employment, office or profession, which it was the duty of the enterer in such manner to make, or which was commonly and regularly made, or which it was convenient to make, in the conduct of the business to which such entry pertains.

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

Entry of judgment. *See* Entering judgments.

Entry on the roll. In old English practice, the parties to an action, personally or by their counsel, used to appear in open court and make their mutual statements *vivâ voce*, instead of as at the present day delivering their mutual pleadings, until they arrived at the issue or precise point in dispute between them. During the progress of this oral statement, a minute of the various proceedings was made on parchment by an officer of the court appointed for that purpose. The parchment then

became the record; in other words, the official history of the suit. Long after the practice of oral pleading had fallen into disuse, it continued necessary to enter the proceedings in like manner upon the parchment roll, and this was called "entry on the roll," or making up the "issue roll." But by a rule of H.T. 4 Wm. IV, the practice of making up the issue roll was abolished; and it was only necessary to make up the issue in the form prescribed for the purpose by a rule of H.T. 1853, and to deliver the same to the court and to the opposite party. The issue which was delivered to the court was called the "*nisi prius record*;" and that was regarded as the official history of the suit, in like manner as the issue roll formerly was. Under later practice, the issue roll or *nisi prius record* consisted of the papers delivered to the court, to facilitate the trial of the action, these papers consisting of the pleadings simply, with the notice of trial.

A future interest created in a transferor who conveys an estate on condition subsequent.

Entry, right of. See Right of entry.

Entry, writ of. In old English practice, this was a writ made use of in a form of real action brought to recover the possession of lands from one who wrongfully withheld the same from the demandant. Its object was to regain the *possession* of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged to the *possessory* division of real actions. It decided nothing with respect to the *right of property*, but only restored the demandant to that situation in which he was (or by law ought to have been) before the dispossession committed. 3 Bl.Comm. 180. It was usual to specify in such writs the degree or degrees within which the writ was brought, and it was said to be "in the *per*" or "in the *per and cui*," according as there had been one or two descents or alienations from the original wrongdoer. If more than two such transfers had intervened, the writ was said to be "in the *post*." 3 Bl.Comm. 181. See Writ of entry.

Enumerated. This term is often used in law as equivalent to "mentioned specifically," "designated," or "expressly named or granted"; as in speaking of "enumerated" governmental powers, items of property, or articles in a tariff schedule.

Enumerated powers. The powers specifically delegated by the Constitution to some branch or authority of the national government, and which are not denied to that government or reserved to the States or to the people. The powers specifically given to Congress are enumerated in Article I of U.S. Constitution. See also Power (*Constitutional powers*).

Enumeratio infirmat regulam in casibus non enumeratis /ən(y)üwmäréysh(iy)ow ənfərmət régyæləm ən kéyzəbəs nòn ən(y)üwmäréytəs/. Enumeration disaffirms the rule in cases not enumerated.

Enumeratio unius est exclusio alterius /ən(y)üwmäréysh(iy)ow yanáyəs èst əksklúwzh(iy)ow ðltaríyəs/. The specification of one thing is the exclusion of a different

thing. A maxim more generally expressed in the form "*expressio unius est exclusio alterius*" (*q.v.*).

Enumerators /ən(y)ümərəýtərz/. Persons appointed to collect census papers or schedules.

Enure. To operate or take effect. To serve to the use, benefit, or advantage of a person. A release to the tenant for life *enures* to him in reversion; that is, it has the same effect for him as for the tenant for life. Often written "inure."

En ventre sa mere /òn vóntrə sà mér/. L. Fr. In its mother's womb. A term descriptive of an unborn child. For some purposes the law regards an infant *en ventre* as in being. It may take a legacy; have a guardian; an estate may be limited to its use, etc. 1 Bl.Comm. 130. LaBlue v. Specker, 358 Mich. 558, 100 N.W.2d 445, 447.

En vie /òn víy/. L. Fr. In life; alive.

Environment. The totality of physical, economic, cultural, aesthetic, and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples' lives. The surrounding conditions, influences or forces which influence or modify. U. S. v. Amadio, C.A.Ind., 215 F.2d 605, 611.

Environmental impact statements. Documents which are required by federal and state laws to accompany proposals for major projects and programs that will likely have an impact on the surrounding environment. See 42 U.S.C.A. § 4332. Statement required by the National Environmental Policy Act to be developed by federal agencies for every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.

Environmental Protection Agency. The federal Environmental Protection Agency was created in 1970 to permit coordinated and effective governmental action on behalf of the environment. EPA endeavors to abate and control pollution systematically, by proper integration of a variety of research, monitoring, standard setting, and enforcement activities. As a complement to its other activities, EPA coordinates and supports research and antipollution activities by State and local governments, private and public groups, individuals, and educational institutions. EPA also reinforces efforts among other Federal agencies with respect to the impact of their operations on the environment, and it is specifically charged with making public its written comments on environmental impact statements and with publishing its determinations when those hold that a proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality. See also National Environmental Policy Act.

Envoy. A diplomat of the rank of minister or ambassador sent by a country to the government of a foreign country to execute a special mission or to serve as a permanent diplomatic representative.

Eodem ligamine quo ligatum est dissolvitur /iyówdəm ləgéyməniy kwòw ləgéytəm èst dəzòlvətər/. A bond is

released by the same formalities with which it is contracted.

Eodem modo quo quid constituitur, dissolvitur /iýówdám mówdow kwów kwid kónstátýúwətər, dázólvətər/. In the manner in which [by the same means by which] a thing is constituted, is it dissolved.

Eo die /iýow dáy(iy)/. Lat. On that day; on the same day.

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

Eo instanti /iýow ənstántay/. Lat. At that instant; at the very or same instant; immediately. 1 Bl.Comm. 196, 249; 2 Bl.Comm. 168. Also written *eo instante*.

Eo intuitu /iýow ənt(y)úwətuw/. Lat. With or in that view; with that intent or object.

Eo loci /iýow lówsay/. Lat. In the civil law, in that state or condition; in that place (*eo loco*).

E.O.M. End of month. Payment terms in sale contract.

Eo nomine /iýow nómnəniy/. Lat. Under or by that name; by that appellation. *Perinde ac si eo nomine tibi tradita fuisset*, just as if it had been delivered to you by that name.

An "eo nomine" designation is one which describes commodity by a specific name, usually one well known to commerce. Ordinarily, use is not a criteria in determining whether merchandise is embraced within eo nomine provision, but use may be considered in determining identity of eo nomine designation. J.E. Mamiye & Sons, Inc., v. U.S., Cust.Ct., 509 F.Supp. 1268, 1274.

Eoth. In Saxon law, an oath.

EPA. Environmental Protection Agency.

Epidemic. This term, in its ordinary and popular meaning, applies to any disease which is widely spread or generally prevailing at a given place and time. *Bethlehem Steel Co. v. Industrial Accident Commission*, 21 Cal.2d 742, 135 P.2d 153, 157.

Epilepsy /əpələpsiy/. Epilepsy, a disruption of the normal rhythm of the brain, is an occasional, periodic, excessive and disorderly discharge of nerve cells in the brain. The discharge is chemical-electrical in nature. While the discharge itself is hidden, it manifests itself in various forms of visible activity, called seizures. The type of seizures will vary according to the location of the discharge in the brain, and the spread of the charge from cell to cell. In many cases, seizures are so mild (a brief twitch, a momentary attention loss) that they are not recognized. Even when they are, they have a minimal effect. A major convulsion which the public tends immediately to associate with epilepsy is only one of a number of seizure types.

E pili ana /éy piyli ána/. Hawaiian. Adjoining.

Epimēnia /əpəmiyniyə/. Expenses or gifts.

Epiphany /əpifəniy/. A Christian festival, otherwise called the "Manifestation of Christ to the Gentiles,"

observed on the 6th of January, in honor of the appearance of the star to the three *magi*, or wise men, who came to adore the Messiah, and bring him presents. It is commonly called "Twelfth Day."

Epiphyseal separation /əpəfəsiəl səpəréyshən/. Not a bone fracture in true sense, but a separation of the fibers and cartilaginous tissues which attach the epiphysis to the femur.

Epiphyseitis /əpəfiziáyəts/. Inflammation of an epiphysis—a process of bone attached for a time to another bone by cartilage.

Epiphysis /əpifəsəs/. Part or process of a bone which ossifies separately and subsequently becomes ankylosed (to grow together into one) into the main part of the bone.

Epiqueya /əpiykéya/. In Spanish law, a term synonymous with "equity" in one of its senses, and defined as "the benignant and prudent interpretation of the law according to the circumstances of the time, place, and person."

Episcopacy /əpiskəpəsiy/. The office of overlooking or overseeing; the office of a bishop, who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops.

Episcopalia /əpiskəpéyl(i)yə/. In ecclesiastical law, synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, formerly collected by the rural deans.

Episcopalian /əpiskəpéyliən/. Of or pertaining to episcopacy, or to the Episcopal Church.

Episcopate /əpiskəpət/. A bishopric. The dignity or office of a bishop.

Episcoporum eccidicus /əpiskəpórəm ékdəkəs/. Bishop's proctors; church lawyers.

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

Episcopus alterius mandato quam regis non tenetur obtemperare /əpiskəpəs oltəráiyəs mändéytow kwəm riyəs nòn təniytər obtəmpərəriy/. A bishop needs not obey any mandate save the king's.

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

Episcopus teneat placitum, in curia christianitatis, de iis quæ mere sunt spiritualia /əpiskəpəs təniyət plásətam in kyúriyəs kristiyənətéytəs, diy iyəs kwiy míriy sənt spirətyuwéyl(i)yə/. A bishop may hold plea in a Court Christian of things merely spiritual.

Epistola /əpístələ/. A letter; a charter; an instrument in writing for conveyance of lands or assurance of contracts.

Epistolæ /əpístəli/. In the civil law, rescripts; opinions given by the emperors in cases submitted to them for decision. Answers of the emperors to petitions. The answers of counsellors (*juris-consulti*), as Ulpian and others, to questions of law proposed to them, were also called "*epistolæ*."

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

E pluribus unum /iy pl(y)úrəbəs yúwnəm/. One out of many. The motto of the United States of America.

Epoch /épək/íypòk/. The time at which a new computation is begun; the time whence dates are numbered.

E.P.S. Earnings per share.

Equal. Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights. Word "equal" as used in law implies not identity but duality and the use of one thing as the measure of another. *Poindexter v. Willis*, 23 Ohio Misc. 199, 256 N.E.2d 254, 260.

Equal access rule. This doctrine, whereby finding contraband on premises occupied by defendant is not sufficient to support a conviction if persons other than defendant had an equal opportunity to commit the crime, requires evidence which affirmatively shows that persons other than defendant had equal access to the premises and mere speculative evidence that others, by trespassing, might have come onto the premises is not sufficient to preclude conviction. *Heaton v. State*, 139 Ga.App. 83, 227 S.E.2d 854, 856.

Equal Access to Justice Act. This 1980 Act entitles certain prevailing parties to recover attorney and expert witness fees, and other expenses, in actions involving the United States, unless the Government action was substantially justified. 5 U.S.C.A. § 504; 28 U.S.C.A. § 2412. *See also* American rule; Prevailing party; Substantially justified.

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

Equal Credit Opportunity Act. Federal Act prohibiting a creditor from discriminating against any applicant on the basis of race, color, religion, national origin, age, sex or marital status with respect to any aspect of a credit transaction. 15 U.S.C.A. § 1691 et seq.

Equal degree. Persons are said to be related to a decedent "in equal degree" when they are all removed by an equal number of steps or degrees from the common ancestor.

Equal Employment Opportunity Commission. The Equal Employment Opportunity Commission (EEOC) was created by Title VII of the Civil Rights Act of 1964 (78 Stat. 241; 42 U.S.C.A. § 2000a), and became operational July 2, 1965. The purposes of the Commission are to end discrimination based on race, color, religion, age, sex, or national origin in hiring, promotion, firing, wages, testing, training, apprenticeship, and all other conditions of employment; and to promote voluntary action programs by employers, unions, and community organizations to put equal employment opportunity into actual operation.

Equal footing doctrine. This doctrine provides that, like the original states which retained title to the beds of their navigable waters, all new states are entitled to the beds of navigable waters within their boundaries; however, the doctrine is not without exception. *State of Utah By and Through Div. of State Land v. U.S.*, D.Utah, 624 F.Supp. 622, 627.

Equality. The condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties. "Equality" guaranteed under equal protection clause is equality under the same conditions and among persons similarly situated; classifications must not be arbitrary and must be based upon some difference in classes having substantial relation to legitimate objects to be accomplished. *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 390 P.2d 225, 227. *See* Equal protection clause; Equal protection of the law.

Equalization. The act or process of making equal or bringing about conformity to a common standard. The process of equalizing assessments or taxes, as performed by "boards of equalization" in various states, consists in comparing the assessments made by the local officers of the various counties or other taxing districts within the jurisdiction of the board and reducing them to a common and uniform basis, increasing or diminishing by such percentage as may be necessary, so as to bring about, within the entire territory affected, a uniform and equal ratio between the assessed value and the actual cash value of property. The term is also applied to a similar process of leveling or adjusting the assessments of individual taxpayers, so that the property of one shall not be assessed at a higher (or lower) percentage of its market value than the property of another. The process of determining that property of a certain nature is generally placed on the assessment rolls at a certain percentage of its true and full value. *Yellowstone Pipe Line Co. v. State Bd. of Equalization*, 138 Mont. 603, 358 P.2d 55, 60. *See also* Equal protection of the law.

Equalization board. Local governmental agency whose function is to supervise the equalization of taxes as among various properties and as among various districts to bring about an equitable distribution of tax burdens.

Equalization of taxes. *See* Equalization.

Equalize. To make equal, to cause to correspond, or be like in amount or degree, as compared with something.

De Mille v. Los Angeles County, 25 Cal.App. 506, 77 P.2d 905, 906.

Equally divided. Provision in will that property shall be "equally divided," or divided "share and share alike" means that the property shall be divided per capita and not per stirpes. However, these phrases may be so modified by other parts of the will as to require distribution per stirpes.

Equal Pay Act. Federal law which mandates same pay for all persons who do same work without regard to sex, age, etc. For work to be "equal" within meaning of Act, it is not necessary that jobs be identical but only that they be substantially equal. *Usery v. Richman*, C.A. N.D., 558 F.2d 1318, 1320. 29 U.S.C.A. § 206.

Equal protection clause. That provision in 14th Amendment to U.S. Constitution which prohibits a State from denying to any person within its jurisdiction the equal protection of the laws. This clause requires that persons under like circumstances be given equal protection in the enjoyment of personal rights and the prevention and redress of wrongs. In re Adoption of Richardson, 251 C.A.2d 222, 59 Cal.Rptr. 323, 334. See also Equal protection of the law.

Equal protection of the law. The constitutional guarantee of "equal protection of the laws" means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness. *People v. Jacobs*, 27 Cal.App.3d 246, 103 Cal.Rptr. 536, 543; 14th Amend., U.S. Const. Doctrine simply means that similarly situated persons must receive similar treatment under the law. *Dorsey v. Solomon*, D.C.Md., 435 F.Supp. 725, 733.

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

"Equal protection," with respect to classification for taxation purposes, does not require identity of treatment, but only (1) that classification rests on real and not feigned differences, (2) that the distinction have some relevance to purpose for which classification is made, and (3) that the different treatments be not so disparate, relative to difference in classification, as to be wholly arbitrary. *Walters v. City of St. Louis*, Mo., 347 U.S. 231, 74 S.Ct. 505, 509, 98 L.Ed. 660.

Equal Rights Amendment. Proposed amendment to U.S. Constitution which provided that: "Equality of

rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Such amendment failed to receive ratification by the required number of states.

Equal Time Act. This Act requires that if licensee of broadcasting facility permits a legally qualified candidate for public office to use facility for broadcasting, he shall afford equal opportunities to all other such candidates for that office. 47 U.S.C.A. § 315.

Eques /iykwiyz/. Lat. In Roman and old English law, a knight.

Equilocus /èkwəlówkəs/. An equal.

Equinoxes /iykwə̀nòksəz/ékw'/. The two periods of the year (vernal equinox about March 21st, and autumnal equinox about September 22d) when the time from the rising of the sun to its setting is equal to the time from its setting to its rising.

Equip. To furnish for service or against a need or exigency; to fit out; to supply with whatever is necessary to efficient action in any way. Synonymous with furnish.

Equipment. Furnishings, or outfit for the required purposes. Whatever is needed in equipping; the articles comprised in an outfit; equipment. *Farm & Home Saving & Loan Ass'n of Missouri v. Empire Furniture Co.*, Tex.Civ.App., 87 S.W.2d 1111, 1112.

Under U.C.C., goods include "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods. U.C.C. § 9-109(2).

Equipment trust. Financing device commonly used by railroads by which equipment is purchased from the manufacturer by a trustee who provides a substantial portion of the purchase price, the railroad providing the balance. The trustee then leases the equipment to the railroad which pays a rental fee consisting of interest, amortization for serial retirement and trustee's fee.

Equipment trust certificate. A type of security, generally issued by a railroad, to pay for new equipment. Title to the equipment, such as a locomotive, is held by a trustee until the notes are paid off. An equipment trust certificate is usually secured by a first claim on the equipment.

Equitable. Just; conformable to the principles of justice and right. Existing in equity; available or sustainable by action in equity, or upon the rules and principles of equity. See Equitable action.

As to *equitable* Assets; Construction; Conversion; Easement; Ejectment; Estate; Fraud; Garnishment; Levy; Mortgage; Title, and Waste, see those titles.

Equitable abstention doctrine. A court may refrain from exercising jurisdiction which it possesses in the interest of comity between courts and between states as in the case of actions involving the affairs of a foreign

corporation or foreign land. Doctrine also applies to case of Federal court's refraining from interfering with decision of state administrative agency's decision on a local matter. *Allegheny Airlines, Inc. v. Penn. Public Utility Comm.*, D.C.Pa., 319 F.Supp. 407.

Equitable action. One seeking an equitable remedy or relief; though in the federal and most state courts, with the procedural merger of law and equity, there is now *procedurally* only one type of action—a "civil action." Fed.R. Civil P. 2.

Equitable adjustment theory. In settlement of federal contract disputes, contracting officer should make fair adjustment within a reasonable time before contractor is required to settle with his subcontractors, suppliers and other creditors. *Roberts v. U. S.*, 174 Ct.Cl. 940, 357 F.2d 938.

Equitable adoption. Refers to situation involving oral contract to adopt child, fully performed except that there was no statutory adoption, and in which rule is applied for benefit of child in determination of heirship upon death of person contracting to adopt. *Barlow v. Barlow*, 170 Colo. 465, 463 P.2d 305, 308. In certain jurisdictions, a child has rights of inheritance from person who has contracted to adopt him but has not done so. *Dunn v. Richardson*, D.C.Ark., 336 F.Supp. 649, 654.

Equitable assignment. An assignment which, though invalid at law, will be recognized and enforced in equity; e.g., an assignment of a chose in action, or of future acquisitions of the assignor. *Stewart v. Kane*, Mo.App., 111 S.W.2d 971, 974. In order to work an "equitable assignment", there must be an absolute appropriation by the assignor of the debt or fund sought to be assigned. *Sneesby v. Livingston*, 182 Wash. 229, 46 P.2d 733, 735.

Equitable benefit doctrine. This doctrine allows bankruptcy court to grant preferred status to claims for service rendered by persons other than bankruptcy officers, to extent that services benefited estate, where person is acting primarily for benefit of estate as a whole. *Matter of Supreme Plastics, Inc.*, D.C.Ill., 8 B.R. 730, 736.

Equitable conversion. The doctrine that, since equity regards as done what out to be done, once parties have executed a binding contract for the sale of land, equitable title vests in the purchaser and the vendor holds legal title only as security for payment of the balance of the purchase price. A doctrine commonly applied when death intervenes between the signing of an agreement to sell real estate and the date of transfer of title resulting in treating land as personalty and personalty as land under certain circumstances. It takes place when a contract for sale of realty becomes binding on parties. *Lampman v. Sledge*, Tex.Civ.App., 502 S.W.2d 957, 959. *See also Conversion.*

Equitable defense. Formerly, a defense which was only available in a court of equity. With the procedural merger of law and equity however, equitable defenses

can be raised along with legal defenses in same action. Fed.R. Civil P. 8.

Equitable distribution. No-fault divorce statutes in certain states (e.g. New Jersey) grant courts the power to distribute equitably upon divorce all property legally and beneficially acquired during marriage by husband and wife, or either of them, whether legal title lies in their joint or individual names.

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

Equitable election. Under this doctrine, a person cannot accept benefits accruing to him by a will and at the same time refuse to recognize validity of will in other respects, but doctrine may not be applied to prejudice of third parties. *Luttrell v. Luttrell*, 4 Ohio App.2d 305, 212 N.E.2d 641, 642. The choice to be made by a person who may, under a will or other instrument, have either one of two alternative rights or benefits, but not both. *Peters v. Bain*, 133 U.S. 670, 10 S.Ct. 354, 33 L.Ed. 696. The obligation imposed upon a party to choose between two inconsistent or alternative rights or claims, in cases where there is clear intention of the person from whom he derives one that he should not enjoy both. *Dakan v. Dakan*, 125 Tex. 305, 83 S.W.2d 620, 624. A choice shown by an overt act between two inconsistent rights, either of which may be asserted at the will of the chooser alone. *Bierce v. Hutchins*, 205 U.S. 346, 27 S.Ct. 524, 51 L.Ed. 828. *See also Election (Law of wills).*

Equitable estoppel. The doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had. *Mitchell v. McIntee*, 15 Or.App. 85, 514 P.2d 1357, 1359. The effect of voluntary conduct of a party whereby he is precluded from asserting rights against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct. *American Bank & Trust Co. v. Trinity Universal Ins. Co.*, 251 La. 445, 205 So.2d 35, 40.

Elements or essentials of such estoppel include change of position for the worse by party asserting estoppel, *Malone v. Republic Nat. Bank & Trust Co.*, Tex.Civ. App., 70 S.W.2d 809, 812; conduct by party estopped such that it would be contrary to equity and good conscience for him to allege and prove the truth, *Rody v. Doyle*, 181 Md. 195, 29 A.2d 290, 293; false representation or concealment of facts, *Clark v. National Aid Life Ass'n*, 177 Okl. 137, 57 P.2d 832, 833; ignorance of party asserting estoppel of facts and absence of opportunity to ascertain them, *Fipps v. Stidham*, 174 Okl. 473, 50 P.2d

680, 684; injury from declarations, acts, or omissions of party were he permitted to gainsay their truth, *Fleishbein v. Western Auto Supply Agency*, 19 Cal.App.2d 424, 65 P.2d 928; intention that representation should be acted on, *Consolidated Cut Stone Co. v. Seidenbach*, 181 Okl. 578, 75 P.2d 442, 452; knowledge, actual or constructive, of facts by party estopped, *Antrim Lumber Co. v. Wagner*, 175 Okl. 564, 54 P.2d 173, 176; *Lillywhite v. Coleman*, 46 Ariz. 523, 52 P.2d 1157, 1160; misleading person to his prejudice, United States, for Use and Benefit of *Noland Co., v. Wood*, C.C.A.Va., 99 F.2d 80, 82; omission, misconduct or misrepresentation misleading another. It is based on some affirmative action, by word or conduct, of the person against whom it is invoked, and some action of the other party, relying on the representations made. *George W. Armbruster, Jr., Inc. v. City of Wildwood*, D.C.N.J., 41 F.2d 823, 829.

Estoppel in pais and equitable estoppel are convertible terms. *Brown v. Corn Exchange Nat. Bank & Trust Co.*, 136 N.J.Eq. 430, 42 A.2d 474, 480.

Equitable interest. The interest of a beneficiary under a trust is considered equitable as contrasted with the interest of the trustee which is a legal interest because the trustee has legal as contrasted with equitable title. *Restatement, Second, Trusts*, § 2f. *See also* Equitable ownership.

Equitable lien. A right, not existing at law, to have specific property applied in whole or in part to payment of a particular debt or class of debts. *Morrison Flying Service v. Deming Nat. Bank*, C.A.N.M., 404 F.2d 856, 861. An equitable lien arises either from a written contract which shows an intention to charge some particular property with a debt or obligation or is implied and declared by a court of equity out of general considerations of right and justice as applied to relations of the parties and circumstances of their dealings. *Owensboro Banking Co. v. Lewis*, 269 Ky. 277, 106 S.W.2d 1000, 1004.

Equitable life estate. An interest in real or personal property which lasts for the life of the holder of the estate and which is equitable as contrasted with legal in its creation as in the case of a beneficiary of a trust who has a life estate under the trust.

Equitable mortgage. An agreement to post certain property as security before the security agreement is formalized. A catchall term to connote all of the transactions which, despite peculiarities of form or appearance of nonsecured transaction, are given effect of mortgage when examined by court with equitable powers. *Eagle's Nest, Inc. v. Malt*, 70 N.C.App. 397, 319 S.E.2d 685, 687. For example, if a person transfers property by deed absolute to his creditor as security for a debt with the mutual understanding that such property will be reconveyed by the creditor on the repayment of the debt, a court will consider such a deed a mortgage, though an innocent purchaser for value from the creditor can cut off the equitable rights of the debtor. *See also* Mortgage.

Equitable owner. One who is recognized in equity as owner of the property, because real and beneficial use

and title belong to him, even though bare legal title is invested in another. *Levin v. Carney*, 120 N.E.2d 92, 96, 161 Ohio St. 513.

Equitable ownership. The ownership interest of one who has equitable as contrasted with legal ownership of property as in the case of a trust beneficiary. Ownership rights which are protected in equity. *See also* Equitable interest.

Equitable recoupment. Rule of the law which diminishes the right of a party invoking legal process to recover a debt, to the extent that he holds money or property of his debtor, to which he has no moral right, and it is ordinarily a defensive remedy going only to mitigation of damages. Doctrine of "equitable recoupment" provides that, at least in some cases, a claim for a refund of taxes barred by a statute of limitations may nevertheless be recouped against a tax claim of the government. *May Dept. Stores Co. v. City of Pittsburgh*, Pa.Cmwth., 376 A.2d 309, 313.

Equitable redemption. The act or process by which a mortgagor redeems his property after payment of the mortgage debt. The purchase of the equity of redemption after foreclosure has commenced. *See* Equity of redemption.

Equitable relief. That species of relief sought in a court with equity powers as, for example, in the case of one seeking an injunction or specific performance instead of money damages.

Equitable rescission. Rescission decreed by court of equity, as distinguished from "legal rescission" which is effected by restoration or offer to restore.

Equitable restraint doctrine. Under this doctrine, federal courts will not intervene to enjoin a pending state criminal prosecution absent a strong showing of bad faith and irreparable injury. *Samuels v. Mackell*, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688; *Boyle v. Landry*, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696; *Perez v. Ledesma*, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701; *Dyson v. Stein*, 401 U.S. 200, 91 S.Ct. 769, 27 L.Ed.2d 78; *Byrne v. Karalexis*, 401 U.S. 216, 91 S.Ct. 777, 27 L.Ed.2d 792.

Equitable right. Right cognizable within court of equity as contrasted with legal right enforced in court of law; though under rules practice in most states and in the federal courts there has been a merger procedurally between actions at law and equity. *Fed.R. Civil P. 2.*

Equitable servitudes. Building restrictions and restrictions on the use of land which may be enforced in equity. If there is a scheme in their creation, a subsequent owner may enforce them by injunctive relief against another subsequent owner. *Snow v. Van Dam*, 291 Mass. 477, 197 N.E. 224. Such are broader than covenants running with the land because they are interests in land.

Equitable subrogation. Legal fiction through which person who pays debt for which another is primarily responsible is substituted, or subrogated, to all rights and remedies of other. *Commercial Union Ins. Co. v.*

Medical Protective Co., 426 Mich. 109, 393 N.W.2d 479, 487.

Equitable title. See Equitable ownership.

Equitable waste. Injury to the corpus of property inconsistent with good management or husbandry and recognized by a court of equity but not by a court of law.

Equitas sequitur legem /iykwətəs sékwətər liyjəm/. Equity follows the law.

Equity. Justice administered according to fairness as contrasted with the strictly formulated rules of common law. It is based on a system of rules and principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair in a particular situation. One sought relief under this system in courts of equity rather than in courts of law. The term "equity" denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men. Gilles v. Department of Human Resources Development, 11 Cal.3d 313, 113 Cal.Rptr. 374, 380, 521 P.2d 110. Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law; though procedurally, in the federal courts and most state courts, equitable and legal rights and remedies are administered in the same court. See Equity, courts of.

A system of jurisprudence collateral to, and in some respects independent of, "law"; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect, or by exercising certain branches of jurisdiction independently of them.

A stockholders' proportionate share (ownership interest) in the corporation's capital stock and surplus. The extent of an ownership interest in a venture. In this context, equity refers not to a legal concept but to the financial definition that an owner's equity in a business is equal to the business's assets minus its liabilities.

Value of property or an enterprise over and above the indebtedness against it (e.g., market value of house minus mortgage). Dorfman v. Dorfman, Tex.Civ.App. 457 S.W.2d 417, 422. See *Real estate, below*.

Accounting. Paid-in capital plus retained earnings.

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

Investment. Ownership interest of shareholders in corporation (as opposed to bond or other debt interests).

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

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

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

Real estate. The remaining interest belonging to one who has pledged or mortgaged his property, or the surplus of value which may remain after the property has been disposed of for the satisfaction of liens. The amount or value of a property above the total liens or charges. The difference between the fair market value and debt in property; thus, an equity of \$5,000 may come about by having fair market value property of \$20,000 with debt of \$15,000. The term came from the development in English courts of equity of the right of an owner of property to redeem his property even after a foreclosure, which right came to be known as the equity of redemption. The existence of the right was predicated on the property being of far greater value than the debt owed to the party that foreclosed.

Equity acts in personam. A basic principle of law of equity to the effect that equity grants relief in the form of personal decrees as contrasted with law which awards money damages. A necessary corollary of this principle is that equity requires personal jurisdiction to grant its relief.

Equity, bill in. The name given to the original pleading in an equity case. However, under current rules practice in most states, the "bill" has been replaced by a complaint with the procedural merger of law and equity. Fed.R. Civil P. 2.

Equity capital. Funds furnished by owners of company in return for stock or other evidence of ownership.

Equity, courts of. Courts which administer justice according to the system of equity, and according to a peculiar course of procedure or practice. Frequently termed "courts of chancery." With the procedural merger of law and equity in the federal and most state courts, equity courts have been abolished.

Equity financing. Raising of capital by corporation by issuing (selling) stock. This is contrasted with "debt

financing" which is the raising of capital by issuing bonds or borrowing money.

Equity follows the law. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. A leading maxim of equity jurisprudence, which, however, is not of universal application, but liable to many exceptions.

Equity jurisdiction. In a general sense, the jurisdiction belonging to a court of equity, but more particularly the aggregate of those cases, controversies, and occasions which form proper subjects for the exercise of the powers of a chancery court.

In the federal and most state courts there has been a merger procedurally between law and equity actions (*i.e.*, the same court has jurisdiction over *both* legal and equitable matters) and, hence, a person seeking equitable relief brings the same complaint as in a law action and simply demands equitable relief instead of (or in addition to) money damages. Fed.R. Civil P. 2.

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

Equity jurisprudence. That portion of remedial justice which is exclusively administered by courts of equity as distinguished from courts of common law. More generally speaking, the science which treats of the rules, principles, and maxims which govern the decisions of a court of equity, the cases and controversies which are considered proper subjects for its cognizance, and the nature and form of the remedies which it grants.

Equity loan. Line of credit made available by banks to homeowners with the extent of such credit based on, and secured with, built-up equity in borrower's home. *See* Equity (*Real estate*).

Equity looks upon that as done which ought to have been done. Equity will treat the subject-matter, as to collateral consequences and incidents, in the same man-

ner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them.

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

Equity of partners. A term used to designate the right of each of them to have the firm's property applied to the payment of the firm's debts.

Equity of redemption. The right of the mortgagor of property to redeem the same (*i.e.*, save from foreclosure) after it has been forfeited, at law, by a breach of the condition of the mortgage (*i.e.*, default in mortgage payments), upon paying the amount of debt, interest and costs. *Brown v. United States*, C.A.Pa., 95 F.2d 487, 489. *See* Foreclosure; Redemption.

Equity ratio. Stockholders' equity divided by total assets.

Equity security. A security that represents an equity ownership interest in a corporation, rather than debt. Equity securities are usually considered to be common and preferred shares. *See* Stock. *Compare* Bonds.

As defined in Bankruptcy Code § 101, term includes: (A) share in a corporation, whether or not transferable or denominated "stock", or similar security; (B) interest of a limited partner in a limited partnership; or (C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B).

Equity shares. Shares of any class of stock, whether or not preferred as to dividends or assets, having unlimited dividend rights. *See* Stock.

Equity suffers not a right without a remedy. *Graselli Chemical Company v. Aetna Explosives Co.*, 164 C.C.A. 380, 252 F. 456.

Equity term. An equity term of court is one devoted exclusively to equity business, that is, in which no criminal cases are tried nor any cases requiring the impaneling of a jury. *See* Equity, courts of.

Equity to a settlement. The equitable right of a wife, when her husband sues in equity for the reduction of her equitable estate to his own possession, to have the whole or a portion of such estate settled upon herself and her children. Also a similar right recognized by the equity courts as directly to be asserted against the husband. Also sometimes called the "wife's equity."

Equivalent, *adj.* Equal in value, force, measure, volume, power, and effect or having equal or corresponding import, meaning or significance; alike, identical. *Bullard Co. v. General Electric Co.*, D.C.W.Va., 234 F.Supp. 995, 998.

Equivalents doctrine. In patent infringement law, doctrine of "equivalents" means that if two devices do the same work in substantially the same way and accomplish substantially the same result, they are the same, even though they differ in name, form or shape. *Fife Mfg. Co. v. Stanford Engineering Co.*, D.C.Ill., 193 F.Supp. 226, 232. A doctrine which declares that a device infringes a patented invention if it does the same work as the invention in substantially the same way, even if it is outside the literal terms of the claims of the patent. The doctrine prevents parties from infringing patents with impunity by making merely trivial changes in an invention. The more significant the patented invention the greater the scope of this doctrine.

Equivocal. Having a double or several meanings or senses. Synonymous with "ambiguous". See *Ambiguity*.

Equuleus /əkwúwliyəs/. A kind of rack for extorting confessions.

ERA. See Equal Rights Amendment.

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

Erasure. The obliteration of words or marks from a written instrument by rubbing, scraping, or scratching them out. Also the place in a document where a word or words have been so removed. The term is sometimes used for the removal of parts of a writing by any means whatever, as by cancellation; but this is not an accurate use.

Erasure of record. Procedure by which a person's criminal record may be sealed or destroyed if certain conditions are met. This is commonly provided for by statute for juvenile records.

Within statute providing that all police and court records shall be erased upon acquittal of the accused, word "erased" means at the very least nondisclosure. *Lechner v. Holmberg*, 165 Conn. 152, 328 A.2d 701, 707. See also *Expungement of record*.

Erciscundus /ərsəskəndəs/. In the civil law, to be divided. *Judicium familiæ erciscundæ*, a suit for the partition of an inheritance. An ancient phrase derived from the Twelve Tables.

Erect. In England, one of the formal words of incorporation in royal charters. "We do, incorporate, erect, ordain, name, constitute, and establish." "Construct" is synonymous with "erect".

Erection. Raising up; building; a completed building; to build; construct; set up. There is a distinction between "erection" and maintenance. *Turturro v. Calder*, 307 Mass. 159, 29 N.E.2d 744, 746.

Ergo /ərgow/. Lat. Therefore; hence; because.

Ergolabi /ərgowléybay/. In the civil law, undertakers of work; contractors.

Erie v. Tompkins. The landmark case holding that in an action in the Federal court, except as to matters governed by the U.S. Constitution and Acts of Congress, the law to be applied in any case is the law of the State in which the Federal Court is situated. 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188. This case overruled *Swift v. Tyson*, 41 U.S. 1, 16 Pet. 1, 10 L.Ed. 865, which held that there was a body of federal general common law to be applied in such cases.

Erigimus /ərijəməs/. We erect. One of the words by which a corporation may be created in England by the king's charter. 1 Bl.Comm. 473.

E.R.I.S.A. Employee Retirement Income Security Act. Federal Act governing the funding, vesting, administration, and termination of private pension plans. This Act also established the Pension Benefit Guaranty Corporation. 29 U.S.C.A. § 1001 et seq.

Ermine /ərmən/. By metonymy, this term is used to describe the office or functions of a judge, whose state robe, lined with ermine, is emblematical of purity and honor without stain.

Erosion. To wear away by the action of water, wind, or other elements. The gradual eating away of the soil by the operation of currents or tides. Distinguished from *submergence*, which is the disappearance of the soil under the water and the formation of a navigable body over it. See *Avulsion*. Compare *Accretion*.

Erotomania /ərətəməyn(i)yə/. See *Insanity*.

Errant. Wandering; itinerant; applied to justices on circuit, and bailiffs at large, etc.

Erratum /ərətəm/ərəytəm/. Lat. Error. Used in the Latin formula for assigning errors, and in the reply thereto, "in nullo est erratum," i.e., there was no error, no error was committed.

Erroneous. Involving error; deviating from the law. This term is not generally used as designating a corrupt or evil act. See *Error*.

Erroneous assessment. Refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officer in fixing the amount of valuation of the property. In *re Blatt*, 41 N.M. 269, 67 P.2d 293, 301.

Erroneous judgment. One rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles.

Erroneous or illegal tax. One levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal.

Erronice /ərównəsiy/. Lat. Erroneously; through error or mistake.

Error. A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law. Such a

mistaken or false conception or application of the law to the facts of a cause as will furnish ground for a review of the proceedings upon a writ of error. A mistake of law, or false or irregular application of it, such as vitiates the proceedings and warrants the reversal of the judgment. An act involving a departure from truth or accuracy; a mistake; an inaccuracy; as, an error in calculation. *State ex rel. Smith v. Smith*, 197 Or. 96, 252 P.2d 550, 555.

Error is also used as an elliptical expression for "writ of error"; as in saying that *error* lies; that a judgment may be reversed *on error*. See *Writ of error*.

See also *Ignorance*; *Mistake*; *Plain error rule*.

Assignment of errors. A specification of the errors upon which the appellant will rely in seeking to have the judgment of the lower court reversed, vacated, modified, or a new trial ordered. See *e.g.* *Fed.R.App. P.* 28.

Clerical error. See *Clerical error*.

Error apparent of record. Plain, fundamental error that goes to the foundation of the action irrespective of the evidence; an obvious misapprehension of the applicable law. *Parks v. Parks*, 68 App.D.C. 363, 98 F.2d 235, 236.

Fundamental error. In appellate practice, error which goes to the merits of the plaintiff's cause of action, and which will be considered on review, whether assigned as error or not, where the justice of the case seems to require it. Error of such character as to render judgment void. Error so grave that, if not rectified, would result in denial of fundamental due process. *Roberts v. State, Ind.*, 492 N.E.2d 310, 313. Error in law apparent on the face of the record; *e.g.* court lacked jurisdiction. Such error is presented, for example, where error in court's instruction to jury goes to very basis of case so that charge fails to state and apply law under which accused is prosecuted. *Kemner v. State, Tex.Cr.App.*, 589 S.W.2d 403, 409. See *Reversible error*, *below*. See also *Plain error rule*.

Harmful error. Error which more probably than improbably affected the verdict or judgment prejudicially to the party complaining. See *Fundamental error*; *Reversible error*, *this topic*. See also *Plain error rule*.

Harmless error. In appellate practice, an error committed in the progress of the trial below, but which was not prejudicial to the rights of the party assigning it, and for which, therefore, the court will not reverse the judgment, as, where the error was neutralized or corrected by subsequent proceedings in the case, or where, notwithstanding the error, the particular issue was found in that party's favor, or where, even if the error had not been committed, he could not have been legally entitled to prevail. Error which is not sufficient in nature or effect to warrant reversal, modification, or retrial. *Fed. R.Crim.P.* 52 provides: "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." See also *Harmless error doctrine*.

Invited error. In appellate practice, the principle of "invited error" is that if, during the progress of a cause, a party requests or moves the court to make a ruling

which is actually erroneous, and the court does so, that party cannot take advantage of the error on appeal or review.

Reversible error. In appellate practice, such an error as warrants the appellate court in reversing the judgment before it; substantial error, that which reasonably might have prejudiced the party complaining. See *Fundamental error*, *above*. See also *Plain error rule*.

Error coram nobis /éhrær kóræm nówbæs/. Error committed in the proceedings "before us"; *i.e.*, error assigned as a ground for reviewing, modifying, or vacating a judgment in the same court in which it was rendered. A writ to bring before the court that pronounced judgment errors in matters of fact which had not been put in issue or passed on and were material to validity and regularity of legal proceeding itself. *Hiawasee Lumber Co. v. United States, C.C.A.N.C.*, 64 F.2d 417, 418. See *Coram nobis*.

Error coram vobis /éhrær kóræm vóvbæs/. Error in the proceedings "before you"; words used in a writ of error directed by an appellate court to the court which tried the cause. See *Coram vobis*.

Errores ad sua principia referre, est refellere /əróriyz æd s(y)úwæ prənsíp(i)yæ rəfəriy, èst rəfələriy/. To refer errors to their sources is to refute them. To bring errors to their beginning is to see their last.

Errores scribentis nocere non debent /əróriyz skrəbéntəs nósəriy nòn débənt/. The mistakes of the writer ought not to harm.

Error fucatus nuda veritate in multis, est probabilior; et sæpe numero rationibus vincit veritatem error /éhrær fyuwkəytəs nyúwdə vèhrətéytiy in máltəs èst pròbəbìliyær; èt síyipy n(y)úwmərow rəshiyównəbəs vínsət vèhrətéytəm éhrær/. Error artfully disguised [or colored] is, in many instances, more probable than naked truth; and frequently error overwhelms truth by [its show of] reasons.

Error in exercise of jurisdiction. Error in determination of questions of law or fact on which the court's jurisdiction in particular case depends. *Burgess v. Nail, C.C.A.Ok.*, 103 F.2d 37, 43.

Error in fact. Error in fact occurs when, by reason of some fact which is unknown to the court and not apparent on the record (*e.g.*, infancy, or death of one of the parties), it renders a judgment void or voidable. Such occurs when some fact which really exists is unknown, or some fact is supposed to exist which really does not. *Schwartz v. Kominski, 25 Ill.App.3d 789, 324 N.E.2d 91, 93*.

Error in law. An error of the court in applying the law to the case on trial, *e.g.*, in ruling on the admission of evidence, or in charging the jury. See also *Error*.

Error in vacuo /éhrær in vəkjuwəw/. Error in adverse ruling without adverse effect is "error in vacuo" which may subject the erring judge to criticism but not the case to re-trial. See *Error (Harmless error)*.

Error juris nocet /éhrər júərəs nósət/. Error of law injures. A mistake of the law has an injurious effect; that is, the party committing it must suffer the consequences.

Error nominis /éhrər nómnəs/. Error of name. A mistake of detail in the name of a person; used in contradistinction to error *de personâ*, a mistake as to identity.

Error nominis nunquam nocet, si de identitate rei constat /éhrər nómnəs nŋkwəm nósət, sáy diy ədɛntətɛytiy riyay kónstət/. A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself [where the thing intended is certainly known]. This maxim is applicable only where the means of correcting the mistake are apparent on the face of the instrument to be construed.

Error of fact. See Error in fact.

Error of law. See Error in law.

Error qui non resistitur approbatur /éhrər kwày nŋ rəzístətər əprowbɛytər/. An error which is not resisted or opposed is approved.

Errors and omissions insurance. See Insurance.

Errors excepted /éhrəz əksɛptəd/. A phrase appended to an account stated, in order to excuse slight mistakes or oversights.

Error, writ of. See Writ of error.

Erthmootum /érθmiytəm/. In old English law, a meeting of the neighborhood to compromise differences among themselves; a court held on the boundary of two lands.

Erubescit lex filios castigare parentes /ərəbɛsət léks fliiyows kəstəgériy pərəntiyz/. The law blushes when children correct their parents.

Escalation clause. See Escalator clause.

Escalator clause. In union contract, a provision that wages will rise or fall depending on some standard like the cost of living index. In lease, provision that rent may be increased to reflect increase in real estate taxes, operating costs, and even increases in Consumer Price Index. In construction contract, clause authorizing contractor to increase contract price should costs of labor or materials increase.

Clause in leases or contracts executed subject to price control regulations. Under this clause, in the case of a lease, the landlord is authorized to collect the maximum rent permissible under rent regulations in force at time of execution of the lease. The escalator part of the clause of the lease consists in the provision that in the event that the rent regulations are modified during the term of the lease, the tenant will pay the increased rental following the allowance thereof. See also Cost of living clause.

Escambio /əskəmbiyow/. In old English law, a writ of exchange. A license in the shape of a writ, formerly granted to an English merchant to draw a bill of exchange on another in foreign parts.

Escambium /əskəmbiyəm/. An old English law term, signifying exchange.

Escape. Leaving physical confinement without permission. The departure or deliverance out of custody of a person who was lawfully imprisoned before he is entitled to his liberty by the process of law. The voluntarily or negligently allowing any person lawfully in confinement to leave. To flee from; to avoid; to get away, as to flee to avoid arrest. The voluntary departure from lawful custody by a prisoner with the intent to evade the due course of justice. *People v. Rivera*, Colo.App., 542 P.2d 90, 92. See 18 U.S.C.A. § 751 et seq.

Escape clause. Provision in a contract, insurance policy, or other legal document permitting party or parties to avoid liability or performance under certain conditions. For example, international tariff containing clause that tariff will be changed if imports covered by such cause harm to domestic industries producing like goods; clause in insurance policy that provides for avoidance of liability when there is other valid insurance; clause in door-to-door sale contract giving purchaser three day period to cancel.

Escape period. Term generally applied to provision in union contracts in connection with maintenance of membership clauses permitting workers to withdraw from the union during a certain period near the end of the contract period and before the start of the next contract period.

Escape warrant. In English practice, this was a warrant granted to retake a prisoner committed to the custody of the king's prison who had escaped therefrom. It was obtained on affidavit from the judge of the court in which the action had been brought, and was directed to all the sheriffs throughout England, commanding them to retake the prisoner and commit him to gaol when and where taken, there to remain until the debt was satisfied.

Escapio quietus /əsképyiyow kwiyiytəs/. In old English law, delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land.

Escapium /əsképyiyəm/. That which comes by chance or accident.

Eschata derivatur a verbo gallico eschoir, quod est accidere, quia accidit domino ex eventu et ex insperato /əschiytə dəhrəvɛytər èy vərbow gæləkow əs(h)wár, kwód èst əksídəriy kwáyə əksədət dómənow èks əvɛnt(y)uw èt èks insɛpərəytw/. Escheat is derived from the French word "eschoir," which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.

Eschata vulgo dicuntur quæ decidentibus iis quæ de rege tenent, cum non existit ratione sanguinis hæres, ad fiscum relabuntur /əschiytiy vəlgow dəkántər kwiy dɛsədɛntəbəs áyas kwiy diy riyiy ténənt kŋm nŋn əgzístət rəshiyówniy sǎngwənəs híriy əd fiskəm rɛləbántər/. Those things are commonly called "escheats" which revert to the exchequer from a failure

of issue in those who hold of the king, when there does not exist any heir by consanguinity.

Escheat /əs(h)chiyt/. A reversion of property to the state in consequence of a want of any individual competent to inherit.

Escheat at feudal law was the right of the lord of a fee to re-enter upon the same when it became vacant by the extinction of the blood of the tenant. This extinction might either be *per defectum sanguinis* or else *per delictum tenentis*, where the course of descent was broken by the corruption of the blood of the tenant. As a fee might be holden either of the crown or from some inferior lord, the escheat was not always to the crown. The word "escheat", in this country, merely indicates the preferable right of the state to an estate left vacant, and without there being any one in existence able to make claim thereto.

Escheator /əs(h)chiytər/. In English law, the name of an officer who was appointed in every county to look after the escheats which fell due to the king in that particular county, and to certify the same into the exchequer. An escheator could continue in office for one year only, and was not re-eligible until three years. There does not appear to exist any such officer at the present day.

Escheat, writ of. A writ which anciently lay for a lord, to recover possession of lands that had escheated to him.

Escheccum /əs(h)chékəm/. In old English law, a jury or inquisition.

Escobedo Rule /èskəbíydow ruwl/. Under this rule, where police investigation begins to focus on a particular suspect, the suspect is in custody, the suspect requests and is denied counsel, and the police have not warned him of his right to remain silent, the accused will be considered to have been denied assistance of counsel and no statement elicited during such interrogation may be used in a criminal trial. *Escobedo v. State of Illinois*, 378 U.S. 478, 490, 491, 84 S.Ct. 1758, 12 L.Ed.2d 977. See also *Effective assistance of counsel*; *Miranda Rule*.

Escot /əskót/. In England, a tax formerly paid in boroughs and corporations towards the support of the community, which is called "scot and lot."

Escribano /èskriybánow/. In Spanish law, an officer, resembling a notary in French law, who has authority to set down in writing, and verify by his attestation, transactions and contracts between private persons, and also judicial acts and proceedings.

Escritura /èskriytúra/. In Spanish law, a written instrument. Every deed that is made by the hand of a public *escribano*, or notary of a corporation or council (*concejo*), or sealed with the seal of the king or other authorized persons.

Esroquerie /e(s)kròwkeriy/. Fr. Fraud, swindling, cheating.

Escrow. A legal document (such as a deed), money, stock, or other property delivered by the grantor, prom-

isor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee. A system of document transfer in which a deed, bond, stock, funds, or other property is delivered to a third person to hold until all conditions in a contract are fulfilled; e.g. delivery of deed to escrow agent under installment land sale contract until full payment for land is made.

Escrow account. A bank account generally held in the name of the depositor and an escrow agent which is returnable to depositor or paid to third person on the fulfillment of escrow condition; e.g. funds for payment of real estate taxes are commonly paid into escrow account of bank-mortgagor by mortgagor.

Escrow contract. Agreement between buyer, seller, and escrow holder setting forth rights and responsibilities of each.

Escrow deposit. See *Escrow account*.

Escrowl /eskrówl/. In old English law, an escrow; a scroll. "And deliver the deed to a stranger, as an escrowl."

Escuage /èskyuwáj/. In feudal law, service of the shield. One of the varieties of tenure in knight's service, the duty imposed being that of accompanying the king to the wars for forty days, at the tenant's own charge, or sending a substitute. In later times, this service was commuted for a certain payment in money, which was then called "escuage certain." 2 Bl.Comm. 74, 75.

Esketores /èskətóriyz/. Robbers, or destroyers of other men's lands and fortunes.

Eskipper, eskippare /èskəpér(iy)/. To ship.

Eskippeson /əskíp(ə)sən/. Shippage, or passage by sea. Spelled, also, "skippeson."

Elisors /əláyzərz/. See *Elisors*.

Esne /ézniy/. In old English law, a hiring of servile condition.

Esneey /é(s)nəsiy/. Seniority; the condition or right of the eldest; the privilege of the eldest-born. Particularly used of the privilege of the eldest among coparceners to make a first choice of purparts upon a voluntary partition.

ESOP. See *Employee Stock Ownership Plan*.

Espera /éspərə/. A period of time fixed by law or by a court within which certain acts are to be performed, e.g., the production of papers, payment of debts, etc.

Espionage. Espionage, or spying, has reference to the crime of "gathering, transmitting or losing" information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation. 18 U.S.C.A. § 793; *Rosenberg v. United States*, 346 U.S. 273, 73 S.Ct. 1152, 97 L.Ed. 1609. See *Internal security acts*.

Espionage Act. Federal law which punishes espionage, spying, and related crimes. 18 U.S.C.A. § 793 *et seq.*

Esplees /əsplīz/. An old term for the products which the ground or land yields; as the hay of the meadows, the herbage of the pasture, corn of arable fields, rent and services, etc. The word has been anciently applied to the land itself.

Espousals /əspáwzəlz/. A mutual promise between a man and a woman to marry each other at some other time. It differs from a marriage, because then the contract is completed.

Espurio /espúriow/. In Spanish law, a spurious child; one begotten on a woman who has promiscuous intercourse with many men.

Esq. Abbreviation for Esquire.

Esquire /éskway(ə)r/əskwáy(ə)r/. In English law, a title of dignity next above gentleman, and below knight. Also a title of office given to sheriffs, serjeants, and barristers at law, justices of the peace, and others.

In United States, title commonly appended after name of attorney; *e.g.* John J. Jones, Esquire.

Essence. That which is indispensable. The gist or substance of any act; the vital constituent of a thing; that without which a thing cannot be itself. *Norman v. Department of Labor and Industries*, 10 Wash.2d 180, 116 P.2d 360, 362.

Essence of the contract. Any condition or stipulation in a contract which is mutually understood and agreed by the parties to be of such vital importance that a sufficient performance of the contract cannot be had without exact compliance with it is said to be "of the essence of the contract." *See also* Basis of bargain.

Essence test. Under this test arbitrator's interpretation of collective bargaining agreement must be upheld if it can in any rational way be derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention. *Carmichaels Area School Dist. v. Carmichaels Area Ed. Ass'n*, 37 Pa.Cmwlth. 141, 389 A.2d 1203, 1205.

Essendi quietum de tlonio /əsénday kwíyítəm diy tálówniyow/. A writ to be quit of toll; it lies for citizens and burgesses of any city or town who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them.

Essential. Indispensably necessary; important in the highest degree; requisite. That which is required for the continued existence of a thing.

Essential governmental duties. Those duties which framers of Constitution intended each member of union would assume in functioning under form of government guaranteed by Constitution. *Commissioner of Internal Revenue v. Stilwell*, C.C.A.7, 101 F.2d 588, 591.

Essoin, v. /əsóyn/. In old English practice, to present or offer an excuse for not appearing in court on an appointed day in obedience to a summons; to cast an essoin.

This was anciently done by a person whom the party sent for that purpose, called an "essoiner."

Essoin, n. /əsóyn/. In old English law, an excuse for not appearing in court at the return of the process. Presentation of such excuse. Essoin was not now allowed at all in personal actions. 3 Bl.Comm. 278, note.

Essoin day /əsóyn dèy/. In England, formerly the first general return-day of the term, on which the courts sat to receive essoins, *i.e.*, excuses for parties who did not appear in court, according to the summons of writs. 3 Bl.Comm. 278. By St. 11 Geo. IV, and 1 Wm. IV, c. 70, § 6, these days were done away with, as a part of the term.

Essoin de malo villæ /əsóyn diy mælow víliy/. When the defendant is in court the first day; but gone without pleading, and being afterwards surprised by sickness, etc., cannot attend, but sends two essoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come *pro lucrari* and *pro perdere*; and this will be admitted, for it falls on the plaintiff to prove whether the essoin is true or not.

Essoiniator /əsóyniyètər/. A person who made an essoin.

Essoin roll /əsóyn ròwl/. In England, a roll upon which essoins were formerly entered, together with the day to which they were adjourned.

Establish. This word occurs frequently in the Constitution of the United States, and it is there used in different meanings: (1) To settle firmly, to fix unalterably; as to establish justice, which is the avowed object of the Constitution. (2) To make or form; as to establish uniform laws governing naturalization or bankruptcy. (3) To found, to create, to regulate; as: "Congress shall have power to establish post-offices." (4) To found, recognize, confirm, or admit; as: "Congress shall make no law respecting an establishment of religion." *See* Establishment clause. (5) To create, to ratify, or confirm, as: "We, the people . . . do ordain and establish this Constitution." *Ware v. U. S.*, 71 U.S. (4 Wall.) 617, 18 L.Ed. 389. *See also* Establishment clause.

To settle, make or fix firmly; place on a permanent footing; found; create; put beyond doubt or dispute; prove; convince. *Wells Lamont Corp. v. Bowles*, Em. App., 149 F.2d 364, 366. To enact permanently. To bring about or into existence.

Establishment. An institution or place of business, with its fixtures and organized staff. *Abnie v. Ford Motor Co.*, Ohio Com.Pl., 195 N.E.2d 131, 135. State of being established.

Establishment clause. That provision of the First Amendment to U.S. Constitution which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" Such language prohibits a state or the federal government from setting up a church, or passing laws which aid one, or all, religions, or giving preference to one religion, or forcing belief or disbelief in any religion. *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504,

91 L.Ed. 711; *McCollum v. Brd. of Education*, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649. *See also* Freedom of religion.

Estadal /'estaðál/. In Spanish America, a measure of land of sixteen square varas, or yards.

Estadia (or **Sobrestadia**) /'estaðiya (sòwbrestaðiya)/. In Spanish law, delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee, for which demurrage is payable. The time for which the party who has chartered a vessel, or is bound to receive the cargo, has to pay demurrage on account of his delay in the execution of the contract.

Est aliquid quod non oportet etiam si licet; quicquid vero non licet certe non oportet /'ést álekwid kwòd nòn epòrtat éshiyám sáy lisèt; kwikwid vírow nòn lisèt sértiy nòn epòrtat/. There is that which is not proper, even though permitted; but whatever is not permitted is certainly not proper.

Estandard /'éstándərd/. L. Fr. A standard (of weights and measures). So called because it stands constant and immovable, and hath all other measures coming towards it for their conformity.

Est ascavoir /éy asavwóhr/. It is to be understood or known; "it is to-wit."

Estate. The degree, quantity, nature, and extent of interest which a person has in real and personal property. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 Bl.Comm. 103. The condition or circumstance in which the owner *stands* with regard to his property. *Boyd v. Sibold*, 7 Wash.2d 279, 109 P.2d 535, 539. In this sense, "estate" is commonly used in conveyances in connection with the words "right," "title," and "interest," and is, in a great degree, synonymous with all of them.

When used in connection with probate proceedings, term encompasses totality of assets and liabilities of decedent, including all manner of property, real and personal, choate or inchoate, corporeal or incorporeal. In *re Adams' Estate*, 148 C.A.2d 319, 306 P.2d 623, 625.

The total property of whatever kind that is owned by a decedent prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the decedent. It means, ordinarily, the whole of the property owned by anyone, the realty as well as the personalty. As used in connection with the administration of decedents' estates, term includes property of a decedent, trust or other person as such property exists from time to time during the administration, and hence may include probate assets as well as property passing by intestacy. Uniform Probate Code, § 1-201(11).

In its broadest sense, the social, civic, or political condition or standing of a person; or a class of persons considered as grouped for social, civic, or political purposes.

Common Law Classifications

Estates may be either *absolute* or *conditional*. An absolute estate is a full and complete estate, or an estate in lands not subject to be defeated upon any condition. In this phrase the word "absolute" is not used legally to distinguish a fee from a life-estate, but a qualified or conditional fee from a fee simple. A conditional estate is one, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. Estates are also classed as *executed* or *executory*. The former is an estate whereby a present interest passes to and resides in the tenant, not dependent upon any subsequent circumstance or contingency. They are more commonly called "estates in possession." 2 Bl.Comm. 162. An estate where there is vested in the grantee a present and immediate right of present or future enjoyment. An executory estate is an estate or interest in lands, the vesting or enjoyment of which depends upon some future contingency. Such estate may be an *executory devise*, or an *executory remainder*, which is the same as a contingent remainder, because no present interest passes. A *contingent* estate is one which depends for its effect upon an event which may or may not happen, as, where an estate is limited to a person not yet born. *Conventional* estates are those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation of law. A *dominant* estate, in the law of easements, is the estate for the benefit of which the easement exists, or the tenement whose owner, as such, enjoys an easement over an adjoining estate. An *expectant* estate is one which is not yet in possession, but the enjoyment of which is to begin at a future time; a present or vested contingent right of future enjoyment. Examples are remainders and reversions. A *future* estate is an estate which is not now vested in the grantee, but is to commence in possession at some future time. It includes remainders, reversions, and estates limited to commence *in futuro* without a particular estate to support them, which last are not good at common law, except in the case of chattel interests. 2 Bl.Comm. 165. An estate limited to commence in possession at a future date, either without the intervention of a precedent estate, or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time. A *particular* estate is a limited estate which is taken out of the fee, and which precedes a remainder; as an estate for years to A., remainder to B. for life; or an estate for life to A., remainder to B. in tail. This precedent estate is called the "particular estate," and the tenant of such estate is called the "particular tenant." 2 Bl.Comm. 165. A *servient* estate, in the law of easements, is the estate upon which the easement is imposed or against which it is enjoyed; an estate subjected to a burden or servitude for the benefit of another estate. A *settled* estate, in English law, is one created or limited under a settlement; that is, one in which the powers of alienation, devising, and transmission according to the ordinary rules of descent are restrained by the limitations of

the settlement. A *vested* estate is one in which there is an immediate right of present enjoyment or a present fixed right of future enjoyment; an estate as to which there is a person in being who would have an immediate right to the possession upon the ceasing of some intermediate or precedent estate. An *original* estate is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a *derivative* estate; and a derivative estate is a particular interest carved out of another estate of larger extent.

"Estate" and "heirs" are not equivalent terms, *Martin v. Hale*, 167 Tenn. 438, 71 S.W.2d 211, 214; *Abraham v. Abraham*, 245 App.Div. 302, 280 N.Y.S. 825.

As to Homestead; Movable; Real; Residuary; Separate, and Trust (*estate*), see those titles. See also Augmented estate; Beneficial estate; Gross estate; Joint estate; Landed estate or property; Life estate; Net estate; Residuary estate; Vested estate.

For the names and definitions of the various kinds of estates in land, see the different titles below.

Bankruptcy estate. See Bankruptcy proceedings.

Equitable estate. An interest recognized only in equity such as the beneficial interest of a beneficiary of a trust.

Future estate. An estate or interest in which title or possession or both is deferred to a future time. See Future interests.

Legal estate. An estate or interest in property which is recognized and enforced in law, not merely in equity.

Qualified estate. Interests in real property which are not absolute and unconditional including fee tail, estates on condition, estates on limitation, and estates on conditional limitation. *Carpender v. City of New Brunswick*, 135 N.J.Eq. 397, 39 A.2d 40, 43.

Small estate. In some jurisdictions, there is an informal procedure for administration of small estates of decedents less structured than ordinary probate and administration. Normally, the services of an attorney are not required. Uniform Probate Code, § 3-1201 *et seq.*

Estate ad remanentiam /əstéyt æd rəmənénsh(iy)əm/. An estate in fee-simple.

Estate at sufferance. The interest of a tenant who has come rightfully into possession of lands by permission of the owner, and continues to occupy the same after the period for which he is entitled to hold by such permission. 2 Bl.Comm. 150. The estate arises where one comes into possession of land by lawful title, but keeps it afterwards without any title at all, and the original entry need not have been under lease or as a tenant of the dispossessing landlord.

Estate at will. A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant by force of this lease obtains possession. 2 Bl.Comm. 145. Or it is where lands are let without limiting any certain and determinate estate. The estate arises where lands or tenements are expressly demised

by one person to another to be held during the joint wills of both parties, or it may arise by implication of law wherever one person is put in possession of another's land with the owner's consent, but under an agreement which does not suffice to create in the tenant an estate of freehold or for years.

Estate by elegit. See Elegit.

Estate by entirety. See Estate by the entirety.

Estate by purchase. One acquired in any other method than descent. See also Purchase.

Estate by statute merchant. In England, an estate whereby the creditor, under the custom of London, retained the possession of all his debtor's lands until his debts were paid. See Statute (*Statute-merchant*).

Estate by statute staple. See Staple (*Statute staple*).

Estate by the curtesy. See Curtesy.

Estate by the entirety. Called also estate in entirety, or estate by the entirety. An estate in joint tenancy, plus the unity of the marital relation. A form of co-ownership of realty or personalty held by husband and wife in which there is unity of estate, unity of possession and unity of control of entire property, and on death of one, survivor takes estate under original conveyance. In re *Gallagher's Estate*, 352 Pa. 476, 43 A.2d 132, 133. A common-law estate, based on the doctrine that husband and wife are one, and that a conveyance of real property to husband and wife creates but one estate. An estate held by husband and wife together so long as both live, and, after the death of either, by the survivor. It is an estate held by husband and wife by virtue of a title acquired by them jointly after marriage. A creature of the common law created by legal fiction based wholly on the common-law doctrine that husband and wife are one, and hence a conveyance to husband and wife created only one estate, and each was owner of the whole estate, and neither could dispose of it without the consent of the other, and on the death of one survivor was the owner in fee simple. *Alexander v. Alexander*, 154 Or. 317, 58 P.2d 1265, 1270, 1271.

Type of joint estate which may be held only by two persons who are married to each other at the time that the estate is created and which does not admit of partition, though, on divorce, it automatically becomes an estate in common unless the parties provide otherwise.

An "estate by entirety" resembles a "joint tenancy" in that there is a right of survivorship in both, but such an estate is distinguishable from a joint tenancy in that the latter may be invested in any number of natural persons each of whom is seized of an undivided moiety of the whole, whereas a "tenancy by entirety" is vested in two persons only, who in law are regarded as only one, and each of whom becomes seized of the estate as a whole. *Heffner v. White*, 113 Ind.App. 296, 45 N.E.2d 342, 346.

See also Community property; Entirety; Tenancy (*Joint tenancy*).

Estate duty. A duty formerly imposed in England (act of 1894) upon the principal value of all property which passed on death. Such duty was replaced in 1975 by a capital transfer tax.

Estate for life. *See* Life estate.

Estate for years. A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are leased for the term of a certain number of years, agreed upon between the lessor and the lessee. Blackstone calls this estate a "contract" for the possession of lands or tenements for some determinate period. 2 Bl.Comm. 140. Estates for years embrace all terms limited to endure for a definite and ascertained period, however short or long the period may be; they embrace terms for a fixed number of weeks or months or for a single year, as well as for any definite number of years, however great. Also called "tenancy for a term".

Estate from period to period. An estate continuing for successive periods of a year, or successive periods of a fraction of a year, unless it is terminated. *Pitney-Bowes Postage Meter Co. v. United States*, D.C.Conn., 57 F.Supp. 365, 366. Also called "tenancy from period to period"; or "periodic estate".

Estate from year to year. An example of an "estate for years" (*q.v.*). It exists in cases where the parties stipulate for it, and also where the parties by their conduct have placed themselves in the relation of landlord and tenant without adopting any other term. If a tenant has been allowed to hold over after the expiration of his term in such a way as to preclude the possibility of his becoming a tenant on sufferance, it is a tenancy from year to year. It was originally a development of a tenancy at will, by which the tenancy was terminable only at the time of the year at which it began, and on notice.

Estate in common. An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. *See also* Tenancy (*Tenancy in common*).

Estate in coparcenary /əstéyt ən kowpárs(ə)nəri/. *See* Coparcenary.

Estate in dower. *See* Dower.

Estate in expectancy. One which is not yet in possession, but the enjoyment of which is to begin at a future time. An estate giving a present or vested contingent right of future enjoyment. One in which the right to pernanity of the profits is postponed to some future period. Such are estates in remainder and reversion.

Estate in fee simple. *See* Fee simple.

Estate in fee-tail. *See* Tail, estate in.

Estate in joint tenancy. *See* Tenancy.

Estate in lands. Property one has in lands, tenements or hereditaments, or conditions or circumstances in which tenant stands as to his property. *Tallman v. Eastern Illinois & Peoria R. Co.*, 379 Ill. 441, 41 N.E.2d 537, 540. *See* Estate.

Estate in remainder. *See* Remainder.

Estate in reversion. *See* Reversion or estate in reversion.

Estate in severalty /əstéyt ən sévráltiy/. An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 Bl.Comm. 179.

Estate in vadio /əstéyt ən vádiyow/. An estate in gage or pledge. 2 Bl.Comm. 157. *See* Mortgage.

Estate less than freehold. An estate for years, estate at will, or estate at sufferance.

Estate of freehold. *See* Freehold.

Estate of inheritance. An estate which may descend to heirs. *Administration & Trust Co. v. Catron*, 171 Tenn. 268, 102 S.W.2d 59, 60. A species of freehold estate in lands, otherwise called a "fee," where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is passed by the law upon the persons who successively represent him *in perpetuum*, according to a certain established order of descent. *See* Estate.

Estate on condition. *See* Estate upon condition.

Estate on conditional limitation. An estate conveyed to one person so that, upon occurrence or failure of occurrence of some contingent event, whether conditional or limitative, the estate shall depart from original grantee and pass to another. *Carpender v. City of New Brunswick*, 135 N.J.Eq. 397, 39 A.2d 40, 43.

Estate on limitation /əstéyt òn limətéyshən/. An estate originated by the use of words denoting duration of time, such as while, during, so long as, and the like and when designated limitative event happens, such estate ends naturally without any re-entry and property reverts to grantor. *Carpender v. City of New Brunswick*, 135 N.J.Eq. 397, 39 A.2d 40, 43. Sometimes referred to as "base fee", "qualified fee", "determinable fee", or "fee simple defeasible". *Lehigh Valley R. Co. v. Chapman*, 35 N.J. 177, 171 A.2d 653, 657.

Estate planning. That branch of the law which, in arranging a person's property and estate, takes into account the laws of wills, taxes, insurance, property, and trusts so as to gain maximum benefit of all laws while carrying out the person's own wishes for the disposition of his property upon his death.

Éstate pur autre vie /əstéyt pər ówtrə váy/. *See* Pur autre vie.

Estates of the realm. The lords spiritual, the lords temporal, and the commons of Great Britain. 1 Bl. Comm. 153. Sometimes called the "three estates." Inasmuch as the lords spiritual had no separate assembly or negative in their political capacity, some authorities

reduce the estates in Great Britain to two, the lords and commons. Generally in feudal Europe there were three estates: the clergy, nobles, and commons. In England (until about the 14th century) the three estates of the realm were the clergy, barons, and knights. In legal practice the lords spiritual and lords temporal are usually collectively designated under the one name *lords*.

Estate subject to a conditional limitation. The distinction between an estate upon condition subsequent and an "estate subject to a conditional limitation" is that in former words creating condition do not originally limit term, but merely permit its termination upon happening of contingency, while in latter words creating it limit continuation of estate to time preceding happening of contingency. *Johnson v. Lane*, 199 Ark. 740, 135 S.W.2d 853, 866.

Estate tail. See Tail, estate in.

Estate tail, quasi. When a tenant for life grants his estate to a man and his heirs, as these words, though apt and proper to create an estate tail, cannot do so, because the grantor, being only tenant for life, cannot grant *in perpetuum*, therefore they are said to create an estate tail *quasi*, or improper.

Estate tax. A tax imposed on the right to transfer property by death. Thus, an estate tax is levied on the decedent's estate and not on the heir receiving the property. A tax levied on right to transmit property, while "inheritance tax" is levied on right to receive property. *Allen v. Flournoy*, 26 Cal.App.3d 774, 103 Cal.Rptr. 275, 277. The tax is based on value of the whole estate less certain deductions. I.R.C. § 2001 *et seq.* See also Alternate valuation date; Inheritance tax; Unified transfer tax.

Many states have adopted the "Uniform Interstate Compromise of Death Taxes Act" or the "Uniform Interstate Arbitration of Death Taxes Act."

Estate upon condition. An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 Bl.Comm. 151. An estate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged, or destroyed. *United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del., D.C.Del.*, 56 F.Supp. 120, 127.

Estate upon condition expressed. An estate granted, either in fee-simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated upon performance or breach of such qualification or condition. 2 Bl.Comm. 154. An estate which is so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail.

Estate upon condition implied. An estate having a condition annexed to it inseparably from its essence and

constitution, although no condition be expressed in words. 2 Bl.Comm. 152.

Est autem jus publicum et privatum, quod ex naturalibus præceptis aut gentium, aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege anglia rectum esse dicitur /ést ôtám jás pábləkám èt právéytám, kwòd èks nàtyaréyləbas práséptás ôt jénsh(iy)əm ôt səviləbas èst kələktám; èt kwòd in júriy skríptow jás àpələytər, id in líyjij ángliyy réktám èst dístər/. Public and private law is that which is collected from natural precepts, on the one hand of nations, on the other of citizens; and that which in the civil law is called "*jus*," that, in the law of England, is said to be right.

Est autem vis legem simulans /ést ôtám vis líyjəm símyələnz/. Violence may also put on the mask of law.

Estendard, estendart, or standard /(ə)sténdərd/. An ensign for horsemen in war.

Ester in judgment. L. Fr. To appear before a tribunal either as plaintiff or defendant.

Estimate. A valuing or rating by the mind, without actually measuring, weighing, or the like. A rough or approximate calculation only. *United States v. Foster*, C.C.A.Iowa, 131 F.2d 3, 7. Act of appraising or valuing. Determination of approximate cost or return.

This word is used to express the mind or judgment of the speaker or writer on the particular subject under consideration. It implies a calculation or computation, as to *estimate* the gain or loss of an enterprise.

Estimated tax. Federal and state tax laws require a quarterly payment of estimated taxes due from corporations, trusts, estates, non-wage employees, and wage employees with income not subject to withholding. Individuals must remit at least 100% of their prior year tax liability or 90% of their current year tax liability in order to avoid an underpayment penalty. Corporations must pay at least 90% of their current year tax liability in order to avoid an underpayment penalty. Additional taxes due, if any, are paid on taxpayer's annual tax return. I.R.C. § 6015. See also Declaration of estimated tax.

Estimated useful life. The period over which an asset will be used by a particular taxpayer. Although such period cannot be longer than the estimated physical life of an asset, it could be shorter if the taxpayer does not intend to keep the asset until it wears out. Assets such as goodwill do not have an estimated useful life. The estimated useful life of an asset is essential in calculating depreciation and amortization as well as any allowable investment tax credit.

Estin doctrine. The principle of law enunciated in *Estin v. Estin*, 334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561 to the effect that a divorce decree is divisible and, while full faith and credit must be given to a decree as to the termination of the marriage, no full faith and credit is required as to that portion of the decree ordering support for the wife unless the court entering the order had personal jurisdiction of the husband.

Est ipsorum legislatorum tanquam viva vox /ést ipsóram léjáslatóram tæjkwæm váyvæ vóks/. The voice of the legislators themselves is like the living voice; that is, the language of a statute is to be understood and interpreted like ordinary spoken language.

Estop. To stop, bar, or impede; to prevent; to preclude. See Embargo; Estoppel; Injunction.

Estoppel /əstópəl/. "Estoppel" means that party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly. *Graham v. Asbury*, 112 Ariz. 184, 540 P.2d 656, 658. A principle that provides that an individual is barred from denying or alleging a certain fact or state facts because of that individual's previous conduct, allegation, or denial. A doctrine which holds that an inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another. *Brand v. Farmers Mut. Protective Ass'n of Texas*, Tex.Civ.App., 95 S.W.2d 994, 997. See Restatement, Agency, Second, § 8B.

Estoppel is a bar or impediment which precludes allegation or denial of a certain fact or state of facts, in consequence of previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. It operates to put party entitled to its benefits in same position as if thing represented were true. *May v. City of Kearney*, 145 Neb. 475, 17 N.W.2d 448, 458. Under law of "estoppel" where one of two innocent persons must suffer, he whose act occasioned loss must bear it. *Sackenreuther v. Winston*, Tex.Civ.App., 137 S.W.2d 93, 96. Elements or essentials of estoppel include change of position of parties so that party against whom estoppel is invoked has received a profit or benefit or party invoking estoppel has changed his position to his detriment.

Estoppel is or may be based on acceptance of benefits, *Harjo v. Johnston*, 187 Okl. 561, 104 P.2d 985, 992, 998; actual or constructive fraudulent conduct, *Peterson v. Hudson Ins. Co.*, 41 Ariz. 31, 15 P.2d 249, 252; admissions or denials by which another is induced to act to his injury, *Wabash Drilling Co. v. Ellis*, 230 Ky. 769, 20 S.W.2d 1002, 1004; agreement on and settlement of facts by force of entering into contract, *Masterson v. Bouldin*, Tex.Civ.App., 151 S.W.2d 301, 307; assertion of facts on which another relies; assumption of position which, if not maintained, would result in injustice to another; concealment of facts, *Greer v. Franklin Life Ins. Co.*, Tex.Civ.App., 109 S.W.2d 305, 315; conduct or acts amounting to a representation or a concealment; consent to copyright infringement, whether express or implied from long acquiescence with knowledge of the infringement, *Edwin L. Wiegand Co. v. Harold E. Trent Co.*, C.C.A.Pa., 122 F.2d 920, 925; election between rights or remedies, *Mason & Mason v. Brown*, Tex.Civ. App., 182 S.W.2d 729, 733; inaction, *Hankins v. Waddell*, 26 Tenn.App. 71, 167 S.W.2d 694, 696; laches; language or conduct which has induced another to act, *Brown v. Federal Land Bank of Houston*, Tex.Civ.App., 180 S.W.2d 647, 652.

Estoppels at common law are sometimes said to be of three kinds: (1) by deed; (2) by matter of record; (3) by matter *in pais*. The first two are also called legal estoppels, as distinguished from the last kind, known as equitable estoppels.

For Acquiescence, estoppel by; Collateral attack; Collateral estoppel doctrine; Contract estoppel by; Deed, estoppel by; Direct estoppel; Election, estoppel by; Equitable estoppel; In pais, estoppel; Judgment, estoppel by; Judicial estoppel; Laches, estoppel by; Legal estoppel; Negligence, estoppel by; Promissory estoppel; Quasi estoppel; Record, estoppel by; Representation, estoppel by; Silence, estoppel by; and Verdict, estoppel by, see those titles. See also Authority (*Authority by estoppel*).

Acts and declarations. An "estoppel by acts and declarations" is such as arises from the acts and declarations of a person by which he designedly induces another to alter his position injuriously to himself.

Equitable estoppel. (See *Estoppel in pais*, below).

Estoppel by deed. A grantor in a warranty deed who does not have title at the time of the conveyance but who subsequently acquires title is estopped from denying that he had title at the time of the transfer and such after-acquired title inures to the benefit of the grantee or his successors. See also Deed, estoppel by.

Estoppel by judgment. Term means that when a fact has been agreed on, or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as judgment or decree stands unreversed. *Humphrey v. Faison*, 247 N.C. 127, 100 S.E.2d 524, 529. Final adjudication of material issue by a court of competent jurisdiction binds parties in any subsequent proceeding between or among them, irrespective of difference in forms or causes of action. *Mansker v. Dealers Transport Co.*, 160 Ohio St. 255, 116 N.E.2d 3, 6. Sometimes referred to as issue preclusion. See also Collateral estoppel doctrine; Judgment, estoppel by. Compare *Res (Res judicata)*.

Estoppel certificate. A signed statement by a party, such as a tenant or a mortgagee, certifying for the benefit of another party that a certain statement of facts is correct as of the date of the statement, such as that a lease exists, that there are no defaults and that rent is paid to a certain date. Delivery of the statement by the tenant prevents (estops) the tenant from later claiming a different state of facts.

Estoppel in pais. The doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had. *Mitchell v. McIntee*, 15 Or.App. 85, 514 P.2d 1357, 1359. The doctrine rests upon principle that when a person by his acts causes another to change his condition to his detriment, person performing such acts is precluded from asserting a right which he otherwise might have had. *Peplinski v. Campbell*, 37 Wash.2d 857, 226 P.2d 211, 213. See also Equitable estoppel.

Misrepresentation. See Representation, estoppel by.

Pleading. Pleader must allege and prove not only that person sought to be estopped made misleading statements and representations but that pleader actually believed and relied on them and was misled to his injury thereby. *Stanolind Oil & Gas Co. v. Midas Oil Co.*, Tex.Civ.App., 173 S.W.2d 342, 345.

Under rules practice in most states, and in the federal courts, estoppel is an affirmative defense which must be pleaded. Fed.R. Civil P. 8(c).

Ratification distinguished. The substance of "estoppel" is the inducement of another to act to his prejudice. The substance of "ratification" is confirmation after conduct.

By ratification party is bound because he intended to be, while under "estoppel" he is bound because other party will be prejudiced unless the law treats him as legally bound. *Carlile v. Harris*, Tex.Civ.App., 38 S.W.2d 622. See Ratification.

Res judicata distinguished. A prior judgment between same parties, which is not strictly *res judicata* because based upon different cause of action, operates as an "estoppel" only as to matters actually in issue or points controverted. *Ætna Life Ins. Co. of Hartford, Conn. v. Martin*, C.C.A.Ark., 108 F.2d 824, 827; *Cunningham v. Oklahoma City*, 188 Okl. 466, 110 P.2d 1102, 1104. In a later action upon a different cause of action a judgment operates as an "estoppel" only as to such issues in second action as were actually determined in the first action. *Lorber v. Vista Irr. Dist.*, C.C.A.Cal., 127 F.2d 628, 634. The doctrine of "*res judicata*" is a branch of law of "estoppel". *Krisher v. McAllister*, 71 Ohio App. 58, 47 N.E.2d 817, 819. The plea of "*res judicata*" is in its nature an "estoppel" against the losing party from again litigating matters involved in previous action, but the plea does not have that effect as to matters transpiring subsequently. *Fort Worth Stockyards Co. v. Brown*, Tex.Civ.App., 161 S.W.2d 549, 555. See *Res (Res judicata)*.

Waiver distinguished. Waiver is voluntary surrender or relinquishment of some known right, benefit or advantage; estoppel is the inhibition to assert it. In insurance law, however, the two terms are commonly used interchangeably. See Waiver.

Estover /əstóvər/. The right or privilege which a tenant has to furnish himself with so much wood from the demised premises as may be sufficient or necessary for his fuel, fences, and other agricultural operations. 2 Bl.Comm. 35.

An allowance made to a person out of an estate or other thing for his or her support, as for food and raiment.

An allowance (more commonly called "alimony") granted to a woman divorced *a mensa et thoro*, for her support out of her husband's estate. 1 Bl.Comm. 441.

Estoveria sunt ardendi, arandi, construendi et claudendi /əstəviriə sànt ardénday, aránday, kòonstruwénd-

day èt klòdénday/. Estovers are of fire-bote, plow-bote, house-bote, and hedge-bote.

Estoveriis habendis /əstəviriəs həbéndəs/. A writ (now obsolete) for a wife judicially separated to recover her alimony or estovers.

Est quiddam perfectius in rebus licitis /ést kwíðəm pərféksh(iy)əs in riybəs lisétəs/. There is something more perfect in things allowed.

Estray /əstréy/. An estray is an animal that has escaped from its owner, and wanders or strays about; usually defined, at common law, as a wandering animal whose owner is unknown. An animal cannot be an estray when on the range where it was raised, and permitted by its owner to run, and especially when the owner is known to the party who takes it up.

The term is also used of flotsam at sea.

Estreat, v. /əstriyt/. To take out a forfeited recognizance from the recordings of a court, and return it to the court to be prosecuted. See Estreat, *n.*

Estreat, n. (From Lat. *extractum*.) In English law, a copy or extract from the book of estreats, that is, the rolls of any court, in which the ameracements or fines, recognizances, etc., imposed or taken by that court upon or from the accused, are set down, and which are to be levied by the bailiff or other officer of the court. A true copy or duplicate of some original writing or record, and especially of fines and ameracements imposed by a court, *extracted* from the record, and certified to a proper officer or officers authorized and required to collect them.

Estreciatus /əstriys(h)iyétəs/. Straightened, as applied to roads.

Estrepe /əstriyp/. To strip; to despoil; to lay waste; to commit waste upon an estate, as by cutting down trees, removing buildings, etc. To injure the value of a reversionary interest by stripping or spoiling the estate.

Estrepe ment /əstriypmənt/. A species of aggravated waste, by stripping or devastating the land, to the injury of the reversioner, and especially pending a suit for possession.

Estrepe ment, writ of. A common-law writ of waste, which lay in particular for the reversioner against the tenant for life, in respect of damage or injury to the land committed by the latter. As it was only auxiliary to a real action for recovery of the land, and as equity afforded the same relief by injunction, the writ fell into disuse in England, and was abolished by 3 & 4 Wm. IV, c. 27.

Estuary /és(h)chəwèhriy/. That part of the mouth or lower course of a river flowing into the sea which is subject to tide; especially, an enlargement of a river channel toward its mouth in which the movement of the tide is very prominent.

Et. And. The introductory word of several Latin and law French phrases formerly in common use.

Et adjournatur /éd ædjárnéytər/. And it is adjourned. A phrase used in the old reports, where the argument of a cause was adjourned to another day, or where a second argument was had.

Et al. /èd æl/. An abbreviation for *et alii*, "and others." The singular is "et alius" (*q.v.*). It may also mean "and another" in the singular.

The abbreviation *et al.* (sometimes in the plural written *et als.*) is often affixed to the name of the person first mentioned, where there are several plaintiffs, grantors, persons addressed, etc.

Where the words "et al." are used in a judgment against defendants, the quoted words include all defendants. *Williams v. Williams*, 25 Tenn.App. 290, 156 S.W.2d 363, 369.

Et alii è contra /èd éyliyay iy kóntrə/. And others on the other side. A phrase constantly used in the Year Books, in describing a joinder in issue.

Et alius /èd éyliyəs/. And another.

Et allocatur /èd æləkéytər/. And it is allowed.

Et cetera (or *etc.*) /et sétərə/. And others; and other things; and others of like character; and others of the like kind; and the rest; and so on; and so forth. In its abbreviated form (*etc.*) this phrase is frequently affixed to one of a series of articles or names to show that others are intended to follow or understood to be included. So, after reciting the initiatory words of a set formula, or a clause already given in full, *etc.* is added, as an abbreviation, for the sake of convenience. And other things of like kind or purpose as compared with those immediately theretofore mentioned.

Et de ceo se mettent en le pays. L. Fr. And of this they put themselves upon the country.

Et de hoc ponit se super patriam /èt diy hók pównət síy s(y)úwpər pättriyəm/. And of this he puts himself upon the country. The formal conclusion of a common-law plea in bar by way of traverse. 3 Bl.Comm. 313. The literal translation is retained in the modern form.

Et ei legitur in hæc verba /èd iyay liytətər ən híyk vərbə/. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record.

Eternal security. The doctrine of "eternal security" means that once one becomes a Christian or has been "regenerated" his future conduct, no matter what it may be, will not jeopardize his salvation. *Ashman v. Studebaker*, 115 Ind.App. 73, 56 N.E.2d 674, 678.

Et habeas ibi tunc hoc breve /èt héybiyəs íbay tánk hók briyvii/. And have you then there this writ. The formal words directing the return of a writ. The literal translation was retained in the later form of a considerable number of writs.

Et habuit /èt hæbyuwət/. And he had it, a common phrase in the Year Books, expressive of the allowance of an application or demand by a party.

Ethics. Of or relating to moral action, conduct, motive or character; as, ethical emotion; also, treating of moral feelings, duties or conduct; containing precepts of morality; moral. Professionally right or befitting; conforming to professional standards of conduct. *Kraushaar v. La Vin*, 181 Misc. 508, 42 N.Y.S.2d 857, 859.

Legal ethics. See Canon (*Canons of judicial ethics*); Code of Professional Responsibility; Legal ethics.

Et hoc paratus est verificare /et hók pəréytəs èst vèhrəfəkériy/. And this he is prepared to verify. The Latin form of concluding a plea in confession and avoidance; that is, where the defendant has confessed all that the plaintiff has set forth, and has pleaded new matter in avoidance. These words were used, when the pleadings were in Latin, at the conclusion of any pleading which contained new affirmative matter. They expressed the willingness or readiness of the party so pleading to establish by proof the matter alleged in his pleading. A pleading which concluded in that manner was technically said to "conclude with a verification," in contradistinction to a pleading which simply denied matter alleged by the opposite party, and which for that reason was said to "conclude to the country," because the party merely put himself upon the country, or left the matter to the jury.

Et hoc petit quod inquiratur per patriam /et hók pétət kwòd ínkwəréytər pər pättriyəm/. And this he prays may be inquired of by the country. The conclusion of a plaintiff's pleading, tendering an issue to the country. Literally translated in the modern forms.

Et inde petit iudicium /ed índiy pétət juwdísh(iy)əm/. And thereupon [or thereof] he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms.

Et inde producit sectam /ed índiy prəd(y)úwsət séktəm/. And thereupon he brings suit. The Latin conclusion of a declaration, except against attorneys and other officers of the court. 3 Bl.Comm. 295.

Etiquette of the profession /étəkət əv ðə prəfəshən/. The code of honor agreed on by mutual understanding and tacitly accepted by members of the legal profession, especially by the bar. See Code of Professional Responsibility; Legal ethics.

Et modo ad hunc diem /et mówdow æd hánk dáyəm/. Lat. And now at this day. This phrase was the formal beginning of an entry of appearance or of a continuance. The equivalent English words are still used in this connection.

Et non /èt nón/. Lat. And not. A technical phrase in pleading, which introduces the negative averments of a special traverse. It has the same force and effect as the words *absque hoc*, "without this," and is occasionally used instead of the latter.

Et seq. /èt səkwéntiyy/et səkwénsh(iy)ə/. An abbreviation for *et sequentes* (masculine and feminine plural) or *et sequentia* (neuter), "and the following." Thus a refer-

ence to "p. 1, *et seq.*" means "page first and the following pages." Also abbreviated "et sqq.," which is preferred by some authorities for a reference to more than one following page.

Et sic /èt sik/. And so. In the Latin forms of pleading these were the introductory words of a special conclusion to a plea in bar, the object being to render it positive and not argumentative; as *et sic nil debet*.

Et sic ad iudicium /èt sik æd juwdishiyəm/. And so to judgment.

Et sic ad patriam /èt sik æd pætriyəm/. And so to the country. A phrase used in the Year Books, to record an issue to the country.

Et sic fecit /èt sik féysət/. And he did so.

Et sic pendet /èt sik péndət/. And so it hangs. A term used in the old reports to signify that a point was left undetermined.

Et sic ulterius /èt sik æltiriyəs/. And so on; and so further; and so forth.

Et ux /èd áks(ər)/. An abbreviation for *et uxor*,—"and wife." Where a grantor's wife joins him in the conveyance, it is sometimes expressed (in abstracts, etc.) to be by "A. B. *et ux*."

Euclidian Zoning. See Zoning.

Eum qui nocentem infamat, non est æquum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit /iyəm kwày nəséntəm inféymət nón èst iykwəm èt bównəm òb iyəm rəm kòndemnéray; dəlíkta iynəm nəsénsh(iy)əm nówdə ésiy épórtət èt ékspədət/. It is not just and proper that he who speaks ill of a bad man should be condemned on that account; for it is fitting and expedient that the crimes of bad men should be known. 1 Bl.Comm. 125.

Eundo et redeundo /iyándow èt rèdiyándow/. Lat. In going and returning. Applied to vessels.

Eundo, morando, et redeundo /iyándow, mərəndow, èt rèdiyándow/. Lat. Going, remaining, and returning. A person who is privileged from arrest (as a witness, legislator, etc.) is generally so privileged *eundo, morando, et redeundo*; that is, on his way to the place where his duties are to be performed, while he remains there, and on his return journey.

Eunomy /yúwnəmiy/. Equal laws and a well-adjusted constitution of government.

Eunuch /yúwnək/. A male of the human species who has been castrated.

Euphoria /yufóriyə/. Exaggerated feeling of physical and emotional well-being not consonant with apparent stimuli or events; usually of psychologic origin, but also seen in organic brain diseases, or toxic and drug induced states.

Eurobanks. Banks that participate in the Eurocurrency market by accepting deposits and providing loans in foreign currencies.

Eurobond. An international bond which is issued outside the country in whose currency the bonds are denominated.

Eurodollar /yúrowdòlər/. U.S. dollars that have been deposited in European banks or European branches of U.S. banks.

European Court of Human Rights. The judicial body of the Council of Europe. Sits at Strasbourg. Established in 1950. The Convention on Human Rights, 1950, in force 1953, does not necessarily form part of the domestic law of member nations nor is there any obligation to accept the Court's jurisdiction.

Euthanasia /yüwθənéyzhə/. The act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy. See also Brain death; Death (*Natural Death Acts*); Will (*Living will*).

Evarts Act. See Judiciary Acts.

Evasion. An act of eluding, dodging, or avoiding, or avoidance by artifice. *City of Wink v. Griffith Amusement Co.*, 129 Tex. 40, 100 S.W.2d 695, 701. A subtle endeavoring to set aside truth or to escape the punishment of the law. Tax "evasion" is to be distinguished from tax "avoidance," the former meaning the illegal nonpayment of taxes due, the latter referring to the legal reduction or nonpayment of taxes through allowable deductions, exemptions, etc.

Evasive. Tending or seeking to evade; elusive; shifting; as an *evasive* argument or plea. If a pleading to which a responsive pleading is required is evasive, a party may make motion for a more definite statement. Fed.R.Civil P. 12(e).

Evasive answer. One which consists in refusing either to admit or to deny a matter in a direct, straight-forward manner as to which the person is necessarily presumed to have knowledge. Under Fed.R.Civil P. 37, an evasive answer is considered and treated as a failure to answer, for which a party may on motion seek a court order compelling answers to discovery questions.

Eve. Evening. The period immediately preceding an important event.

Even. Nothing due or owing on either side; neither a profit nor loss; *i.e.* breaking even.

Evening. The closing part of the day and beginning of the night; in a strict sense, from sunset till dark. In common speech, the latter part of the day and the earlier part of the night, until bedtime. The period between sunset or the evening meal and ordinary bedtime. See also Nighttime.

Evenings. In old English law, the delivery at evening or night of a certain portion of grass, or corn, etc., to a customary tenant, who performs the service of cutting, mowing, or reaping for his lord, given him as a gratuity or encouragement.

Event. The consequence of anything; the issue or outcome of an action as finally determined; that in which

an action, operation, or series of operations, terminates. Noteworthy happening or occurrence. Something that happens.

Distinguished from an act in that an act is the product of the will whereas an event is an occurrence which takes place independent of the will such as an earthquake or flood.

See also Fortuitous event.

Eventus est qui ex causa sequitur; et dicitur eventus quia ex causis evenit /əvɛntəs ɛst kwáy ɛks kózə sékwɛdər, ɛt dístər əvɛntəs kwáyə ɛks kózəs évnət/. An event is that which follows from the cause, and is called an "event" because it eventuates from causes.

Eventus varios res nova semper habet /əvɛntəs vériyovs ríyz nóvə sémpər héybat/. A new matter always produces various events.

Evergreen contract. A contract which renews itself from year to year in lieu of notice by one of the parties to the contrary. *Chemplex Co. v. Tauber Oil Co., D.C. Iowa, 309 F.Supp. 904, 908.*

Every. Each one of all; all the separate individuals who constitute the whole, regarded one by one. The term is sometimes equivalent to "all"; and sometimes to "each".

Every other thing. This phrase, as used in requiring employer to furnish safe place of employment and to do "every other thing" reasonably necessary to protect employees, relates to things of same kind that employer must necessarily do in making place safe.

Evesdroppers. *See* Eavesdropping.

Evict. In civil law, to recover anything from a person by virtue of the judgment of a court or judicial sentence. *See* Eviction.

Eviction. Dispossession by process of law; the act of depriving a person of the possession of land or rental property which he has held or leased. Act of turning a tenant out of possession, either by re-entry or legal proceedings, such as an action of ejectment. Deprivation of lessee of possession of premises or disturbance of lessee in beneficial enjoyment so as to cause tenant to abandon the premises (the latter being constructive conviction). *Estes v. Gatliff, 291 Ky. 93, 163 S.W.2d 273, 276.*

See also Actual eviction; Constructive eviction; Ejectment; Forcible entry and detainer; Notice to quit; Partial eviction; Process (*Summary process*); Retaliatory eviction; Total eviction.

Evidence. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention. *Taylor v. Howard, 111 R.I. 527, 304 A.2d 891, 893.* Testimony, writings, or material objects offered in proof of an alleged fact or proposition. That probative material, legally received, by which the tribunal may be lawfully persuaded of the

truth or falsity of a fact in issue. *People v. Leonard, 207 C.A.2d 409, 24 Cal.Rptr. 597, 600.*

Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. *Calif.Evid.Code.*

All the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. Any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion of the existence or nonexistence of some matter of fact. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. That which tends to produce conviction in the mind as to existence of a fact. The means sanctioned by law of ascertaining in a judicial proceeding the truth respecting a question of fact.

As a part of procedure "evidence" signifies those rules of law whereby it is determined what testimony should be admitted and what should be rejected in each case, and what is the weight to be given to the testimony admitted. *See* Evidence rules.

For Presumption as evidence, *see* Presumption; Proof and evidence distinguished, *see* Proof; Testimony as synonymous or distinguishable, *see* Testimony; View as evidence, *see* View.

See also Admnicular evidence; Aliunde; Autoptic evidence; Best evidence; Beyond a reasonable doubt; Circumstantial evidence; Competent evidence; Conclusive evidence; Conflicting evidence; Corroborating evidence; Critical evidence; Cumulative evidence; Demeanor (*Demeanor evidence*); Demonstrative evidence; Derivative evidence; Direct evidence; Documentary evidence; Exemplars; Extrajudicial evidence; Extraneous evidence; Extrinsic evidence; Fabricated evidence; Fact; Fair preponderance of evidence; Hearsay; Illegally obtained evidence; Immaterial evidence; Incompetent evidence; Incriminating evidence; Inculpatory; Independent source rule; Indirect evidence; Indispensable evidence; Inference; Laying foundation; Legal evidence; Legally sufficient evidence; Limited admissibility; Material evidence; Mathematical evidence; Moral evidence; Narrative evidence; Newly discovered evidence; Offer of proof; Opinion evidence; *or* testimony; Oral evidence; Original document rule; Parol evidence rule; Partial evidence; Past recollection recorded; Perpetuating testimony; Physical fact rule; Positive evidence; Preliminary evidence; Preponderance of evidence; Presumption; Presumptive evidence; Prima facie evidence; Primary evidence; Prior inconsistent statements; Privileged evidence; Probable evidence; Probative evidence; Probative facts; Proof; Proper evidence; Real evidence; Reasonable inference rule; Rebuttal evidence; Relevant evidence; Satisfactory evidence; Scintilla of evidence rule; Secondary evidence; Second-hand evidence; State's evidence; Substantial evidence; Substantive evidence; Substitutionary evidence rule; Sufficiency of evidence; Traditionary evidence; View; Weight of evidence; Withholding of evidence.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence—such as the

testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Autoptic evidence. Type of evidence presented in court which consists of the thing itself and not the testimony accompanying its presentation. Articles offered in evidence which the judge or jury can see and inspect. Real evidence as contrasted with testimonial evidence; *e.g.* in contract action, the document purporting to be the contract itself, or the gun in a murder trial. *See* Demonstrative evidence.

Character evidence. Evidence of a person's character or traits is admissible under certain conditions in a trial, though, as a general rule, evidence of character traits are not competent to prove that a person acted in conformity therewith on a particular occasion. Fed. Evid.R. 404.

Curative admissibility. *See* Curative.

Exculpatory evidence. A defendant in a criminal case is entitled to evidence in possession or control of the government if such evidence tends to indicate his innocence or tends to mitigate his criminality if he demands it and if the failure to disclose it results in a denial of a fair trial. *U. S. v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342. Disclosure of evidence by the government is governed by Fed.R.Crim.P. 16.

Expert evidence. Testimony given in relation to some scientific, technical, or professional matter by experts, *i.e.*, persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject. *See also* Expert witness.

Identification evidence. *See* Exemplars.

Illegally obtained evidence. *See* Exclusionary Rule; Fruit of poisonous tree doctrine; *Mapp v. Ohio*; *Miranda Rule*; *McNabb-Mallory Rule*; *Motion to suppress*.

Inculpatory evidence. Evidence tending to show a person's involvement in a crime; incriminating evidence. *See* Incriminating evidence.

Irrelevant evidence. Evidence is irrelevant if it is not so related to the issues to be tried and if it has no logical tendency to prove the issues. *See* Irrelevant. *Compare Relevant evidence, below.*

Material evidence. *See* Relevant evidence, *below.*

Oral evidence. *See* Testimony.

Original evidence. *See* Original; Original document rule.

Preponderance of the evidence. A standard of proof (used in many civil suits) which is met when a party's evidence on a fact indicates that it is "more likely than not" that the fact is as the party alleges it to be. *See* Fair preponderance of evidence.

Proffered evidence. Evidence, the admissibility or inadmissibility of which is dependent upon the existence or nonexistence of a preliminary fact. *Calif.Evid.Code.*

Relevant evidence. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. Evid.R. 401. Evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. *Calif.Evid.Code.* Evidence which bears a logical relationship to the issues in a trial or case. *See* Material evidence.

Tangible evidence. Physical evidence; evidence that can be seen or touched, *e.g.*, documents, weapons. Testimonial evidence is evidence which can be heard, *e.g.*, the statements made by anyone sitting in the witness box. *See* Demonstrative evidence.

Testimonial evidence. Communicative evidence as distinguished from demonstrative or physical evidence. *Com. v. Fernandez*, 333 Pa.Super. 279, 482 A.2d 567, 569. *See* Testimony.

Evidence by inspection. Such evidence as is addressed directly to the senses without intervention of testimony. Tangible; physical evidence. *See* Demonstrative evidence.

Evidence codes. Statutory provisions governing admissibility of evidence and burden of proof at hearings and trials (*e.g.* California Evidence Code). *See also* Evidence rules, *infra.*

Evidence completed. Exists where both sides have offered testimony and rested, or where plaintiff has rested and defendant has made motion for finding on plaintiff's case and stands on motion and declines to offer evidence. *Merriam v. Sugrue*, D.C.Mun.App., 41 A.2d 166, 167.

Evidence, law of. The aggregate of rules and principles regulating the burden of proof, admissibility, relevancy, and weight and sufficiency of evidence in legal proceedings. *See* Evidence codes; Evidence rules.

Evidence of debt. A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. *See* Bond; Debenture.

Evidence of insurability. Medical examination, records, and the like, required by insurer to establish a potential insurers qualification, or lack thereof, for particular insurance.

Evidence of title. A deed or other document establishing the title to property, especially real estate. *See* Deed.

Evidence reasonably tending to support verdict. Means evidence that is competent, relevant, and material, and which to rational and impartial mind naturally leads, or involuntarily tends to lead, to conclusion for which there is valid, just, and substantial reason. *Kelly*

v. Oliver Farm Equipment Sales Co., 169 Okl. 269, 36 P.2d 888, 891. *See also* Evidence to support findings.

Means some legal evidence tending to prove every material fact in issue as to which the party in whose favor the verdict was rendered had the burden of proof. Nicolai-Neppach Co. v. Smith, 154 Or. 450, 58 P.2d 1016, 1024.

Evidence rules. Rules which govern the admissibility of evidence at hearings and trials, *e.g.*, Federal Rules of Evidence; Uniform Rules of Evidence. A number of states have adopted evidence rules as patterned on the Federal Rules of Evidence. In certain states evidence rules are codified (*e.g.*, California Evidence Code) or otherwise set forth in statutes (*e.g.*, state statutes commonly govern admissibility of privileged communications).

Evidence to support findings. Substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for jury. *Jordan v. Craighead*, 114 Mont. 337, 136 P.2d 526, 528. *See also* Ultimate facts.

Evident. Clear to the understanding and satisfactory to the judgment; manifest; plain; obvious; conclusive. Noticeable; apparent to observation.

Proof evident. *See* Proof.

Evidentia /'ɛvədənsh(ɪ)ə/. L. Evidence.

Evidentiary /'ɛvədənsh(ə)riy/'ʧəriy/'ɪyəriy/. Having the quality of evidence; constituting evidence; evidencing. Pertaining to the rules of evidence or the evidence in a particular case. A term introduced by Bentham, and, from its convenience, adopted by other writers.

Evidentiary facts. Those facts which are necessary for determination of the ultimate facts; they are the premises upon which conclusions of ultimate facts are based. *Womack v. Industrial Comm.*, 168 Colo. 364, 451 P.2d 761, 764. Facts which furnish evidence of existence of some other fact.

Evidentiary harpoon. Exists where prosecution through its witnesses successfully places before jury improper evidence, such as previous arrests and convictions of defendant, in situations where such evidence would not be admissible. *Kramer v. State*, 258 Ind. 257, 317 N.E.2d 203, 207.

Evidently. Means in an evident manner; perceptibly, clearly, obviously, plainly. It is employed to express the idea of full-proof conviction. *Tennes v. Tennes*, 320 Ill.App. 19, 50 N.E.2d 132, 139.

Evocation. In French law, the withdrawal of a cause from the cognizance of an inferior court, and bringing it before another court or judge. In some respects this process resembles the proceedings upon *certiorari*.

Evolution statute. Legislative enactment which forbids teaching of evolution in schools and which has been held unconstitutional as violative of the Establishment

Clause of First Amend., U.S.Const. *Epperson v. Arkansas*, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228.

Ewage /yúwəj/. (L. Fr. *Ewe*, water.) In old English law, toll paid for water passage. The same as *aquage* or *aquagium*.

Ewbrice /yúwbriych/. Adultery; spouse-breach; marriage-breach.

Ewry /yúw(ə)riy/. An office in the royal household where the table linen, etc., is taken care of.

Ex /éks/. A latin preposition meaning from, out of, by, on, on account of, or according to.

A prefix, denoting removal, cessation or former. Prefixed to the name of an office, relation, *status*, etc., it denotes that the person spoken of once occupied that office or relation, but does so no longer, or that he is now *out* of it. Thus, *ex-mayor*, *ex-partner*, *ex-judge*.

A prefix which is equivalent to "without," "reserving," or "excepting." In this use, probably an abbreviation of "except." Thus, *ex-interest*, *ex-coupons*, *ex-dividend*.

Also used as an abbreviation for "exhibit."

Ex abundanti /'ɛks əbʌndántay/. Out of abundance; abundantly; superfluously; more than sufficient.

Ex abundanti cautela /'ɛks əbʌndántay kotíylə/. Lat. Out of abundant caution.

Exaction. The wrongful act of an officer or other person in compelling payment of a fee or reward for his services, under color of his official authority, where no payment is due. *See also* Extortion.

Exactor. In the civil law, a gatherer or receiver of money; a collector of taxes. In old English law, a collector of the public moneys; a tax gatherer. Thus, *exactor regis* was the name of the king's tax collector, who took up the taxes and other debts due the treasury.

Ex adverso /'ɛks ədvərsow/. On the other side. Applied to opposing counsel.

Ex æquitate /'ɛks íkwwətétyi/. According to equity; in equity.

Ex æquo et bono /'ɛks íkwow èt bównow/. A phrase derived from the civil law, meaning, in justice and fairness; according to what is just and good; according to equity and conscience. 3 Bl.Comm. 163.

Ex altera parte /'ɛks óltərə pártiy/. Of the other part.

Examen /'ɛgzéymən/. L. Lat. A trial. *Examen computi*, the balance of an account.

Examination. An investigation; search; inspection; interrogation.

Abstract of title. An investigation of the abstract of title made by or for a person who intends to purchase real estate, to ascertain the history and present condition of the title to such land, and its status with reference to liens, incumbrances, clouds, etc. to determine if marketable title exists.

Bankruptcy. Questioning of bankrupt during course of bankruptcy proceedings (first meeting of creditors) concerning extent of his debts and assets, conduct of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and all matters which may affect the administration and settlement of his estate. Bankruptcy Code, § 343.

Criminal procedure. An investigation by a magistrate of a person who has been charged with crime and arrested, or of the facts and circumstances which are alleged to have attended the crime, in order to ascertain whether there is sufficient ground to hold him to bail for his trial by the proper court. The preliminary hearing to determine whether person charged with having committed a crime should be held for trial. *See* Court of Inquiry; Examining court; Examining trial; Interrogation; Preliminary hearing.

Discovery. *See* Deposition; Discovery; Interrogatories.

Invention. An inquiry made at the patent-office, upon application for a patent, into the novelty and utility of the alleged invention, and as to its interfering with any other patented invention. 35 U.S.C.A. § 131 et seq.

Witnesses. The examination of a witness consists of the series of questions put to him by a party to the action, or his counsel, or opposing counsel, for the purpose of bringing before the court and jury in legal form the knowledge which the witness has of the facts and matters in dispute, or of probing and sifting his evidence previously given.

See also Cross-examination; Direct examination; Leading question; Preliminary hearing; Recross examination; Redirect examination; Re-examination; Separate examination. As regards examination of witnesses prior to trial, *see* Deposition; Interrogatories. As regards compulsory examination, *see* Subpoena.

Examined copy. A copy of a record, public book, or register, and which has been compared with the original.

Examiner. Officer or other person authorized to conduct an examination (*e.g.* bank examiner) or appointed by court to take testimony of witnesses.

An officer appointed by the court to take testimony in causes pending in that court; *e.g.* a master, auditor, referee.

An officer in the patent-office charged with the duty of examining the patentability of inventions for which patents are asked.

See also Auditor; Inspector; Master; Referee.

Examiners, bar. Persons appointed in states to test law graduates to ascertain their qualifications to practice law. Such test is called "bar examination."

Examining board. Generally, a board composed of public or quasi public officials who are responsible for conducting tests and examinations for those applying for occupational, professional, etc. licenses.

Examining court. A lower court which conducts preliminary examinations to determine probable cause and

set bail before a criminal defendant is bound over to the grand jury. *See* Court of inquiry; Preliminary hearing.

Examining trial. A preliminary hearing to determine whether there exists probable cause for binding one over to the grand jury. *See also* Preliminary hearing.

Exannual roll /ɛksænyuwəl rɔwəl/. In old English practice, a roll into which (in the old way of exhibiting sheriffs' accounts) the illeivable fines and desperate debts were transcribed, and which was *annually* read to the sheriff upon his accounting, to see what might be gotten.

Ex antecedentibus et consequentibus fit optima interpretatio /ɛks æntəsədéntəbəs èt kɔnsəkwéntəbəs fit ɔptəm əntəprətéysh(iy)ow/. A passage in a statute is best interpreted by reference to what precedes and what follows it. The best interpretation [of a part of an instrument] is made from the antecedents and the consequents [from the preceding and following parts]. The law will judge of a deed or other instrument, consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. The whole instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual.

Ex arbitrio iudicis /ɛks arɪtriyow júwdəsəs/. At, in, or upon the discretion of the judge. 4 Bl.Comm. 394. A term of the civil law.

Ex assensu curiæ /ɛks əséns(y)uw kyúriyiy/. By or with the consent of the court.

Ex assensu patris /ɛks əséns(y)uw pátrəs/. By or with the consent of the father. A species of dower *ad ostium ecclesiæ*, during the life of the father of the husband; the son, by the father's consent expressly given, endowing his wife with parcel of his father's lands. Abolished in England by 3 & 4 Wm. IV, c. 105, § 13.

Ex assensu suo /ɛks əséns(y)uw s(y)úwuw/. With his assent. Formal words in judgments for damages by default.

Ex bonis /ɛks bównəs/. Of the goods or property. A term of the civil law, distinguished from *in bonis*, as being descriptive of or applicable to property not in actual possession.

Excambiator /ɛkskæmbiyètər/. An exchanger of lands; a broker. Obsolete.

Excambium /ɛkskæmbiyəm/. An exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiæ*.

Ex cathedra /ɛks kætʰədɹə/*kəθiydrə/. From the chair. Originally applied to the decisions of the popes from their *cathedra*, or chair. Hence, authoritative; having the weight of authority.

Ex causa /ɛks kózə/. L. Lat. By title.

Excellency. Title sometimes given to the chief executive of a state or of the nation; also to members of

hierarchy of church and judges of the International Court of Justice at the Hague.

Except. But for; only for; not including; other than; otherwise than; to leave out of account or consideration. *See* Exception.

Excepting. As used in a deed, the terms "reserving" and "excepting" are used interchangeably, and their technical meaning will give way to the manifest intent. *Porter v. Warner-Caldwell Oil Co.*, 183 Okl. 1, 80 P.2d 252, 253. The words "reserving" and "excepting," although strictly distinguishable, may be used interchangeably or indiscriminately. *Stephens v. Kentucky Valley Distilling Co.*, 275 Ky. 705, 122 S.W.2d 493, 496.

Exceptio /əksépsh(iy)ow/. An exception, plea, or objection. In civil law, a plea by which the defendant admits the cause of action, but alleges new facts which, provided they be true, totally or partially answer the allegations put forward on the other side; thus distinguished from a mere traverse of the plaintiff's averments. In this use, the term corresponds to the common-law plea in confession and avoidance. Such answers to the "defense" or "plea" of the common law. An allegation and defense of a defendant by which the plaintiff's claim or complaint is defeated, either according to strict law or upon grounds of equity. In a stricter sense, the exclusion of an action that lay in strict law, on grounds of equity (*actionis jure stricto competentis ob æquitatem exclusio*). A kind of limitation of an action, by which it was shown that the action, though otherwise just, did not lie in the particular case. A species of defense allowed in cases where, though the action as brought by the plaintiff was in itself just, yet it was unjust as against the particular party sued.

Exceptio dilatoria /əksépsh(iy)ow dilatóriyə/. A dilatory exception; called also "*temporalis*" (temporary); one which defeated the action for a time (*quæ ad tempus nocet*), and created delay (*et temporis dilationem tribuit*); such as an agreement not to sue within a certain time, as five years.

Exceptio doli mali /əksépsh(iy)ow dówlay málay/. An exception or plea of fraud.

Exceptio domini /əksépsh(iy)ow dāmīniyay/. A claim of ownership set up in an action for the recovery of property not in the possession of the plaintiff.

Exceptio dotis cautæ non numeratæ /əksépsh(iy)ow dówtəs kótīy nòn n(y)üwmərəytiy/. A defense to an action for the restitution of a dowry that it was never paid, though promised, available upon the dissolution of the marriage within a limited time.

Exceptio ejus rei cuius petitur dissolutio nulla est /əksépsh(iy)ow iyjəs riýay kyúwjəs pétətər disəlyúwsh(iy)ow nólə èst/. A plea of that matter the dissolution of which is sought [by the action] is null [or of no effect].

Exceptio falsi omnium ultima /əksépsh(iy)ow fòlsay ómniyəm ðltəmə/. A plea denying a fact is the last of all.

Exceptio firmat regulam in casibus non exceptis /əksépsh(iy)ow fármət régyələm ən kéysəbəs nòn əkséptəs/. An exception affirms the rule in cases not excepted.

Exceptio firmat regulam in contrarium /əksépsh(iy)ow fármət régyələm in kənt්රériyəm/. An exception proves an opposite rule. *See* Exceptio probat regulam.

Exceptio in factum /əksépsh(iy)ow in fáktəm/. An exception on the fact. An exception or plea founded on the peculiar circumstances of the case.

Exceptio in personam /əksépsh(iy)ow in pərsównəm/. A plea or defense of a personal nature, which may be alleged only by the person himself to whom it is granted by the law.

Exceptio in rem /əksépsh(iy)ow in rém/. A plea or defense not of a personal nature, but connected with the legal circumstances on which the suit is founded, and which may therefore be alleged by any party in interest, including the heirs and sureties of the proper or original debtor.

Exceptio jurisjurandi /əksépsh(iy)ow jürəsjərənday/. An exception of oath; an exception or plea that the matter had been sworn to. This kind of exception was allowed where a debtor, at the instance of his creditor (*creditor deferente*), had sworn that nothing was due the latter, and had notwithstanding been sued by him.

Exceptio metus /əksépsh(iy)ow métəs/. An exception or plea of fear or compulsion. Answering to the modern plea of duress.

Exception. Act of excepting or excluding from a number designated or from a description; that which is excepted or separated from others in a general rule or description; a person, thing, or case specified as distinct or not included; an act of excepting, omitting from mention or leaving out of consideration. Express exclusion of something from operation of contract or deed. An "exception" operates to take something out of thing granted which would otherwise pass or be included. *Christman v. Emineth, N.D.*, 212 N.W.2d 543, 552. Such excludes from the operation of conveyance the interest specified and it remains in grantor unaffected by conveyance. *Elrod v. Heirs, Devises, etc.*, 156 Neb. 269, 55 N.W.2d 673, 675, 676.

Objection to order or ruling of trial court. A formal objection to the action of the court, during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal, and that he means to save the benefit of his request or objection in some future proceeding. Under rules practice in the federal and most state courts, the need for claiming an exception to evidence or to a ruling to preserve appellate rights has been eliminated in favor of an objection. *Fed.R. Civil P.* 46.

See also Challenge; Dilatory exceptions; General exception; Objection; Peremptory exceptions; Reservation; Special exception.

Bill of exceptions. See Bill.

Deed. An exception withdraws from operation of deed part of thing granted which would otherwise pass to grantee.

Insurance policy. An exclusion of one or more risks. *Kirkby v. Federal Life Ins. Co.*, C.C.A.Mich., 35 F.2d 126, 128. The object of an exception is to exclude that which otherwise would be included, to take special cases out of a general class, or to guard against misinterpretation. *"Reservation" and "proviso" compared.* A "reservation" creates some new right in grantor while an "exception" withholds from grant title to some part of property which would otherwise pass. *Clark v. Pauley*, 291 Ky. 637, 165 S.W.2d 161, 162. A reservation does not affect the description of the property conveyed, but retains to the grantor some right upon the property, as an easement, whereas an exception operates upon the description and withdraws from the description the excepted property. *Moore v. Davis*, 273 Ky. 838, 117 S.W.2d 1033, 1035. A "reservation" is always of something taken back out of that which is clearly granted, while an "exception" is of some part of the estate not granted at all. *Lewis v. Standard Oil Co. of California*, C.C.A.Cal., 88 F.2d 512, 514. An exception *exempts*, absolutely, from the operation of an engagement or an enactment; a proviso, properly speaking, defeats their operation, *conditionally*. An exception takes out of an engagement or enactment something which would otherwise be part of the subject-matter of it; a proviso avoids them by way of defeasance or excuse. Reservation reserves to grantor some new interest out of thing granted, while exception excludes from operation of grant some existing part of estate. *Petty v. Griffith, Mo.*, 165 S.W.2d 412, 414; *U. S. v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del.*, D.C.Del., 56 F.Supp. 120, 128.

It has also been held however that a "proviso" and an "exception" are substantially the same thing, and that the terms are frequently used interchangeably for synonymous terms. *Victory Oil Co. v. Hancock Oil Co.*, 270 P.2d 604, 611.

Compare also Variance.

Statutory laws. An exception in a statute is a clause designed to reserve or exempt some individuals from the general class of persons or things to which the language of the act in general attaches. The office of an "exception" in a statute is to except something from the operative effect of a statute or to qualify or restrain the generality of the substantive enactment to which it is attached, and it is not necessarily limited to the section of the statute immediately following or preceding. *Gatliff Coal Co. v. Cox*, C.C.A.Ky., 142 F.2d 876, 882. Two statutes relating to same subject must be read together, and provisions of one having special application to particular subject will be deemed an "exception" to other statute general in its terms. *Eagleton v. Murphy*, 348 Mo. 949, 156 S.W.2d 683, 685. See Grandfather clause.

Exceptional circumstances. Conditions which are out of the ordinary course of events; unusual or extraordinary circumstances. For example, lack of original jurisdiction to hear and determine a case constitutes "except-

tional circumstance" as basis for raising question for the first time on habeas corpus. *Wesley v. Schneckloth*, 55 Wash.2d 90, 346 P.2d 658, 660.

Exceptio non adimpleti contractus /əksəpsh(iy)ow nɔn ədɛmpliytay kɔntrəktəs/. An exception in an action founded on a contract involving mutual duties or obligations, to the effect that the plaintiff is not entitled to sue because he has not performed his own part of the agreement.

Exceptio non solutæ pecuniæ /əksəpsh(iy)ow nɔn səl(y)úwtiy pəkýúwniy/. A plea that the debt in suit was not discharged by payment (as alleged by the adverse party) notwithstanding an acquittance or receipt given by the person to whom the payment is stated to have been made.

Exceptio nulla est versus actionem quæ exceptionem perimit /əksəpsh(iy)ow nálə èst vársəs əkshiyównəm kwiy əksəpshiyówniy pásəmat/. There is [can be] no plea against an action which destroys [the matter of] the plea.

Exceptio pacti conventi /əksəpsh(iy)ow páktay kənvéntay/. An exception of compact; an exception or plea that the plaintiff had agreed not to sue.

Exceptio pecuniæ non numeratæ /əksəpsh(iy)ow pəkýúwniy nɔn n(y)úwmərətyiy/. An exception or plea of money not paid; a defense which might be set up by a party who was sued on a promise to repay money which he had never received.

Exceptio peremptoria /əksəpsh(iy)ow pərəm̀tóriy/. A peremptory exception; called also "*perpetua*," (perpetual); one which forever destroyed the subject-matter or ground of the action (*quæ semper rem de qua agitur perimit*); such as the *exceptio doli mali*, the *exceptio metus*, etc.

Exceptio plurium concubentium /əksəpsh(iy)ow pl(y)úriyəm kɔnkyuwbəns(iy)əm/. The plea or defense of several lovers (*i.e.* multiple access) in paternity actions. *Yarmark v. Strickland*, Fla.App., 193 So.2d 212.

Exceptio probat regulam /əksəpsh(iy)ow prówbət régyələm/. The exception proves the rule. Sometimes quoted with the addition "*de rebus non exceptis*" ("so far as concerns the matters not excepted").

Exceptio quæ firmat legem, exponit legem /əksəpsh(iy)ow kwiy fərmət liyjəm, əkspównət liyjəm/. An exception which confirms the law explains the law.

Exceptio quoque regulam declarat /əksəpsh(iy)ow kwókwiy régyələm dəklérət/. The exception also declares the rule.

Exceptio rei judicatæ /əksəpsh(iy)ow riáy júwdəkétyiy/. An exception or plea of matter adjudged; a plea that the subject-matter of the action had been determined in a previous action.

Exceptio rei venditæ et traditæ /əksəpsh(iy)ow riáy véndətyiy èt trádətyiy/. An exception or plea of the sale and delivery of the thing. This exception presumes that there was a valid sale and a proper tradition; but

though, in consequence of the rule that no one can transfer to another a greater right than he himself has, no property was transferred, yet because of some particular circumstance the real owner is estopped from contesting it.

Exceptio semper ultin.o ponenda est /əksəpsh(iy)ow sɛmpər ʔltəmw pənɛndə ɛst/. An exception should always be put last.

Exceptio senatusconsulti macedoniani /əksəpsh(iy)ow sənɛydəskənsʔltay mæsədəwniyéynay/. A defense to an action for the recovery of money loaned, on the ground that the loan was made to a minor or person under the paternal power of another; so named from the decree of the senate which forbade the recovery of such loans.

Exceptio senatusconsulti velleiani /əksəpsh(iy)ow sənɛydəskənsʔltay vɛliyéynay/. A defense to an action on a contract of suretyship, on the ground that the surety was a woman and therefore incapable of becoming bound for another; so named from the decree of the senate forbidding it.

Exceptio temporis /əksəpsh(iy)ow tɛmpərəs/. An exception or plea analogous to that of the statute of limitations in our law; viz., that the time prescribed by law for bringing such actions has expired.

Exceptis excipiendis /əksɛptəs əksipiyéndəs/. Lat. With all necessary exceptions.

Exceptor. In old English law, a party who entered an exception or plea.

Except right of way. Recitals "less the right of way" and "except right of way" in granting clause of deed have well-defined accepted certain and unambiguous meaning by which grantor conveys entire interest in servient estate and at same time expressly recognizes and acknowledges dominant estate. *Jennings v. Amerada Petroleum Corporation*, 179 Okl. 561, 66 P.2d 1069, 1071.

Excerpta /əksərpətə/ or **excerpts** /éksərpəts/. Extracts.

Ex certa scientia /èks sɛrtə sayénsh(iy)ə/. Of certain or sure knowledge. These words were anciently used in patents, and imported full knowledge of the subject-matter on the part of the king.

Excess. Act or amount which goes beyond that which is usual, proper, or necessary. Degree or amount by which one thing or number exceeds another. *See also* Excessive.

Excess clause. An "excess clause" in insurance policy limits liability to the amount of loss in excess of the coverage provided by other insurance. *Federal Kemper Ins. Co., Inc. v. Health Ins. Admin., Inc.*, 424 Mich. 537, 383 N.W.2d 590, 592. In insurance policy, such clause provides for insurer's liability up to limits of policy covering excess loss only after exhaustion of other valid insurance. *Underground Const. Co., Inc. v. Pacific Indem. Co.*, 49 Cal.App.3d 62, 122 Cal.Rptr. 330, 333. *See also* Excess policy.

Excess condemnation. Taking more property under condemnation than is actually needed. *See* Condemnation.

Excess insurance. That amount of insurance coverage which is beyond the dollar amount of coverage of one carrier but which is required to pay a particular loss as distinguished from "other insurance" which may be used to pay or contribute to the loss. *See also* Excess policy.

Excess jurisdiction. Such exists where a court, having jurisdiction of persons and subject matter of the case before it, exceeds its power in trial of such case by dealing with matters about which it is without power or authority to act; and error in court's ruling is not synonymous with ruling in excess of jurisdiction. *Robrock v. Robrock*, 105 Ohio App. 25, 151 N.E.2d 234, 239. *See* Excess of jurisdiction.

Excessive. Greater than what is usual or proper. A general term for what goes beyond just measure or amount. *Austin St. Ry. Co. v. Oldham*, Tex.Civ.App., 109 S.W.2d 235, 237. Tending to or marked by excess, which is the quality or state of exceeding the proper or reasonable limit or measure.

Excessive assessment. A tax assessment grossly disproportionate as compared with other assessments. *Southern California Telephone Co. v. Los Angeles County*, 45 Cal.App.2d 111, 113 P.2d 773, 776.

Excessive bail. The 8th Amendment to the U.S. Constitution, as well as the constitutions of the various states, prohibits excessive bail. Refers to bail in a sum more than will be reasonably sufficient to prevent evasion of the law by flight or concealment; bail which is per se unreasonably great and clearly disproportionate to the offense involved, or shown to be so by the special circumstances of the particular case. *Blunt v. U.S.*, D.C. D.C. 322 A.2d 579. Bail set at higher figure than amount reasonably calculated to fulfill purpose of assuring that accused will stand trial and submit to sentence if found guilty is "excessive" under 8th Amendment. *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3.

Excessive damages. *See* Damages.

Excessive drunkenness. Drunkenness is excessive where a person is so far deprived of his reason and understanding as to render him incapable of understanding character and consequences of his act. *See* Driving while intoxicated.

Excessive fine or penalty. The 8th Amendment to the U.S. Constitution, as well as the constitutions of the various states, prohibits excessive fines. A state may not constitutionally imprison a person for inability to pay a fine if he would not have been imprisoned on a showing of ability to pay the fine and on payment of the fine. *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130. Any fine or penalty which seriously impairs the capacity of gaining a business livelihood. *See* Corporal punishment; Excessive punishment; Punishment.

Excessive force. That amount of force which is beyond the need and circumstances of the particular event or which is not justified in the light of all the circumstances as in the case of deadly force to protect property as contrasted with protecting life. *See* Self defense.

Excessively. To excess.

Excessively intoxicated. Exists where one is so intoxicated as to be so far deprived of his reason and understanding as to render him incapable of knowing the character and consequences of his act. *See* Driving while intoxicated; Excessive drunkenness.

Excessive punishment. Any sentence or fine which is not commensurate with the gravity of the offense or the criminal record of the defendant. Excessive punishments under 8th Amendment are those which by their length or severity are greatly disproportionate to offenses charged. *Naked City, Inc. v. State, Ind.App. 3 Dist., 460 N.E.2d 151, 158.* Excessive length of a sentence may be cruel and unusual punishment within the meaning of the prohibition in the 8th Amendment, U.S. Constitution. *Weems v. U. S., 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793.* *See* Corporal punishment; Excessive fine or penalty; Punishment.

Excessive speed. Automobile's speed is "excessive" whenever it places car beyond driver's control.

Excessive verdict. A verdict which is result of passion or prejudice. *Babb v. Murray, 26 Cal.App.2d 153, 79 P.2d 159, 160.* The test of whether a verdict is "excessive" is whether the amount thereof is such as to shock the conscience of the court. *Scheidegger v. Thompson, Mo.App., 174 S.W.2d 216, 222.* *See* Remittitur.

Excessivum in jure reprobatur. Excessus in re qualibet jure reprobatur communi /èksesáývøm in júriy réprábéytar. eksésas in ríy kwéylabøt júriy réprábéytar kòmýúwnay/. Excess in law is reprehended. Excess in anything is reprehended at common law.

Excess limits. Insurance coverage against losses in excess of specified limit.

Excess of jurisdiction. A case in which court has initially proceeded properly within its jurisdiction but steps out of jurisdiction in making of some order or in the doing of some judicial act. *Olson v. District Court of Salt Lake County, 93 Utah 145, 71 P.2d 529, 534.* Acts which exceed defined power of court in any instance. *Abelleira v. District Court of Appeal, Third Dist., 17 Cal.2d 280, 109 P.2d 942, 948.* A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an "excess of jurisdiction." *Wuest v. Wuest, 53 Cal.App.2d 339, 127 P.2d 934, 937.* *See also* Excess jurisdiction.

Excess or surplus water. Water which is flowing in stream in addition to what may be termed adjudicated waters. Any water not needed for reasonable beneficial uses of those having prior rights is "excess or surplus water". *City of Pasadena v. City of Alhambra, 33 Cal.2d 908, 207 P.2d 17, 28.*

Excess policy. One that provides that the insurer is liable only for the excess above and beyond that which may be collected on other insurance. *Brownsville Fabrics, Inc. v. Gulf Ins. Co., Tex.Civ.App., 550 S.W.2d 332, 337.* *See also* Excess clause.

Excess profits tax. Tax levied on profits which are beyond the normal profits of a business and generally imposed in times of national emergency such as war to discourage profiteering. The Internal Revenue Code also imposes a tax on corporations who accumulate an unreasonable surplus of profits rather than paying such out as dividends. I.R.C. § 531 et seq. *See* Accumulated earnings tax.

Exchange. To barter; to swap. To part with, give or transfer for an equivalent. *Kessler v. United States, C.C.A.Pa., 124 F.2d 152, 154.* To transfer goods or services for something of equal value. *Rosenberg v. State, 12 Md.App. 20, 276 A.2d 708, 711.* Act of giving or taking one thing for another. *United States v. Paine, D.C.Mass., 31 F.Supp. 898, 900.* Contract by terms of which specific property is given in consideration of the receipt of property other than money. *Capps v. Mines Service, 175 Or. 248, 152 P.2d 414, 416.* Mutual grant of equal interests, the one in consideration of the other. *Hale v. Helvering, 66 App.D.C. 242, 85 F.2d 819, 821, 822.* Mutual transfer of property other than for money although one of parties may pay a sum of money in addition to property. Transaction in which one piece of property, usually something other than money or its equivalent, is given in return for another piece of property. *Hadley Falls Trust Co. v. United States, C.C.A. Mass., 110 F.2d 887, 891.* Transfer of property for property or some value other than money. *Burger-Phillips Co. v. Commissioner of Internal Revenue, C.C.A. Ala., 126 F.2d 934, 936.* Transfers of enduring interests and not such as must immediately be reconveyed in fulfillment of preconceived plan. *Morgan v. Helvering, C.C.A.N.Y., 117 F.2d 334, 336.* The criterion in determining whether a transaction is a sale or an exchange is whether there is a determination of value of things exchanged, and if no price is set for either property it is an "exchange". *Gruver v. Commissioner of Internal Revenue, C.C.A.D.C., 142 F.2d 363, 366.* The mutual transfers must be in kind, and any transaction into which money enters, either as the consideration or as a basis of measure is excluded. *Trenton Cotton Oil Co. v. C. I. R., C.C.A.Tenn., 147 F.2d 33, 36.* Reciprocal transfers. *Helvering v. William Flaccus Oak Leather Co., 313 U.S. 247, 61 S.Ct. 878, 880, 85 L.Ed. 1310; Harwick v. Commissioner of Internal Revenue, C.C.A.Minn., 133 F.2d 732, 737.*

Commerce or trade in goods, currency, or commercial paper.

Any organization, association, or group of persons, incorporated or not, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities, and includes the market place and facilities maintained by such an exchange. A major stock and bond exchange is the New York Stock Exchange. Similar exchanges exist for the

trading of commodities; *e.g.* New York Commodities Exchange; Minneapolis Grain Exchange; Chicago Board of Trade. Trading in securities is controlled by the Securities and Exchange Commission; trading in commodities by the Commodity Futures Trading Commission.

For Arbitration of exchange; Dry exchange; First of exchange, and *Owely (Owely of exchange)*, see those titles. For *Bill of exchange*, see *Bill*. See also *Barter*; *Sale or exchange*.

Commercial law. A negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon or which is fixed by commercial usage. The process of settling accounts or debts between parties residing at a distance from each other, without the intervention of money, by exchanging orders or drafts, called bills of exchange. The payment of debts in different places by an exchange or transfer of credits. The profit which arises from a maritime loan, when such profit is a percentage on the money lent, considering it in the light of money lent in one place to be returned in another, with a difference in amount in the sum borrowed and that paid, arising from the difference of time and place.

Conveyancing. A mutual grant of equal interests (in lands or tenements), the one in consideration of the other.

Like kind exchange. See *Like-kind exchange*.

Exchange broker. One who negotiates bills of exchange drawn on foreign countries or on other places in the same country. One who makes and concludes bargains for others in matters of money or merchandise.

Exchange offer. In a bilateral contract, such constitutes part of the consideration for the ultimate contract when such offer is accepted.

Exchange rate. The value of one country's money in terms of the value of another country's currency (*e.g.*, dollar vs. pound). Price at which the currency of one country can be converted into that of another country. See also *Foreign exchange rate*; *Rate (Rate of exchange)*.

Exchange ratio. The number of shares an acquiring company must give, or *exchange*, for each share of an acquired company in a merger.

Exchequer /èkschékər/. That department of the English government which has charge of the collection of the national revenue; the treasury department.

It is said to have been so named from the chequered cloth, resembling a chess-board, which anciently covered the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 Bl.Comm. 44.

For *Court of Exchequer* and *Court of Exchequer Chamber*, see those titles.

Exchequer bills. Bills of credit issued in England by authority of parliament.

Instruments issued at the exchequer, under the authority, for the most part, of acts of parliament passed

for the purpose, and containing an engagement on the part of the government for repayment of the principal sums advanced with interest.

Exchequer division. A division of the English high court of justice, to which the special business of the court of exchequer was specially assigned by section 34 of the judicature act of 1873. Merged in the queen's bench division from and after 1881, by order in council under section 31 of that act.

Excise lieu property tax. Tax on gross premiums received and collected by designated classes of insurance companies. *United Pacific Ins. Co. v. Bakes*, 57 Idaho 537, 67 P.2d 1024, 1029.

Excise tax. A tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege. *Rapa v. Haines*, Ohio Com.Pl., 101 N.E.2d 733, 735. A tax on the manufacture, sale, or use of goods or on the carrying on of an occupation or activity, or a tax on the transfer of property. In current usage the term has been extended to include various license fees and practically every internal revenue tax except the income tax (*e.g.*, federal alcohol and tobacco excise taxes, IRC § 5001 et seq.)

Excited utterance. In evidence, a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. It is an exception to the hearsay rule. Fed.Evid. Rule 803(2); *State v. Emery*, 4 Or.App. 527, 480 P.2d 445, 447. See also *Fresh complaint rule*; *Res gestæ*; *Spontaneous declarations*.

Exclusa /əksklúwzə/. In old English law, a sluice to carry off water; the payment to the ford for the benefit of such a sluice.

Exclusion. Denial of entry or admittance.

In taxation, item of income that is excluded from gross income (*i.e.*, not taxed) because of particular I.R.C. provision; *e.g.*, gifts and inheritance (I.R.C. § 102); qualified scholarships (I.R.C. § 117). Compare *Deduction*.

"Exclusion" from the United States means preventing someone from entering the United States who was actually outside of the United States or is treated as being so. *Kwong Hai Chew v. Colding*, N.Y., 344 U.S. 590, 73 S.Ct. 472, 477, 97 L.Ed. 576.

Evidence. The action by the trial judge in which he excludes from consideration by the trier of fact whatever he rules is not admissible as evidence. See also *Exclusionary Rule*.

Gift tax. The amount which a donor may transfer by gift each year without tax consequences. I.R.C. § 2503(b).

Insurance. In insurance policy, "exclusion" is provision which eliminates coverage where were it not for exclusion, coverage would have existed. *Kansas-Nebraska Natural Gas Co., Inc. v. Hawkeye-Security Ins. Co.*, 195 Neb. 658, 240 N.W.2d 28, 31. Provision in policy specifying the situations, occurrences or persons not covered by the policy.

Witness. A trial judge may, under certain circumstances, sequester witnesses and require that they be kept apart from other witnesses until they are called to testify.

Exclusionary hearing. Pre-trial hearing at which alleged illegally obtained evidence is reviewed by trial judge to determine whether such is admissible at trial. *See* Fed.R.Crim.P. 12(b)(3). *See also* Exclusionary Rule.

Exclusionary Rule. This rule commands that where evidence has been obtained in violation of the search and seizure protections guaranteed by the U.S. Constitution, the illegally obtained evidence cannot be used at the trial of the defendant. Under this rule evidence which is obtained by an unreasonable search and seizure is excluded from admissibility under the Fourth Amendment, and this rule has been held to be applicable to the States. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081.

"Good faith exception" to exclusionary rule provides that evidence is not to be suppressed under such rule where that evidence was discovered by officers acting in good faith and in reasonable, though mistaken, belief that they were authorized to take those actions. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677. This exception recognizes that officers who have acted with objective good faith have right to rely upon issuing magistrate's determination that substantial basis existed for finding probable cause. *State v. Murphy*, Mo.App., 693 S.W.2d 255, 266.

See also Counsel, right to; Escobedo Rule; Fruit of poisonous tree doctrine; Good faith exception to exclusionary rule; Illegally obtained evidence; Independent source rule; Inevitable discovery rule; Miranda Rule; Motion to suppress; Suppression hearing; Suppression of evidence.

Exclusionary zoning. Any form of zoning ordinance which tends to exclude specific classes of persons or businesses from a particular district or area. *See also* Zoning.

Exclusive. Appertaining to the subject alone, not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone. Apart from all others, without the admission of others to participation. *People on Complaint of Samboy v. Sherman*, 158 N.Y. S.2d 835, 837.

Exclusive agency. Grant to agent of exclusive right to sell within a particular market or area. A contract to give an "exclusive agency" to deal with property is ordinarily interpreted as not precluding competition by the principal generally, but only as precluding him from appointing another agent to accomplish the result. The grant of an "exclusive agency to sell," that is, the exclusive right to sell the products of a wholesaler in a specified territory, ordinarily is interpreted as precluding competition in any form within designated area. *Navy Gas & Supply Co. v. Schoech*, 105 Colo. 374, 98 P.2d 860, 861.

Exclusive agency listing. Agreement between a property owner and a real estate broker whereby the owner promises to pay a fee or commission to broker if his real property is sold during the listing period, regardless of whether the broker is responsible for the sale. *Carlson v. Zane*, 261 Cal.App.2d 399, 67 Cal.Rptr. 747, 749. *See also* Exclusive right (*Exclusive right to sell*); Listing.

Exclusive agent. An agent who has exclusive right to sell within a particular market or area. *See also* Exclusive agency.

Exclusive contract. A contract by which one binds himself to sell to or buy from only one person for his total requirements. *See* Entire output contract; Exclusive dealing arrangements.

Exclusive control. Essential prerequisite to application of doctrine of *res ipsa loquitur* is that person to be charged have "exclusive control," connoting that no other person or entity had any control of instrumentality causing harm. *Mahowald v. Minnesota Gas Co.*, Minn., 344 N.W.2d 856, 862. Under this rule, where a thing is shown to be under management of defendant or his servants, and accident is such as in ordinary course does not happen if those having management use proper care, it affords reasonable evidence in absence of explanation that the accident arose from want of care. *Mack v. Reading Co.*, 377 Pa. 135, 103 A.2d 749, 751. *See also* *Res (Res ipsa loquitur)*.

Exclusive dealing arrangements. A form of vertical integration by contract under which a buyer agrees to purchase all its needs of a particular product from the seller—*i.e.*, the buyer agrees not to deal in the same product with a different supplier. At common law, generally agreements to deal exclusively with one seller or buyer were upheld, but under the Sherman Act as well as the Clayton and Federal Trade Commission Acts, such agreements are usually illegal. *See also* Requirement contract.

Exclusive franchise. *See* Exclusive agency.

Exclusive jurisdiction. That power which a court or other tribunal exercises over an action or over a person to the exclusion of all other courts. That forum in which an action must be commenced because no other forum has the jurisdiction to hear and determine the action. For example, by statute, actions brought under the Securities Exchange Act *must* be brought in federal district court.

Exclusive and concurrent jurisdiction. The federal courts have original and exclusive jurisdiction over certain actions (*e.g.* controversies between two or more states) and concurrent jurisdiction with that of state courts in others (*e.g.* actions between citizens of different states).

Exclusive license. Exclusive right granted by patent holder to licensee to use, manufacture, and sell patented article. Permission to do thing and contract not to give leave to any one else to do same thing. *Overman Cushion Tire Co. v. Goodyear Tire & Rubber Co.*, C.C.A. N.Y., 59 F.2d 998, 999. A license which binds licensor

not to enlarge thereafter the scope of other licenses already granted, or increase the number of licenses, is an "exclusive license". *Mechanical Ice Tray Corporation v. General Motors Corporation, C.C.A.N.Y., 144 F.2d 720, 725. See also Exclusive agency; License.*

Exclusive licensee. One granted exclusive right and license to use, manufacture, and sell patented article. *Deitel v. Chisholm, C.C.A.N.Y., 42 F.2d 172, 173.* One having exclusive right to use patented method and apparatus in designated territory. *Paul E. Hawkinson Co. v. Carnell, C.C.A.Pa., 112 F.2d 396, 398.*

Exclusive listing. *See Exclusive agency listing.*

Exclusively. Apart from all others; only; solely; substantially all or for the greater part. To the exclusion of all others; without admission of others to participation; in a manner to exclude. *Standard Oil Co. of Texas v. State, Tex.Civ.App., 142 S.W.2d 519, 521, 522, 523.*

Exclusively used. The phrase in provision exempting from taxation properties exclusively used for religious worship, for schools or for purposes purely charitable, has reference to primary and inherent as over against a mere secondary and incidental use. *Salvation Army v. Hoehn, Mo., 354 Mo. 107, 188 S.W.2d 826, 830.*

Exclusive ownership. Ownership free from any kind of legal or equitable interest in any one else. *See Fee simple.*

Exclusive possession. Exclusive possession by adverse possessor means that adverse possessor must show an exclusive dominion over the land and an appropriation of it to his own use and benefit, and not for another. *W. T. Carter & Bro. v. Holmes, 131 Tex. 365, 113 S.W.2d 1225, 1226.* Possession may be "exclusive" so as to entitle possessor to title by adverse possession, notwithstanding that the land is subject to exercise of easement by private party. *Young v. City of Lubbock, Tex.Civ. App., 130 S.W.2d 418, 420. See also, Adverse possession.*

Exclusive right. One which only the grantee thereof can exercise, and from which all others are prohibited or shut out.

Exclusive right to sell. An "exclusive right to sell" agreement listing real property for sale prohibits the owner from selling his property either by himself or through another broker without liability while the property is listed with the original broker. *Foltz v. Begnoche, 222 Kan. 383, 565 P.2d 592, 595. See Exclusive agency listing.*

Exclusive use. As used in law authorizing registration of trademarks, means exclusive use not only of specific mark but also any other confusingly similar mark or term. *McKesson & Robbins v. Charles H. Phillips Chemical Co., C.C.A.Conn., 53 F.2d 1011.*

Exclusive use, as essential element of acquisition of easement by prescription, means that exercise of right shall not be dependent upon similar right in others, but use may be shared with owner of servient estate. *White v. Wheatland Irr. Dist., Wyo., 413 P.2d 252, 260. Exclu-*

sive use, for purpose of establishing a right in easement by adverse user, does not mean use to exclusion of use by all others, but exclusive use under claim of right requires only that right claimed by adverse user be not dependent on right of any one else to use way and may be established by common user thereof with owner of servient land and without any subjective claim of right. *Feldman v. Knapp, 196 Or. 453, 250 P.2d 92, 102.*

Ex colore /èks kàlóriy/. By color; under color of; under pretense, show, or protection of. Thus, *ex colore officii*, under color of office.

Ex comitate /èks komátéytiy/. Out of comity or courtesy.

Excommengement /èkskàménjmant/. Excommunication (*q.v.*).

Ex commodato /èks komədəytow/. From or out of loan. A term applied in the old law of England to a right of action arising out of a loan (*commodatum*).

Excommunication. A sentence of censure pronounced by one of the spiritual courts for offenses falling under ecclesiastical cognizance. It is described as two-fold: (1) The lesser excommunication, which is an ecclesiastical censure, excluding the party from the sacraments; (2) the greater, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties were abolished in England by St. 53 Geo. III, c. 127. Excommunication is still a censure under Canon Law. *See Canons 1331-1335 (Code, 1983).*

Excommunicato capiendo /èkskàmyùwnàkéytow kàpiyéndow/. In ecclesiastical law, a writ issuing out of chancery, founded on a bishop's certificate that the defendant had been excommunicated, and requiring the sheriff to arrest and imprison him, returnable to the king's bench.

Excommunicato deliberando /èkskàmyùwnàkéytow dèliberéndow/. In old English law, a writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction.

Excommunicato interdicatur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri /èkskàmyùwnàkéytow intàrdísətər òmnàs àktàs ləjítəməs, àyətə kwòd əjəriy nòn pòwtəst, nèk ələkweɪm kònvənáyriy, lisət ipsiy əb éyliyas pòsət kònvənáyray/. Every legal act is forbidden an excommunicated person, so that he cannot act, nor sue any person, but he may be sued by others.

Excommunicato recapiendo /èkskàmyùwnàkéytow rəkàpiyéndow/. A writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again.

Ex comparatione scriptorum /èks kòmpərəyshiyówniy skriptórəm/. By a comparison of writings or handwritings. A term in the law of evidence.

Ex concessis /èks kənsésəs/. From the premises granted. According to what has been already allowed.

Ex consulto /èks kənsáltow/. With consultation or deliberation.

Ex continenti /èks kòntənéntay/. Immediately; without any interval or delay; incontinently. A term of the civil law.

Ex contractu /èks kənrékt(y)uw/. From or out of a contract. In both the civil and the common law, rights and causes of action are divided into two classes,—those arising *ex contractu* (from a contract), and those arising *ex delicto* (from a delict or tort). 3 Bl.Comm. 117. Where cause of action arises from breach of a promise set forth in contract, the action is "*ex contractu*"; but where it arises from a breach of duty growing out of contract, it is "*ex delicto*". Eads v. Marks, 39 C.2d 807, 249 P.2d 257, 260. See also *Ex delicto*.

Exculpate /ékskəlpət/əkskəlpət/. Term is employed in sense of excuse or justification. State v. Langdon, 46 N.M. 277, 127 P.2d 875, 876.

Exculpatory /ekskəlpət(ə)riy/. Clearing or tending to clear from alleged fault or guilt; excusing. Baird v. State, 246 S.W.2d 192, 195. See *Exculpatory statement or evidence*. Compare *Incriminate*.

Exculpatory clause. A contract clause which releases one of the parties from liability for his or her wrongful acts. A provision in a document which protects a party from liability arising, in the main, from negligence; such clause is common in leases, contracts and trusts. Such clause in favor of a trustee in will implies that trustee has power which he purports to execute, and it exculpates him where this power is exercised in good faith. In re Wacht's Estate, Sur., 32 N.Y.S.2d 871, 897.

Exculpatory statement or evidence. A statement or other evidence which tends to justify, excuse or clear the defendant from alleged fault or guilt. State v. Cobb, 2 Ariz.App. 71, 406 P.2d 421, 423. Declarations against declarant's interest which indicate that defendant is not responsible for crimes charged. U.S. v. Riley, C.A.Iowa, 657 F.2d 1377, 1385. Evidence which extrinsically tends to establish defendant's innocence of crimes charged as differentiated from that which although favorable, is merely collateral or impeaching. Com. v. Jeter, 273 Pa.Super. 83, 416 A.2d 1100, 1102. For purposes of rule constraining State from disposing of potentially exculpatory evidence, is evidence which clears or tends to clear accused person from alleged guilt. Gibson v. State, 110 Idaho 631, 718 P.2d 283, 285. Compare *Incriminating evidence*.

Ex curia /èks kyúriyə/. Out of court; away from the court.

Excusable. Admitting of excuse or palliation. Justifiable, pardonable, allowable, defensible. Tyler v. Cowen Const., Inc., 216 Kan. 401, 532 P.2d 1276, 1281. As used

in the law, this word implies that the act or omission spoken of is on its face unlawful, wrong, or liable to entail loss or disadvantage on the person chargeable, but that the circumstances attending it were such as to constitute a legal "excuse" for it, that is, a legal reason for withholding or foregoing the punishment, liability, or disadvantage which otherwise would follow. See *Justification*; *Legal excuse*.

Excusable assault. One committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent. People v. O'Connor, 82 App.Div. 55, 81 N.Y.S. 555. See e.g. *Self-defense*.

Excusable homicide. See *Homicide*.

Excusable neglect. In practice, and particularly with reference to the setting aside of a judgment taken against a party through his "excusable neglect," this means a failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party. As used in rule (e.g. Fed.R.Civil P. 6(b)) authorizing court to permit an act to be done after expiration of the time within which under the rules such act was required to be done, where failure to act was the result of "excusable neglect", quoted phrase is ordinarily understood to be the act of a reasonably prudent person under the same circumstances. Conlan v. Conlan, Ky., 293 S.W.2d 710, 712. For purposes of motion to vacate judgment, "excusable neglect" is that neglect which might have been the act of a reasonably prudent person under the circumstances. Hollingsworth v. American Finance Corp., 86 Wis.2d 172, 271 N.W.2d 872, 878.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus /əkskyúwzət òt əkstén-yuwət dəlíktəm ìn kəpətéyləbəs kwòd nòn opəréyətər áydəm ìn səvíləbəs/. That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries.

Excusatio /èkskyvwzézsh(iy)ow/. In the civil law, an excuse or reason which exempts from some duty or obligation.

Excusator /èkskyuwzézýtər/. In English law, an excuser. In old German law, a defendant; he who utterly denies the plaintiff's claim.

Excusatur quis quod clameum non opposuerit, ut si toto tempore litigii fuit ultra mare quacunquē occasione /èkskyuwzézýtər kwís kwòd kléymiyəm nòn əpòz(y)uwérət, àt sáy tówtow témpəriy lətijiyay fyúwət əltrə məriy kweykəŋkwiy əkèyzhiyówniy/. He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he has been beyond sea for any reason.

Excuse. A reason alleged for doing or not doing a thing. A matter alleged as a reason for relief or exemption

from some duty or obligation. That which is offered as a reason for being excused, or a plea offered in extenuation of a fault or irregular deportment. It is that plea or statement made by the accused which arises out of the state of facts constituting and relied on as the cause. *See also* Defense.

Excuss. To seize and detain by law.

Excussio /əkʃkəs(h)(i)yow/. In civil law, a diligent prosecution of a remedy against a debtor. The exhausting of a remedy against a principal debtor before resorting to his sureties. Translated "discussion" (*q.v.*).

Ex debito justitiae /èks débatow jəstīshiy/. From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of *ex gratia* (*q.v.*). 3 Bl.Comm. 48, 67.

Ex defectu sanguinis /èks dəfekt(y)uw səngwənas/. From failure of blood; for want of issue.

Ex delicto /èks dəlīktow/. From a delict, tort, fault, crime, or malfeasance. In both the civil and the common law, obligations and causes of action are divided into two classes—those arising *ex contractu* (out of a contract), and those *ex delicto*. The latter are such as grow out of or are founded upon a wrong or tort, e.g., trespass, trover, replevin. *See also* *Ex contractu*.

Where cause of action arises from breach of a promise set forth in contract, the action is "ex contractu", but where it arises from a breach of duty growing out of contract, it is "ex delicto". *Eads v. Marks*, 39 Cal.2d 807, 249 P.2d 257, 260.

Ex delicto non ex supplicio emergit infamia /èks dəlīktow nɔn èks səplīsh(i)yow əmərjət ənfəymiy/. Infamy arises from the crime, not from the punishment.

Ex delicto trusts. Trusts which are created for illegal purposes, the most common of which are trusts created to prevent creditors of the settlor from collecting their claims out of the property.

Ex demissione /èks dəmis(h)iyówniy/. (Commonly abbreviated *ex dem.*) Upon the demise. A phrase forming part of the title of the old action of ejectment.

Ex directo /èks dəréktow/. Directly; immediately.

Ex diuturnitate temporis, omnia praesumuntur solemniter esse acta /èks dəyətərnətéyiy tēmpərəs, ómniyə priyzymántər sələmnətar ésiy əktə/. From length of time [after lapse of time] all things are presumed to have been done in due form.

Ex dividend. A synonym for "without dividend." The buyer of a stock selling ex-dividend does not receive the recently declared dividend. Said of a stock at the time when the declared dividend becomes the property of the person who owned the stock on the record date. The payment date follows the ex-dividend date. When stock is sold ex dividend, the seller, not the buyer, has the right to the next dividend which has been declared but not paid. The ex dividend date is a matter of agreement or of convention to be established by the securities exchange. On the first day shares are traded without the right to receive a dividend, the price will normally

decline by approximately the amount of the dividend. Such shares are often referred to as "trading ex dividend."

Ex-dividend date. The date on which the right to the most recently declared dividend no longer goes along with the sale of the stock.

Ex dolo malo /èks dówlo məlow/. Out of fraud; out of deceitful or tortious conduct. A phrase applied to obligations and causes of action vitiated by fraud or deceit.

Ex dolo malo non oritur actio /èks dówlow məlow nɔn órətar əksh(i)yow/. Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.

Ex donationibus autem feoda militaria vel magnum serjeantium non continentibus oritur nobis quoddam nomen generale, quod est socagium /èks dənəy-shiyównəbəs ótəm fyúwdə milətériyə vèl mǎgnəm sərjyǎnsh(i)yəm nɔn kɔntənəntəbəs órətar nówbəs kwódəm nówmən jənərəyliy, kwód èst səkéy(ji)-əm/. From grants not containing military fees or grand serjeanty, a kind of general name is used by us, which is "socage."

Exeat /éksiyət/. A permission which a bishop grants to a priest to go out of his diocese; also leave to go out generally. For *Ne exeat*, see that title.

Execute. To complete; to make; to sign; to perform; to do; to follow out; to carry out according to its terms; to fulfill the command or purpose of. To perform all necessary formalities, as to make and sign a contract, or sign and deliver a note. *See also* Execution.

Executed. Completed; carried into full effect; already done or performed; signed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. Act or course of conduct carried to completion. Term imports idea that nothing remains to be done. The opposite of *executory*. *See also* Execution.

Executed consideration. A consideration which is wholly performed. An act done or value given before the making of the agreement.

Executed contract. Contract which has been fully performed by the parties. If performed in part, it is partially executed (*executory*); if entirely performed, it is fully or wholly executed. *See also* Contract; Executed oral agreement; Executory contract.

Executed estate. Estate in property which is vested. *See* Estate.

Executed fine. The fine *sur cognizance de droit, come ceo que il ad de son done*; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished in England by 3 & 4 Wm. IV, c. 74.

Executed gift. *See* Gift.

Executed note. Promissory note which has been signed and delivered.

Executed oral agreement. An oral agreement is not "executed" unless it has been fully performed by both parties. *Walther v. Occidental Life Ins. Co.*, 40 Cal. App.2d 160, 104 P.2d 551, 554.

Executed remainder. *See* Remainder.

Executed sale. *See* Sale.

Executed trust. *See* Trust.

Executed use. *See* Use.

Executio /èksàkyúwsh(iy)ow/. Lat. The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration.

In old practice, execution; the final process in an action.

Executio bonorum /èksàkyúwsh(iy)ow bônórám/. In old English law, management or administration of goods. *Ad ecclesiam et ad amicos pertinebit executio bonorum*, the execution of the goods shall belong to the church and to the friends of the deceased.

Executio est executio juris secundum iudicium /èksàkyúwsh(iy)ow èst èksàkyúwsh(iy)ow júras sàkándám juwdísh(iy)ám/. Execution is the execution of the law according to the judgment.

Executio est finis et fructus legis /èksàkyúwsh(iy)ow èst fáynàs èt fráktàs líyjàs/. Execution is the end and fruit of the law.

Executio juris non habet injuriam /èksàkyúwsh(iy)ow júras nòn héybèt ènjúriyám/. The execution of law does no injury.

Execution. Carrying out some act or course of conduct to its completion. *Northwest Steel Rolling Mills v. Commissioner of Internal Revenue*, C.C.A.Wash., 110 F.2d 286, 290. Completion of an act. Putting into force. The completion, fulfillment, or perfecting of anything, or carrying it into operation and effect.

Execution of contract includes performance of all acts necessary to render it complete as an instrument and imports idea that nothing remains to be done to make complete and effective contract. *Travelers Ins. Co. v. Chicago Bridge & Iron Co.*, Tex.Civ.App., 442 S.W.2d 888, 895.

Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor. *See Writ of execution, below.*

Form of process whereby an official (usually a sheriff) is directed by way of an appropriate judicial writ to seize and sell so much of the debtor's nonexempt property as is necessary to satisfy a judgment. Process of carrying into effect the directions in a decree or judgment. *Foust v. Foust*, 47 Cal.2d 121, 302 P.2d 11, 13.

In criminal law, refers to carrying out of death sentence (capital punishment).

Body execution. An order of court which commands the officer to take the body of the defendant or debtor; generally to bring him before court to pay debt. *A capias.*

Writ of execution. Formal process issued by court generally evidencing the debt of the defendant to the plaintiff and commanding the officer to take the property of the defendant in satisfaction of the debt. Unless the court directs otherwise, the process to enforce a money judgment shall be a writ of execution. Fed.R. Civil P. 69. A writ of execution is a written demand to bailiff, directing him to execute the judgment of the court. *Miami Motor Sales v. Singleton*, Ohio Mun., 94 N.E.2d 819, 822. Process issuing from a court in a civil action authorizing the sheriff or other competent officer to carry out the court's decision in favor of the prevailing party.

For *Testatum execution*, *see* Testatum. *See also* Alias execution; Attachment execution; Dormant execution; General execution; Judgment execution; Junior execution; Lien of execution; Special execution.

Execution creditor. *See* Creditor.

Executione faciendâ in withernamium /èksàkyúwshiyówniy fáshiyéndâ in wiðárnéymiyám/. A writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them.

Executione iudicii /èksàkyúwshiyówniy juwdishiyay/. A writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution.

Executioner. Person who executes (*i.e.* carries out) capital punishment.

Execution lien. An execution lien may be created by service of execution, levy upon real estate, and filing of a certificate of levy in the proper office of county in which real estate is located. *Reconstruction Finance Corporation v. Maley*, C.C.A.Ill., 125 F.2d 131, 135.

Execution of instrument. Completion of instrument, including signing and delivery. Execution includes performance of all acts necessary to render instrument complete and of every act required to give instrument validity or to carry it into effect. *Northwest Steel Rolling Mills v. Commissioner of Internal Revenue*, C.C.A.Wash., 110 F.2d 286, 290. Execution of written contract includes signing, unconditional delivery by promisor, and acceptance by promisee. *Coen v. American Surety Co. of New York*, C.C.A.Mo., 120 F.2d 393, 397.

Execution of judgment or decree. *See* Execution.

Execution parée /èkseykyuwsyówn pàréy/. In French law, a right founded on an act passed before a notary, by which the creditor may immediately, without citation or summons, seize and cause to be sold the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike a warrant of attorney.

Execution sale. A sale by a sheriff or other ministerial officer under the authority of a writ of execution which he has levied on property of the debtor. *See also* Judicial sale.

Executive. As distinguished from the legislative and judicial departments (*i.e.* branches) of government, the executive department is that which is charged with the detail of carrying the laws into effect and securing their due observance. *See also* Executive department; Executive powers.

The word "executive" is also used as an impersonal designation of the chief executive officer of a state or nation. Term also refers to upper level management of business. *See also* Executive employees.

Executive administration, or ministry. A political term in England, applicable to the higher and responsible class of public officials by whom the chief departments of the government of, the kingdom are administered.

Executive agency. A department of the executive branch of government such as the Army and Air Force Exchange Service whose activities are subject to statutes and whose contracts are subject to judicial review. *W. B. Fishburn Cleaners Inc. v. Army & Air Force Exchange Service, D.C.Tex., 374 F.Supp. 162, 165.*

Executive agreement. A treaty-like agreement with another country in which the President may bind the country without submission to the Senate (as in the case of a treaty). *United States v. Belmont, 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134.* Executive Agreements prevail over contrary state law. Even though there is no express constitutional authority for such agreements, their constitutional validity has been long established. *United States v. Belmont, 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134.*

Executive capacity. Duties in such capacity relate to active participation in control, supervision, and management of business. *Arkansas Amusement Corporation v. Kempner, C.C.A.Ark., 57 F.2d 466, 473.*

Executive clemency. The power of the chief executive (*i.e.* President or a governor) to pardon or commute a criminal sentence as, for example, the power to reduce the death penalty to life imprisonment. Art. II, § 2, U.S.Const. *See also* Clemency.

Executive committee. In business, the body which directly manages the operations between meetings of the board of directors; commonly consisting of the principal officers and directors.

Executive department. That branch of government charged with carrying out the laws enacted by the legislature. The President is the chief executive officer of the country and the governor is chief executive officer of a state. Used to describe that branch of the government in contrast to the other two branches; *i.e.* legislative and judicial. *See* Art. II, U.S.Const.

Executive employees. Persons whose duties include some form of managerial authority, actually directing the work of other persons. Persons whose duties relate to active participation in control, supervision and management of business, or who administer affairs, or who direct, manage, execute or dispense. *Steiner v. Pleasantville Constructors, 181 Misc. 798, 46 N.Y.S.2d*

120, 123. The term executive employee carries the idea of supervision of or control over ordinary employees. *Ralph Knight, Inc. v. Mantel, C.C.A.Mo., 135 F.2d 514, 517.*

Executive officer. An officer of the executive department of government; one in whom resides the power to execute the laws; one whose duties are to cause the laws to be executed and obeyed. *Petzak v. Graves, 33 Wis.2d 175, 147 N.W.2d 294, 297.* Officers who are neither judicial nor legislative are executive officers. *Spivey v. State, 69 Okl.Cr. 397, 104 P.2d 263, 277.* One who assumes command or control and directs course of business, or some part thereof, and who outlines duties and directs work of subordinate employees. President and vice president of corporation are executive officers. *Emerglick v. Philip Wolf, Inc., C.C.A.N.Y., 138 F.2d 661, 662.*

Executive order. An order or regulation issued by the President or some administrative authority under his direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the Constitution or of some law or treaty. To have the effect of law, such orders must be published in the Federal Register.

Executive order Indian reservation. Reservation created by order of President withdrawing land within its boundaries from settlement or making other disposition of it under public land laws of United States. *Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P.2d 117, 122.*

Executive pardon. An executive act of grace exempting an individual from punishment for a crime he has committed. Such presidential power is authorized by Art. II, § 2, U.S.Const. Similar powers are afforded to governors by state constitutions. *See also* Executive clemency; Pardon.

Executive powers. Authority vested in executive department of federal or state government to execute laws. The enumerated powers of the President are provided for in Article II of the U.S.Const. Executive powers of governors are provided for in state constitutions. The executive powers vested in governors by state constitutions include the power to execute the laws, that is, to carry them into effect, as distinguished from the power to make the laws and the power to judge them. *Tucker v. State, 218 Ind. 614, 35 N.E.2d 270, 291.* *See also* Executive order.

Executive privilege. This privilege, based on constitutional doctrine of separation of powers, exempts the executive from disclosure requirements applicable to the ordinary citizen or organization where such exemption is necessary to the discharge of highly important executive responsibilities involved in maintaining governmental operations, and extends not only to military and diplomatic secrets but also to documents integral to an appropriate exercise of the executive's domestic decisional and policy making functions, that is, those documents reflecting the frank expression necessary in intra-governmental advisory and deliberative communications. 5

U.S.C.A. § 552(b)(1). *Black v. Sheraton Corp. of America*, D.C.D.C., 371 F.Supp. 97, 100. However, need for confidentiality of high level communications cannot, without more, sustain an absolute unqualified presidential privilege of immunity from judicial process under all circumstances. *U. S. v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 3106, 3107, 41 L.Ed.2d 1039. As term is generally employed, relates to matters of national security and foreign policy. *Young v. Town of Huntington*, 88 Misc.2d 632, 388 N.Y.S.2d 978, 984. See also Privilege.

Executive session. Executive session of a board or governmental body is a session closed to the public, and at which only such selected persons as the board or other body may invite are permitted to be present. *Blum v. Board of Zoning and Appeals of Town of North Hempstead*, 1 Misc.2d 668, 149 N.Y.S.2d 5, 8.

Executor(-trix) /ægʒəkətər/. A person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease. In *re Silverman's Estate*, 6 Ill.App.3d 225, 285 N.E.2d 548, 550.

"Personal representative" includes "executor." Uniform Probate Code, § 1-201. Compare Administrator (-trix).

For Co-executor; General executor; Instituted executor; Joint executors; Limited executor; Special executor and Substituted executor, see those titles.

Civil Law

A ministerial officer who executed or carried into effect the judgment or sentence in a cause.

Ecclesiastical Law

Executor à lege constitutus. An executor appointed by law; the ordinary of the diocese.

Executor ab episcopo constitutus, or *executor dativus.* An executor appointed by the bishop; an administrator to an intestate.

Executor à testatore constitutus. An executor appointed by a testator. Otherwise termed "*executor testamentarius*;" a testamentary executor.

An *executor to the tenor.* One who, though not directly constituted executor by the will, is therein charged with duties in relation to the estate which can only be performed by the executor.

Executor by substitution. A successor executor appointed by testator entitled to succeed to administration of estate following resignation of first executor who had partially administered upon such estate. In *re Stahl's Estate*, 113 Ind.App. 29, 44 N.E.2d 529, 532.

Executor creditor. See Creditor.

Executor dative. See Dative.

Executor de son tort. See De son tort.

Executor lucratus /èksəkýúwtər l(y)uwkréytəs/. An executor who has assets of his testator who in his life-time

made himself liable by a wrongful interference with the property of another.

Executorship. Office held by an executor.

Executory /ægʒékýətòriy/. That which is yet to be fully executed or performed; that which remains to be carried into operation or effect; incomplete; depending upon a future performance or event. The opposite of *executed*.

As to *executory* Bequest; Contracts; Devise; Estates; Remainder; Trust, and Use, see those titles.

Executory accord. An agreement embodying a promise, express or implied, to accept at some future time a stipulated performance in satisfaction or discharge, in whole or in part, of any present claim, cause of action or obligation, and a promise, express or implied, to render such performance. Two principal categories of compromise agreements are "executory accord", providing for acceptance in future of stated performance in satisfaction of claim, and "substituted contract" which itself is accepted as substitution for and extinguishment of existing claim. *Johnson v. Utile*, 86 Nev. 593, 472 P.2d 335, 337.

Executory consideration. A consideration which is to be performed after the contract for which it is a consideration is made.

Executory contract. A contract that has not as yet been fully completed or performed. A contract the obligation (performance) of which relates to the future. *Wagstaff v. Peters*, 203 Kan. 108, 453 P.2d 120, 124. In context of Bankruptcy Code, is contract under which obligation of both bankrupt and other party to contract are so far unperformed that failure of either to complete performance would constitute material breach excusing performance of either. In *re Knutson*, C.A.Minn., 563 F.2d 916, 917. Compare Executed contract.

Executory contract to sell. Contract under which something remains to be done by either party before delivery and passing of title. *Martin v. John Clay & Co.*, Mo.App., 167 S.W.2d 407, 411.

Executory devise. Devise of a future estate, and, if the executory devisee dies before the event happens, the estate goes to the heir at the time of the event, and not to the heir at the time of the death of the devisee. The happening of the contingency determines who is to take the estate, and until that time no one has an interest to transmit. By the earlier common law it was an established rule that a devise of lands, without words of limitation, conferred upon the devisee an estate for life only. An exception was soon recognized in the case of a will, so that an estate in fee could be given without the use of the technical words required in a conveyance or deed. The gift in such case was known as an "executory devise."

Executory interests. A general term, comprising all future estates and interests in land or personalty, other than reversions and remainders. A future interest held by a third person (not the grantor) which either cuts

short (shifting) or begins some time after (springing) the natural termination of the preceding estate.

A contingent future interest which: (a) cannot qualify as a remainder; (b) is always in favor of a conveyee, and; (c) takes effect when the contingency happens as a springing use or shifting use under the Statute of Uses (1535), or Statute of Wills (1540).

Executory judgment. Court decision that has not yet been carried out; *e.g.*, order to defendant to pay plaintiff which has not as yet been fulfilled.

Executory limitation. A limitation of a future interest by deed or will; if by will, it is also called an "executory devise."

Executory process. A civil law process which can be resorted to in the following cases, namely: (1) When the right of the creditor arises from an act importing confession of judgment, and which contains a privilege or mortgage in his favor; (2) when the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. An accelerated procedure, summary in nature, by which holder of a mortgage or privilege evidenced by an authentic act importing a confession of judgment seeks to effect an *ex parte* seizure and sale of the subject property, without previous citation, contradictory hearing or judgment. *Cameron Brown South, Inc. v. East Glen Oaks, Inc.*, La.App., 341 So.2d 450, 457.

Executory promise. A promise that has not yet been performed by the promisor doing whatever act was promised.

Executory sale. *See* Sale.

Executory trust. Under this type of trust a further conveyance or settlement is to be made by the trustee. The test as to whether a trust is an "executory trust" is to determine whether settlor has acted as his own conveyancer and defines precisely the settlement to be made, and, if he has, the word "heirs" is one of limitation, and if he has not, the trust is executory, and the word "heirs" is a word of purchase, and the persons coming within such definition have an interest in the property. *Sutliff v. Aydelott*, 373 Ill. 633, 27 N.E.2d 529, 532.

Executory unilateral accord. An offer to enter a contract.

Executory warranties. Such arise where insured undertakes to perform some executory stipulation, as that certain acts will be done, or that certain facts will continue to exist.

Executress /əgzékjətɹəs/. A female executor.

Executrix /əgzékjətɹiks/. Female executor. A woman who has been appointed by will to execute such will or testament.

Exedos /èyhéyðɔws/. *See* Ejidos.

Exempla illustrant non restringunt legem /egzémplə ilástrənt nɔn rəstrɪŋgənt líjəm/. Examples illustrate, but do not restrain, the law.

Exemplars /əgzémplərz/. Nontestimonial identification evidence taken from defendant; *e.g.* fingerprints, blood samples, voiceprints, lineup identification, handwriting samples.

Exemplary damages /əgzémpləriy dāməjəz/. Damages on an increased scale, awarded to plaintiff over and above actual or ordinary damages, where wrong done to plaintiff was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on part of defendant. *Goines v. Pennsylvania R. R.*, 208 Misc. 103, 143 N.Y.S.2d 576, 583. *See also* Damages (*Exemplary or punitive damages*).

Exemplification. An official transcript of a document from public records, made in form to be used as evidence, and authenticated or certified as a true copy. *See* Certified copy.

Exemplificatione /əgzémpləfəkèyshiyówniy/. A writ granted for the exemplification or transcript of an original record.

Exemplified copy. Copy of document which has been authenticated. *See* Certified copy.

Exempli gratia /əgzémplay gréysh(iy)ə/. For the purpose of example, or for instance. Often abbreviated "ex. gr." or "*e.g.*"

Exemplum /əgzémpləm/. In the civil law, copy; a written authorized copy. This word is also used in the modern sense of example—*ad exemplum constituti singulares non trahi*, exceptional things must not be taken for examples.

Exempt. To release, discharge, waive, relieve from liability. To relieve, excuse, or set free from a duty or service imposed upon the general class to which the individual exempted belongs; as to exempt from military service.

To relieve certain classes of property from liability to sale on execution, or from taxation, or from bankruptcy or attachment.

See also Exemption; Exemption laws.

Exempt income. Income that is not subject to state and/or federal taxation. Certain income may be exempt from federal but not from state taxation, and vice versa (*e.g.*, tax exempt bond interest).

Exemption. Freedom from a general duty or service; immunity from a general burden, tax, or charge. Immunity from service of process or from certain legal obligations, as jury duty, military service, or the payment of taxes. *See also* Immunity.

A privilege allowed by law to a judgment debtor, by which he may retain property to a certain amount or certain classes of property, free from all liability to levy and sale on execution, attachment, or bankruptcy. *See* Exemption laws.

Property exempt in bankruptcy proceedings is provided for under Bankruptcy Code § 522. See Exemption laws.

In taxation, an exemption is an amount allowed as a deduction from adjusted gross income in arriving at taxable income. There are two types of exemptions allowed; personal and dependency exemptions. Exemptions are allowed as follows; the taxpayer, the taxpayer's spouse, the taxpayer who is 65 or older or who is blind, the taxpayer's dependent children for whom the taxpayer provides more than one half of the dependent's support. I.R.C. § 151. See also Dependency exemption.

Exemption equivalent. The maximum value of assets that can be transferred to another party without incurring any Federal gift or estate tax because of the application of the unified tax credit.

Exemption laws. A privilege allowed by law to a judgment debtor, by which he may hold property to a certain amount, or certain classes of property, free from all liability to levy and sale on execution or attachment. Laws enacted by individual states describing the property of the debtor that cannot be attached by a judgment creditor or trustee in bankruptcy to satisfy a debt. See Bankruptcy Code § 522.

Exemption, words of. It is a maxim of law that words of exemption are not to be construed to import any liability; the maxim *expressio unius exclusio alterius*, or its converse, *exclusio unius inclusio alterius*, not applying to such a case.

Ex empto /èks ém(p)tow/. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton.

Exempt organization. An organization that is either partially or completely exempt from Federal income taxation. I.R.C. § 501. See Charitable organizations.

Exempt property. Real estate of religious, educational, and charitable organizations, as well as of federal, state and local government which is not subject to real estate taxes. With respect to property that is exempt in bankruptcy, attachment, etc., proceedings, see Exemption; Exemption laws.

Exempts. Persons who are not bound by law, but excused from the performance of duties imposed upon others.

Exempt securities. Securities exempt from registration requirements of federal and state securities laws. See also Registration of securities.

Exempt transactions. Those dealings in securities which fall outside the scope of Securities Act of 1933 and Securities Exchange Act.

Exennium /èkséniyəm/. In old English law, a gift; a new year's gift.

Exequatur /èksəkwéytər/. Lat. Let it be executed.

An "exequatur" is a written official recognition and authorization of a consular officer, issued by government to which he is accredited. *Doyle v. Fleming*, D.C. Canal Zone, 219 F.Supp. 277, 283.

In French practice, this term is subscribed by judicial authority upon a transcript of a judgment from a foreign country, or from another part of France, and authorizes the execution of the judgment within the jurisdiction where it is so indorsed.

Exercise. To make use of. Thus, to exercise a right or power is to do something which it enables the holder to do; e.g. exercising option to purchase stock.

To put in action or practice, to carry on something, to transact or execute. See Performance.

Exercise clause. See Free exercise clause.

Exercised dominion. Open acts and conduct relative to land as evidence claim of the right of absolute possession, use, and ownership. *Whelan v. Henderson*, Tex. Civ.App., 137 S.W.2d 150, 153. See Dominion.

Exercise of judgment. Exercise of sound discretion, that is, discretion exercised, not arbitrarily or willfully, but with regard to what is right and equitable. *United States v. Beckman*, C.C.A.Pa., 104 F.2d 260, 262.

Exercitalis /əgzərsətéyləs/. A soldier; a vassal.

Exercitoria actio /əgzərsətóriyə éksh(iy)ow/. In the civil law, an action which lay against the employer of a vessel (*exercitor navis*) for the contracts made by the master.

Exercitorial power /əgzərsətóriyəl páwər/. The trust given to a ship-master.

Exercitor navis /əgzərsədər néyvəs/. Lat. The temporary owner or charterer of a ship.

Exercitium /əgzərsítuywəl/. In old English law, a heriot paid only in arms, horses, or military accouterments.

Exercitus /əgzərsətəs/. In old European law, an army; an armed force. The term was absolutely indefinite as to number. It was applied, on various occasions, to a gathering of forty-two armed men, of thirty-five, or even of four.

Ex facie /èks féys(h)iyiy/. From the face; apparently; evidently. A term applied to what appears on the face of a writing.

Ex facto /èks fáktow/. From or in consequence of a fact or action; actually. Usually applied to an unlawful or tortious act as the foundation of a title, etc. Sometimes used as equivalent to "de facto."

Ex facto jus oritur /èks fáktow jəs órətər/. The law arises out of the fact. A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape.

Exfestucare /eksfèstəkériy/. In old English law, to abdicate or resign; to resign or surrender an estate, office, or dignity, by the symbolical delivery of a staff or rod to the alienee.

Ex fictione juris /èks fikshiyówniy júrəs/. By a fiction of law.

Exfrediare /èksfrydiyériy/. To break the peace; to commit open violence.

Ex frequenti delicto augetur poena /èks frækwéntay dalíktow oýtər piýnə/. Punishment increases with increasing crime.

Ex gratia /èks gréysh(iy)ə/. Out of grace; as a matter of grace, favor, or indulgence; gratuitous. A term applied to anything accorded as a favor; as distinguished from that which may be demanded *ex debito*, as a matter of right.

Ex gratia payment. Payment made by one who recognizes no legal obligation to pay but who makes payment to avoid greater expense as in the case of a settlement by an insurance company to avoid costs of suit. A payment without legal consideration.

Ex gravi querela /èks gréyvy kwəriýlə/. (From or on the grievous complaint.) In old English practice, the name of a writ (so called from its initial words) which lay for a person to whom any lands or tenements in fee were devised by will (within any city, town, or borough wherein lands were devisable by custom), and the heir of the devisor entered and detained them from him. Abolished by St. 3 & 4 Wm. IV, c. 27, § 36.

Exhaustion of administrative remedies /əgzóstyən əv ədmínəstrətəv rémédíy/. This doctrine requires that where an administrative remedy is provided by statute, relief must first be sought by exhausting such remedies before the courts will act. *McKart v. U. S.*, 395 U.S. 185, 89 S.Ct. 1657, 23 L.Ed.2d 194. The doctrine requires the party to use all available agency administrative procedures before resorting to courts for relief and requires that a party not only initially raise the issue in the administrative forum, but requires party to proceed through the entire proceeding to a final decision on the merits of the entire controversy. *McHugh v. County of Santa Cruz*, 33 C.A.3d 533, 109 Cal.Rptr. 149, 153. See also Primary jurisdiction.

Exhaustion of state remedies. Federal courts require that state remedies be exhausted in certain classes of cases in order to give state courts as a matter of comity the opportunity to make the initial determination as to all claims, federal or state, raised in those cases. *U.S. v. State of Texas*, D.C.Tex., 430 F.Supp. 920, 930. Under this doctrine, a petition for habeas corpus by a state prisoner will be entertained by a federal court only after all state remedies have been exhausted. *Darr v. Burford*, 399 U.S. 200, 70 S.Ct. 587, 94 L.Ed. 761; 28 U.S.C.A. § 2254. However, exhaustion of state remedies is not required in Civil Rights § 1983 (42 U.S.C.A.) actions. *Pasty v. Brd. of Regents of State of Fla.*, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172. See also Abstention doctrine; Comity.

Exhibere /égzəbiriy/. To present a thing corporeally, so that it may be handled. To appear personally to conduct the defense of an action at law.

Exhibit, v. To show or display; to offer or present for inspection. To produce anything in public, so that it may be taken into possession. To present; to offer publicly or officially; to file of record. To administer;

to cause to be taken, as medicines. To submit to a court or officer in course of proceedings.

Exhibit, n. A paper or document produced and exhibited to a court during a trial or hearing, or to a person taking depositions, or to auditors, arbitrators, etc., as a voucher, or in proof of facts, or as otherwise connected with the subject-matter, and which, on being accepted, is marked for identification and annexed to the deposition, report, or other principal document, or filed of record, or otherwise made a part of the case.

Paper, document, chart, map, or the like, referred to and made a part of an affidavit, pleading or brief.

An item of physical/tangible evidence which is to be or has been offered to the court for inspection.

Exhibits may be included as a part of the appendix to appellate briefs. See Fed.R.App.P. 30(e).

Exhibitio billæ /égzəbíš(iy)ow bíliy/. Lat. Exhibition of a bill. In old English practice, actions were instituted by presenting or exhibiting a bill to the court, in cases where the proceedings were by bill; hence this phrase is equivalent to "commencement of the suit."

Exhibition. See Exhibit.

Exhibitionism. Indecent exposure of sexual organs. See Indecent.

Exhibition value. "Minimum sale" or "exhibition value" is interchangeably used with term "price expectancy" in moving picture industry, denoting minimum receipts which distributors expect to realize from exhibition of pictures. *Export & Import Film Co. v. B. P. Schulberg Productions*, 125 Misc. 756, 211 N.Y.S. 838, 839.

Exhumation /èks(h)yuwméyshən/égz(y)uw"/. Disinterment; the removal from the earth of anything previously buried therein, particularly a human corpse.

Ex hypothesi /èks hàypóθəsay/. By the hypothesis; upon the supposition; upon the theory or facts assumed.

Exidos /èyhíðows/. See Ejidos.

Exigence /égzəjəns/ or **exigency** /égzəjənsiy/əgzí"/. Demand, want, need, imperativeness. Something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy; a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition. *Los Angeles County v. Payne*, 8 Cal.2d 563, 66 P.2d 658, 663. State of being urgent or exigent; pressing need or demand; also, case requiring immediate attention, assistance, or remedy; critical period or condition, pressing necessity. *State v. Rubion*, Tex.Civ.App., 292 S.W.2d 650, 657. See Exigent circumstances, *infra*.

Exigency of a bond. That which the bond demands or exacts, *i.e.*, the act, performance, or event upon which it is conditioned.

Exigency of a writ. The command or imperativeness of a writ; the directing part of a writ; the act or performance which it commands.

Exigendary /éksəjéndəriy/. In English law, an officer who makes out exigents. *See* Exigenter.

Exigent, /éksəjənt/ **exigi facias** /éksəjay féys(h)iyəs/. L. Lat. In English practice, a judicial writ made use of in the process of outlawry, commanding the sheriff to demand the defendant (or *cause him to be demanded, exigi faciat*), from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 3 Bl.Comm. 283, 284. Outlawry has long been obsolete. *See* Allocatur exigent.

Exigent circumstances. Situations that demand unusual or immediate action. "Exigent circumstances" in relation to justification for warrantless arrest or search refers generally to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure for which probable cause exists unless they act swiftly and without seeking prior judicial authorization. *U.S. v. Campbell*, C.A.N.Y., 581 F.2d 22, 25. Exception to rule requiring search warrant is presence of exigent or emergency-like circumstances as for example presence of weapons in a motor vehicle stopped on highway and such exigent circumstances permit warrantless search and seizure. *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419. Where there are exigent circumstances in which police action literally must be "now or never" to preserve the evidence of the crime, it is reasonable to permit action without prior evaluation. *Roaden v. Kentucky*, 413 U.S. 496, 505, 93 S.Ct. 2796, 2802, 37 L.Ed.2d 757; *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768. *See also* Probable cause.

Exigenter /éksəjəntər/. An officer of the English court of common pleas, whose duty it was to make out the *exigents* and proclamations in the process of outlawry. Abolished by St. 7 Wm. IV, and 1 Vict., c. 30.

Exigent list. A phrase used to indicate a list of cases set down for hearing upon various incidental and ancillary motions and rules.

Exigent search. *See* Exigent circumstances.

Exigible /éksəjəbəl/. Demandable; requirable.

Exigible debt /éksəjəbəl détt/. A liquidated and demandable or matured claim.

Exigi facias /éksəjay féyshiyəs/. That you cause to be demanded. The emphatic words of the Latin form of the writ of *exigent*. They are sometimes used as the name of that writ.

Exile /égzayl/éksayl/. Banishment; the person banished. As noun, expulsion from country; expatriation. As verb, to expel from country; to banish. *See also* Deportation.

Exilium /əgziliyəm/. Lat. In old English law: (1) Exile; banishment from one's country. (2) Driving away; despoiling. The name of a species of waste, which consisted in driving away tenants or vassals from the estate; as by demolishing buildings, and so compelling the tenants

to leave, or by enfranchising the bond-servants, and unlawfully turning them out of their tenements.

Exilium est patriæ privatio, natalis soli mutatio, legum nativarum amissio /əgziliyəm èst pãtriyy prãvéysh(iy)ow, natéylàs sówlay myuwtéysh(iy)ow, liygãm nèytãvéřãm əmish(iy)ow/. Exile is a privation of country, a change of natal soil, a loss of native laws.

Ex industria /èks indəstriyə/. With contrivance or deliberation; designedly; on purpose.

Ex integro /èks intəgrow/. Anew; afresh.

Exist. To live; to have life or animation; to be in present force, activity, or effect at a given time, as in speaking of "existing" contracts, creditors, debts, laws, rights, or liens. To be or continue to be. *State v. Sawtooth Men's Club*, 59 Idaho 616, 85 P.2d 695, 698.

Existimatio /əgzistəméysh(iy)ow/. In the civil law, the civil reputation which belonged to the Roman citizen, as such. Called a state or condition of unimpeached dignity or character (*dignitatis inlæsæ status*); the highest standing of a Roman citizen. Also the decision or award of an arbiter.

Existing claim. Claim which has arisen and is pending.

Existing debt. To have an "existing debt" it is sufficient if there is an absolute debt owing though the period for its payment may not yet have arrived. A tax may be a "debt" within meaning of agreement to assume "existing debts". *Shepard v. Commissioner of Internal Revenue*, C.C.A.Ill., 101 F.2d 595, 598. Within provision of Uniform Fraudulent Conveyance Act which defines "insolvency", an "existing debt" is an existing legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent. *Baker v. Geist*, 457 Pa. 73, 321 A.2d 634, 636.

Existing person. A child conceived, but not born, is to be deemed an "existing person" so far as may be necessary for its interests in the event of its subsequent birth.

Exit /égzət/. Lat. It goes forth. This word is used in docket entries as a brief mention of the issue of process. Thus, "*exit fi. fa.*" denotes that a writ of *fieri facias* has been issued in the particular case. The "*exit* of a writ" is the fact of its issuance.

Way out; opposite of entrance. *See* Egress.

Exitus /éksətəs/. Children; offspring. The rents, issues, and profits of lands and tenements. An export duty. The conclusion of the pleadings.

Exit wound. A term used in medical jurisprudence to denote the wound made by a weapon on the side where it emerges, after it has passed completely through the body, or through any part of it.

Ex justa causa /èks jãstə kózə/. From a just or lawful cause; by a just or legal title.

Exlegalitas /èksləgélýtãtəs/. In old English law, outlawry.

Exlegalitus /èksləgélýtãtəs/. He who is prosecuted as an outlaw.

Exlegare /èkslægériy/. In old English law, to outlaw; to deprive one of the benefit and protection of the law (*exuere aliquem beneficio legis*).

Ex lege /èks liyjij/. By the law; by force of law; as a matter of law.

Ex legibus /èks liyjəbəs/. According to the laws. A phrase of the civil law, which means according to the intent or spirit of the law, as well as according to the words or letter.

Exlex /èkslɛx/. In old English law, an outlaw; *qui est extra legem*, one who is out of the law's protection.

To relieve from responsibility, duty, or obligation. To clear from guilt; *i.e.* dropping criminal charges against accused.

Ex licentia regis /èks ləsəns(h)ijə ri:jəs/. By the king's license. 1 Bl.Comm. 168, note.

Ex locato /èks ləkəytow/. From or out of lease or letting. A term of the civil law, applied to actions or rights of action arising out of the contract of *locatum*. Adopted at an early period in the law of England.

Ex maleficio /èks mələfɪʃ(i)yow/. Defined variously as from or growing out of wrongdoing; tortious; tortiously; growing out of, or founded on, misdoing or tort; on account of misconduct; by virtue of or out of an illegal act. Synonymous with "malfeasance". *Lucas v. Central Missouri Trust Co.*, 350 Mo. 593, 166 S.W.2d 1053, 1056. This term is frequently used in the civil law as the synonym of "*ex delicto*" (*q.v.*), and is thus contrasted with "*ex contractu*". In this sense it is of more rare occurrence in the common law.

Ex maleficio non oritur contractus /èks mələfɪʃ(i)yow nən órətər kəntráktəs/. A contract cannot arise out of an act radically vicious and illegal.

Ex malis moribus bonæ leges natæ sunt /èks mələs mórəbəs bównij liyjij néytiy sánt/. Good laws arise from evil morals, *i.e.*, are necessitated by the evil behavior of men.

Ex malitia /èks məliš(i)yə/. From malice; maliciously. In the law of libel and slander, this term imports a publication that is false and without legal excuse.

Ex mero motu /èks mīrow mówtuw/. Of his own mere motion; of his own accord; voluntarily and without prompting or request. In England, royal letters patent which are granted at the crown's own instance, and without request made, are said to be granted *ex mero motu*. When a court interferes, of its own motion, to object to an irregularity, or to do something which the parties are not strictly entitled to, but which will prevent injustice, it is said to act *ex mero motu*, or *ex proprio motu*, or *sua sponte*, all these terms being here equivalent.

Ex mora /èks mórə/. A term of the civil law, meaning from or in consequence of delay. Interest is allowed *ex mora*; that is, where there has been delay in repaying a sum borrowed.

Ex more /èks móriy/. According to custom.

Ex multitudine signorum, colligitur identitas vera /èks məltət(y)úwdəniy signórəm, kəlɪjətər ədéntətəs vírə/. From a great number of signs or marks, true identity is gathered or made up. A thing described by a great number of marks is easily identified, though, as to some, the description may not be strictly correct.

Ex mutuo /èks myúwtuwow/. From or out of loan. In the old law of England, a debt was said to arise *ex mutuo* when one lent another anything which consisted in number, weight, or measure.

Ex necessitate /èks nəsəsətéytiy/. Of necessity.

Ex necessitate legis /èks nəsəsətéytiy li:jəs/. From or by necessity of law. 4 Bl.Comm. 394.

Ex necessitate rei /èks nəsəsətéytiy ri:yay/. From the necessity or urgency of the thing or case.

Ex nihilo nihil fit /èks nəy(h)əlow nəy(h)əl fit/. From nothing nothing comes.

Ex nudo pacto non oritur [nascitur] actio /èks n(y)úwdow pəktow nən órətər ákshiyow/ ˈnəs(h)ətər/. Out of a nude or naked pact [that is, a bare parol agreement without consideration] no action arises. Out of a promise neither attended with particular solemnity (such as belongs to a specialty) nor with any consideration no legal liability can arise. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law.

Ex officio /èks əfɪʃ(i)yow/. From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer which are not specifically conferred upon him, but are necessarily implied in his office; these are *ex officio*. Thus, a judge has *ex officio* the powers of a conservator of the peace.

Ex officio information /èks əfɪʃ(i)yow infərméyʃən/. In English law, a criminal information filed by the attorney general *ex officio* on behalf of the crown, in the court of king's bench, for offenses more immediately affecting the government, and to be distinguished from informations in which the crown is the nominal prosecutor.

Ex officio justices. Judges who serve in a particular capacity by reason of their office as a judge who serves on a commission or board because the law requires a particular judge to serve thereon and not because he is selected for such post. May also refer to one who exercises judicial functions by reason of his office.

Ex officio services /èks əfɪʃ(i)yow sɔrvəsəs/. Services which the law annexes to a particular office and requires the incumbent to perform.

Exoine. In French law, an act or instrument in writing which contains the reasons why a party in a civil suit, or a person accused, who has been summoned, agreeably to the requisitions of a decree, does not appear. The same as "Essoin" (*q.v.*).

Exonerate /əgzónəreyt/. To exculpate.

Exoneration /əgzɔnərəyʃən/. The removal of a burden, charge, responsibility, or duty. Right to be reimbursed by reason of having paid that which another should be compelled to pay while "indemnity" generally is based upon contract, express or implied, and means compensation for loss already sustained. *Uptagraff v. U. S., C.A.Va., 315 F.2d 200, 203.*

Equitable right of a surety, confirmed by statute in many states, to proceed by action in court to compel the principal debtor, against whom the surety will have a right of reimbursement, to satisfy the obligation where it would be inequitable for the surety to be compelled to perform, and thereby suffer the inconvenience and temporary loss which a payment by her will entail, if the principal debtor can satisfy the obligation. See *Restatement of Security § 112 (1941).*

Exoneratione sectæ /əgzɔnərəyʃiyówniy séktiý/. A writ that formerly lay for the crown's ward, to be free from all suit to the county court, hundred court, leet, etc., during wardship.

Exoneratione sectæ ad curiam baron /əgzɔnərəyʃiyówniy séktiý æd kyúriyám bærən/. A writ of the same nature as that last above described, issued by the guardian of the crown's ward, and addressed to the sheriffs or stewards of the court, forbidding them to distrain him, etc., for not doing suit of court, etc.

Exoneretur /əgzɔnərəiytər/. Lat. Let him be relieved or discharged. An entry made on a bailpiece, whereby the surety is relieved or discharged from further obligation, when the condition is fulfilled by the surrender of the principal or otherwise.

Exorbitant /əgzórbətənt/. Deviating from the normal or customary course, or going beyond the rule of established limits of right, propriety, or expense.

Exordium /əgzórdiyəm/. The beginning or introductory part of a speech or document.

Ex pacto illicito non oritur actio /èks páktow alísətow nɔn órətər æksh(iy)ow/. From an illegal contract an action does not arise.

Ex parte /èks pártiy/. On one side only; by or for one party; done for, in behalf of, or on the application of, one party only.

A judicial proceeding, order, injunction, etc., is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

"*Ex parte*," in the heading of a reported case, signifies that the name following is that of the party upon whose application the case is heard.

Ex parte divorce. Divorce proceeding in which only one spouse participates or one in which the other spouse does not appear. The validity of such divorce depends upon the nature of the notice given to the absent spouse.

Ex parte hearing. Hearings in which the court or tribunal hears only one side of the controversy.

Ex parte injunction. An injunction which issues from a court which has heard only one side, the moving side, of the controversy.

Ex parte investigation. An investigation conducted about a person who is not personally contacted or questioned.

Ex parte materna /èks pártiy mətárnə/. On the mother's side; of the maternal line.

Ex parte paterna /èks pártiy pətárnə/. On the father's side; of the paternal line.

Ex parte proceeding. Any judicial or quasi judicial hearing in which only one party is heard as in the case of a temporary restraining order.

Ex parte revocation. The withdrawal or revocation of a license or other authority from a person without that person's participation or without notice and opportunity to be heard and defend.

Expatriation /ekspèytriyéyʃən/. The voluntary act of abandoning or renouncing one's country, and becoming the citizen or subject of another.

Ex paucis dictis intendere plurima possis /èks pósəs díktəs ənténdəriy pl(y)úrəmə pósəs/. You can imply many things from few expressions.

Ex paucis plurima concipit ingenium /èks pósəs pl(y)úrəmə kənsípət ənjýn(iy)əm/. From a few words or hints the understanding conceives many things.

Expect. To await; to look forward to something intended, promised, or likely to happen.

Expectancy. That which is expected or hoped for. The condition of being deferred to a future time, or of dependence upon an expected event. Contingency as to possession or enjoyment. With respect to the time of their enjoyment, estates may either be in possession or in expectancy; and of expectancies there are two sorts,—one created by the act of the parties, called a "remainder;" the other by act of law, called a "reversion." Expectancy as applied to property, is contingency as to possession, that which is expected or hoped for. At most it is a mere hope or expectation, contingent upon the will and pleasure of the landowner, and hardly reaches the height of a property right, much less a vested right, because where there is no obligation, there is no right. It is a possibility for which a party may under certain circumstances properly hope for or expect.

Expectancy of life. With respect to life annuities, the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy. See *Actuarial table; Mortality tables.*

Expectancy tables. See *Actuarial table; Mortality tables.*

Expectant. Contingent as to enjoyment. Having relation to, or dependent upon, a contingency. See *Contingent.*

Expectant estates. See *Estate in expectancy.*

Expectant heir /əkspéktənt ér/. A person who has the expectation of inheriting property or an estate, but small present means.

Expectant right. A contingent right, not vested; one which depends on the continued existence of the present condition of things until the happening of some future event. *Pearsall v. Great Northern R. Co.*, 161 U.S. 646, 16 S.Ct. 705, 40 L.Ed. 838. A right is contingent, not vested, when it comes into existence only on an event or condition which may not happen.

Expectation of life. See Actuarial table; Expectancy of life; Mortality tables.

Expedient. Apt and suitable to end in view. *Werner v. Biederman*, 64 Ohio App. 423, 28 N.E.2d 957, 959. Whatever is suitable and appropriate in reason for the accomplishment of a specified object.

Expediente /ekspèyðiyéntey/. An historical record of proceedings in connection with grant of land by the sovereign. *State v. Balli*, Tex.Civ.App., 173 S.W.2d 522, 526. In Mexican law, a term including all the papers or documents constituting a grant or title to land from government.

Expediment /əkspédəmənt/. The whole of a person's goods and chattels, bag and baggage.

Expedite. To hasten; to make haste; to speed.

Expediter /ékspədàytər/. An employee whose duty is to see that shortage in material at one point in a plant is remedied by delivery of the needed material from another part of the plant where it is stacked or stored.

Expeditio /ékspədish(iy)ow/. An expedition; an irregular kind of army.

Expeditio brevis /ékspədish(iy)ow briyvəs/. In old practice, the service of a writ.

Expedition. A sending forth or setting forth for the execution of some object of consequence. Speed or promptness in performance. An important journey or excursion for a specific purpose; as, a military or exploring expedition; also, the body of persons making such an excursion. *Equitable Life Assur. Soc. of United States v. Dyess*, 194 Ark. 1023, 109 S.W.2d 1263, 1265. A journey, march, or voyage generally of several or many persons for definite purpose, such as a military or exploring expedition or a trading expedition to the African coast. The word carries an implication of a military exploit or of an exploration into remote regions or over new routes. *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 149.

Expeditious /ékspədishəs/. Possessed of, or characterized by, expedition or efficiency and rapidity in action; performed with, or acting with, expedition; quick; speedy.

Expedit reipublicæ ne sua re quis male utatur /ékspədət riyaypəbləsiy nīy s(y)ūwə rīy kwīs māliy yūwtətər/. It is for the interest of the state that a man should not enjoy his own property improperly (to the injury of others).

Expedit reipublicæ ut sit finis litium /ékspədət riyaypəbləsiy ùt sit fáynəs lish(iy)əm/. It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. This maxim belongs to the law of all countries.

Expel. In regard to trespass and other torts, this term means to eject, to put out, to drive out, and generally with an implication of the use of force. See also Ejectment; Eviction.

Expend. To pay out, lay out, consume, use up; normally implying receiving something in return.

Expendable. That which is consumed in its use over a short period of time such as expenses for day to day operations which are charged as expenses to current income as contrasted with payments for long term or capital improvements. Not essential or critical to preserve.

Expendere /əkspéndariy/. The word "expense" had its origin in the Latin word "expendere"; "ex" meaning "out," and "pendere" meaning "to weigh."

Expeditors /əkspédətərz/. Paymasters. Those who expend or disburse certain taxes.

Expenditure. Spending or payment of money; the act of expending, disbursing, or laying out of money; payment. Compare Appropriation. See also Expense. As regards *Capital expenditure* see Capital.

Expensæ litis /əkspénsiy láytəs/. Costs or expenses of the suit, which are generally allowed to the successful party.

Expense. That which is expended, laid out or consumed. An outlay; charge; cost; price. The expenditure of money, time, labor, resources, and thought. That which is expended in order to secure benefit or bring about a result. *Shinrone Farms, Inc. v. Gosch*, Iowa, 319 N.W.2d 298, 304. See also Costs; Fee.

Accrued expense. One which has been incurred in a given period but not yet paid.

Business expense. One which is directly related to one's business as contrasted with expenses incurred for personal and family reasons. See *Tax deduction, below*.

Current expense. Normal expense incurred, for example, in daily operations of a business. See *Operating expenses, below*.

Operating expenses. The cost of operating a business, such as rent, wages, utilities, and similar day to day expenses, as well as taxes, insurance, and a reserve for depreciation.

Ordinary expense. See Ordinary.

Out of pocket expenses. A direct expense which requires the immediate outlay of cash in contrast to an accrued expense.

Prepaid expense. Payment of rent, interest, insurance, or similar expenses, prior to actual due date for payment. I.R.C. §§ 162, 213. Costs that are deductible from current income as opposed to capital expenditures.

Cash basis as well as accrual basis taxpayers are generally required to capitalize prepayments for rent, insurance, etc. that cover more than one year. Deductions are taken during the period the benefits are received.

Tax deduction. Certain expenses such as those directly related to production of income are deductions from gross income for tax purposes.

Expense in carrying on business. Usual or customary expenditure in course of conducting business during the year. *Whitney v. Commissioner of Internal Revenue, C.C.A.N.Y., 73 F.2d 589, 591. See Ordinary (Ordinary expenses).*

Expense ratio. Proportion or ratio of expenses to income.

Expenses of administration. As used in Internal Revenue Code, means obligations incurred after decedent's death by his representatives in administering his estate. *Mayer v. Reinecke, D.C.Ill., 28 F.Supp. 334, 339. See Administration expense.*

Expenses of family. Medical and funeral expenses are "expenses of the family" within meaning of statute making expenses of family chargeable upon property of both husband and wife. *Hansen v. Hayes, 175 Or. 358, 154 P.2d 202, 205.* Under such a statute the term includes not only merchandise used by family as a whole, but also expenses, such as medical aid, hospital services and burial attendance, incurred or supplied for one of the spouses. *In re De Nisson's Guardianship, 197 Wash. 265, 84 P.2d 1024, 1026.*

Expenses of receivership. Includes allowances to receivers' counsel, master's fees, appraisers' fees, auditors' fees, and rent and other expenses incurred by receivers in conducting business.

Expenses of the state. Within constitutional provision for raising revenue has reference to general operating expenses of state government for fiscal year.

Expensis militum non levandis /əkspənsəs məlɪʃ(iy)əm nɒn ləvændəs/. An ancient writ to prohibit the sheriff from levying any allowance for knights of the shire upon those who held lands in ancient demesne.

Experience. A state, extent, or duration of being engaged in a particular study or work; the real life as contrasted with the ideal or imaginary. A word implying skill, facility, or practical wisdom gained by personal knowledge, feeling, and action, and also the course or process by which one attains knowledge or wisdom.

Experience rating. In insurance, a method of determining rates by using the loss experience of the insured over a period of time.

Experientia per varios actus legem facit. Magistra rerum experientia /əkspɪriyənʃ(iy)ə pər vériyovs áktəs líyəm féysət. məjɪstrə rɪrəm əkspɪriyənʃ(iy)ə/. Experience by various acts makes law. Experience is the mistress of things.

Experiment. A trial or special test or observation made to confirm or disprove something doubtful. The process of testing.

Expert. One who is knowledgeable in specialized field, that knowledge being obtained from either education or personal experience. *Midtown Properties, Inc. v. George F. Richardson, Inc., 139 Ga.App. 182, 228 S.E.2d 303, 307.* One who by reason of education or special experience has knowledge respecting a subject matter about which persons having no particular training are incapable of forming an accurate opinion or making a correct deduction. *Balfour v. State, Ind., 427 N.E.2d 1091, 1094.* One who by habits of life and business has peculiar skill in forming opinion on subject in dispute. *Brown v. State, 140 Ga.App. 160, 230 S.E.2d 128, 131. See Expert testimony; Expert witness.*

Expert testimony. Opinion evidence of some person who possesses special skill or knowledge in some science, profession or business which is not common to the average man and which is possessed by the expert by reason of his special study or experience. *Board of Ed. of Claymont Special School Dist. v. 13 Acres of Land in Brandywine Hundred, Del.Super., 11 Terry 387, 131 A.2d 180, 184.* Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject. Evidence of persons who are skilled in some art, science, profession, or business, which skill or knowledge is not common to their fellow men, and which has come to such experts by reason of special study and experience in such art, science, profession, or business.

If scientific, technology, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. *Fed.Evid.R. 702, 703. See also Expert witness; Opinion evidence or testimony.*

Expert witness. One who by reason of education or specialized experience possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions. *Kim Mfg., Inc. v. Superior Metal Treating, Inc., Mo.App., 537 S.W.2d 424, 428.* A witness who has been qualified as an expert and who thereby will be allowed (through his/her answers to questions posed) to assist the jury in understanding complicated and technical subjects not within the understanding of the average lay person. One possessing, with reference to particular subject, knowledge not acquired by ordinary persons. One skilled in any particular art, trade, or profession, being possessed of peculiar knowledge concerning the same, and one who has given subject in question particular study, practice, or observation. One who by habits of life and business has peculiar skill in forming opinion on subject in dispute. For admissibility of testimony and court appointment of

expert witnesses, see Fed.Evid.Rules 702-706. See also Expert testimony; Hypothetical question.

Expilare /èkspələriy/. In the civil law, to spoil; to rob or plunder. Applied to inheritances.

Expilatio /èkspələysh(iy)ow/. In the civil law, the offense of unlawfully appropriating goods belonging to a succession. It is not technically theft (*furtum*) because such property no longer belongs to the decedent, nor to the heir, since the latter has not yet taken possession. In the common law, the grant of letters testamentary, or letters of administration, relates back to the time of the death of the testator or intestate; so that the property of the estate is vested in the executor or administrator from that period.

Expilator /èkspələyštər/. In the civil law, a robber; a spoiler or plunderer.

Expiration. Cessation; termination from mere lapse of time, as the expiration date of a lease, insurance policy, statute, and the like. Coming to close; termination or end.

The term "expiration," as in an insurance policy, refers to termination of the policy by lapse of time covering the policy period, while "cancellation" refers to termination of the policy by act of either or both parties prior to ending of the policy period.

Expire. See Expiration.

Explees /ə(k)splyz/. See Esplees.

Expleta /əkspliytə/, **expletia** /əkspliysh(iy)ə/, or **explecia** /əkspliysh(i)yə/. The rents and profits of an estate.

Explicatio /èkspləkéysh(iy)ow/. In the civil law, the fourth pleading; equivalent to the surrejoinder of the common law.

Explicit. Not obscure or ambiguous, having no disguised meaning or reservation. Clear in understanding.

Exploitation /èksploytəyshən/. Act or process of exploiting, making use of, or working up. Utilization by application of industry, argument, or other means of turning to account, as the exploitation of a mine or a forest. State Finance Co. v. Hamacher, 171 Wash. 15, 17 P.2d 610, 613. Taking unjust advantage of another for one's own advantage or benefit (e.g. paying low wages to illegal aliens).

Exploration. The examination and investigation of land supposed to contain valuable minerals, by drilling, boring, sinking shafts, driving tunnels, and other means, for the purpose of discovering the presence of ore and its extent.

Explorator /èkspləryètər/. A scout, huntsman, or chaser.

Export, *v.* To carry or to send abroad. Canton R. Co. v. Rogan, 340 U.S. 511, 71 S.Ct. 447, 449, 95 L.Ed. 488. To send, take, or carry an article of trade or commerce out of the country. To transport merchandise or goods from one country to another in the course of trade. To carry out or convey goods by sea. Transportation of goods from United States to foreign country. West India Oil

Co. v. Sancho, C.C.A.Puerto Rico, 108 F.2d 144, 147. The Constitution gives Congress the power to regulate exports through its grant of power to regulate trade with foreign nations. Art. I, Sec. 8, Cl. 3. See also Re-export.

Export, *n.* Products manufactured in one country, and then shipped and sold in another. A thing or commodity exported. More commonly used in the plural.

Exportation. The act of sending or carrying goods and merchandise from one country to another. A severance of goods from mass of things belonging to United States with intention of uniting them to mass of things belonging to some foreign country. Matson Nav. Co. v. State Bd. of Equalization, 136 Cal.2d 577, 289 P.2d 73, 77.

Export declaration. Document which contains details of export shipment and required by federal law.

Export drafts. When a domestic seller and foreign buyer complete a trade transaction, the actual exchange of documents for payment is usually handled by banks. To carry out the financial end of the transaction, the parties often use an "export draft" or "bill of exchange." An export draft is an unconditional order, drawn by the seller upon the buyer, directing the buyer to pay the face amount of the draft, either when it is presented (a sight draft) or at a specified future date (a time draft or usance). The draft is usually made payable to the order of the seller—or to the order of the seller's bank.

Export-Import Bank. Independent agency of federal government whose function is to aid in financing exports and imports.

Export quotas. Amounts of specific goods which may be exported. Such quotas are set by the federal government for purposes of national defense, economic stability, price support, etc.

Exports clause. Provision in U.S.Const., Art. I, Sec. 10, Cl. 2, limiting power of states to impose duties or imposts on imports or exports.

Export tax. Tax levied upon merchandise and goods shipped out of a country. Tax levied upon right to export or upon goods because of fact that they are being exported or intended to be exported. Virgo Corp. v. Paiewonsky, D.C.Virgin Islands, 251 F.Supp. 279, 283. See also Customs duties; Domestic International Sales Corporation (DISC).

Expose, *v.* To show publicly; to display; to offer to the public view, as, to "expose" goods to sale, to "expose" a tariff or schedule of rates, to "expose" misconduct of public or quasi-public figures.

To place in a position where the object spoken of is open to danger, or where it is near or accessible to anything which may affect it detrimentally; as, to "expose" a child, or to expose oneself or another to a contagious disease or to danger or hazard of any kind.

For *indecent exposure*, see Indecent.

Exposé /əkspówz/èkspowzéy/. Fr. A statement; account; recital; explanation. The term is used in diplomatic language as descriptive of a written explanation

of the reasons for a certain act or course of conduct. Exposure of discreditable matter concerning a person, government, etc.

Expositio /èkspəzish(iy)ow/. Lat. Explanation; exposition; interpretation.

Exposition. Explanation; interpretation.

Exposition de part. In French law, the abandonment of a child, unable to take care of itself, either in a public or private place.

Expositio quæ ex visceribus causæ nascitur, est aptissima et fortissima in lege /èkspəzish(iy)ow kwiy èks vəséhɾəbəs kóziy násətər èst æptisəmæ èt fortisəmæ in liyiy/. That kind of interpretation which is born [or drawn] from the bowels [or vitals] of a cause is the aptest and most forcible in the law.

Expository statute. A law that is enacted to explain the meaning of a previously enacted law. Such statutes are often expressed thus: "The true intent and meaning of an act passed * * * be and is hereby declared to be"; "the provisions of the act shall not hereafter extend"; or "are hereby declared and enacted not to apply", and the like. This is a common mode of legislation.

Ex post facto /éks pòwst fáktow/. After the fact; by an act or fact occurring after some previous act or fact, and relating thereto; by subsequent matter; the opposite of *ab initio*. Thus, a deed may be good *ab initio*, or, if invalid at its inception, may be confirmed by matter *ex post facto*.

Ex post facto law /éks pòwst fáktow ló/. A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed. A law is unconstitutionally "ex post facto" if it deprives the defendant of a defense to criminal liability that he had prior to enactment of the law. *State v. Rogers*, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9 (Cl.3) and § 10 of U.S.Const. prohibit both Congress and the states from passing any *ex post facto* law. Most state constitutions contain similar prohibitions against *ex post facto* laws.

An "ex post facto law" is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; a law which aggravates a crime or makes it greater than when it was committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; a law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right which, when done, was lawful; a law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of the proclamation of amnesty; every law which, in relation to the offense or its consequences,

alters the situation of a person to his disadvantage. *Wilensky v. Fields*, Fla., 267 So.2d 1, 5.

Exposure. The act or state of exposing or being exposed. *See* *Exposé*.

For *Indecent exposure*, *see* *Indecent*.

Exposure of child. Placing child in such a place or position as to leave it unprotected against danger to its health or life or subject it to the peril of severe suffering or serious bodily harm.

Exposure of person. In criminal law, such an intentional exposure, in a public place, of the naked body or the private parts as is calculated to shock the feelings of chastity or to corrupt the morals of the community. *See also* *Indecent (Indecent exposure)*.

Ex præcedentibus et consequentibus optima fit interpretatio /èks prəsədéntəbəs èt kònsəkwéntəbəs óptəmə fit əntəɾprətéysh(iy)ow/. The best interpretation is made from the context.

Express. Clear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous. Declared in terms; set forth in words. Directly and distinctly stated. Made known distinctly and explicitly, and not left to inference. *Minneapolis Steel & Machinery Co. v. Federal Surety Co.*, C.C.A.Minn., 34 F.2d 270, 274. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied."

As to *express* Condition; Consent; Consideration; Contract; Covenant; Dedication; Emancipation; Invitation; Malice; Notice; Obligation; Trust; Waiver; and Warranty, *see* those titles.

Express abrogation. Abrogation by express provision or enactment; the repeal of a law or provision by a subsequent one, referring directly to it. Express abrogation is that literally pronounced by the law either in general terms, as when a final clause abrogates or repeals all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates certain preceding laws which are named.

Express active trust. *See* *Trust*.

Expressa nocent, non expressa non nocent /əksprésə nòsənt, nón əksprésə nón nòsənt/. Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm.

Expressa non prosunt quæ non expressa proderunt /əksprésə nón pròwsənt kwiy nón əksprésə prədírənt/. The expression of things of which, if unexpressed, one would have the benefit, is useless. Things expressed may be prejudicial which when not expressed will profit.

Express assumpsit /əksprés əsəm(p)sət/. An undertaking to do some act, or to pay a sum of money to another, manifested by express terms. An undertaking made orally, by writing not under seal, or by matter of record, to perform act or to pay sum of money to another. *Holcomb v. Kentucky Union Co.*, 262 Ky. 192, 90 S.W.2d

25, 27; *Anderson v. Biesman & Carrick Co.*, 287 Ill.App. 507, 4 N.E.2d 639, 640, 641.

Express authority. Authority delegated to agent by words which expressly authorize him to do a delegable act. Authority which is directly granted to or conferred upon agent in express terms. That authority which principal intentionally confers upon his agent by manifestations to him. *Epstein v. Corporacion Peruana de Vapores*, D.C.N.Y., 325 F.Supp. 535, 537.

That which confers power to do a particular identical thing set forth and declared exactly, plainly, and directly with well-defined limits. An authority given in direct terms, definitely and explicitly, and not left to inference or implication, as distinguished from authority which is general, implied, or not directly stated or given.

Express color. In old English law, an evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the common-law procedure act, 1852, 15 & 16 Vict., c. 76, § 64.

Express common-law dedication. *See* Dedication.

Express company. A firm or corporation engaged in the business of transporting parcels or other movable property, in the capacity of common carriers, and especially undertaking the safe carriage and speedy delivery of small but valuable packages of goods and money.

Express conditions. *See* Condition.

Express contract. *See* Contract.

Express dissatisfaction. Where will declares that any one expressing dissatisfaction with its provisions should forfeit his interest, "dissatisfaction" is legally "expressed" when beneficiary contests or objects in legal proceeding to enforcement of any provision of will.

Expressed. Means stated or declared in direct terms; set forth in words; not left to inference or implication. *Anderson v. Board of Ed. of School Dist. No. 91*, 390 Ill. 412, 61 N.E.2d 562, 567. *See* Express.

Expressio eorum quæ tacite insunt nihil operatur /æksprésh(i)yow iyórəm kwíy tásətiy insənt náy(h)əl òpəréytər/. The expression or express mention of those things which are tacitly implied avails nothing. A man's own words are void, when the law speaks as much. Words used to express what the law will imply without them are mere words of abundance.

Expression, freedom of. One of the basic freedoms guaranteed by the First Amendment of U.S.Const. and by most state constitutions. Such is equivalent to freedom of speech, press, or assembly.

Expressio unius est exclusio alterius /æksprésh(i)yow yənáyəs èst æsklúwz(h)(i)yow òltəráyəs/. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one

exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.

Expressio unius personæ est exclusio alterius /æksprésh(i)yow yənáyəs pərsówniy èst æsklúwz(h)(i)yow òltəráyəs/. The mention of one person is the exclusion of another.

Expressly. In an express manner; in direct or unmistakable terms; explicitly; definitely; directly. *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W.2d 685, 689. The opposite of impliedly. *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 58 N.E.2d 381, 396.

Express malice. Express malice for purposes of first degree murder includes malice, formed design or intention to kill or to do great bodily harm, and sedate and deliberate mind of which that intention is the product. *State v. Gardner*, 7 Storey 588, 203 A.2d 77, 80. As used with respect to libel, means publication of defamatory material in bad faith, without belief in the truth of the matter published, or with reckless disregard of the truth or falsity of the matter. *Barlow v. International Harvester Co.*, 95 Idaho 881, 522 P.2d 1102, 1113. *See also* Malice.

Express permission. Within statute respecting automobile owner's liability, includes prior knowledge of intended use and affirmative and active consent thereto.

Express private trust. *See* Trust.

Express repeal. Abrogation or annulment of previously existing law by enactment of subsequent statute declaring that former law shall be revoked or abrogated.

Express republication. Occurs with respect to will when testator repeats ceremonies essential to valid execution, with avowed intention of republishing will.

Express request. That which occurs when one person commands or asks another to do or give something, or answers affirmatively when asked whether another shall do a certain thing.

Express terms. Within provision that qualified acceptance, in "express terms," varies effect of draft, "express terms" means clear, unambiguous, definite, certain, and unequivocal terms.

Express trust. *See* Trust.

Expressum facit cessare tacitum /æksprésh(i)yow féysət səsəriy tásətəm/. That which is expressed makes that which is implied to cease [that is, supersedes it, or controls its effect]. Thus, an implied covenant in a deed is in all cases controlled by an express covenant. Where a law sets down plainly its whole meaning the court is prevented from making it mean what the court pleases. *Munro v. City of Albuquerque*, 48 N.M. 306, 150 P.2d 733, 743.

Expressum servitium regat vel declaret tacitum /æksprésh(i)yow sərvis(h)(i)yəm riygət vèl dèklərérat tásətəm/. Let service expressed rule or declare what is silent.

Express warranty. *See* Warranty.

Expromissio /èksprəmís(h)iyow/. In the civil law, the species of novation by which a creditor accepts a new debtor, who becomes bound instead of the old, the latter being released.

Expromissor /èksprəmísər/. In the civil law, a person who assumes the debt of another, and becomes solely liable for it, by a stipulation with the creditor. He differs from a surety, inasmuch as this contract is one of novation, while a surety is jointly liable with his principal.

Expromittere /èksprəmítəriy/. In the civil law, to undertake for another with the view of becoming liable in his place.

Expropriation. A taking, as of privately owned property, by government under eminent domain. This term is also used in the context of a foreign government taking an American industry located in the foreign country. In Louisiana, the word has the same general meaning as eminent domain.

A voluntary surrender of rights or claims; the act of divesting oneself of that which was previously claimed as one's own, or renouncing it. In this sense it is the opposite of "appropriation."

See also Condemnation; Eminent domain.

Ex proprio motu /èks prówpriyow mówtuw/. Of his own accord. See *Ex mero motu*.

Ex proprio vigore /èks prówpriyow vágóriy/. By their or its own force.

Ex provisione hominis /èks prəviz(h)iyówniy hómənəs/. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law.

Ex provisione mariti /èks prəviz(h)iyówniy mārətay/. From the provision of the husband.

Expulsion. A putting or driving out. Ejectment; banishment; a cutting off from the privileges of an institution or society permanently. The act of depriving a member of a corporation, legislative body, assembly, society, commercial organization, etc., of his membership in the same, by a legal vote of the body itself, for breach of duty, improper conduct, or other sufficient cause. Also, in the law of torts and of landlord and tenant, an eviction or forcible putting out. See *Deportation*; *Ejectment*; *Eviction*; *Expel*; *Forcible entry and detainer*; *Process (Summary process)*.

Expunge /əkspánj/. To destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information—including criminal records—in files, computers, or other depositories.

Expungement of record. Process by which record of criminal conviction is destroyed or sealed after expiration of time. Some states also provide for expungement of criminal records if arrested person is not convicted (e.g. N.J.S.A. 2C:52-6) or in the event of unlawful arrest. See also *Erasure (Erasure of record)*.

Expurgation /èkspərgéyshən/. The act of purging or cleansing, as where a book is published without its obscene passages.

Expurgator /èkspərgéytər/. One who corrects by expurgating.

Ex quasi contractu /èks kwéysày kənráktuyw/. From *quasi contract*.

Ex rel. See *Ex relatione*.

Ex relatione /èks rələyshiyówniy/. Upon relation or information.

Legal proceedings which are instituted by the attorney general (or other proper person) in the name and behalf of the state, but on the information and at the instigation of an individual who has a private interest in the matter, are said to be taken "on the relation" (*ex relatione*) of such person, who is called the "relator." Such a cause is usually entitled thus: "State *ex rel.* Doe v. Roe."

In the books of reports, when a case is said to be reported *ex relatione*, it is meant that the reporter derives his account of it, not from personal knowledge, but from the relation or narrative of some person who was present at the argument.

Ex rights. Literally, without rights. A stock sells *ex rights* when stock purchasers no longer receive the rights along with the shares purchased. Such stock is sold without privileged subscription rights to a current new issue by a corporation. Refers to the date on which a purchaser of publicly traded shares is not entitled to receive rights that have been declared on the shares.

Ex rigore juris /èks rágóriy júrəs/. According to the rigor or strictness of law; in strictness of law.

Exrogare /èksrágériy/. (From *ex*, from, and *rogare*, to pass a law.) In Roman law, to take something from an old law by a new law.

Ex scriptis olim visis /èks skriptəs ówłəm váyzəs/. From writings formerly seen. A term used as descriptive of that kind of proof of handwriting where the knowledge has been acquired by the witness having seen letters or other documents professing to be the handwriting of the party, and having afterwards communicated personally with the party upon the contents of those letters or documents, or having otherwise acted upon them by written answers, producing further correspondence or acquiescence by the party in some matter to which they relate, or by the witness transacting with the party some business to which they relate, or by any other mode of communication between the party and the witness which, in the ordinary course of the transactions of life, induces a reasonable presumption that the letters or documents were the handwriting of the party.

Ex ship. Words in a contract for the sale of goods denoting that risk of loss shall pass to the buyer upon the goods leaving the ship. Buyer is responsible for any subsequent landing charges. UCC § 2-322. See also *Ship*.

Ex statuto /èks stətyúwtow/. According to the statute.

Ex stipulatu actio /èks stīpyələytuw éksh(iy)ow/. In the civil law, an action of stipulation. An action given to recover marriage portions.

Ex tempore /èks témpəriy/. From or in consequence of time; by lapse of time. *Ex diuturno tempore*, from length of time. Without preparation or premeditation.

Extend. Term lends itself to great variety of meanings, which must in each case be gathered from context. It may mean to expand, enlarge, prolong, lengthen, widen, carry or draw out further than the original limit; *e.g.*, to extend the time for filing an answer, to extend a lease, term of office, charter, railroad track, etc. *Keetch v. Cordner*, 90 Utah 423, 62 P.2d 273, 277. To stretch out or to draw out. *Loeffler v. Federal Supply Co.*, 187 Okl. 373, 102 P.2d 862, 864. *See also* Extension; Renewal.

Extended. A lengthening out of time previously fixed and not the arbitrary setting of a new date. Stretched, spread, or drawn out.

Extended coverage clause. Provision in insurance policy which carries protection for hazards beyond those covered (or excluded) in the basic policy. *See also* Omnibus clause.

Extended insurance. An option to use dividend to procure extended insurance is one to procure extension of term of insurance from date to which premiums have been paid, without further payment. *Williams v. Union Central Life Ins. Co.*, Tex., 291 U.S. 170, 54 S.Ct. 348, 78 L.Ed. 711.

Extended warranty. *See* Warranty.

Extendi facias /əksténday féys(h)(i)yas/. Lat. You cause to be extended. In English practice, the name of a writ of execution (derived from its two emphatic words); more commonly called an "extent."

Extension. An increase in length of time specified in contract (*e.g.* of expiration date of lease, or due date of note). *See also* Grace period.

A part constituting an addition or enlargement, as an annex to a building or an extension to a house. Addition of existing facilities. Enlargement of main body; addition of something smaller than that to which it is attached; to cause to reach or continue as from point to point; to lengthen or prolong. That property of a body by which it occupies a portion of space. *Newark Stove Co. v. Gray & Dudley Co.*, D.C.Tenn., 39 F.Supp. 992, 993.

Commercial law. An allowance of additional time for the payment of debts. An agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities. A creditor's indulgence by giving a debtor further time to pay an existing debt. *See* Bankruptcy proceedings.

Lease. The word "extension," when used in its proper and usual sense in connection with a lease, means a prolongation of the previous leasehold estate. The distinction between "extension" and "renewal" of lease is chiefly that, in the case of renewal, a new lease is requisite, while, in the case of extension, the same lease

continues in force during additional period upon performance of stipulated act. An option for renewal implies giving of new lease on same terms as old lease, while an option for extension contemplates a continuance of old lease for a further period.

Patents. Extension of life of patent for an additional statutorily allowed period.

Taxes. Request for additional time to file income tax return beyond due date.

Time. Extensions of time for performing an act that is otherwise to be done within time specified by court rule or order in civil actions is governed by Fed.R. Civil P. 6, in criminal actions by Fed.R.Crim.P. 45, and in appeals by Fed.R.App.P. 26.

Extension agreements. Those agreements which provide for further time in which performance of the basic agreement may be performed.

Extension or renewal of note. Takes place when parties agree upon valuable consideration for maturity of debt on day subsequent to that provided in original contract. *Elk Horn Bank & Trust Co. v. Spraggins*, 182 Ark. 27, 30 S.W.2d 858, 859.

Extensive. Widely extended in space, time, or scope; great or wide or capable of being extended.

Extensores /èkstənsóriyz/. In old English law, extenders or appraisers. The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule, or inventory of the lands, to lay them out under certain heads, and then to ascertain the value of each, as preparatory to the division or partition.

Extent. Amount; scope; range; magnitude.

In old English law, a writ of execution issuing from the exchequer upon a debt due the crown, or upon a debt due a private person, if upon recognizance or statute merchant or staple, by which the sheriff was directed to appraise the debtor's lands, and, instead of selling them, to set them off to the creditor for a term during which the rental will satisfy the judgment. It was so called because the sheriff was to cause the lands to be appraised at their full extended value before he delivers them to the plaintiff. The term was at one time used in the various states of the United States to denote writs which give the creditor possession of the debtor's lands for a limited time till the debt be paid.

Extenta manerii /əksténtə maniriyà/. (The extent or survey of a manor.) The title of English statute passed 4 Edw. I, St. 1; being a sort of direction for making a survey or terrier of a manor, and all its appendages.

Extent in aid. In old English law, that kind of extent which issued at the instance and for the benefit of a debtor to the crown for the recovery of a debt due to himself. This writ was much abused, owing to some peculiar privileges possessed by crown-debtors, and its use was regulated by Stat. 57 Geo. III, c. 117. 3 Bl. Comm. 419. Abolished by Crown Proceedings Act (1947). The writ formerly used by a debtor of the king

against his debtor to enforce the right of preference given to him because of his indebtedness to the king. *United States Fidelity & Guaranty Co. v. Carter*, 161 Va. 381, 170 S.E. 764, 768.

Extent in chief. In old English law, a summary process by which the king's action was commenced against his debtor and his body, personal property (tangible and intangible), and lands at once seized for the satisfaction of the king's debt. The principal kind of extent, issuing at the suit of the crown, for the recovery of the crown's debt. Abolished by Crown Proceedings Act (1947). An adverse proceeding by the king, for the recovery of his own debt.

Extenuate /əkstényuweyt/. To lessen; to palliate; to mitigate.

Extenuating circumstances. Such as render a delict or crime less aggravated, heinous, or reprehensible than it would otherwise be, or tend to palliate or lessen its guilt. Such circumstances may ordinarily be shown in order to reduce the punishment or damages. In contract law, unusual or extraordinary events that prevent performance within specified time (e.g., strike by workers or suppliers). *See also* Extraordinary circumstances; Mitigating circumstances.

Extenuation. That which renders a crime or tort less heinous than it would be without it. It is opposed to aggravation. *See* Extenuating circumstances.

Exterior. On the outside, external, pertaining to the outside part. *Northwestern Casualty & Surety Co. v. Barzune*, Tex.Civ.App., 42 S.W.2d 100, 103. The surface outside.

External. Apparent, outward, visible from the outside, patent, exterior, capable of being perceived. Acting from without, as the external surface of a body; physical or corporeal, as distinguished from mental or moral. *Provident Life & Accident Ins. Co. v. Campbell*, 18 Tenn.App. 452, 79 S.W.2d 292, 296. In double indemnity clause of life policy, the term "external" applies to the force or means and not to the injury. *Hanna v. Rio Grande Nat. Life Ins. Co.*, Tex.Civ.App., 181 S.W.2d 908, 911.

External, violent and accidental means. Death through "external, violent and accidental means" necessarily implies that death did not result indirectly from disease or bodily infirmity. *Mutual Life Ins. Co. of New York v. Hassing*, C.C.A.10, 134 F.2d 714, 716.

Exterritoriality. The privilege of those persons (such as foreign ministers) who, though temporarily resident within a country, are not subject to the operation of its laws. The exemption from the operation of the ordinary laws of the country accorded to foreign monarchs temporarily within the country and their retinue, to diplomatic agents and the members of their household, and to others of similar position and rank. *See* Capitulation.

Exterus /ékstərəs/. Lat. A foreigner or alien; one born abroad. The opposite of *civis*.

Exterus non habet terras /ékstərəs nòn héybət téhrəs/. An alien holds no lands.

Ex testamento /éks tɛstaméntow/. From, by, or under a will. The opposite of *ab intestato* (q.v.).

Extinct. Extinguished. No longer in existence or use. Lacking a claimant. *See* Extinguishment.

Extincto subjecto, tollitur adjunctum /əkstíŋktow səbjéktow tólətər əjəŋktəm/. When the subject [or substance] is extinguished, the incident [or adjunct] ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases.

Extinguish. To bring or put an end to. *Onondaga Water Service Corporation v. Crown Mills, Inc.*, 132 Misc. 848, 230 N.Y.S. 691, 698. To terminate or cancel. To put out, quench, stifle, as to extinguish a fire or flame. *See also* Cancellation; Termination.

Extinguishment. The destruction or cancellation of a right, power, contract, or estate. The annihilation of a collateral thing or subject in the subject itself out of which it is derived. *See* Cancellation.

"Extinguishment" is sometimes confounded with "merger," though there is a clear distinction between them. "Merger" is only a mode of extinguishment, and applies to estates only under particular circumstances; but "extinguishment" is a term of general application to rights, as well as estates. "Extinguishment" connotes the end of a thing, precluding the existence of future life therein; in "mergers" there is a carrying on of the substance of the thing, except that it is merged into and becomes a part of a separate thing with a new identity. *McRoberts v. McRoberts*, 177 Okl. 156, 57 P.2d 1175, 1177.

Extinguishment of common. In English law, loss of the right to have common, which could happen from various causes.

Extinguishment of copyhold. In English law, a copyhold is said to be extinguished when the freehold and copyhold interests unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold or by the freehold interest coming to the copyhold. Under the provisions of the Law of Property Act, 1922, copyholds were enfranchised and became either leasehold, or more often, freehold.

Extinguishment of debts. This takes place by payment; by accord and satisfaction; by novation, or the substitution of a new debtor; by merger, when the creditor recovers a judgment or accepts a security of a higher nature than the original obligation; by a release; by bankruptcy; and where one of the parties, debtor or creditor, makes the other his executor. *See also* Bankruptcy proceedings.

Extinguishment of legacy. This occurs in case the identical thing bequeathed is not in existence, or has been disposed of so that it does not form part of the testator's estate, at the time of his death. *See* Ademption.

Extinguishment of lien. Discharge by operation of law.

Extinguishment of rent. If a person has a yearly rent of lands, and afterwards purchases those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished. Rent may also be extinguished by conjunction of estates, by confirmation, by grant, by release, and by surrender.

Extinguishment of ways. This is usually effected by unity of possession, as if a man had a way over the close of another, and he purchased that close, the way is extinguished.

Extirpation /'ɛkstəpɛɪʃən/. In English law, a species of destruction or waste, analogous to estrepement. See Estrepement.

Extirpatione /'ɛkstəpɛɪʃiəwɒni/. A judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, etc., maliciously overthrew any house or extirpated any trees upon it.

Extorsively /'ɛkstɔːsɪvli/. A technical word used in indictments for extortion.

Extort. To compel or coerce, as a confession or information by any means serving to overcome one's power of resistance, thus making the confession or admission involuntary. To gain by wrongful methods; to obtain in an unlawful manner, as to compel payments by means of threats of injury to person, property, or reputation. To exact something wrongfully by threats or putting in fear. The natural meaning of the word "extort" is to obtain money or other valuable thing either by compulsion, by actual force, or by the force of motives applied to the will, and often more overpowering and irresistible than physical force. See also Extortion.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum /'ɛkstɔːrʃ(i)əw ɛst kráymən kwɔndow kwɪs kəlɔriy əfɪʃiəy ɛkstɔːrkwɛt kwɔd nɔn ɛst dɛbətəm, vɛl s(y)úwprɛ dɛbətəm, vɛl ɛntiəw tɛmpəs kwɔt ɛst dɛbətəm/. Extortion is a crime when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due.

Extortion. The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. 18 U.S.C.A. § 871 et seq.; § 1951.

A person is guilty of theft by extortion if he purposely obtains property of another by threatening to: (1) inflict bodily injury on anyone or commit any other criminal offense; or (2) accuse anyone of a criminal offense; or (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or (4) take or withhold action as an official, or cause an official to take or withhold action; or (5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or (6) testify or

provide information or withhold testimony or information with respect to another's legal claim or defense; or (7) inflict any other harm which would not benefit the actor. Model Penal Code, § 223.4.

See also Blackmail; Hobbs Act; Loan sharking; Shake-down. With respect to *Larceny by extortion*, see Larceny. Compare Coercion.

Extortionate credit. See Loansharking.

Ex tota materia emergat resolutio /'ɛks tɔwdə mətɪriə əmɔːrgət rɛzəl(y)úwsh(i)yəw/. The explanation should arise out of the whole subject-matter; the exposition of a statute should be made from all its parts together.

It has also been defined as corrupt demanding or receiving by a person in office of a fee for services which should be performed gratuitously; or, where compensation is permissible, of a larger fee than the law justifies, or a fee not due.

Term applies to persons who exact money either for the performance of a duty, the prevention of injury, or the exercise of influence, and covers the obtaining of money or other property by operating on fear or credulity, or by promise to conceal the crimes of others. Term in comprehensive or general sense signifies any oppression under color of right, and in strict or technical sense signifies unlawful taking by any officer, under color of office, of any money or thing of value not due him, more than is due, or before it is due.

See also Blackmail; Hobbs Act; Loansharking; Shake-down.

For the distinction between *extortion* and *exaction*, see Exaction.

Extra /'ɛkstrə/. A Latin preposition, occurring in many legal phrases, and meaning beyond, except, without, out of, outside. Additional.

Extra allowance. In New York practice, a sum in addition to costs, which may, in the discretion of the court, be allowed to the successful party in cases of unusual difficulty. *Hascall v. King*, 54 App.Div. 441, 66 N.Y.S. 1112.

Extra commercia /'ɛkstrə kəmɔːs(h)(i)yə/. Property once dedicated to public use is "extra commercia".

Extract, v. To draw out or forth; to pull out from a fixed position.

Extract, n. A portion or segment of a writing.

Extracta curiæ /'ɛkstrɛktə kyúriyɪ/. In old English law, the issues or profits of holding a court, arising from the customary fees, etc.

Extradition. The surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender. U.S. Const., Art. IV, § 2; 18 U.S.C.A. § 3181 et seq. Most states have adopted the Uniform Criminal Extradition Act. See also Interstate rendition; Rendition.

Extra dividend. Dividend paid by corporation in cash or stock beyond that which is regularly paid. *See also* Ex dividend; Extraordinary dividend.

Extra-dotal property. In Louisiana this term is used to designate that property which forms no part of the dowry of a woman, and which is also called "paraphernal property." *Fleitas v. Richardson*, 147 U.S. 550, 13 S.Ct. 495, 37 L.Ed. 276.

Extra feudum /ékstrə fīy(ə)dəm/. Out of his fee; out of the seigniori, or not holden of him that claims it.

Extrahazardous. In the law of insurance, means conditions of special and unusual danger.

Extrahura /ékstrəhyúra/. In old English law, an animal wandering or straying about, with an owner; an estray.

Extrajudicial /ékstrəjuwdishəl/. That which is done, given, or effected outside the course of regular judicial proceedings. Not founded upon, or unconnected with, the action of a court of law, as *e.g.* extrajudicial evidence, or an extrajudicial oath.

That which, though done in the course of regular judicial proceedings, is unnecessary to such proceedings, or interpolated, or beyond their scope; as an extrajudicial opinion (*dictum*).

That which does not belong to the judge or his jurisdiction, notwithstanding fact that he takes cognizance of it.

See also Alternative dispute resolution; Self-help.

Extrajudicial confession /ékstrəjuwdishəl kənfeshən/. *See* Confession.

Extrajudicial evidence. That which is used to satisfy private persons as to facts requiring proof.

Extrajudicial oath. One taken not in the course of judicial proceedings, or taken without any authority of law, though taken formally before a proper person.

Extrajudicial statement. Any utterance, written or oral, made outside of court. It is governed by the hearsay rule and its exceptions when offered in court as evidence.

Extra judicium /ékstrə jədish(iy)əm/. Extrajudicial; out of the proper cause; out of court; beyond the jurisdiction. *See* Extrajudicial.

Extra jus /ékstrə jəs/. Beyond the law; more than the law requires.

Extralateral right. In mining law, the right of the owner of a mining claim duly located on the public domain to follow, and mine, any vein or lode the apex of which lies within the boundaries of his location on the surface, notwithstanding the course of the vein on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the side lines of his location.

Extra legem /ékstrə liyjəm/. Out of the law; out of the protection of the law.

Extra legem positus est civiliter mortuus /ékstrə liyjəm pózədas èst səvilətər mórtyuwəs/. He who is placed out of the law is civilly dead. *International Bank v. Sherman*, 101 U.S. 403, 25 L.Ed. 866.

Extramural /ékstrəmyúərəl/. As applied to the powers of a municipal corporation, its "extramural" powers are those exercised outside the corporate limits, as distinguished from "intramural".

Extranational. Beyond the territorial and governing limits of a country. *See also* Extraterritorial.

Extraneous evidence. With reference to a contract, deed, will, or any writing, extraneous evidence is such as is not furnished by the document itself, but is derived from outside sources; the same as evidence *aliunde*. *See also* Aliunde; Parol evidence rule.

Extraneous offense. One that is extra, beyond, or foreign to the offense for which the party is on trial. *Ridinger v. State*, 146 Tex.Cr.R. 286, 174 S.W.2d 319, 320.

Extraneous questions. Issues which are beyond or beside the point to be decided.

Extraneus /əkstréyniəs/. In old English law, one foreign born; a foreigner.

In Roman law, an heir not born in the family of the testator. Those of a foreign state. The same as *alienus*.

Extraneus est subditus qui extra terram, i.e., potestatem regis natus est /əkstréyniəs èst səbdətəs kwəy ékstrə téhrəm, id èst, pówtəstéytəm ríyjəs néytəs èst/. A foreigner is a subject who is born out of the territory, *i.e.*, government of the king.

Extraordinary. Out of the ordinary; exceeding the usual, average, or normal measure or degree; beyond or out of the common order, method, or rule; not usual, regular, or of a customary kind; remarkable; uncommon; rare; employed for an exceptional purpose or on a special occasion. *Courtney v. Ocean Accident & Guaranty Corporation*, 346 Mo. 703, 142 S.W.2d 858, 861. The word is both comprehensive and flexible in meaning.

Extraordinary designates an accident, casualty, occurrence or risk of a class or kind other than those which ordinary experience or prudence would foresee, anticipate or provide for. *Western & Atlantic Ry. Co. v. Hassler*, 92 Ga.App. 278, 88 S.E.2d 559, 562.

Extraordinary average. In admiralty law, a contribution by all the parties concerned in a commercial voyage, either as to the vessel or cargo, toward a loss sustained by some of the parties in interest for the benefit of all.

Extraordinary care. Synonymous with greatest care, utmost care, highest degree of care. *See* Care; Diligence; Negligence.

Extraordinary circumstances. Factors of time, place, etc., which are not usually associated with a particular thing or event; out of the ordinary factors. *See also* Extenuating circumstances; Mitigating circumstances.

The "extraordinary circumstances" justifying federal equitable intervention in pending state criminal prosecution must be extraordinary in the sense of creating an extraordinary pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation. *Kugler v. Helfant*, N.J., 421 U.S. 117, 95 S.Ct. 1524, 1531, 44 L.Ed.2d 15.

Extraordinary danger. Danger or risk of employment, not ordinarily incident to the service. *See also* Extraordinary hazard; Extraordinary risk.

Extraordinary dividend. Dividend of corporation which is nonrepetitive and generally paid at irregular time because of some unusual corporate event (e.g. unusually high profits). An "extraordinary dividend" is distinguished from an "ordinary dividend" or "regular dividend" in that it is not declared from ordinary profits arising out of regular course of business of corporation and is generally declared by reasons of unusually large income or unexpected increment in capital assets due to fortuitous conditions or circumstances occurring outside of activities and control of corporation but advantageous to corporation either in stepping up its product and sales or in giving added value to its property. In re Bank of N. Y. & Fifth Ave. Bank, 105 N.Y.S.2d 211, 217, 222. *See also* Extra dividend.

Cash disbursements by "wasting asset" companies are apportioned as "extraordinary dividends" where they represent, in part at least, distribution of proceeds of capital assets.

Extraordinary expenses. An expense characterized by its unusual nature and infrequency of occurrence; e.g. plant abandonment, goodwill write-off, large product liability judgment.

This term in a constitutional provision that the state may incur indebtedness for extraordinary expenses, means other than ordinary expenses and such as are incurred by the state for the promotion of the general welfare, compelled by some unforeseen condition which is not regularly provided for by law, such as flood, famine, fire, earthquake, pestilence, war, or any other condition that will compel the state to put forward its highest endeavors to protect the people, their property, liberty, or lives.

Extraordinary flood. A flood whose unexplained occurrences is not foreshadowed by the usual course of nature, and whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight. *Jensen v. Buffalo Drainage Dist. of Cloud County*, 148 Kan. 712, 84 P.2d 961, 965. One of such unusual occurrence that it could not have been foreseen by men of ordinary experience and prudence.

Extraordinary gain or loss. A gain or loss that is both unusual and infrequent; e.g., gain from sale of a significant segment of a business, loss resulting from an earthquake.

Extraordinary grand jury. Such jury is limited in scope of its investigation and may not go beyond terms

of executive proclamation, and examination of witness must be confined within those terms, and must not be used as a means of disclosing or intermeddling with extraneous matters.

Extraordinary hazard. One not commonly associated with a job or undertaking. If hazards are increased by what other employees do, and injured employee has no part in increasing them, they are "extraordinary". *Stone v. Howe*, 92 N.H. 425, 32 A.2d 484, 487. *See also* Extraordinary risk.

Extraordinary remedies. The writs of *mandamus*, *quo warranto*, *habeas corpus*, and some others are often classified or termed "extraordinary remedies," in contradistinction to the ordinary remedy by action.

Under Rules practice in the federal courts and most states, most extraordinary "writs" have been abolished. In any action seeking relief formerly obtainable under any such writ, the procedure shall follow that of a regular action. *See* Fed.R.Civ.P. 60(b), 81(b).

Extraordinary repairs. Within the meaning of a lease, such repairs as are made necessary by some unusual or unforeseen occurrence which does not destroy the building but merely renders it less suited to the use for which it was intended. *Courtney v. Ocean Accident & Guaranty Corporation*, 346 Mo. 703, 142 S.W.2d 858, 861. In lease provisions for "extraordinary" repairs, word "extraordinary" means beyond or out of common order of rule, not the usual, customary or regular kind, not ordinary. *Atlanta & St. A. B. Ry. Co. v. Chilean Nitrate Sales Corp.*, D.C.Fla., 277 F.Supp. 242, 246.

Extraordinary risk. A risk lying outside of the sphere of the normal, arising out of conditions not usual in the business. It is one which is not normally and necessarily incident to the employment, and is one which may be obviated by the exercise of reasonable care by the employer. *See also* Extraordinary hazard.

Extraordinary session. A legislative session, called usually by the governor, which meets in the interval between regular sessions to handle specific legislation. In most states such sessions are limited to the consideration of matters specified in the governor's call. *See also* Extra session, *supra*.

Extraordinary storm. One which is not necessarily an unprecedented one, but one that happens so rarely that it is unusual and not ordinarily to be expected. *Oklahoma City v. Evans*, 173 Okl. 586, 50 P.2d 234, 238. *See also* Extraordinary flood.

Extraordinary writs. *See* Extraordinary remedies.

Extraparochial /ɛkstrəpəˈrɔːkiəl/. In English law, out of a parish; not within the bounds or limits of any parish.

Extrapolation. The process of estimating an unknown number outside the range of known numbers. Term sometimes used in cases when a court deduces a principle of law from another case.

Extra præsentiam mariti /ɛkstrə præzɛnʃ(i)əm mɑːrɪtəi/. Out of her husband's presence.

Extra quatuor maria /ékstrə kwótúwər мэ́riyə/. Beyond the four seas; out of the kingdom of England.

Extra regnum /ékstrə régnəm/. Out of the realm.

Extra session. After a Legislature has adjourned or prorogued, it may be recalled for an additional session by the Governor to deal with matters which could not be considered during the regular term. Also, a court may provide additional court sessions to eliminate or reduce a case backlog. *See also* Extraordinary session.

Extraterritorial. Beyond the physical and juridical boundaries of a particular state or country. *See* Extraterritoriality.

Extraterritoriality. The extraterritorial operation of laws; that is, their operation upon persons, rights, or jural relations, existing beyond the limits of the enacting state or nation, but still amenable to its laws. A term used, especially formerly, to express, in lieu of the word exterritoriality the exemption from the obligation of the laws of a state granted to foreign diplomatic agents, warships, etc. The term is used to indicate jurisdiction exercised by a nation in other countries by treaty, or by its own ministers or consuls in foreign lands. Crime is said to be extraterritorial when committed in a state or country other than that of the forum in which the party is tried.

Extraterritorial jurisdiction. Juridical power which extends beyond the physical limits of a particular state or country. *See* Long arm statutes.

Extra territorium /ékstrə téhrətóriyəm/. Beyond or without the territory.

Extra territorium jus dicenti impune non paretur /ékstrə téhrətóriyəm jús dáséntay impyúwniy nòn pəriytər/. One who exercises jurisdiction out of his territory is not obeyed with impunity. He who exercises judicial authority beyond his proper limits cannot be obeyed with safety.

Extravagantes /ékstrəvəgántiyz/. In canon law, those decretal epistles which were published after the Clementines. They were so called because at first they were not digested or arranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII, successor of Clement V. The last collection was brought down to the year 1483, and was called the "Common Extravagantes," notwithstanding that they were likewise incorporated with the rest of the canon law.

Extra viam /ékstrə váyəm/. Outside the way. In common law pleading, where the defendant in trespass pleaded a right of way in justification, and the replication alleged that the trespass was committed outside the limits of the way claimed, these were the technical words to be used.

Extra vires /ékstrə váyriyz/. Beyond powers. *See* Ultra (*Ultra vires*).

Extra work. As used in connection with construction contract, means work done not required in performance of the contract, *i.e.* something done or furnished in addition to or in excess of the requirement of the contract. Work entirely outside and independent of contract—something not required or contemplated in its performance.

Extra work, for which a contractor is entitled to charge additional compensation, depends on construction of the original contract, and generally means only labor and materials not contemplated by or embraced in terms of the original contract. *Trinity Builders, Inc. v. Schaff, N.D., 199 N.W.2d 914, 918.* Such work is usually defined as being work not foreseen at time of entrance into contract. *W. R. Ferguson, Inc. v. William A. Berbusse, Jr., Inc., Del.Super., 216 A.2d 876, 879.* Materials and labor not contemplated by the contract, but which are required by changes in the plans and specifications made after the contract had been entered into, are "extra work". *Collins v. Hall, Tex.Civ.App., 161 S.W.2d 311, 314.*

Extreme. At the utmost point, edge, or border; most remote. Last; conclusive. Greatest, highest, strongest, or the like. Immoderate; violent.

Extreme case. One in which the facts or the law or both reach the outer limits of probability; desperate.

Extreme cruelty. As grounds for divorce, may consist of personal injury or physical violence or it may be acts or omissions of such character as to destroy peace of mind or impair bodily or mental health of person upon whom inflicted or be such as to destroy the objects of matrimony. *Schlueter v. Schlueter, 158 Neb. 233, 62 N.W.2d 871, 876.*

Extreme low tide. Tides which are lower than lower low. *State v. Edwards, 188 Wash. 467, 62 P.2d 1094, 1095.*

Extremis /(*in*) əkstriyməs/. When a person is sick, beyond the hope of recovery, and near death, he is said to be in *extremis*.

Extremis probatis, præsumentur media /əkstriyməs prəbéytəs, priyzyəmántər miydiyə/. Extremes being proved, intermediate things are presumed.

Extremity. The furthest point, section, or part. Limb of the body (hand or foot). Extreme danger or need. Desperate act or measure.

Extrinsic. Foreign; from outside sources; *dehors*. As to *Extrinsic fraud, see* Fraud.

Extrinsic ambiguity. In a written contract, such is an uncertainty which does not arise by the terms of the instrument itself, but is created by some collateral matter not appearing in the instrument. *Pacific Indemnity Co. v. California Electric Works, 29 Cal.App.2d 260, 84 P.2d 313, 320.*

Extrinsic evidence. External evidence, or that which is not contained in the body of an agreement, contract, and the like. Evidence which does not appear on the face of a document, but which is available from other sources

such as statements by the parties and other circumstances surrounding the transaction. Extrinsic evidence is also said to be evidence not legitimately before the tribunal in which the determination is made. *See* Parol evidence rule.

Extrinsic fraud. *See* Fraud.

Ex turpi causa non oritur actio /èks tårpay kózà nòn órætår éksh(iy)ow/. Out of a base [illegal, or immoral] consideration, an action does [can] not arise.

Ex turpi contractu actio non oritur /èks tårpay kåntráktyuw éksh(iy)ow nòn órætår/. From an immoral or iniquitous contract an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action.

Exuere patriam /ægzyúwøriy pátriyəm/. To throw off or renounce one's country or native allegiance; to expatriate one's self.

Exulare /ègzalériy/. In old English law, to exile or banish. *Nullus liber homo, exuletur, nisi, etc.*, no free-man shall be exiled, unless, etc.

Ex una parte /èks yúwnà pártiy/. Of one part or side; on one side.

Ex uno disces omnes /èks yúwnow dísiyz ómniyz/. From one thing you can discern all.

Exuperare /egzyúwpèrériy/. To overcome; to apprehend or take.

Ex utraque parte /èks yuwtréykwiy pártiy/. On both sides.

Ex utrisque parentibus conjuncti /èks yuwtriskwiy pèréntàbəs kånjånktay/. Related on the side of both parents; of the whole blood.

Ex visceribus /èks vəséhřabəs/. From the bowels. From the vital part, the very essence of the thing. *Ex visceribus verborum*, from the mere words and nothing else.

Ex visitatione Dei /èks vizəteyshiyówniy díyay/. By the dispensation of God; by reason of physical incapacity. Anciently, when a prisoner, being arraigned, stood silent instead of pleading, a jury was impaneled to

inquire whether he obstinately stood mute or was dumb *ex visitatione Dei*.

Also by natural, as distinguished from violent, causes. When a coroner's inquest finds that the death was due to disease or other natural cause, it is frequently phrased "*ex visitatione Dei*."

Ex visu scriptionis /èks váysyuw skřipshiyównəs/. From sight of the writing; from having seen a person write. A term employed to describe one of the modes of proof of handwriting.

Ex vi termini /èks váy tårmanay/. From or by the force of the term. From the very meaning of the expression used. 2 Bl.Comm. 109, 115.

Ex voluntate /èks vóləntétyiy/. Voluntarily; from free will or choice.

Ex warrants. A security is traded "ex warrants" when sold without warrants which have been retained by seller.

Eyde /éyd/. Aid; assistance; relief. A subsidy.

Eyewitness. A person who can testify as to what he has seen from personal observation. *Wigginton v. Order of United Commercial Travelers of America, C.C.A.Ind.*, 126 F.2d 659, 662, 665, 666, 667. One who saw the act, fact, or transaction to which he testifies. Distinguished from an ear-witness (*auritus*). *Pannell v. Sovereign Camp, W. O. W.*, 171 Tenn. 245, 102 S.W.2d 50, 52.

Eyewitness identification. Type of evidence by which one who has seen the event testifies as to the person or persons involved from his own memory of the event. *See also* Lineup.

Eygne /éyn/. The same as "eigne" (*q.v.*).

Eyre /ér/. A journey; a court of itinerant justices.

Justices in eyre were judges commissioned in Anglo-Norman times in England to travel systematically through the kingdom, once in seven years, holding courts in specified places for the trial of certain descriptions of causes.

Eyrer /érər/. L. Fr. To travel or journey; to go about or itinerate.