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

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

U. R. Initials of "*uti rogās*," be it as you desire, a ballot thus inscribed, by which the Romans voted in favor of a bill or candidate. Tayl. Civil Law, 191.

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

UBERRIMA FIDES. Lat. The most abundant good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception, however slight. A phrase used to express the perfect good faith, concealing nothing, with which a contract must be made; for example, in the case of insurance, the insured must observe the most perfect good faith towards the insurer. 1 Story, Eq. Jur. § 317.

Contracts of life insurance are said to be "*uberimæ fidæ*" when any material misrepresentation or concealment is fatal to them. *Equitable Life Assur. Soc. v. McElroy*, 28 C. C. A. 365, 83 F. 631, 636.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. When anything is granted, that also is granted without which the thing granted cannot exist. *Broom, Max.* 483; 13 Mees. & W. 706.

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum. Where anything is impeded by one single cause, if that be removed, the impediment is removed. *Branch, Princ.*, citing 5 Coke, 77a.

Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium. Where the ordinary remedy fails, recourse must be had to an extraordinary one. 4 Coke, 92b.

Ubi culpa est, ibi pœna subesse debet. Where the crime is committed, there ought the punishment to be undergone. *Jenk. Cent.* 325.

Ubi damna dantur, victus victori in expensis condemnari debet. Where damages are given, the vanquished party ought to be condemned in costs to the victor. 2 Inst. 289; 3 Sharsw. Bla. Comm. 399.

Ubi eadem ratio, ibi eadem lex; et de similibus idem est iudicium. 7 Coke, 18. Where the same reason exists, there the same law prevails; and, of things similar, the judgment is similar. Where there is the same reason, there is the same law, and the same judgment should be rendered on the same state of facts. *Broom, Max.* 103, n., 153, 155.

Ubi est forum, ibi ergo est jus. The law of the forum governs. 31 Law Mag. & Rev. 471.

Ubi est specialis, et ratio generalis generaliter accipienda est. See *Ubi lex est specialis, est.*

Ubi et dantis et accipientis turpitude versatur, non posse repeti dicimus; quotiens autem accipientis turpitude versatur, repeti posse. Where there is turpitude on the part of both

giver and receiver, we say it cannot be recovered back; but as often as the turpitude is on the side of the receiver [alone] it can be recovered back. *Mason v. Waite*, 17 Mass. 562.

Ubi factum nullum, ibi fortia nulla. Where there is no principal fact, there can be no accessory. 4 Coke, 426. Where there is no act, there can be no force.

Ubi jus, ibi remedium. Where there is a right, there is a remedy. *Broom, Max.* 191, 204; 1 Term R. 512; *Co. Litt.* 197b; 7 Gray (Mass.) 197; *Carroll v. Rye Tp.*, 13 N. D. 458, 101 N. W. 894, 897; *Henry v. Cherry & Webb*, 30 R. I. 13, 73 A. 97, 101, 24 L. R. A. 991, 136 Am. St. Rep. 928, 18 Ann. Cas. 1006; *Civ. Code Ga.* 1895, § 4929 (*Civ. Code* 1910, § 5506). It is said that the rule of primitive law was the reverse: Where there is a remedy, there is a right. *Salmond, Jurispr.* 645.

Ubi jus incertum, ibi jus nullum. Where the law is uncertain, there is no law.

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima. Where the law compels a man to show cause, it is necessary that the cause be just and lawful. 2 Inst. 289.

Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est. 2 Inst. 43. Where the law is special, and the reason of it general, it ought to be taken as being general. When the reason for a particular legislative act and acts of the same general character is the same, they should have the same effect. *Guile v. La Crosse Gas & Electric Co.*, 145 Wis. 157, 130 N. W. 234, 241.

Ubi lex non distinguit, nec nos distinguere debemus. Where the law does not distinguish, neither ought we to distinguish. 7 Coke, 5b.

Ubi major pars est, ibi totum. Where the greater part is, there the whole is. That is, majorities govern. *Moore*, 578.

Ubi matrimonium, ibi dos. Where there is marriage, there is dower. *Bract.* 92.

Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt. When the law fails to serve as a rule, almost everything ought to be suspected. *Bac. Aphorisms*, 25.

Ubi non est annua renovatio, ibi decimæ non debent solvi. Where there is no annual renovation, there tithes ought not to be paid.

Ubi non est condendi auctoritas, ibi non est parendi necessitas. *Dav. Ir. K. B.* 69. Where there is no authority for establishing a rule, there is no necessity of obeying it.

Ubi non est directa lex, standum est arbitrio iudicis, vel procedendum ad similia. *Ellesm. Post. N.* 41. Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.

Ubi non est lex, ibi non est transgressio, quoad mundum. Where there is no law, there is no transgression, so far as relates to the world. 4 Coke, 16*b*.

Ubi non est manifesta injustitia, iudices habentur pro bonis viris, et iudicatum pro veritate. Where there is no manifest injustice, the judges are to be regarded as honest men, and their judgment as truth. *Goix v. Low*, 1 Johns. Cas. (N. Y.) 341, 345.

Ubi non est principalis, non potest esse accessorius. 4 Coke, 43. Where there is no principal, there cannot be an accessory.

Ubi nulla est conjectura quæ ducat alio, verba intelligenda sunt ex proprietate, non grammatica, sed populari ex usu. Where there is nothing to call for a different construction, [the] words [of an instrument] are to be understood, not according to their strict grammatical meaning, but according to their popular and ordinary sense. *Grot. de Jure B. lib. 2, c. 16*.

Ubi nullum matrimonium, ibi nulla dos. Where there is no marriage, there is no dower. *Bract. fol. 92*; 2 Bl. Comm. 130; *Co. Litt. 32*a**.

Ubi periculum, ibi et lucrum collocatur. He at whose risk a thing is, should receive the profits arising from it.

Ubi pugnantia inter se in testamento juberentur, neutrum ratum est. Where repugnant or inconsistent directions are contained in a will, neither is valid. *Dig. 50, 17, 188, pr.*

Ubi quid generaliter conceditur inest hæc exceptio, si non aliquid sit contra jus fasque. 10 Coke, 78. Where a thing is conceded generally [or granted in general terms], this exception is implied: that there shall be nothing contrary to law and right.

Ubi quis delinquit, ibi puniatur. Where a man offends, there he shall be punished. 6 Coke, 47*b*. In cases of felony, the trial shall be always by the common law in the same place where the offense was, and shall not be supposed in any other place. *Id.*

UBI RE VERA. Where in reality; when in truth or in point of fact. *Cro. Eliz. 645*; *Cro. Jac. 4*.

UBI SUPRA. *Lat.* Where above mentioned. *Webster, Dict.*

Ubi verba conjuncta non sunt sufficit alterutrum esse factum. *Dig. 50, 17, 110, 3*. Where words are not conjoined, it is enough if one or other be complied with. Where words are used disjunctively, it is sufficient that either one of the things enumerated be performed.

Ubique est injuria, ibi damnum sequitur. Wherever there is a wrong, there damage follows. 10 *Co. 116*.

UBIQUITY. Omnipresence; presence in several places, or in all places, at one time. A fiction of English law is the "legal ubiquity"

of the sovereign, by which he is constructively present in all the courts. 1 Bl. Comm. 270.

UDAL. A term mentioned by Blackstone as used in Finland to denote that kind of right in real property which is called, in English law, "allodial." 2 Bl. Comm. 45, note *f*.

UKAAS, UKASE. Originally, a law or ordinance made by the czar of Russia.

Hence, any official decree or proclamation. *Webster, Dict.*

ULLAGE. In commercial law. The amount wanting when a cask, on being gauged, is found not to be completely full.

ULNA FERREA. *L. Lat.* In old English law. The iron ell; the standard ell of iron, kept in the exchequer for the rule of measure.

ULNAGE. *Alnage.* See *Alnager*.

ULTIMA RATIO. *Lat.* The last argument; the last resort; the means last to be resorted to.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention. *Co. Litt. 322*; *Broom, Max. 566*.

ULTIMATE FACTS. In pleading and practice. Issuable facts. *Maxwell Steel Vault Co. v. National Casket Co. (D. C.) 205 F. 515, 524*. The issuable, constitutive, or traversable facts essential to the statement of the cause of action. *Musser v. Musser, 281 Mo. 649, 221 S. W. 46, 50*. Facts in issue as opposed to probative or evidential facts, the latter being such as serve to establish or disprove the issue. *Kahn v. Central Smelting Co., 2 Utah, 379*. They are found in that vaguely defined field lying between evidential facts on one side and the primary issue or conclusion of law on the other. *Universal Oil Products Co. v. Skelly Oil Co. (D. C.) 12 F.(2d) 271, 272*. Facts are either "evidential facts," meaning facts which can be directly established by testimony or evidence, or "ultimate facts," which can only be deduced by inference from evidential facts. *Real Estate Title, Ins. & Trust Co. v. Lederer (D. C.) 229 F. 799, 804*. And see *Fact*.

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

ULTIMUM SUPPLICIUM. *Lat.* The last or extreme punishment; the extremity of punishment; the punishment of death. 4 Bl. Comm. 17.

Ultimum supplicium esse mortem solam interpretamur. The extremest punishment we consider to be death alone. *Dig. 48, 19, 21*.

ULTIMUS HÆRES. Lat. The last or remote heir; the lord. So called in contradistinction to the *hæres proximus* and the *hæres remotior*. Dalr. Feud. Prop. 110.

ULTRA. Lat. Beyond; outside of; in excess of.

Damages Ultra

Damages beyond a sum paid into court.

Ultra Mare

Beyond sea. One of the old essoins or excuses for not appearing in court at the return of process. Bract. fol. 338.

Ultra Reprises

After deduction of drawbacks; in excess of deductions or expenses.

Ultra Vires

A term used to express the action of a corporation which is beyond the powers conferred upon it by its charter, or the statutes under which it was instituted. 13 Am. Law Rep. 632. The modern technical designation, in the law of corporations, of acts beyond the scope of the powers of a corporation, as defined by its charter or act of incorporation. *Lambeth v. City of Thomasville*, 179 N. C. 452, 102 S. E. 775, 776. The term "ultra vires," whether with perfect accuracy or not, as to the acts of a corporation, or acts purporting to be done by it, has been used in more than one sense. *Georgia Granite R. Co. v. Miller*, 144 Ga. 665, 87 S. E. 897; *McPherson v. Foster*, 43 Iowa, 48, 22 Am. Rep. 215. An act is ultra vires in the strictest sense when it is beyond the scope of the powers granted by law to the corporation, so that it is not in the power of the corporation to perform it under any circumstances or for any purpose. *Buck Creek Lumber Co. v. Nelson*, 188 Ala. 243, 66 So. 476, 477; *Crowder State Bank v. Aetna Powder Co.*, 41 Okl. 394, 138 P. 392, 393, L. R. A. 1917A, 1021; *Desdemona State Bank & Trust Co. v. Streety* (Tex. Civ. App.) 250 S. W. 286, 288; *Houston v. Utah Lake Land, Water & Power Co.*, 55 Utah, 393, 47 A. L. R. 1282, 187 P. 174, 176; *Lincoln Court Realty Co. v. Kentucky Title Savings Bank & Trust Co.*, 169 Ky. 840, 185 S. W. 156, 158; *Richmond, F. & P. R. Co. v. Richmond, Fredericksburg & Potomac and Richmond & Petersburg Railroad Connection Co.*, 145 Va. 266, 133 S. E. 888, 898; *Wagg v. Toler*, 80 Cal. App. 501, 251 P. 973, 977; *Whitney Arms Co. v. Barlow*, 63 N. Y. 68, 20 Am. Rep. 504. See, also, *Chicago, R. I. & P. R. Co. v. Union Pac. R. Co.* (C. C.) 47 F. 15. Sometimes an act is said to be ultra vires with reference to the rights of certain persons when the corporation cannot legally perform such act without their consent. Sometimes an act is said to be ultra vires with reference to some specific purpose, when the corporation cannot perform it for that purpose. See *James Eva Estate v. Mecca Co.*, 40 Cal. App. 515, 181 P.

415, 416. "*Ultra vires*" is also sometimes applied to an act which, though within the powers of a corporation, is not binding on it because the consent or agreement of the corporation has not been given in the manner required by its constitution. Thus, where a company delegates certain powers to its directors, all acts done by the directors beyond the scope of those powers are *ultra vires*, and not binding on the company, unless it subsequently ratifies them. Sweet. And see *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 578, 9J Am. Dec. 30; *Minnesota Thresher Mfg. Co. v. Langdon*, 44 Minn. 37, 46 N. W. 312; *State v. Morris & E. R. Co.*, 23 N. J. Law, 360; *Central Transp. Co. v. Pullman's Palace Car Co.*, 139 U. S. 24, 11 S. Ct. 478, 35 L. Ed. 55; *Latimer v. Bard* (C. C.) 76 F. 543; *Edwards County v. Jennings* (Tex. Civ. App.) 33 S. W. 585. "*Ultra vires contracts*" include not only those entirely without the scope and purpose of the charter privileges and objects, but also those beyond the limitation of the charter powers, though within the purposes contemplated by the articles of incorporation. *American Southern Nat. Bank v. Smith*, 170 Ky. 512, 186 S. W. 482, 485, Ann. Cas. 1918B, 959. While the phrase "*ultra vires*" has been used to designate, not only acts beyond the express and implied powers of a corporation, but also acts contrary to public policy or contrary to some express statute prohibiting them, the latter class of acts is now termed illegal, and the "*ultra vires*" confined to the former class. In *Re Grand Union Co.* (C. C. A.) 219 F. 353, 363; *Staacke v. Routledge*, 111 Tex. 489, 241 S. W. 994, 998; *Pennsylvania R. Co. v. Minis*, 120 Md. 461, 496, 87 A. 1062, 1072.

Ultra posse non potest esse, et vice versa. What is beyond possibility cannot exist, and the reverse, [what cannot exist is not possible.] *Wing Max*. 100.

ULTRONEOUS WITNESS. In Scotch law. A volunteer witness; one who appears to give evidence without being called upon. 2 Alis. Crim. Pr. 393.

UMPIRAGE. The decision of an umpire. *Powell v. Ford*, 4 Lea (Tenn.) 288. The word "Umpirage," in reference to an umpire, is the same as the word "award," in reference to arbitrators; but "award" is commonly applied to the decision of the umpire also.

UMPIRE. A third person appointed to decide between two other judges or referees who differ in opinion. *Randel v. Canal*, 1 Harr. (Del.) 260. When matters in dispute are submitted to two or more arbitrators, and they do not agree in their decision, it is usual for another person to be called in as "umpire," to whose sole judgment it is then referred. *Brown*. And see *Ingraham v. Whitmore*, 75 Ill. 30; *Tyler v. Webb*, 10 B. Mon. (Ky.) 123; *Lyon v. Blossom*, 4 Duer (N. Y.) 325. An "umpire," strictly speaking, makes his award

independently of that of the arbitrators. *Dennis v. Standard Fire Ins. Co.*, 90 N. J. Eq. 419, 107 A. 161, 163.

A third person, chosen by two arbitrators who cannot agree, is not, in the strict sense, an umpire, unless he succeeds to the duties of those who have chosen him to accomplish that wherein they have failed, making the original arbitrators *functus officio*. *Lesser v. Pallay*, 96 Or. 142, 188 P. 718, 719.

UN- "Un-" is a prefix used indiscriminately, and may mean simply "not." Thus, "unlawful" means "not authorized by law." *State v. Sanders*, 136 La. 1059, 68 So. 125, 126, Ann. Cas. 1916E, 105.

Un ne doit prise avantage de son tort demesne. 2 And. 38, 40. One ought not to take advantage of his own wrong.

Una persona vix potest supplere vices duarum. 7 Coke, 118. One person can scarcely supply the place of two. See 9 H. L. Cas. 274.

UNA VOCE. Lat. With one voice; unanimously; without dissent.

UNABLE. This term, as used in a statute providing that evidence given in a former trial may be proved in a subsequent trial, where the witness is unable to testify, means mentally and physically unable. *Hansen-Rynning v. Oregon-Washington R. & Nav. Co.*, 105 Or. 67, 209 P. 462, 464.

UNACCRUED. Not become due, as rent on a lease. *Elms Realty Co. v. Wood*, 285 Mo. 130, 225 S. W. 1002, 1005.

UNADJUSTED. Uncertain; not agreed upon. *Richardson v. Woodbury*, 43 Me. 214.

UNALIENABLE. Inalienable; incapable of being alienated, that is, sold and transferred.

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

UNANIMOUS. To say that a proposition was adopted by a "unanimous" vote does not always mean that every one present voted for the proposition, but it may, and generally does, mean, when a *viva voce* vote is taken, that no one voted in the negative. *State v. Stephens*, 195 Mo. App. 34, 189 S. W. 630, 631.

UNASCERTAINED DUTIES. Payment in gross, on an estimate as to amount, and where the merchant, on a final liquidation, will be entitled by law to allowances or deductions which do not depend on the rate of duty charged, but on the ascertainment of the quantity of the article subject to duty. *Moke v. Barney*, 5 Blatchf. 274, Fed. Cas. No. 9,698.

UNAVOIDABLE ACCIDENT. An inevitable accident. *Leland v. Empire Engineering Co.*, 135 Md. 208, 108 A. 570, 575, which could

not have been foreseen and prevented by using ordinary diligence, and resulting without fault, *U. S. v. Kansas City Southern Ry. Co.* (D. C.) 189 F. 471. Not necessarily an accident which it was physically impossible, in the nature of things, for the person to have prevented, but one not occasioned in any degree, either remotely or directly, by the want of such care or skill as the law holds every man bound to exercise. *Dygart v. Bradley*, 8 Wend. (N. Y.) 473; *San Pedro, L. A. & S. L. R. Co. v. United States* (C. C. A.) 220 F. 737, 744. An accident which could not be prevented by the exercise of ordinary care and prudence. *Wollaston v. Stiltz*, 1 W. W. Harr. (Del.) 273, 114 A. 198, 200; *Johnson v. Homestead-Iron Dyke Mines Co.*, 98 Or. 318, 193 P. 1036, 1041; *Dwyer v. Chew*, 149 Md. 281, 131 A. 350, 351; *E. P. Barnes & Bro. v. Eastin*, 190 Ky. 392, 227 S. W. 578, 580; *Atlantic Coast Line R. Co. v. Cook*, 34 Ga. App. 1, 128 S. E. 75, 76. One happening unexpectedly, *American Glycerin Co. v. Kenridge Oil Co.* (Tex. Civ. App.) 295 S. W. 633, 635, and without negligence of either party; *Wilson v. Roach*, 101 Okl. 30, 222 P. 1000, 1002; *Larrow v. Martell*, 92 Vt. 435, 104 A. 826, 827. A pure accident, for which no one was responsible. *Engle v. Bowen*, 122 Kan. 283, 251 P. 1108, 1109.

In the Hours of Service Act, "unavoidable accident" means a fortuitous happening caused by some human agency over which the carrier may have some control, yet which could not have been prevented by the exercise of due care, and "act of God" is an accident not occasioned by human agency, but by physical causes alone; *United States v. Pennsylvania Co.* (D. C.) 239 F. 761, 764; while "casualty," differing from the others and not so broad as to deprive them of meaning and use, is an occurrence or happening due entirely to an outside human agency, *i. e.*, some human agency which the carrier could not control; *United States v. Great Northern Ry. Co.* (C. C. A.) 220 F. 630, 633.

The term is sometimes defined, however, as synonymous with "act of God,"—any accident produced by physical causes which are inevitable, such as lightnings, storms, perils of the sea, earthquakes, inundations, sudden death, or illness. *Early v. Hampton*, 15 Ga. App. 95, 82 S. E. 669, 671.

UNAVOIDABLE CASUALTY. An event or accident which human prudence, foresight, and sagacity cannot prevent. *Fernwood Mining Co. v. Pluma*, 138 Ark. 193, 211 S. W. 159, 163; *Crystal Spring Distillery Co. v. Cox*, 1 C. C. A. 365, 49 F. 555, 6 U. S. App. 42; *Welles v. Castles*, 3 Gray (Mass.) 325. If by any care, prudence, or foresight a thing could have been guarded against, it is not unavoidable. *Central Line of Boats v. Lowe*, 50 Ga. 509; *E. P. Barnes & Bro. v. Eastin*, 190 Ky. 392, 227 S. W. 578, 580. The term is not ordinarily limited to an act of God. *Kirby v. Davis*, 210 Ala. 192, 97 So. 655, 656.

An "unavoidable casualty or misfortune," within the meaning of statutes in several states relating to the vacation of judgments, means some casualty or misfortune growing

out of conditions or circumstances that prevented the party or his attorney from doing something that, except therefor, would have been done, and does not include mistakes or errors of judgment growing out of misconstruction or misunderstanding of the law, or the failure of parties or counsel through mistake to avail themselves of remedies, which if resorted to would have prevented the casualty or misfortune. *Commonwealth v. Fidelity & Columbia Trust Co.*, 185 Ky. 300, 215 S. W. 42, 44. The term refers to events which human prudence or foresight cannot prevent (but see *Kohlman v. Moore*, 175 Ky. 710, 194 S. W. 933, 935), such as disease and death, miscarriage of the mails, or mistake in the wording of a telegram. *Wagner v. Lucas*, 79 Okl. 231, 193 P. 421, 422. It may include the sickness. *Thweatt v. Grand Temple and Tabernacle of International Order of Twelve Knights and Daughters of Tabor*, of Arkansas, 128 Ark. 269, 193 S. W. 508, 509, or death of an attorney, *Columbia County v. England*, 151 Ark. 465, 236 S. W. 625, 626, or his failure, through some oversight or misunderstanding, to defend. *Krause v. Hobart*, 173 Iowa, 330, 155 N. W. 279, but it does not apply to the neglect of an attorney or his client; *Gavin v. Heath*, 125 Okl. 118, 256 P. 745, 746; *McGuire v. Mishawaka Woolen Mills*, 218 Ky. 530, 291 S. W. 747, 749.

UNAVOIDABLE CAUSE. A cause which reasonably prudent and careful men under like circumstances do not and would not ordinarily anticipate, and whose effects, under similar circumstances, they do not and would not ordinarily avoid. *Chicago, B. & Q. R. Co. v. U. S.*, 194 F. 342, 114 C. C. A. 334.

UNAVOIDABLE DANGERS. This term in a marine policy covering unavoidable dangers of the river includes the unexplained capsizing of a vessel, though human intervention existed in the operation of the vessel, for "unavoidable dangers" mean those unpreventable by persons operating the vessel, and, like the term perils of the sea, include all kinds of marine casualties, thus including accidents in which there is human intervention. A river vessel's tendency to turn over, due to topheavy construction, necessary on account of the shallowness of rivers, is an "unavoidable danger" within the policy. *Hillman Transp. Co. v. Home Ins. Co. of New York*, 268 Pa. 547, 112 A. 108, 111.

UNBOLTED CORN MEAL. The courts judicially know that corn meal is an unmixed meal made from entire grains of corn, and that "unbolted corn meal" is simply meal not bolted, or from which the bran has not been sifted or separated. *Miller Grain & Commission Co. v. International Sugar Feed No. 2 Co.*, 197 Ala. 100, 72 So. 368.

UNBROKEN. Continuous, as adverse possession. *Panhandle & S. F. Ry. Co. v. Hoffman* (Tex. Civ. App.) 250 S. W. 246, 248.

UNCEASESATH. In Saxon law. An oath by relations not to avenge a relation's death. *Blount*.

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

UNCHASTITY. Impurity in mind and conduct, which may exist without actually engaging in unlawful sexual intercourse. *State v. Valvoda*, 170 Iowa, 102, 152 N. W. 21, 23; *Cooper v. State*, 15 Ala. App. 657, 74 So. 753, 754.

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

UNCIA AGRI, UNCIA TERRÆ. These phrases often occur in the charters of the British kings, and signify some measure or quantity of land. It is said to have been the quantity of twelve *modii*; each *modius* being possibly one hundred feet square. *Jacob*; *Mon. Ang. tom. 3*, pp. 198, 205.

UNCIARIUS HÆRES. Lat. In Roman law. An heir to one-twelfth of an estate or inheritance. *Calvin*.

UNCLE. The brother of one's father or mother. *State v. Reedy*, 44 Kan. 190, 24 P. 66; *State v. Guiton*, 51 La. Ann. 155, 24 So. 784; *Capps v. State*, 87 Fla. 388, 100 So. 172, 173. Jocularly, a pawnbroker.

UNCONDITIONAL. Not limited or affected by any condition;—applied especially to the quality of an insured's estate in the property insured. *Libby Lumber Co. v. Pacific States Fire Ins. Co.*, 79 Mont. 166, 255 P. 340, 344, 60 A. L. R. 1; *Western Assur. Co. v. White*, 171 Ark. 733, 286 S. W. 804, 806, 48 A. L. R. 349; *Avery v. Mechanics' Ins. Co. of Philadelphia* (Mo. App.) 295 S. W. 509, 513; *Rochester German Ins. Co. v. Schmidt*, 162 F. 447, 89 C. C. A. 333. See the subtitle "Sole and unconditional owner" under the main title *Owner*.

UNCONSCIONABLE BARGAIN. An unconscionable bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other. *Hume v. U. S.*, 132 U. S. 406, 10 S. Ct. 134, 33 L. Ed. 393; *Elder v. Frazier*, 174 Iowa, 46, 156 N. W. 182, 187; *Hall v. Wingate*, 159 Ga. 630, 126 S. E. 796, 813; 2 Ves. 125; 4 Bouv. Inst. n. 3848.

UNCONSTITUTIONAL. That which is contrary to the constitution. The opposite of

"constitutional." See *State v. McCann*, 4 Lea (Tenn.) 10; *In re Rahrer* (C. C.) 43 F. 538, 10 L. R. A. 444; *Norton v. Shelby County*, 118 U. S. 425, 6 S. Ct. 1121, 30 L. Ed. 178. The word does not necessarily mean that the act assailed is contrary to sound principles of legislation. *Ketterer v. Lederer* (D. C.) 269 F. 153, 154.

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

This expression as applied to an act of parliament means simply that it is, in the opinion of the speaker, opposed to the spirit of the English constitution; it cannot mean that the act is either a breach of the law or is void. When applied to a law passed by the French parliament, it means that the law is opposed to the articles of the constitution; it does not necessarily mean that the law in question is void, for it is by no means certain that any French court will refuse to enforce a law because it is unconstitutional. It would probably, though not of necessity, be, when employed by a Frenchman, a term of censure. *Dicey, Const.* 516.

UNCONTROLLABLE IMPULSE. As an excuse for the commission of an act otherwise criminal, this term means an impulse towards its commission of such fixity and intensity that it cannot be resisted by the person subject to it, in the enfeebled condition of his will and moral sense resulting from derangement or mania. See *Insanity*. And see *State v. O'Neil*, 51 Kan. 651, 33 P. 287, 24 L. R. A. 555.

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

UNCUTH. In Saxon law. Unknown; a stranger. A person entertained in the house of another was, on the first night of his entertainment, so called. *Bract. fol. 124b*. See *Twa Night Gest*.

UNDE NIHIL HABET. Lat. In old English law. The name of the writ of dower, which lay for a widow, where *no dower* at all had been assigned her within the time limited by law. 3 Bl. Comm. 183.

UNDEFENDED. A term sometimes applied to one who is obliged to make his own defense when on trial, or in a civil cause. A cause

is said to be undefended when the defendant makes default, in not putting in an appearance to the plaintiff's action; in not putting in his statement of defense; or in not appearing at the trial either personally or by counsel, after having received due notice. *Mozley & Whitley*.

UNDER. Sometimes used in its literal sense of "below in position," but more frequently in its secondary meaning of "inferior" or "subordinate." *Mills v. Stoddard*, 8 How. 356, 12 L. Ed. 1107.

According to; as, "under the testimony." *Boughan v. State*, 193 Ind. 66, 133 N. E. 87. But a count declaring on a contract alleging that plaintiff did the work "under" the contract has been held demurrable as not being equivalent to an allegation that plaintiff did the work as required by or in accordance with the contract. *Patterson v. Camp*, 209 Ala. 514, 96 So. 605.

UNDER AND SUBJECT. Words frequently used in conveyances of land which is subject to a mortgage, to show that the grantee takes subject to such mortgage. See *Walker v. Physick*, 5 Pa. 203; *Moore's Appeal*, 88 Pa. 453, 32 Am. Rep. 469; *Blood v. Crew Livick Co.*, 171 Pa. 328, 33 A. 344; *Lavelle v. Gordon*, 15 Mont. 515, 39 P. 740; 27 Am. L. Reg. (N. S.) 337, 401.

UNDER-CHAMBERLAINS OF THE EX-CHEQUER. Two officers who cleaved the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and comptrollers thereof might see their entries were true. They also made searches for records in the treasury, and had the custody of Domesday Book. *Cowell*. The office is now abolished.

UNDER CONTROL. This phrase does not necessarily mean the ability to stop instantaneously under any and all circumstances, an automobile being "under control" within the meaning of the law if it is moving at such a rate, and the mechanism and power under such control, that it can be brought to a stop with a reasonable degree of celerity. *Carruthers v. Campbell*, 195 Iowa, 390, 192 N. W. 138, 28 A. L. R. 949. In general, as applied to street cars or railroad trains, the term denotes the control and preparation appropriate to probable emergencies. *Lincoln v. Pacific Electric Ry. Co.*, 33 Cal. App. 83, 164 P. 412, 445; *Torantolla v. Kansas City Rys. Co.* (Mo. App.) 226 S. W. 617, 618. It is such control as will enable a train to be stopped promptly if need should arise. *Missouri K. & T. Ry. Co. v. Missouri Pac. Ry. Co.*, 103 Kan. 1, 175 P. 97, 102. It implies the ability to stop within the distance the track is seen to be clear. *Fuller v. Oregon-Washington R. & Nav. Co.*, 93 Or. 160, 181 P. 338, 341; *Moyes v. St. Louis, I. M. & S. Ry. Co.* (Mo. Sup.) 186 S. W. 1027, 1030.

UNDER HERD. A term conveying the idea that a considerable number of domestic animals are gathered together and held together by herders in constant attendance and in control of their movements from place to place on a public range or within certain areas. *Schreiner v. Deep Creek Stock Ass'n*, 68 Mont. 104, 217 P. 663, 665.

UNDER-LEASE. In conveyancing. A lease granted by one who is himself a lessee for years, for any fewer or less number of years than he himself holds. If a deed passes *all* the estate or time of the termor, it is an *assignment*; but, if it be for *less* portion of time than the whole term, it is an *under-lease*, and leaves a reversion in the termor. 4 Kent, Comm. 96. And even a conveyance of the *whole* estate by the lessee, reserving to himself the rent, with a power of re-entry for non-payment, was held to be not an assignment, but an under-lease. 1 Stra. 405; Woodf. L. & T. 731. The transfer of a part only of the lands, though for the whole term, is an under-lease. *Fulton v. Stuart*, 2 Ohio 216, 15 Am. Dec. 542; *contra*, *Cox v. Fenwick*, 4 Bibb (Ky.) 538.

UNDER-SHERIFF. An officer who acts directly under the sheriff, and performs all the duties of the sheriff's office, a few only excepted where the personal presence of the high-sheriff is necessary. The sheriff is civilly responsible for the acts or omissions of his under-sheriff. *Mozley & Whitley*. A sheriff's deputy, who, being designated by the sheriff as an "under sheriff," becomes his chief deputy with authority by virtue of his appointment to execute all the ordinary duties of the office of sheriff. *Shirran v. Dallas*, 21 Cal. App. 405, 132 P. 454, 458. A distinction is sometimes made between this officer and a *deputy*, the latter being appointed for a special occasion or purpose, while the former discharges, in general, all the duties required by the sheriff's office.

UNDER-TENANT. A tenant under one who is himself a tenant; one who holds by under-lease.

UNDER THE INFLUENCE OF LIQUOR. This expression, or substantially identical language, in an accident policy has been held to contemplate intoxication in some substantial degree. *Robinson v. Hawkeye Commercial Men's Ass'n*, 186 Iowa 759, 171 N. W. 118, 120. And as employed in statutes or ordinances relating to the operation of motor vehicles, it has been construed as equivalent to the words, "in an intoxicated condition," *State v. Dudley*, 159 La. 872, 106 So. 364, 365, and to the words, "in a drunken or partly drunken condition," *Daniels v. State*, 155 Tenn. 549, 296 S. W. 20, 23, but not as synonymous with the words, "while intoxicated," *Cannon v. State*, 91 Fla. 214, 107 So. 360, 362. The expression is said to cover not only all

the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging in any degree in intoxicating liquors and which tends to deprive the driver of that clearness of intellect and control of himself which he would otherwise possess. *Latimer v. Wilson*, 103 N. J. Law, 159, 134 A. 750, 751. It is applicable to the condition created where intoxicating liquor has so far affected the nervous system, brain, or muscles of the driver as to impair to an appreciable degree his ability to operate an automobile in a manner that an ordinarily prudent and cautious man in the full possession of his faculties, using reasonable care, would drive a similar vehicle under like conditions. *People v. Dingle*, 56 Cal. App. 445, 205 P. 705, 706; *People v. McKee*, 80 Cal. App. 200, 251 P. 675, 677.

UNDER-TREASURER OF ENGLAND. He who transacted the business of the lord high treasurer.

UNDER-TUTOR. In Louisiana. In every tutorship there shall be an under-tutor, whom it shall be the duty of the judge to appoint at the time letters of tutorship are certified for the tutor. It is the duty of the under-tutor to act for the minor whenever the interest of the minor is in opposition to the interest of the tutor. Civ. Code La. arts. 273, 275.

UNDER WAY. Not being at anchor, or made fast to the shore, or aground;—said of vessels subject to the navigation rules embraced in Act June 7, 1897, c. 4, 30 Stat. 96 (33 USCA § 154 et seq., 46 USCA § 331 note). *The George W. Elder* (C. C. A.) 249 F. 956, 958; *The Nimrod*, 173 F. 520. Thus, a vessel lying with her nose against the bank of a stream and holding her position against the current by the movement of her wheel is a vessel under way, and not entitled to the rights of an anchored vessel. *The Ruth*, 186 F. 87, 108 C. C. A. 199. And a steamer being towed down stream by tugs without any steam on her boilers, except for steering purposes, is nevertheless "under way." *The Scandinavia* (D. C.) 11 F.(2d) 542, 543.

UNDERGROUND WATERS. See Water, subtitle Subterranean Waters.

UNDERGROWTH. A term applicable to plants growing under or below other greater plants. *Clay v. Telegraph Co.*, 70 Miss. 411, 11 So. 658.

UNDERLIE THE LAW. In Scotch criminal procedure, an accused person, in appearing to take his trial, is said "to compare and underlie the law." *Mozley & Whitley*.

UNDERSTAND. To know; to appreciate; as, to understand the nature and effect of

an act. *Western Indemnity Co. v. MacKech-
nie* (Tex. Civ. App.) 214 S. W. 456, 460. To
have a full and clear knowledge of; to com-
prehend. *Chaney v. Baker*, 304 Ill. 362, 136
N. E. 804, 807. Thus, to invalidate a deed
on the ground that the grantor did not un-
derstand the nature of the act, the grantor
must be incapable of comprehending that
the effect of the act would divest him of the
title to the land set forth in the deed. *Miller
v. Folsom*, 49 Okl. 74, 149 P. 1185, 1188. As
used in connection with the execution of wills
and other instruments, the term includes the
realization of the practical effects and con-
sequences of the proposed act. *Tillman v.
Ogren*, 99 Misc. 539, 166 N. Y. S. 39, 40.

UNDERSTANDING. In the law of contracts.
An agreement. *Southern Ry. Co. v. Powell*,
124 Va. 65, 97 S. E. 357, 358. An implied
agreement resulting from the express terms
of another agreement, whether written or
oral. *United States v. United Shoe Machin-
ery Co.* (D. C.) 234 F. 127, 148. An informal
agreement, or a concurrence as to its terms.
Barkow v. Sanger, 47 Wis. 507, 3 N. W. 16.
A valid contract engagement of a somewhat
informal character. *Winslow v. Lumber Co.*,
32 Minn. 238, 20 N. W. 145. This is a loose
and ambiguous term, unless it be accompa-
nied by some expression to show that it con-
stituted a meeting of the minds of parties
upon something respecting which they in-
tended to be bound. *Camp v. Waring*, 25
Conn. 529.

The term may also import simply a wish
or hope, as in a will bequeathing property
to another with the "understanding" that
at the legatee's death, all property derived
under the will should be given to the testa-
trix's sister. *Vincent v. Rix*, 127 Misc. 639,
217 N. Y. S. 393, 399.

UNDERSTOOD. The phrase "it is un-
derstood," when employed as a word of contract
in a written agreement, has the same force
as the words "it is agreed." *Higginson v.
Weld*, 14 Gray (Mass.) 165; *Phoenix Iron &
Steel Co. v. Wilkoff Co.* (C. C. A.) 253 F. 165,
167; *Mertz v. Fleming*, 185 Wis. 58, 200 N.
W. 655, 656.

UNDERTAKE. To perform; to attempt; to
try. Hence, a person, such as a seller of
goods, who "undertakes" to make a propor-
tionate delivery in each month, is not abso-
lutely obligated to do so. *Garcia S. en C. v.
Taggart Coal Co.*, 27 Ga. App. 204, 108 S. E.
72, 78.

UNDERTAKER. One who undertakes (to
do something). In a mechanic's lien statute,
the word has been held not to include a mere
furnisher of material in connection with the
erection of the building. In re *American
Lime Co.* (D. C.) 201 F. 433, 435.

One whose business is to prepare the dead
for burial and to take the charge and man-
agement of funerals. *Anderson v. State*, 19

Ala. App. 606, 99 So. 778, 779; *State v. Whyte*,
177 Wis. 541, 188 N. W. 607, 608, 23 A. L. R.
67.

UNDERTAKING. A promise, engagement, or
stipulation. An engagement by one of the
parties to a contract to the other, as dis-
tinguished from the mutual engagement of
the parties to each other. 5 East 17; 4 B. &
Ald. 595, followed in *Alexander v. State*, 28
Tex. App. 186, 12 S. W. 595. It does not
necessarily imply a consideration. *Thomp-
son v. Blanchard*, 3 N. Y. 335.

In a somewhat special sense, a promise giv-
en in the course of legal proceedings by a
party or his counsel, generally as a condition
to obtaining some concession from the court
or the opposite party. Sweet.

A promise or security in any form. Code,
Iowa, § 48, par. 20.

An official undertaking, such as one by a county
clerk or other officer under statutes, unlike an of-
ficial bond, is not required to be signed by the prin-
cipal. *Fleischner v. Florey*, 111 Or. 35, 224 P. 831,
832.

UNDERTOOK. Agreed; promised; as-
sumed. This is the technical word to be used
in alleging the promise which forms the basis
of an action of *assumpsit*. Bacon, Abr. *As-
sumpsit* (F).

UNDERWRITE. To insure life or property.
See Underwriter.

To insure the sale of corporate bonds or
similar securities to the public by agreeing
to buy those which are not sold. *Busch v.
Stromberg-Carlson Tel. Mfg. Co.* (C. C. A.)
217 F. 328, 330; *Stewart v. G. L. Miller &
Co.*, 161 Ga. 919, 132 S. E. 535, 538, 45 A. L.
R. 559. To agree to sell bonds, etc., to the
public, or to furnish the necessary money
for such securities, and to buy those which
cannot be sold. *Minot v. Burroughs*, 223
Mass. 595, 112 N. E. 620, 623; *Rauer's Law &
Collection Co. v. Harrell*, 32 Cal. App. 45,
162 P. 125, 131.

An underwriting contract, aside from its use in in-
surance, is an agreement, made before corporate
shares are brought before the public, that in the
event of the public not taking all the shares or the
number mentioned in the agreement, the underwriter
will take the shares which the public do not take;
"underwriting" being a purchase, together with a
guaranty of a sale of the bonds. *Fraser v. Home
Telephone & Telegraph Co.*, 91 Wash. 253, 157 P. 692,
694; *International Products Co. v. Vail's Estate*, 97
Vt. 318, 123 A. 194, 196.

UNDERWRITER. The person who insures
another, as in a fire or life policy; the in-
surer. See *Childs v. Firemen's Ins. Co.*, 66
Minn. 393, 69 N. W. 141, 35 L. R. A. 99. Es-
pecially, a person who joins with others in
entering into a marine policy of insurance as
insurer.

One who underwrites corporate bonds or
stocks. *Fraser v. Home Telephone & Tele-
graph Co.*, 91 Wash. 253, 157 P. 692, 694. One

who agrees with others to purchase an entire issue of bonds or other securities, usually at the end of a certain period. By reason of such underwriting, the bonds, etc., obtain a market value or a value as collateral security. See Underwrite.

UNDISPUTED FACT. Within the meaning of a statute, an admitted fact, which the court has not deemed sufficiently material to add to the finding, or has inadvertently omitted from it; a fact not found by the court does not become an "undisputed fact," merely because one or more witnesses testify to it without direct contradiction. *Dexter Yarn Co. v. American Fabrics Co.*, 102 Conn. 529, 129 A. 527, 532.

UNDIVIDED PROFITS. Profits which have not in fact been divided or distributed, *English & Mersick Co. v. Eaton* (D. C. Conn.) 299 F. 646, 649, or otherwise used, *Douglas v. Edwards* (C. C. A.) 298 F. 229, 237. Current undistributed earnings. *Edwards v. Douglas*, 46 S. Ct. 85, 89, 269 U. S. 204, 70 L. Ed. 235. Profits not set aside as surplus or distributed in dividends. *First Nat. Bank v. Moon*, 102 Kan. 334, 170 P. 33, 34, L. R. A. 1918C, 986; *Phillips v. U. S.* (D. C.) 12 F. (2d) 598, 600.

The terms "surplus" and "undivided profits" have different meanings in banking circles. *State ex rel. Payne v. Exchange Bank of Natchitoches*, 84 So. 481, 482, 147 La. 25. Surplus, like the capital stock, constitutes the working capital of the bank and is, in addition, a fund for the protection of the depositors. The "undivided profits" constitute a temporary fund changing in size from day to day and carried only until dividend periods when it is distributed to the stockholders or transferred to the permanent surplus. It is the fund from which the expenses and losses of the bank are paid. *Sarles v. Scandinavian American Bank*, 33 N. D. 40, 156 N. W. 556, 557.

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

UNDIVIDED RIGHT. An undivided right or title, or a title to an undivided portion of an estate, is that owned by one of two or more tenants in common or joint tenants before partition. Held by the same title by two or more persons, whether their rights are equal as to value or quantity, or unequal. See *In re Wellington*, 16 Pick. (Mass.) 98, 26 Am. Dec. 631.

UNDRES. In old English law. Minors or persons under age not capable of bearing arms. *Fleta*, l. 1, c. 9; *Cowell*.

UNDUE. More than necessary; not proper; illegal. *Webb v. Superior Court* in and for

Del Norte County, 28 Cal. App. 391, 152 P. 957, 958. See, also, *Elk Hotel Co. v. United Fuel Gas Co.*, 75 W. Va. 200, 83 S. E. 922, 924, L. R. A. 1917E, 970. Under an allegation of the "undue" execution of a will, every species of duress, fraud, undue influence, or whatever else shows undue execution may be proved. *Thompson v. Miller*, 182 Ind. 545, 107 N. E. 74, 75.

UNDUE INFLUENCE. The antithesis of right influence. In *re Ball's Estate*, 153 Wis. 27, 141 N. W. 8, 12. In regard to the making of a will and other such matters, undue influence is persuasion carried to the point of overpowering the will, or such a control over the person in question as prevents him from acting intelligently, understandingly, and voluntarily, and in effect destroys his free agency, and constrains him to do what he would not have done if such control had not been exercised. See *Bennett v. Bennett*, 50 N. J. Eq. 439, 26 A. 573; *Francis v. Wilkinson*, 147 Ill. 370, 35 N. E. 150; *Conley v. Nailer*, 118 U. S. 127, 6 S. Ct. 1001, 30 L. Ed. 112; *Marx v. McGlynn*, 88 N. Y. 370; *Gongaware v. Donehoo*, 255 Pa. 502, 100 A. 264, 266; In *re Hudson's Estate*, 131 Minn. 439, 155 N. W. 392, 395; *Black v. Funk*, 97 Kan. 509, 155 P. 959, 960; *Creighton v. Creighton* (C. C. A.) 261 F. 333, 335; *Folsom v. Buttolph*, 82 Ind. App. 283, 143 N. E. 258, 262; *Appeal of Rogers*, 123 Me. 459, 123 A. 634, 636; *Stutiville's Ex'r v. Wheeler*, 187 Ky. 361, 219 S. W. 411, 415; In *re Chopper's Estate*, 112 Okl. 25, 239 P. 592, 593; *Burroughs v. Reed*, 150 Ga. 724, 105 S. E. 290, 291; In *re Klink's Estate*, 210 Mich. 614, 178 N. W. 14, 15; *Scott v. Townsend* (Tex. Civ. App.) 159 S. W. 342, 349; *Brown v. Brown*, 171 N. C. 649, 88 S. E. 870, 871; *Pratt v. Carns*, 80 Fla. 243, 85 So. 681, 683.

Undue influence consists (1) in the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority, for the purpose of obtaining an unfair advantage over him; (2) in taking an unfair advantage of another's weakness of mind; or (3) in taking a grossly oppressive and unfair advantage of another's necessities or distress. *Civ. Code Dak.* § 886 (*Comp. Laws N. D.* 1913, § 5852; *Rev. Code S. D.* 1919, § 819); *Buchanan v. Prall*, 39 N. D. 423, 167 N. W. 488, 489; *Dolliver v. Dolliver*, 94 Cal. 642, 30 P. 4.

"Undue influence" sufficient to avoid a will is that which compels the testator to do that which is against his will, from fear, the desire of peace, or some feeling that he is unable to resist, and must be such as to overcome his free volition or conscious judgment and substitute the wicked purposes of another instead, and be the efficient cause, without which the obnoxious disposition would not have been made; In *re Allen's Estate*, 116 Or. 467, 241 P. 996, 998; *Sheppey v. Stevens* (C. C.) 185 F. 147; and must have been directly connected with and have operated at the time of the execution of the will; *Crane v. Hensler*, 196 Ind. 341, 146 N. E. 577, 581.

Solicitation, importunity, argument, advice, and persuasion are not "undue influence" sufficient to avoid a contract or will. Influence obtained by persuasion and argument, or gained by kindness and affection, is not prohibited, where no imposition or fraud is practiced, and where the person's will is not overcome. *Coleman v. Coleman*, 85 Or. 99, 166 P. 47, 50; *Peacock v. Du Bois*, 90 Fla. 162, 105 So. 321, 322; *In re Paozoch's Estate*, 202 Iowa, 849, 211 N. W. 500, 532; *Cunningham v. Dorwart*, 317 Ill. 451, 148 N. E. 314, 316; *Craycroft v. Crawford* (Tex. Civ. App.) 275 S. W. 124, 126; *In re Anderson's Estate*, 185 Cal. 700, 198 P. 407, 410; *Talbott v. Giltner*, 179 Ky. 571, 200 S. W. 913, 915; *Hamlett v. McMillin* (Mo. Sup.) 223 S. W. 1069, 1073; *Barron v. Reardon*, 137 Md. 308, 113 A. 283, 285; *Stump v. Sturn* (C. C. A.) 254 F. 535, 538. The line between "due" and "undue" influence when drawn must be with full recognition of the liberty due every true owner to obey the voice of justice, the dictates of friendship, of gratitude, and of benevolence, as well as the claims of kindred, when not hindered by personal incapacity or particular regulations, to dispose of his own property according to his own free choice. *Coleman v. Coleman*, 85 Or. 99, 166 P. 47, 50. The courts will not undertake to define it by definite words or rules, *Roche v. Roche*, 286 Ill. 336, 121 N. E. 621, 627, but what constitutes "undue influence" must depend upon the peculiar facts and conditions of each case, *Sturm v. Stump* (D. C.) 239 F. 749, 754. The character of the transaction, the mental condition of the person whose act is in question, and the relationship of the parties concerned to each other may be considered. *Hamilton v. Morgan*, 93 Fla. 311, 112 So. 80, 82; *Geddes v. McElroy*, 171 Iowa, 633, 154 N. W. 320, 323.

"Undue influence" is a species of fraud; *Price's Ex'r v. Barham*, 147 Va. 478, 137 S. E. 511, 512; *In re Powers*, 176 App. Div. 455, 162 N. Y. S. 828, 831; *In re Duncan's Will*, 154 Wis. 39, 141 N. W. 1002, 1003; *Neill v. Brackett*, 234 Mass. 367, 126 N. E. 93, 94; *i. e.*, of constructive fraud; *Pilcher v. Surlis*, 202 Ala. 643, 81 So. 585, 588; *Valbert v. Valbert*, 282 Ill. 415, 118 N. E. 738, 741. It may also be said to be a species of coercion, *In re Buck's Estate*, 122 Minn. 463, 142 N. W. 729, 731, or equivalent to coercion or fraud, *Phillips v. Gaither*, 191 Ala. 87, 67 So. 1001, 1002. However, undue influence may be exercised otherwise than through fraud. *Hopper v. Sellers*, 91 Kan. 876, 139 P. 365, 368.

Though undue influence is generally declared to be a species of fraud, the two terms are not synonymous (*In re Newhall's Estate*, 190 Cal. 709, 214 P. 231, 234, 28 A. L. R. 778; *Peacock v. Du Bois*, 90 Fla. 162, 105 So. 321, 322), since, though a victim of deceit, the testator may still act voluntarily; while, as a victim of undue influence, even though he is not also the subject of deception, the will of another is substituted for his own. *Shirley v. Ezell*, 130 Ala. 352, 60 So. 905, 907; *Stolle v. Kanetzky* (Tex. Civ. App.) 259 S. W. 657, 662.

"Undue influence" is distinct from testamentary capacity. Capacity is the power to act. It depends solely upon the mental soundness of the actor. It exists whether the act stands in law or not. Undue influence affects the will of one having testamentary capacity, and invalidates what would otherwise be operative. Undue influence and weakness of mind are frequently found together, but they have no necessary connection with each other. *Hoff v. Hoff*, 106 Kan. 542, 189 P. 613, 617. See, also, *Rasmussen v. Evans*, 150 Minn. 319, 185 N. W. 297, pointing out that, as to undue influence, the burden of proof is on the contestant, whereas the burden of proving mental capacity is on the proponent.

Undue influence at elections occurs where any one interferes with the free exercise of a voter's franchise, by violence, intimidation, or otherwise. It is a misdemeanor. 1 Russ. Crimes, 321; *Steph. Crim. Dig.* 79.

UNEARNED INCREMENT. The increase in the value of property from the growth of population. *Seaboard Air Line Ry. v. U. S.* (D. C.) 275 F. 77, 82.

UNEDUCATED. Not synonymous with illiterate. A man might be able to read and write, carry on a business correspondence, understand business transactions, and be bound by all his contracts, and yet be an "uneducated" man. *Baker v. Patton*, 144 Ga. 502, 87 S. E. 659, 660.

UNEQUAL. Ill-balanced; uneven; partial; unfair;—not synonymous with inappropriate, which means unsuitable, unfit, or improper. *Lane v. St. Denis Catholic Church of Benton* (Mo. App.) 274 S. W. 1103, 1106.

UNEQUIVOCAL. Without doubt; clearly demonstrated; free from uncertainty. As used in an instruction on the proof necessary to make out a case, it requires proof of the highest possible character, equaling, if not exceeding, the proof required of the state in a criminal case, while the term "clear and convincing" indicates a degree of proof required in civil cases less than the degree required in criminal cases, but more than is required in the ordinary civil action. *Merrick v. Ditzler*, 91 Ohio St. 256, 110 N. E. 493, 494.

UNERRING. Incapable of error or failure; certain; sure; infallible. *Gardner v. State*, 27 Wyo. 316, 196 P. 750, 752, 15 A. L. R. 1040.

UNEXCEPTIONABLE. Without any fault; not subject to any objection or criticism. *Washam v. Beaty*, 210 Ala. 635, 99 So. 163, 167.

UNFAIR. In the labor movement, unfriendly to organized labor; refusing to recognize its rules and regulations;—applied particularly to employers, *e. g.*, one who refuses to employ members of a trade union. *Steffes v. Motion Picture Mach. Operators' Union*, 136 Minn. 200, 161 N. W. 524. When borne on a banner carried by pickets of a theater, the term signifies that patronage of the theater is to be withheld because of action taken with reference thereto by a labor or trade union. *Campbell v. Motion Picture Mach. Operators' Union of Minneapolis, Local 219, International Alliance of Theatrical Stage Employees of U. S. and Canada*, 151 Minn. 220, 186 N. W. 781, 782, 27 A. L. R. 631.

UNFAIR COMPETITION. A term which may be applied generally to all dishonest or fraudulent rivalry in trade and commerce, but is particularly applied in the courts of equity (where it may be restrained by injunction)

to the practice of endeavoring to substitute one's own goods or products in the markets for those of another, having an established reputation and extensive sale, by means of imitating or counterfeiting the name, title, size, shape, or distinctive peculiarities of the article, or the shape, color, label, wrapper, or general appearance of the package, or other such simulations, the imitation being carried far enough to mislead the general public or deceive an unwary purchaser, and yet not amounting to an absolute counterfeit or to the infringement of a trade-mark or trade-name. Called in France and Germany "*concurrence deloyale*." See Reddaway v. Baham, [1896] App. Cas. 199; Singer Mfg. Co. v. June Mfg. Co., 163 U. S. 169, 16 S. Ct. 1002, 41 L. Ed. 118; Dennison Mfg. Co. v. Thomas Mfg. Co. (C. C.) 94 F. 651; Simmons Medicine Co. v. Mansfield Drug Co., 93 Tenn. 84, 23 S. W. 165; Cornelius v. Ferguson, 17 S. D. 481, 97 N. W. 390; Sterling Remedy Co. v. Eureka Chemical Co., 80 F. 108, 25 C. C. A. 314.

Passing off, or attempting to pass off upon the public the goods or business of one person as the goods or business of another. Westminister Laundry Co. v. Hesse Envelope Co., 174 Mo. App. 238, 156 S. W. 767, 768; Sayre v. McGill Ticket Punch Co. (D. C.) 200 F. 771, 773; O. & W. Thum Co. v. Dickinson (C. C. A.) 245 F. 609, 625; Gerosa v. Apco Mfg. Co. (C. C. A.) 299 F. 19, 25; Sears, Roebuck & Co. v. Elliott Varnish Co. (C. C. A.) 232 F. 588, 590; Charles Broadway Rouss, Inc., v. Winchester Co. (C. C. A.) 300 F. 706, 723; Vogue Co. v. Thompson-Hudson Co. (C. C. A.) 300 F. 509, 512; Col. W. F. Cody Historical Picture Co. v. Colonial Amusement Co. (D. C.) 284 F. 873, 875; Wirfs v. D. W. Bosley Co. (C. C. A.) 20 F.(2d) 632, 634; Lennox Furnace Co. v. Wrot Iron Heater Co., 181 Iowa, 1331, 160 N. W. 356, 360; Henry Gehring Co. v. McCue, 23 Ohio App. 281, 154 N. E. 171, 172; Metcalf v. Hanover Star Milling Co. (C. C. A.) 204 F. 211, 214; White Studio v. Dreyfoos, 221 N. Y. 46, 116 N. E. 796, 797. The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor as those of another. Handel Co. v. Jefferson Glass Co. (D. C.) 265 F. 286, 288; Turner & Seymour Mfg. Co. v. A. & J. Mfg. Co. (C. C. A.) 20 F.(2d) 298, 301.

The sale of goods by means which shock judicial sensibilities. Margaret Steiff v. Bing (D. C.) 215 F. 204, 206. See, however, Federal Trade Commission v. Gratz, 253 U. S. 421, 40 S. Ct. 572, 575, 64 L. Ed. 993.

UNFAITHFUL. Characterized by bad faith;—not synonymous with "illegal," which means unlawful or contrary to law, nor with "improper," which, as applied to conduct, implies such conduct as a man of ordinary and reasonable prudence would not, under the circumstances, have been guilty of. State v. American Surety Co. of New York, 26 Idaho, 652, 145 P. 1097, 1104, Ann. Cas. 1916E, 209.

UNFIT. Not fit; unsuitable; not adapted to the performance of one's duties;—not necessarily synonymous with incompetent, for a man might be unfit to discharge a dignified office by reason of his moral character, though he could not be said to be incompetent. State v. Latham, 174 Ala. 281, 61 So. 351.

UNFIT FOR USE AS A BEVERAGE. This language in a statute is not necessarily applicable to an alcoholic compound or preparation merely because it may be drunk in sufficient quantities to produce death. Thamann v. Merritt, 111 Neb. 639, 197 N. W. 418, 414.

UNFORESEEN CAUSE. With reference to causes excusing delay, under the Workmen's Compensation Act, in giving notice of injury, a cause which could not have been reasonably foreseen as likely to arise or occur, and yet is of such a nature as to have substantially interfered with the giving of the notice. Wardwell's Case, 121 Me. 216, 116 A. 447, 448. A reasonable cause. Donahue v. R. A. Sherman's Sons Co., 39 R. I. 373, 98 A. 109, L. R. A. 1917A, 76.

UNFORESEEN EVENT. In the civil law. A vis major; an uncontrollable force;—so used in Civ. Code La. art. 2697, relating to the termination of a lease by the total destruction of the property. Knapp v. Guerin, 144 La. 754, 81 So. 302, 305.

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

UNICA TAXATIO. The obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default. Wharton.

UNIFACTORAL OBLIGATION. See Contract.

UNIFORM, n. Within the meaning of an ordinance requiring a traction company to give free transportation to members of the police force and fire department when in uniform, a plain clothes man, whose only prescribed uniform was a metal badge which might be worn concealed, while wearing such badge was "in uniform." Montgomery Light & Traction Co. v. Avant, 202 Ala. 404, 80 So. 497, 498, 3 A. L. R. 384.

UNIFORM, adj. Conforming to one rule, mode, or unvarying standard; not different at different times or places; applicable to all places or divisions of a country. People v. Vickroy, 266 Ill. 384, 107 N. E. 638, 640. Equable; applying alike to all within a class. Bufkin v. Mitchell, 106 Miss. 253, 63 So. 458, 459, 50 L. R. A. (N. S.) 428.

A statute is general and uniform in its operation when it operates equally upon all persons who are brought within the relations and circumstances provided for. *McAunich v. Mississippi & M. R. Co.*, 20 Iowa, 342; *People v. Judge*, 17 Cal. 554; *Kelley v. State*, 6 Ohio St. 271; *State v. Hogan*, 63 Ohio St. 202, 58 N. E. 572, 52 L. R. A. 863, 81 Am. St. Rep. 626; *Arms v. Ayer*, 192 Ill. 601, 61 N. E. 851, 58 L. R. A. 277, 85 Am. St. Rep. 357; *Winston v. Moore*, 244 Pa. 447, 91 A. 520, 524, L. R. A. 1915A, 1190, Ann. Cas. 1915C, 498; *Stevens v. Village of Nashwauk*, 200 N. W. 927, 929, 161 Minn. 20.

"Uniform operation," as used in a constitutional provision requiring all laws of a general nature to have a uniform operation, does not mean that the law shall operate alike on all persons, but that it shall affect all persons uniformly who stand in the same category, or all those who stand in the same relation with respect to particular privileges and immunities conferred by the act. *Gregory v. Hecke*, 73 Cal. App. 268, 238 P. 787, 793. It means that the law shall apply to all persons, matters, or things which it is intended to affect. If it operates alike on all who come within the scope of its provisions, constitutional uniformity is secured. *Cooper v. Rollins*, 152 Ga. 588, 110 S. E. 726, 728, 20 A. L. R. 1105.

The words "general" and "uniform" as applied to laws have a meaning antithetical to special or discriminatory laws. *Ex parte Nowak*, 184 Cal. 701, 195 P. 402, 404. The term "uniform," however, does not mean universal. *Watson v. Greely*, 67 Cal. App. 328, 227 P. 664, 670.

The burdens of taxation, to be uniform, must have the essential of equality, and must bear alike upon all the property within the limits of the unit wherein it is lawful to levy taxes for a purpose, whether that unit be the state, county, or a municipality. *Lang v. Commonwealth*, 190 Ky. 29, 226 S. W. 379, 382. See, also, *Jordan v. Duval County*, 68 Fla. 48, 66 So. 298, 299.

With reference to locality, a tax is "uniform" when it operates with equal force and effect in every place where the subject of it is found, and with reference to classification, it is uniform when it operates without distinction or discrimination upon all persons composing the described class. *Hart v. Board of Comrs. of Burke County*, 192 N. C. 161, 134 S. E. 403, 405.

A tax is valid as being at a "uniform rate" if imposed at the same rate in proportion to value as is imposed on other property in the taxing district, for the tax is then proportional and reasonable. In re Opinion of the Justices, 77 N. H. 611, 93 A. 311, 312.

—Uniform laws. A considerable number of laws have been approved by the National Conference of Commissioners on Uniform State Laws, and many of them have been adopted in one or more jurisdictions in the United States and its possessions. Among the more important of these laws are the Uniform Negotiable Instruments Act which has been adopted in all the states as well as in the District of Columbia, Alaska, Hawaii, the Philippine Islands, and Porto Rico; the Uniform

Sales Act, which in 1932 had been adopted in 33 jurisdictions; the Uniform Bills of Lading Act, in 28 jurisdictions; the Uniform Stock Transfer Act, in 23 jurisdictions; the Uniform Aeronautics Act, in 22; and the Uniform Partnership Act, in 19. Others which may be mentioned include the Uniform Warehouse Receipts, Declaratory Judgments, Fiduciaries, Fraudulent Conveyance, Desertion and Nonsupport, and Veterans' Guardianship Acts.

UNIFORMITY. Conformity to one pattern; sameness. *Naill v. Order of United Commercial Travelers of America*, 103 Okl. 179, 229 P. 833, 837.

"Uniformity of operation" of laws does not require "universality of operation." The former term relates to similarity of conditions affecting subjects or localities of the state that are appropriately classified. The latter term relates to the whole and every part of the state. *State v. Daniel*, 87 Fla. 270, 99 So. 804, 809.

The constitutional requirement of "uniformity" is complied with when the law operates uniformly upon all persons brought within the relations and circumstances provided by it. *Abbott v. Commissioners of Roads and Revenues of Fulton County*, 160 Ga. 657, 129 S. E. 38, 41.

Uniformity in taxation implies equality in the burden of taxation, which cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. Further, the uniformity must be coextensive with the territory to which it applies. And it must be extended to all property subject to taxation, so that all property may be taxed alike and equally. *Exchange Bank v. Hines*, 3 Ohio St. 15. And see *Edye v. Robertson*, 112 U. S. 580, 5 S. Ct. 247, 28 L. Ed. 798; *Adams v. Mississippi State Bank*, 75 Miss. 701, 23 So. 395; *People v. Auditor General*, 7 Mich. 90; *Hilger v. Moore*, 56 Mont. 146, 182 P. 477, 481.

As a principle of taxation, it is established that "uniformity" does not mean universality. *Gallardo v. Porto Rico Ry., Light & Power Co. (C. C. A.)* 18 F.(2d) 918, 925.

The rule of "uniformity" does not require that all subjects be taxed, nor taxed alike, but is complied with when the tax is levied equally and uniformly on all subjects of the same class and kind. *Sims v. Ahrens*, 167 Ark. 557, 271 S. W. 720, 729. The uniformity required in taxation is limited to a uniformity in rate, assessment, and valuation of the particular tax involved, and has no reference to a uniformity of the sum total of taxes which a citizen is required to pay. *King v. Sullivan County*, 128 Tenn. 393, 160 S. W. 847, 848.

Uniformity in taxation means equality in burden and not equality in method. *Ewert v. Taylor*, 38 S. D. 124, 160 N. W. 797, 803.

UNIFORMITY, ACT OF. An act which regulates the terms of membership in the Church of England and the colleges of Oxford and Cambridge, (St. 13 & 14 Car. II. c. 4.) See St. 9 & 10 Vict. c. 59. The act of uniformity has been amended by the St. 35 & 36 Vict. c.

35, which *inter alia* provides a shortened form of morning and evening prayer. Whar-ton.

UNIFORMITY OF PROCESS ACT. The English statute of 2 Wm. IV. c. 39, establishing a uniform process for the commencement of actions in all the courts of law at Westminster. 3 Steph. Comm. 566. The improved system thus established was more fully amended by the Procedure Acts of 1852, 1854, and 1860, and by the Judicature Acts of 1873 and 1875.

UNIGENITURE. The state of being the only begotten.

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

UNILATERAL CONTRACT. See Contract.

UNILATERAL MISTAKE. A mistake or misunderstanding as to the terms or effect of a contract, made or entertained by one of the parties to it but not by the other. *Green v. Stone*, 54 N. J. Eq. 387, 34 A. 1099, 55 Am. St. Rep. 577; *Kant v. Atlanta, B. & A. R. Co.*, 189 Ala. 48, 66 So. 598, 599.

UNILATERAL RECORD. Records are unilateral when offered to show a particular fact, as a *prima facie* case, either for or against a stranger. *Colligan v. Cooney*, 107 Tenn. 214, 64 S. W. 31.

UNIMPEACHABLE WITNESS. Under a statute requiring proof of a holographic will by the unimpeachable evidence of at least three disinterested witnesses to the testator's handwriting, an "unimpeachable witness" is one whom the jury finds to speak truthfully and whose conclusion they find to be correct, notwithstanding the presence of other evidence contradicting him. *Sneed v. Reynolds*, 166 Ark. 581, 266 S. W. 686, 689; *Murphy v. Murphy*, 144 Ark. 429, 222 S. W. 721, 723.

UNIMPROVED LAND. A statutory term which includes lands, once improved, that have reverted to a state of nature, as well as lands that have never been improved. *Moore v. Morris*, 118 Ark. 516, 177 S. W. 6, 8.

UNINCLOSED PLACE. A place not entirely inclosed, an "inclosed" place being a place inclosed on all sides by some sort of material. *Ex parte Wisner*, 32 Cal. App. 637, 163 P. 868, 869.

UNINTELLIGIBLE. That which cannot be understood.

UNIO. Lat. In canon law. A consolidation of two churches into one. Cowell.

UNIO PROLIUM. Lat. Uniting of offspring. A method of adoption, chiefly used in Germany, by which step-children (on either or

both sides of the house) are made equal, in respect to the right of succession, with the children who spring from the marriage of the two contracting parties. See Helnecc. Elem. § 188.

UNION. A league; a federation; an unincorporated association of persons for a common purpose; as, a trade or labor union. *Hughes v. State*, 109 Ark. 403, 160 S. W. 209.

In Ecclesiastical Law

Two or more benefices which have been united into one benefice. Sweet.

In English Poor-Law

Two or more parishes which have been consolidated for the better administration of the poor-law therein.

In Public Law

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

In Scotch Law

A "clause of union" is a clause in a feoffment by which two estates, separated or not adjacent, are united as one, for the purpose of making a single seisin suffice for both.

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

UNION MORTGAGE CLAUSE. A clause, as in a fire policy (together with the rider making the loss, if any, payable to the mortgagee), which provides that if the policy is made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee, or his agents or those claiming under him, shall affect his right to recover in case of loss on such real estate. *Bankers' Joint Stock Land Bank of Milwaukee, Wis., v. St. Paul Fire & Marine Ins. Co.*, 158 Minn. 363, 197 N. W. 749.

UNION OF CHURCHES. A combining and consolidating of two churches into one. Also it is when one church is made subject to another, and one man is rector of both; and where a conventual church is made a cathedral. Tomlins.

UNION SOLDIERS. Those who fought in the American Civil War in support of the Union, in contradistinction to Confederate soldiers, who fought for the establishment of the new confederacy. *Keely v. Board of Sup'rs of Dubuque County*, 158 Iowa, 205, 139 N. W. 473, 474.

UNIT. A term sometimes used in the sense of a share, as in an oil syndicate, *Chew v. U. S. (C. C. A.)* 9 F.(2d) 348, 351, or as equivalent to an investment security, *State v. Summerland*, 150 Minn. 266, 185 N. W. 255, 256.

UNIT OF PRODUCTION. The "unit of production" method of determining the taxable net income or profit in the oil or gas business is accomplished by a system of accounting by which is ascertained, as nearly as science will permit, the total amount of recoverable oil in the property, and to each barrel of this oil is assigned its part of the capital investment, and from the sale price of each barrel produced and sold there is deducted the expenses of producing it, and its proportion of the capital investment, leaving the balance as profit, and thus, when the property is exhausted, the operator has received back his capital and expenses, and accounted for his net income or loss. *Carter v. Phillips*, 88 Okl. 202, 212 P. 747, 750.

UNITAS PERSONARUM. Lat. The unity of persons, as that between husband and wife, or ancestor and heir.

UNITED IN INTEREST. A statutory term applicable to codefendants only when they are similarly interested in and will be similarly affected by the determination of the issues involved in the action; *McCord v. McCord*, 104 Ohio St. 274, 135 N. E. 548, 549; *e. g.*, joint obligors upon a guaranty; *Columbia Graphophone Co. v. Slawson*, 100 Ohio St. 473, 126 N. E. 890, 891.

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND. The official title of the kingdom composed of England, Scotland, Ireland, and Wales, and including the colonies and possessions beyond the seas, under the act of January 1, 1801, effecting the union between Ireland and Great Britain.

UNITED STATES BONDS. Obligations for payment of money which have been at various times issued by the government of the United States.

UNITED STATES COMMISSIONERS. It shall be the duty of the district court of each judicial district to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court. *Rev. St. U. S. § 627 (28 USCA § 526, note)*. See 5 USCA § 92; 8 USCA § 45; 18 USCA §§ 591, 641, 651, 652; 22 USCA § 257; 28 USCA §§

123, 126, 392, 393, 526, 758; *Austill v. United States*, 58 Ct. Cl. 232; *United States v. Maresca (D. C.)* 266 F. 713.

UNITED STATES COURTS. Except in the case of impeachments the judicial power of the United States is vested by the Constitution in a supreme court and such other inferior courts as may be from time to time established by congress. All the judges are appointed by the president, with the advice and consent of the senate, to hold office during good behavior, and their compensation cannot be diminished during their terms of office. The judges, other than those of the supreme court, are circuit judges and district judges. The circuit judges compose the circuit courts of appeals and the district judges hold the district courts, and also at times sit in the circuit courts of appeal. For a detailed statement of the territorial boundaries of the several districts and divisions of districts, see 28 USCA § 141 et seq. and various special acts.

In statutes, the words "court of the district" (*Prieto v. U. S. Shipping Board Emergency Fleet Corporation*, 193 N. Y. S. 342, 117 Misc. 703), and "courts of the United States," are commonly deemed to refer to federal courts and not to state courts. *General Inv. Co. v. Lake Shore & M. S. Ry. Co. (C. C. A.)* 269 F. 235, 237.

UNITED STATES CURRENCY. Commonly understood to include every form of currency authorized by the United States government, whether issued directly by it or under its authority. *Appel v. State*, 28 Ariz. 416, 237 P. 190, 191.

UNITED STATES NOTES. Promissory notes, resembling bank-notes, issued by the government of the United States.

UNITED STATES OFFICER. Usually and strictly, in United States statutes, a person appointed in the manner declared under Const. art. 2, § 2, *McGrath v. U. S. (C. C. A.)* 275 F. 294, 300, providing for the appointment of officers, either by the President and the Senate, the President alone, the courts of law, or the heads of departments, *Steele v. U. S.*, 45 S. Ct. 417, 418, 267 U. S. 505, 69 L. Ed. 761. Thus, a prohibition agent, appointed by the Commissioner of Internal Revenue, is not an "officer of the United States," within the meaning of article 2, § 2. *Keehn v. U. S. (C. C. A.)* 300 F. 493, 496. A receiver appointed by a federal court may be an "officer of the United States," within the meaning of Criminal Code, § 97, and Act March 4, 1911 (18 USCA §§ 183, 189), *Weitzel v. U. S. (C. C. A.)* 274 F. 101, 102, but not within the meaning of the Revenue Act Oct. 3, 1917, § 201(a), 40 Stat. 303, the words "officers or employees" meaning persons holding offices that are public stations, conferred by appointment of the government, and embracing

the idea of tenure, duration, emolument, and duties fixed by law. *Fleming v. Bowers* (D. C.) 11 F.(2d) 789, 790. An "officer of the United States," within Const. art. 4, § 3, is one who holds office under appointment by the President, or by heads of departments authorized to make appointments, usually evidenced by a commission, but a commission is not essential to the validity of the appointment. *Fekete v. City of East St. Louis*, 315 Ill. 58, 145 N. E. 692, 693, 40 A. L. R. 650.

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

UNITY OF INTEREST. This term is applied to joint tenants, to signify that no one of them can have a greater interest in the property than each of the others, while, in the case of tenants in common, one of them may have a larger share than any of the others. *Williams*, Real Prop. 134, 139.

UNITY OF POSSESSION. Joint possession of two rights by several titles. As if I take a lease of land from a person at a certain rent, and afterwards I buy the fee-simple of such land, by this I acquire unity of possession, by which the lease is extinguished. *Cowell*; *Brown*. It is also one of the essential properties of a joint estate, each of the tenants having the entire possession as well of every parcel as of the whole. 2 Bl. Comm. 182.

UNITY OF SEISIN is where a person seised of land which is subject to an easement, *profit à prendre*, or similar right, also becomes seised of the land to which the easement or other right is annexed. *Sweet*.

UNITY OF TIME. One of the essential properties of a joint estate; the estates of the tenants being vested at one and the same period. 2 Bl. Comm. 181.

UNITY OF TITLE is applied to joint tenants, to signify that they hold their property by one and the same title, while tenants in common may take property by several titles. *Williams*, Real Prop. 134.

Unius omnino testis responsio non audiatur. The answer of one witness shall not be heard at all; the testimony of a single witness shall not be admitted under any circumstances. A maxim of the civil and canon law. Cod. 4, 20, 9; 3 Bl. Comm. 370; *Best*, Ev. p. 426, § 390, and note.

Uniuscujusque contractus initium spectandum est, et causa. The commencement and cause of every contract are to be regarded. Dig. 17, 1, 8; *Story*, Bailm. § 56.

UNIVERSAL. Having relation to the whole or an entirety; pertaining to all without exception; a term more extensive than "general," which latter may admit of exceptions. See *Blair v. Howell*, 68 Iowa, 619, 28 N. W. 199; *Koen v. State*, 35 Neb. 676, 53 N. W. 595, 17 L. R. A. 821.

UNIVERSAL AGENT. One who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. *Story*, Ag. 18; *Baldwin v. Tucker*, 112 Ky. 282, 65 S. W. 841, 57 L. R. A. 451; *Wood v. McCain*, 7 Ala. 800.

UNIVERSAL LEGACY. See *Legacy*.

UNIVERSAL PARTNERSHIP. See *Partnership*.

UNIVERSAL REPRESENTATION. In Scotch law. A term applied to the representation by an heir of his ancestor. *Bell*.

UNIVERSAL SUCCESSION. In the civil law. Succession to the entire estate of another, living or dead, though generally the latter, importing succession to the entire property of the predecessor as a juridical entirety, that is, to all his active as well as passive legal relations. *Mackeld. Rom. Law*, § 649.

Universalia sunt notiora singularibus. 2 *Rolle*, 294. Things universal are better known than things particular.

UNIVERSITAS. Lat. In the civil law. A corporation aggregate. Dig. 3, 4, 7. Literally, a whole formed out of many individuals. 1 Bl. Comm. 469.

UNIVERSITAS FACTI. In the civil law. A plurality of corporeal things of the same kind, which are regarded as a whole; *e. g.*, a herd of cattle, a stock of goods. *Mackeld. Rom. Law*, § 162.

UNIVERSITAS JURIS. In the civil law. A quantity of things of all sorts, corporeal as well as incorporeal, which, taken together, are regarded as a whole; *e. g.*, an inheritance, an estate. *Mackeld. Rom. Law*, § 162.

UNIVERSITAS RERUM. In the civil law. Literally, a whole of things. Several single things, which, though not mechanically connected with one another, are, when taken together, regarded as a whole in any legal respect. *Mackeld. Rom. Law*, § 162.

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiam si major pars id faciat. A university or cor-

poration is not said to do anything unless it be deliberated upon as a body, although the majority should do it. Dav. 48.

UNIVERSITY. An institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned professions, and conferring degrees. See *Com. v. Banks*, 198 Pa. 397, 48 A. 277.

UNIVERSITY COURT. See Chancellor's Courts in the Two Universities.

UNIVERSUS. Lat. The whole; all together. Calvin.

UNJUST. Contrary to right and justice, or to the enjoyment of his rights by another, or to the standards of conduct furnished by the laws. *U. S. v. Oglesby Grocery Co. (D. C.)* 264 F. 691, 695; *Komen v. City of St. Louis*, 316 Mo. 9, 289 S. W. 838, 841.

UNKOUTH. Unknown. The law French form of the Saxon "uncouth." *Britt. c. 12.*

UNLAGE. Sax. An unjust law.

UNLARICH. In old Scotch law. That which is done without law or against law. *Spelman.*

UNLAW. In Scotch law. A witness was formerly inadmissible who was not worth the king's *unlaw*; *i. e.*, the sum of £10 Scots, then the common fine for absence from court and for small delinquencies. *Bell.*

UNLAWFUL. That which is contrary to law or unauthorized by law. *State v. Chenault*, 20 N. M. 181, 147 P. 283, 285.

"Unlawful" and "illegal" are frequently used as synonymous terms, but, in the proper sense of the word, "unlawful," as applied to promises, agreements, considerations, and the like, denotes that they are ineffectual in law because they involve acts which, although not illegal, *i. e.*, positively forbidden, are disapproved of by the law, and are therefore not recognized as the ground of legal rights, either because they are immoral or because they are against public policy. It is on this ground that contracts in restraint of marriage or of trade are generally void. *Sweet.* And see *Hagerman v. Buchanan*, 45 N. J. Eq. 292, 17 A. 946, 14 Am. St. Rep. 732; *Tatum v. State*, 66 Ala. 467; *Johnson v. State*, 66 Ohio St. 59, 63 N. E. 607, 61 L. R. A. 277, 90 Am. St. Rep. 564; *Pinder v. State*, 27 Fla. 370, 8 So. 837, 26 Am. St. Rep. 75; *MacDaniel v. U. S.*, 87 F. 321, 30 C. C. A. 670; *People v. Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798, 8 L. R. A. 497, 17 Am. St. Rep. 319.

UNLAWFUL ASSEMBLY. At common law. The meeting together of three or more persons, to the disturbance of the public peace,

and with the intention of co-operating in the forcible and violent execution of some unlawful private enterprise. If they take steps towards the performance of their purpose, it becomes a *riot*; and, if they put their design into actual execution, it is a *riot*. 4 Bl. Comm. 146. Any meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm. 4 Steph. Comm. 254; *Shields v. State*, 187 Wis. 448, 204 N. W. 486, 487, 40 A. L. R. 945.

UNLAWFUL DETAINER. The unjustifiable retention of the possession of lands by one whose original entry was lawful and of right, but whose right to the possession has terminated and who refuses to quit, as in the case of a tenant holding over after the termination of the lease and in spite of a demand for possession by the landlord. *McDevitt v. Lambert*, 80 Ala. 536, 2 So. 438; *Silva v. Campbell*, 84 Cal. 420, 24 Pac. 316; *Code Tenn.* 1896, § 5093 (*Code* 1932, § 9247).

Where an entry upon lands is unlawful, whether forcible or not, and the subsequent conduct is forcible and tortious, the offense committed is a "forcible entry and detainer;" but where the original entry is lawful, and the subsequent holding forcible and tortious, the offense is an "unlawful detainer" only. *Pullen v. Boney*, 4 N. J. Law, 129.

UNLAWFUL ENTRY. An entry upon lands effected peaceably and without force, but which is without color of title and is accomplished by means of fraud or some other willful wrong. *Dickinson v. Maguire*, 9 Cal. 46; *Blaco v. Haller*, 9 Neb. 149, 1 N. W. 978.

UNLAWFULLY. Illegally; wrongfully. *Dickinson v. New York*, 92 N. Y. 584; *Dameron v. Hamilton*, 264 Mo. 103, 174 S. W. 425, 430; see *State v. Massey*, 97 N. C. 465, 2 S. E. 445. This word is frequently used in indictments in the description of the offence: it is necessary when the crime did not exist at common law, and when a statute, in describing an offence which it creates, uses the word; 1 *Mood. C. C.* 339; but is unnecessary whenever the crime existed at common law and is manifestly illegal; 1 *Chit. Cr. L.* *241.

UNLESS. "If it be not that," "if it be not the case that," "if not," "supposing not," "if it be not," "except." *West Lumber Co. v. Keen (Tex. Com. App.)* 237 S. W. 236; *State v. Timmerari*, 96 N. J. Law. 442, 115 A. 394, 395; *Ward v. Interstate Business Men's Ass'n*, 185 Iowa, 674, 169 N. W. 451, 452.

"UNLESS" LEASE. An oil and gas lease which provides that lease will be rendered null and void and lessee will automatically be relieved from liability, upon failure to commence operations or to pay rent. It must be expressly stipulated in the lease that lease

shall become null and void at a certain time "unless" the lessee begins operations or pays the rental stipulated. *Brunson v. Carter Oil Co.* (D. C.) 259 F. 656, 663.

UNLIMITED. Without confines, unrestricted, boundless. *Flynn v. Caplan*, 234 Mass. 516, 126 N. E. 776, 777.

UNLIQUIDATED. Not ascertained in amount; not determined; remaining unassessed or unsettled; as unliquidated damages.

A debt is spoken of as "unliquidated," if the amount thereof cannot be ascertained at the trial by a mere computation, based on the terms of the obligation or on some other accepted standard. *Hettrick Mfg. Co. v. Barish*, 199 N. Y. S. 755, 767, 120 Misc. 673.

Under the law of accord and satisfaction, a claim or debt will be regarded as unliquidated if it is in dispute as to the proper amount. *Early-Foster Co. v. W. F. Klump & Co.* (Tex. Civ. App.) 229 S. W. 1015, 1018; *Schultz v. Farmers' Elevator Co.*, 174 Iowa, 667, 156 N. W. 716, 719. See Damages.

UNLIVERY. A term used in maritime law to designate the unloading of cargo of a vessel at the place where it is properly to be delivered. *The Two Catharines*, 24 Fed. Cas. 429.

UNMARRIED. Its primary meaning is "never having been married"; but it is a word of flexible meaning and it may be construed as not having a husband or wife at the time in question. 9 H. L. Cas. 601; *People v. Weinstock* (Mag. Ct.) 140 N. Y. S. 453, 458; *Myers v. Denver & R. G. R. Co.*, 61 Colo. 302, 157 P. 196, 197, L. R. A. 1917D, 287. A divorced woman has been held an unmarried woman; *In re Giles*, 85 C. C. A. 418, 158 F. 596; *State v. Wallace*, 79 Or. 129, 154 P. 430, L. R. A. 1916D, 457.

UNNATURAL OFFENSE. The infamous crime against nature; *i. e.*, sodomy or buggery.

UNNATURAL WILL. An expression applied to disposition of estate or large portion thereof to strangers, to exclusion of natural objects of testator's bounty without apparent reason. *In re Shay's Estate*, 196 Cal. 355, 237 P. 1079, 1083.

UNNECESSARY. Not required by the circumstances of the case. *Hickman v. Ohio State Life Ins. Co.*, 92 Ohio St. 87, 110 N. E. 542, 543.

Uno absurdo dato, infinita sequuntur. 1 Coke, 102. One absurdity being allowed, an infinity follows.

UNO ACTU. Lat. In a single act; by one and the same act.

UNO FLATU. Lat. In one breath. 3 Man. & G. 45. *Uno flatu, et uno intuitu*, at one

breath, and in one view. *Pope v. Nickerson*, 3 Story, 504, Fed. Cas. No. 11,274.

UNOCCUPIED. In fire policies covering dwellings "unoccupied" means not used as a dwelling by human beings. *Russell v. Granite State Fire Ins. Co.*, 121 Me. 248, 116 A. 554, 556. The terms vacant and "unoccupied" are not synonymous. The former term generally refers to inanimate objects, the latter to animate occupancy. *Parmeter v. Williamsburgh City Fire Ins. Co.*, 48 N. D. 530, 185 N. W. 810, 811. See Occupation.

UNPRECEDENTED. Unusual and extraordinary; affording no reasonable warning or expectation of recurrence. *Nashville, C. & St. L. Ry. v. Yarbrough*, 194 Ala. 162, 69 So. 582, 584.

UNQUES. L. Fr. Ever; always. *Ne unques*, never.

UNQUES PRIST. L. Fr. Always ready. Cowell. Another form of *tout temps prist*.

UNREASONABLE. Beyond the rules of reason or moderation; immoderate or exorbitant. *U. S. v. Oglesby Grocery Co.* (D. C.) 264 F. 691, 695. See "Search."

UNRULY AND DANGEROUS. "Unruly and dangerous" animals, within the meaning of the law, are such as are likely to injure other domestic animals and persons. *Fink v. United States Coal & Coke Co.*, 72 W. Va. 507, 78 S. E. 702, 703.

UNSAFE. "Dangerous." *Hanson v. City of Anamosa*, 177 Iowa, 101, 158 N. W. 591, 595; *Houston & T. C. R. Co. v. Smallwood* (Tex. Civ. App.) 171 S. W. 292, 293.

UNSEATED LAND. See Land.

UNSEAWORTHY. Of a vessel, unable to withstand the perils of an ordinary voyage at sea. *Fireman's Fund Ins. Co. v. Compania de Navegacion, Interior, S. A.* (C. C. A.) 19 F.(2d) 493, 495; *The Willdomino* (C. C. A.) 300 F. 5, 12; *The Asuarca* (D. C.) 291 F. 73, 74; *Brown v. Jerome* (C. C. A.) 298 F. 1, 5. Also, within the meaning of the Harter Act (46 USCA §§ 190-195), unable to withstand an extraordinary peril, such as a tropical hurricane, when the master and manager knew or should have known, when the ship left her home port, that the hurricane was approaching. *Texas & Gulf S. S. Co. v. Parker* (C. C. A.) 263 F. 864, 868. See, also, Seaworthiness.

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

UNSOLEMN WILL.

In the Civil Law

One in which an executor is not appointed. *Swinb. Wills* 29.

UNSOUND MIND. A person of unsound mind is one who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots, and imbeciles. Sweet. See *Insanity*. And see *Cheney v. Price*, 90 Hun, 238, 37 N. Y. S. 117; *In re Black's Estate*, 1 Myr. Prob. (Cal.) 24; *In re Mason*, 3 Edw. Ch. (N. Y.) 380; *Hart v. Miller*, 29 Ind. App. 222, 64 N. E. 239; *In re Lindsley*, 44 N. J. Eq. 567, 15 A. 1, 6 Am. St. Rep. 913; *Dennett v. Dennett*, 44 N. H. 531, 84 Am. Dec. 97; *Edwards v. Davenport* (C. C.) 20 F. 758; *Witte v. Gilbert*, 10 Neb. 539, 7 N. W. 288; *Stewart v. Lisenard*, 26 Wend. (N. Y.) 300; *Ray v. State*, 32 Ga. App. 513, 124 S. E. 57.

UNTHRIFT. A prodigal; a spendthrift. 1 Bl. Comm. 306.

UNTIL. Up to time of. "Until" is a word of limitation, used ordinarily to restrict that which precedes to what immediately follows it, and its office is to fix some point of time or some event upon the arrival or occurrence of which what precedes will cease to exist. *State v. Kehoe*, 49 Mont. 582, 144 P. 162, 164; *Whitford v. Lee*, 97 Conn. 554, 117 A. 554, 556; *Board of Education of School Dist. No. 41 v. Morgan*, 316 Ill. 143, 147 N. E. 34, 37; *Irwin v. Irwin*, 179 App. Div. 871, 167 N. Y. S. 76, 78.

UNTRUE. *Prima facie* inaccurate, but not necessarily wilfully false. 3 B. & S. 929.

Unumquodque dissolvitur eodem ligamine quo ligatur. Every obligation is dissolved by the same solemnity with which it is created. *Broom*, Max. 884.

Unumquodque eodem modo quo colligatu est, dissolvitur,—quo constituitur, destruitur. Everything is dissolved by the same means by which it is put together,—destroyed by the same means by which it is established. 2 Rolle, 39; *Broom*, Max. 891.

Unumquodque est id quod est principalis in ipso. Hob. 123. That which is the principal part of a thing is the thing itself.

Unumquodque principiorum est sibimetipsi fides; et perspicua vera non sunt probanda. Every general principle [or maxim of law] is its own pledge or warrant; and things that are clearly true are not to be proved. *Branch*; Co. Litt. 11.

UNUS NULLUS RULE, THE. The rule of evidence which obtains in the civil law, that the testimony of one witness is equivalent to the testimony of none. *Wharton*.

UNVALUED POLICY. One in which the value of the interest at risk is not fixed in the policy but is estimated by a certain standard, and, in case of loss, is made out by proof.

Peninsular & O. S. S. Co. v. Atlantic Mut. Ins. Co. (D. C.) 185 F. 172.

UNWHOLESOME FOOD. Food not fit to be eaten; food which if eaten would be injurious.

UNWORTHY. Unbecoming, discreditable, not having suitable qualities or value. *Alsop v. State*, 91 Tex. Cr. R. 224, 238 S. W. 667, 669.

UNWRITTEN LAW. All that portion of the law, observed and administered in the courts, which has not been enacted or promulgated in the form of a statute or ordinance, including the unenacted portions of the common law, general and particular customs having the force of law, and the rules, principles, and maxims established by judicial precedents or the successive like decisions of the courts. See *Code Civ. Proc. Cal.* § 1899; *B. & C. Comp. Or.* 1901, § 736 (*Code* 1930, § 9-609).

A popular expression to designate a supposed rule of law that a man who takes the life of his wife's paramour or daughter's seducer is not guilty of a criminal offence. *Almerigi v. State*, 17 Okl. Cr. 458, 188 P. 1094, 1096. A trial judge is said to have expressed to a jury his approval of a verdict based upon such a theory; see 43 *Canada L. J.* 764; it is said to have received recognition in California; see 19 *Green Bag* 721, an article from the *London L. J.*; see also 12 *Law Notes* 224. The rule was much urged upon a jury in the common pleas of Philadelphia: *Biddle, J.*, said to counsel: "In this court the 'unwritten law' is not worth the paper it isn't written on."

UPLANDS. Lands bordering on bodies of waters. *Martin v. Busch*, 93 Fla. 535, 112 So. 274, 285.

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

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

UPSET PRICE. The price at which any subject, as lands or goods, is exposed to sale by auction, below which it is not to be sold. In a final decree in foreclosure, the decree should name an upset price large enough to cover costs and all allowances made by the court, receiver's certificates and interest, liens prior to the bonds, amounts diverted from the earnings, and all undetermined claims which will be settled before the confirmation and sale; *Blair v. St. Louis, H. & K. R. Co.* (C. C.) 25 F. 232.

UPSUN. In Scotch law. Between the hours of sunrise and sunset. Pounding must be executed with *upsun*. 1 Forb. Inst. pt. 3, p. 32.

URBAN HOMESTEAD. See Homestead.

URBAN SERVITUDE. City servitudes, or servitudes of houses, are called "urban." They are the easements appertaining to the building and construction of houses; as, for instance, the right to light and air, or the right to build a house so as to throw the rain-water on a neighbor's house. Mozley & Whitley; Civ. Code La. § 711.

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

URE. L. Fr. Effect; practice. *Mis en ure*, put in practice; carried into effect. Kelham.

USAGE. A reasonable and lawful public custom in a locality concerning particular transactions which is either known to the parties, or so well established, general, and uniform that they must be presumed to have acted with reference thereto. And see *Milroy v. Railway Co.*, 98 Iowa, 188, 67 N. W. 276; *Barnard v. Kellogg*, 10 Wall. 388, 19 L. Ed. 987; *Wilcocks v. Phillips*, 29 Fed. Cas. 1203; *McCarthy v. McArthur*, 69 Ark. 313, 63 S. W. 56; *Lincoln & K. Bank v. Page*, 9 Mass. 156, 6 Am. Dec. 52; *Lane v. Bank*, 3 Ind. App. 299, 29 N. E. 613; *Morningstar v. Cunningham*, 110 Ind. 328, 11 N. E. 593, 59 Am. Rep. 211; *Barreda v. Milmo Nat. Bank* (Tex. Civ. App.) 241 S. W. 743, 745. *Gerseta Corporation v. Silk Ass'n of America*, 220 App. Div. 293, 222 N. Y. S. 11, 13.

This word, as used in English law, differs from "custom" and "prescription," in that no man may claim a rent common or other inheritance by usage, though he may by prescription. Moreover, a usage is local in all cases, and must be proved; whereas, a custom is frequently general, and as such is noticed without proof. "Usage," in French law, is the "*usus*" of Roman law, and corresponds very nearly to the tenancy at will or on sufferance of English law. Brown.

"Usage," in its most extensive meaning, includes both custom and prescription; but, in its narrower signification, the term refers to a general habit, mode, or course of procedure. A usage differs from a custom, in that it does not require that the usage should be immemorial to establish it; but the usage must be known, certain, uniform, reasonable, and not contrary to law. *Lowry v. Read*, 3 Brewst. (Pa.) 452.

"Usage" is also called a "custom," though the latter word has also another signification; it is a long and uniform practice, applied to habits, modes, and courses of dealing. It relates to modes of action, and does not comprehend the mere adoption of certain peculiar doctrines or rules of law. *Dickinson v. Gay*, 7 Allen (Mass.) 29, 83 Am. Dec. 656.

General Usage

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

Usage of Trade

A course of dealing; a mode of conducting transactions of a particular kind. *Haskins v. Warren*, 115 Mass. 535.

USANCE. In mercantile law. The common period fixed by the usage or custom or habit of dealing between the country where a bill is drawn, and that where it is payable, for the payment of bills of exchange. It means, in some countries, a month, in others two or more months, and in others half a month. *Story, Bills*, §§ 50, 144, 332.

USE, v. To make use of, to convert to one's service, to avail one's self of, to employ. *Rice v. Fields*, 192 Ky. 161, 232 S. W. 385; *Bastian v. State*, 104 Misc. 287, 175 N. Y. S. 564, 566; *Whitaker v. Regents of the University of California*, 39 Cal. App. 111, 178 P. 308, 310.

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

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

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

In Conveyancing

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

In the Civil Law

A right of receiving so much of the natural profits of a thing as is necessary to daily

sustenance. It differs from "usufruct," which is a right not only to use, but to enjoy. 1 Browne, Civil & Adm. Law, 184.

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

In a Non-technical Sense

The "use" of a thing means that one is to enjoy, hold, occupy, or have some manner of benefit thereof. *Mace v. Hollenbeck* (Mo. Sup.) 175 S. W. 876, 877; *Bryson v. Hicks*, 78 Ind. App. 111, 134 N. E. 874, 875. Use also means usefulness, utility, advantage, productive of benefit. *Williams v. City of Norman*, 85 Okl. 230, 205 P. 144, 148; *National Surety Co. v. Jarrett*, 95 W. Va. 420, 121 S. E. 291, 295, 36 A. L. R. 1171.

In General

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

—**Charitable use.** See Charitable.

—**Contingent use.** A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B., after a marriage shall be had between them. 2 Bl. Comm. 334; *Haywood v. Shreve*, 44 N. J. Law, 94; *Jemison v. Blowers*, 5 Barb. (N. Y.) 692.

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

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

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

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

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

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

—**Resulting use.** A use raised by equity for the benefit of a feoffor who has made a voluntary conveyance to uses without any declaration of the use. 2 Washb. Real Prop. 100. A resulting use arises where the legal seisin is transferred, and no use is expressly declared, nor any consideration or evidence of intent to direct the use. The use then remains in the original grantor, for it cannot be supposed that the estate was intended to be given away, and the statute immediately transfers the legal estate to such resulting use. Wharton.

—**Secondary use.** A use limited to take effect in derogation of a preceding estate, otherwise called a "shifting use," as a conveyance to the use of A. and his heirs, with a proviso that, when B. returns from India, then to the use of C. and his heirs. 1 Steph. Comm. 546.

—**Shifting use.** A use which is so limited that it will be made to shift or transfer itself, from one beneficiary to another, upon the occurrence of a certain event after its creation. For example, an estate is limited to the use of A. and his heirs, provided that, upon the return of B. from Rome, it shall be to the use of C. and his heirs; this is a shifting use, which transfers itself to C. when the event happens. 1 Steph. Comm. 503; 2 Bl. Comm. 335. These shifting uses are common in all settlements; and, in marriage settlements, the first use is always to the owner in fee till the marriage, and then to other uses. The fee remains with the owner until the marriage, and then it *shifts* as uses arise. 4 Kent, Comm. 297.

—**Springing use.** A use limited to arise on a future event where no preceding use is limited, and which does not take effect in derogation of any other interest than that which results to the grantor, or remains in him in the mean time. 2 Washb. Real Prop. 281; *Smith v. Brisson*, 90 N. C. 288.

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

Smelting & Refining Co. v. Barr, 58 Colo. 116, 144 P. 552, 554.

—**Superstitious uses.** See that title.

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

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

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

USEFUL. The term "useful," as used in the patent law, when applied to a machine, means that the machine will accomplish its purpose practically when applied in industry. *Besser v. Merrilat Culvert Core Co.* (C. C. A.) 243 F. 611.

By "useful" is meant such an invention as may be applied to some beneficial use in society, in contradistinction to an invention which is injurious to the morals, the health, or the good order of society. *Bedford v. Hunt*, 1 Mason, 302, Fed. Cas. No. 1,217.

USEFULNESS. Capabilities for use. The word pertains to the future as well as to the past. *Chesapeake, O. & S. W. R. Co. v. Dyer Co.*, 87 Tenn. 712, 11 S. W. 943.

USER. The actual exercise or enjoyment of any right or property. It is particularly used of franchises.

Adverse User

Such a use of the property under claim of right as the owner himself would make, asking no permission, and disregarding all other claims to it, so far as they conflict with this use. *Blanchard v. Moulton*, 63 Me. 434; *Murray v. Scribner*, 74 Wis. 602, 43 N. W. 549; *Ward v. Warren*, 82 N. Y. 265; *Outhwaite v. Foote*, 240 Mich. 327, 215 N. W. 331, 332; *Thorworth v. Scheets*, 269 Ill. 573, 110 N. E. 42, 45; *Cummins v. Dumas*, 147 Miss. 215, 113 So. 332, 334.

USER DE ACTION. L. Fr. In old practice. The pursuing or bringing an action. Cowell.

USHER. This word is said to be derived from "*huissier*," and is the name of a subordinate officer in some English courts of law. Archb. Pr. 25.

USHER OF THE BLACK ROD. The gentleman usher of the black rod is an officer of the house of lords appointed by letters patent from the crown. His duties are, by himself or deputy, to desire the attendance of the commons in the house of peers when the royal assent is given to bills, either by the king in person or by commission, to execute orders for the commitment of persons guilty of breach of privilege, and also to assist in the introduction of peers when they take the oaths and their seats. Brown.

USO. In Spanish law. Usage; that which arises from certain things which men say and do and practice uninterruptedly for a great length of time, without any hindrance whatever. *Las Partidas*, pt. 1, tit. 2, l. 1.

USQUE. Lat. Up to; until. This is a word of exclusion, and a release of all demands *usque ad* a certain day does not cover a bond made on that day. 2 Mod. 28.

Usually applied to ownership of property. Applied to right to air it has been held that ownership extends "*usque ad coelum*." *Romano v. Birmingham Ry. Light & Power Co.*, 62 So. 677, 182 Ala. 335, 46 L. R. A. (N. S.) 642, Ann. Cas. 1915D, 776. See *A Coelo Usque Ad Centrum*.

USQUE AD FILUM AQUÆ, OR VIÆ. Up to the middle of the stream or road.

USUAL. Habitual; ordinary; customary; according to usage or custom; commonly established, observed, or practised. Such as is in common use or occurs in ordinary practice or course of events. See *Chicago & A. R. Co. v. Hause*, 71 Ill. App. 147; *Kellogg v. Curtis*, 69 Me. 214, 31 Am. Rep. 273; *Tescher v. Merea*, 118 Ind. 586, 21 N. E. 316; *Trust Co. v. Norris*, 61 Minn. 256, 63 N. W. 634; *Commonwealth v. Weber*, 103 A. 348, 349, 259 Pa. 592; *Oilmen's Reciprocal Ass'n v. Gilleland* (Tex. Com. App.) 291 S. W. 197, 199; *Roberts Coal Co. v. Corder Coal Co.*, 143 Va. 133, 129 S. E. 341, 344.

USUAL COVENANTS. See Covenant.

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

USUARIUS. Lat. In the civil law. One who had the mere use of a thing belonging to another for the purpose of supplying his daily wants; a usuary. Dig. 7, 8, 10, pr.; Calvin.

USUCAPIO, or USCAPTIO. A term of Roman law used to denote a mode of acquisition of property. It corresponds very nearly to the term "prescription." But the prescription of Roman law differed from that of the English law, in this: that no *mala fide* pos-

essor (*i. e.*, person in possession knowingly of the property of another) could, by however long a period, acquire title by possession merely. The two essential requisites to *usucapio* were *justa causa* (*i. e.*, title) and *bona fides*, (*i. e.*, ignorance.) The term "*usucapio*" is sometimes, but erroneously, written "*usucaptio*." Brown. See Pavey v. Vance, 56 Ohio St. 162, 46 N. E. 898.

Usucapio constituta est ut aliquis litium finis esset. Prescription was instituted that there might be some end to litigation. Dig. 41, 10, 5; Broom, Max. 894, note.

USUFRUCT. In the civil law. The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing. Civ. Code La. art. 533. And see Mulford v. Le Franc, 26 Cal. 102; Cartwright v. Cartwright, 18 Tex. 628; Strausse v. Sheriff, 43 La. Ann. 501, 9 So. 102.

Imperfect Usufruct

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

Perfect Usufruct

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

Quasi Usufruct

In the civil law. Originally the usufruct gave no right to the substance of the thing, and consequently none to its consumption; hence only an inconsumable thing could be the object of it, whether movable or immovable. But in later times the right of usufruct was, by analogy, extended to consumable things, and therewith arose the distinction between true and *quasi* usufructs. See Mackeld. Rom. Law, § 307; Civ. Code La. art. 534.

USUFRUCTUARY. In the civil law. One who has the usufruct or right of enjoying anything in which he has no property, Cartwright v. Cartwright, 18 Tex. 628.

USUFRUIT. In French law. The same as the *usufruct* of the English and Roman law.

USURA. Lat. In the civil law. Money given for the use of money; interest. Commonly used in the plural, "*usuræ*." Dig. 22, 1.

Usura est commodum certum quod propter usum rei mutuata recipitur. Sed secundario spirare de aliqua retributione, ad voluntatem ejus qui

mutuatus est, hoc non est vitiosum. Usury is a certain benefit which is received for the use of a thing lent. But to have an understanding [literally, to breathe or whisper,] in an incidental way, about some compensation to be made at the pleasure of the borrower, is not lawful. Branch, Princ.; 5 Coke, 70b; Glan. lib. 7, c. 16.

USURA MANIFESTA. Manifest or open usury; as distinguished from *usura velata*, veiled or concealed usury, which consists in giving a bond for the loan, in the amount of which is included the stipulated interest.

USURA MARITIMA. Interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and is not affected by the usury laws.

USURARIUS. In old English law. A usurer. Fleta, lib. 2, c. 52, § 14.

USURIOUS. Pertaining to usury; partaking of the nature of usury; involving usury; tainted with usury; as, a usurious contract.

USURPATIO. Lat. In the civil law. The interruption of a usucaption, by some act on the part of the real owner. Calvin.

USURPATION.

Torts

The unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession. Tomlins.

In Public Law

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

USURPATION OF ADVOWSON. An injury which consists in the absolute ouster or dispossession of the patron from the advowson or right of presentation, and which happens when a stranger who has no right presents a clerk, and the latter is thereupon admitted and instituted. Brown.

USURPATION OF FRANCHISE OR OFFICE. The unjustly intruding upon or exercising any office, franchise, or liberty belonging to another.

USURPED POWER. In insurance. An invasion from abroad, or an internal rebellion, where armies are drawn up against each other, when the laws are silent, and when the firing of towns becomes unavoidable. These words cannot mean the power of a common mob. 2 Marsh. Ins. 791.

USURPER. One who assumes the right of government by force, contrary to and in violation of the constitution of the country. Toul, *Droit. Civ.* n. 32.

One who intrudes himself into an office which is vacant, and ousts the incumbent without any color of title whatever; his acts are void in every respect; *McCraw v. Williams*, 33 Grat. (Va.) 513; *Hooper v. Goodwin*, 48 Me. 80.

USURY.

In Old English Law

Interest of money; increase for the loan of money; a reward for the use of money. 2 Bl. Comm. 454. The taking of any compensation whatever for the use of money. *Marshall v. Beeler*, 104 Kan. 32, 178 P. 245, 246.

In Modern Law

Unlawful interest; a premium or compensation paid or stipulated to be paid for the use of money borrowed or returned, beyond the rate of interest established by law. *Carter v. Hook*, 116 Va. 812, 83 S. E. 386, 389. An unconscionable or exorbitant rate or amount of interest. *Grossman v. Calonia Land & Improvement Co.*, 103 N. J. Law, 98, 134 A. 740, 742.

A profit greater than the lawful rate of interest, intentionally exacted as a bonus, for the forbearance of an existing indebtedness or a loan of money, imposed upon the necessities of the borrower in a transaction where the money is to be returned at all events. *Monk v. Goldstein*, 172 N. C. 516, 99 S. E. 519, 520.

"Usury" can attach only to a loan of money or to the forbearance of a debt. *Commercial Credit Co. v. Tarwater*, 215 Ala. 123, 110 So. 39, 40, 48 A. L. R. 1437.

An unlawful contract upon the loan of money, to receive the same again with exorbitant increase. 4 Bl. Comm. 156.

The reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest. *Code Ga. 1882*, § 2051 (Civ. Code 1910, § 3427). See *Henry v. Bank of Salina*, 5 Hill. (N. Y.) 528; *Parham v. Pulliam*, 5 Cold. (Tenn.) 501; *New England Mortg. Sec. Co. v. Gay* (C. C.) 33 F. 640; *Lee v. Peckham*, 17 Wis. 386; *Rosenstein v. Fox*, 150 N. Y. 354, 44 N. E. 1027; *MacRackan v. Bank*, 164 N. C. 24, 80 S. E. 184, 49 L. R. A. (N. S.) 1043; *Midland Savings & Loan Co. v. Tuchy*, 69 Okl. 270, 170 P. 244, 246; *Williams v. American Exchange Bank*, 222 Mo. App. 483, 280 S. W. 720, 723; *Stuart v. Durland*, 115 Neb. 211, 212 N. W. 31, 32, 53 A. L. R. 739; *In re Elmore Cotton Mills* (D. C.) 217 F. 810, 814.

Usury is odious in law.

USUS. Lat. In Roman law. A precarious enjoyment of land, corresponding with the right of *habitatio* of houses, and being closely analogous to the tenancy at sufferance or at will of English law. The *usuarius* (i. e., tenant by *usus*) could only hold on so long as the owner found him convenient, and had to go so soon as ever he was in the owner's way,

(*molestus*.) The *usuarius* could not have a friend to share the produce. It was scarcely permitted to him (Justinian says) to have even his wife with him on the land; and he could not let or sell, the right being strictly personal to himself. Brown.

USUS BELLICI. Lat. In international law. Warlike uses or objects. It is the *usus bellici* which determine an article to be contraband. 1 Kent, Comm. 141.

Usus est dominium fiduciarium. Bac. St. Uses. Use is a fiduciary dominion.

Usus et status sive possessio potius differunt secundum rationem fori, quam secundum rationem rei. Bac. St. Uses. Use and estate, or possession, differ more in the rule of the court than in the rule of the matter.

USUS FRUCTUS. Lat. In Roman law. Usufruct; usufructuary right or possession. The temporary right of using a thing, without having the ultimate property, or full dominion, of the substance. 2 Bl. Comm. 327.

UT CURRERE SOLEBAT. Lat. As it was wont to run; applied to a water-course.

UT DE FEODO. L. Lat. As of fee.

UT HOSPITES. Lat. As guests. 1 Salk. 25, pl. 10.

Ut pœna ad paucos, metus ad omnes perveniat. That the punishment may reach a few, but the fear of it affect all. A maxim in criminal law, expressive of one of the principal objects of human punishment. 4 Inst. 6; 4 Bl. Comm. 11.

Ut res magis valeat quam pereat. That the thing may rather have effect than be destroyed. *Saltonstall v. Sanders*, 11 Allen (Mass.) 455; *Simonds v. Walker*, 100 Mass. 113; *National Pemberton Bank v. Lougee*, 108 Mass. 373, 11 Am. Rep. 367.

Ut summæ potestatis regis est posse quantum veit, sic magnitudinis est velle quantum possit. 3 Inst. 236. As the highest power of a king is to be able to do all he wishes, so the highest greatness of him is to wish all he is able to do.

UTAS. In old English practice. Octave; the octave; the eighth day following any term or feast. Cowell.

UTENSIL. A much broader term than "tool," though it may be applicable to many implements designated tools in common parlance. *Murphy v. Continental Ins. Co.*, 178 Iowa, 375, 157 N. W. 855, 857, L. R. A. 1917B, 934.

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

UTERO-GESTATION. Pregnancy.

UTERQUE. Lat. Both; each. "The justices, being in doubt as to the meaning of this word in an indictment, demanded the opinions of grammarians, who delivered their opinions that this word doth aptly signify *one of them.*" 1 Leon. 241.

UTFANGTHEF, or UTFANGENETHEF. In Saxon and old English law. The privilege of a lord of a manor to judge and punish a thief dwelling out of his liberty, and committing theft without the same, if he were caught within the lord's jurisdiction. Cowell.

The right of the lord of a manor to hang a thief caught with the stolen goods, whether or not the capture was made on the manor. 1 Holdsw. Hist. E. L. 11. See Infangenthef.

UTI. Lat. In the civil law. To use. Strictly, to use for necessary purposes; as distinguished from "*frui*," to enjoy. Heinecc. Elem. lib. 2, tit. 4, § 415.

UTI FRUI. Lat. In the civil law. To have the full use and enjoyment of a thing, without damage to its substance. Calvin.

UTI POSSIDETIS. Lat.

In the Civil Law

A species of interdict for the purpose of retaining possession of a thing, granted to one who, at the time of contesting suit, was in possession of an immovable thing, in order that he might be declared the legal possessor. Halifax, Civil Law, b. 3, c. 6, no. 8. See Utrubi.

In International Law

A phrase used to signify that the parties to a treaty are to retain possession of what they have acquired by force during the war. Wheat. Int. Law, 627.

A treaty which terminates a war may adopt this principle or that of the *status quo ante bellum*, or a combination of the two. In default of any treaty stipulation, the former doctrine prevails. Guillermo Alvarez y Sanchez v. U. S., 42 Ct. Cl. 458.

UTI ROGAS. Lat. In Roman law. The form of words by which a vote in favor of a proposed law was orally expressed. *Uti rogas, volo vel jubeo*, as you ask, I will or order; I vote as you propose; I am for the law. The letters "U. R." on a ballot expressed the same sentiment. Adams, Rom. Ant. 98, 100.

Utile per inutile non vitiatur. The useful is not vitiated by the useless. Surplusage does not spoil the remaining part if that is good in itself. Dyer, 392; Broom, Max. 627; 2 Wheat. 221, 4 L. Ed. 224; 2 Serg. & R. (Pa.) 298; 6 Mass. 303; 12 Mass. 438.

UTILIDAD. Span. In Spanish law. The profit of a thing. White, New Recop. b. 2, tit. 2, c. 1.

UTILIS. Lat. In the civil law. Useful; beneficial; equitable; available. *Actio*

utilis, an equitable action. Calvin. *Dies utilis*, an available day.

UTILITY. In patent law. The absence of frivolity and mischievousness, and utility for some beneficial purpose. Rob. Pat. § 339. But there is no utility if the invention can be used only to commit a fraud with; Klein v. Russell, 19 Wall. 433, 22 L. Ed. 116; or for some immoral purpose; Lowell v. Lewis, 1 Mason, 182, Fed. Cas. No. 8,568; or can be used only for gambling purposes in saloons; Schultze v. Holtz (C. C.) 82 Fed. 448; or if the invention is dangerous in its use; Mitchell v. Tilghman, 19 Wall. 287, 22 L. Ed. 125.

The "utility" which an infringing defendant is estopped to deny means sufficient practical utility to make a device useful in the sense of the patent statute. The estoppel does not forbid him to deny that there is any useful function, or new result serving to give inventive character to the slight step which a patentee has taken in differentiation from prior art. Sandy MacGregor Co. v. Vaco Grip Co. (C. C. A.) 2 F.(2d) 655, 656.

UTLAGATUS, or UTLAGATUM. In old English law. An outlawed person; an outlaw.

Utlagatus est quasi extra legem positus. Caput gerit lupinum. 7 Coke, 14. An outlaw is, as it were, put out of the protection of the law. He bears the head of a wolf.

Utlagatus pro contumacia et fuga, non propter hoc convictus est de facto principali. Fleta. One who is outlawed for contumacy and flight is not on that account convicted of the principal fact.

UTLAGE. L. Fr. An outlaw. Britt. c. 12.

UTLESSE. An escape of a felon out of prison.

UTMOST CARE. Substantially synonymous with "highest care." Brogan v. Union Traction Co., 76 W. Va. 698, 86 S. E. 753, 756.

It is the duty of a common carrier to use the utmost care, skill, and diligence to transport its passengers, which means the care, skill, and diligence that a cautious man in similar employment would use. Link v. Atlantic Coast Line R. Co. (Mo. App.) 233 S. W. 834, 837.

UTMOST RESISTANCE. This term, under the rule that to constitute rape there must be utmost resistance by the woman, is a relative rather than a positive term. What would be "utmost resistance" on the part of a weak and nervous person, with a temperament easily frightened, might be the veriest sham on the part of a robust person in good health, whose nerves and courage are normal. McLain v. State, 159 Wis. 204, 149 N. W. 771, 772.

UTRUBI.

In the Civil Law

The name of a species of interdict for retaining a thing, granted for the purpose of

protecting the possession of a movable thing, as the *uti possidetis* was granted for an immovable. Inst. 4, 15, 4; Mackeld. Rom. Law, § 260.

In Scotch Law

An interdict as to movables, by which the colorable possession of a *bona fide* holder is continued until the final settlement of a contested right; corresponding to *uti possidetis* as to heritable property. Bell.

UTRUMQUE NOSTRUM. Both of us. Words used formerly in bonds.

UTTER, v. To put or send (as a forged check) into circulation; Smith v. Commonwealth, 151 Ky. 517, 152 S. W. 574, 575; to publish or put forth; Barron v. State, 12 Ga. App. 342, 77 S. E. 214, 215; Valley Dry Goods Co. v. Buford, 114 Miss. 414, 75 So. 252, 254; to offer; Bish. Cr. L. § 607. To utter and publish an instrument, as a counterfeit note, is to declare or assert, directly or indirectly, by words or actions, that it is good; uttering it is a declaration that it is good, with an intention or offer to pass it. Whart. Crim. Law, § 703; People v. Bradford, 84 Cal. App. 707, 258 P. 660, 662; Com. v. Searle, 2 Binn. (Pa.) 338, 4 Am. Dec. 446.

To utter, as used in a statute against forgery and counterfeiting, means to offer, whether accepted or not, a forged instrument, with the representation, by words or actions, that the same is genuine. See State v. Horner, 48 Mo. 522; People v. Rathbun, 21 Wend. (N. Y.) 521; Lindsey v. State, 38 Ohio St. 511; State v. Calkins, 73 Iowa, 128, 34 N. W. 777; People v. Caton, 25 Mich. 392; Commonwealth v. Fenwick, 177 Ky. 685, 198 S. W. 32, 34, L. R. A. 1918B, 1189; 2 Bish. Cr. L. § 605.

"Uttering" or "publishing" a check consists in presenting it for payment, and the act is then done although no money may be obtained. State v. Hohl, 108 Kan. 261, 194 P. 921, 924.

UTTER, adj. Entire; complete; absolute; total. In a statute making utter desertion for three years a ground for divorce, it suggests an abnegation of all the duties and obligations resulting from the marriage con-

tract. Moody v. Moody, 118 Me. 454, 108 A. 849.

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

UTTER BARRISTER. In English law. Those barristers who plead without the bar, and are distinguished from benchers, or those who have been readers, and who are allowed to plead within the bar, as the king's counsel are. Cowell. See Outer Bar.

UXOR. Lat. In the civil law. A wife; a woman lawfully married.

Et Uxor

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

Jure Uxoris

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

Uxor et filius sunt nomina naturæ. Wife and son are names of nature. 4 Bac. Works, 350.

Uxor non est sui juris, sed sub potestate viri. A wife is not her own mistress, but is under the power of her husband. 3 Inst. 108.

Uxor sequitur domicilium viri. A wife follows the domicile of her husband. Tray. Lat. Max. 606.

UXORICIDE. The killing of a wife by her husband; one who murders his wife. Not a technical term of the law.