

## C

**C.** The third letter of the alphabet.

The letter is used as an abbreviation of many words of which it is the initial letter, such as cases, civil, circuit; as a numeral, in like manner with that use of A and B; and to designate the *third* of a series of propositions, sections, etc.

It was used among the Romans to denote condemnation, being the initial letter of *condemno*, I condemn. Tayl. Civil Law, 192.

The initial letter of the word "*Codex*," used by some writers in citing the Code of Justinian. Tayl. Civil Law, 24.

**C.—CT.—CTS.** These abbreviations stand for "cent" or "cents," and any one of them, placed at the top or head of a column of figures, sufficiently indicates the denomination of the figures below. Jackson v. Cummings, 15 Ill. 453; Linck v. Litchfield, 141 Ill. 469, 31 N.E. 123.

**C. A. B.** Civil Aeronautics Board.

**C. A. F.** Under "c. a. f." provision in sale contract, freight figures substantially only as a part of the purchase price, not as a reservation of title, and the situation is similar to a "c. i. f." contract. *Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co.*, C.C.A.N.Y., 147 F.2d 399, 402; cost and freight allowed to point of destination, being the equivalent of shipment F. O. B. from point of origin. *Farris & Co. v. William Schluderberg, T. J. Kurdle Co.*, 142 Fla. 765, 196 So. 184.

**C. A. V.** An abbreviation for *curia advisari vult*, the court will be advised, will consider, will deliberate.

**C. B.** In reports and legal documents, an abbreviation for common bench. Also an abbreviation for chief baron.

**C. C.** Various terms or phrases may be denoted by this abbreviation; such as circuit court, (or city or county court;) criminal cases, (or crown or civil or chancery cases;) civil code; chief commissioner; and *cepi corpus*, I have taken his body.

**C. C.; B. B.** I have taken his body; bail bond entered. See *Capias ad Respondendum*.

**C. C. P.** An abbreviation for Code of Civil Procedure; also for court of common pleas.

**C. C. & C.** I have taken his body and he is held.

**C. F. & I.** Also written "c. f. i." Letters used in contracts for *cost, freight and insurance*, indicating that the price fixed covers not only cost but freight and insurance to be paid by the seller; *Benj. Sales*, § 887; *L.R.* 8 Ex. 179; *7 H. & N.* 574; *Mee v. McNider*, 109 N.Y. 500, 502, 17 N.E. 424.

**C. I. A.** Central Intelligence Agency.

**C. I. F.** Also written "c. i. f." These letters in contracts of sale indicate, as does the expression

"c. f. i." or "C. F. & I." (*q. v.*), that the price fixed covers the cost of goods, insurance, and freight. *National Wholesale Grocery Co. v. Mann*, 251 Mass. 238, 146 N.E. 791, 793; *A. Klipstein & Co. v. Dilsizian*, C.C.A.N.Y., 273 F. 473, 475; *Columbus Bagging & Tie Co. v. Steel Union Co.*, 43 Ga. App. 126, 158 S.E. 459, 460.

**C. J.** An abbreviation for chief justice; also for circuit judge.

**C. L.** An abbreviation for civil law.

**C. L. P.** Common law procedure, in reference to the English acts so entitled.

**C. O. D.** "Collect on delivery." These letters import the carrier's liability to return to the consignor either the goods or the charges. *U. S. Exp. Co. v. Keefer*, 59 Ind. 267; *Express Co. v. Wolf*, 79 Ill. 434; *Danciger v. American Express Co.*, 192 Mo.App. 172, 179 S.W. 797, 798. The carrier accepts a check instead of cash at its own peril. *Joseph Mogul, Inc., v. C. Lewis Lavine, Inc.*, 220 App.Div. 287, 221 N.Y.S. 391, 393.

**C. P.** An abbreviation for common pleas.

**C. P. A.** Certified Public Accountant.

**C. R.** An abbreviation for *curia regis*; also for chancery reports.

**C. S. C.** Civil Service Commission.

**C. T. A.** An abbreviation for *cum testamento annexo*, in describing a species of administration.

**C. & F.** The term "c. & f." means that the sale price includes in a lump sum "cost" and "freight" to named destination, and either requires seller to prepay freight or permits buyer, after having paid actual charges, to deduct them from the price. *Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co.*, C.C.A.N.Y., 147 F.2d 399, 402.

**CA. SA.** An abbreviation of *capias ad satisfaciendum, q. v.*

**CABAL.** A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II. formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. *Hume, Hist.Eng.* ix. 69.

**CABALIST.** In French commercial law. A factor or broker.

**CABALLARIA.** Pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

## CABALLERIA

**CABALLERIA.** In Spanish law. An allotment of land acquired by conquest, to a horse soldier. A quantity of land, varying in extent in different provinces. In those parts of the United States which formerly belonged to Spain, it is a lot of one hundred feet front, two hundred feet depth, and equivalent to five peonias. 2 White, New Recop. 49; Strother v. Lucas, 12 Pet. 444, 9 L.Ed. 1137, note; Escriche, Dicc. Raz.

**CABALLERO.** In Spanish law. A knight. So called on account of its being more honorable to go on horseback (*à caballo*) than on any other beast.

**CABANA.** Cabin or small house. Godson v. Town of Surfside, 150 Fla. 614, 8 So.2d 497, 500.

**CABARET.** A room where musical entertainment is permitted in connection with restaurant business. People v. Liquorman, 171 Misc. 535, 13 N. Y.S.2d 410, 411.

**CABINET.** The advisory board or council of a king or other chief executive. The select or secret council of a prince or executive government; so called from the apartment in which it was originally held. Webster

**CABINET COUNCIL.** In English law. A private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established by Charles I. Wharton.

**CABLE.** A large and strong rope or chain. An assembly of wires held together in some way. Triangle Conduit & Cable Co. v. National Electric Products Corporation, D.C.Del., 56 F.Supp. 979, 981.

The term "cable railroad" in a city charter has been held to imply street railroads. City of Denver v. Mercantile Trust Co. of New York, C.C.A.Colo., 201 F. 790, 802.

**CABLE TRANSFER.** A credit for a sum of money payable at the place indicated. Oshinsky v. Taylor, Sup., 172 N.Y.S. 231, 232.

**CABLISH.** Brush-wood, or more properly wind-fall-wood.

**CABOOSE CAR.** A car attached to the rear of a freight train, fitted up for the accommodation of the conductor, brakeman, and chance passengers. Mammoth Cave R. Co. v. Commonwealth, 176 Ky. 747, 197 S.W. 406, 407.

**CABOTAGE.** A nautical term from the Spanish, denoting strictly navigation from cape to cape along the coast without going out into the open sea. In International Law, cabotage is identified with *coasting-trade* so that it means navigating and trading along the coast between the ports thereof.

**CACHEPOLUS, or CACHERELLAS.** An inferior bailiff, or catchpoll. Jacob.

**CACHET, LETTRES DE.** Letters issued and signed by the kings of France, and countersigned

by a secretary of state, authorizing the imprisonment of a person. Abolished during the revolution of 1789. See Lettres de Cachet.

**CACICAZGOS.** In Spanish-American law. Property entailed on the *caciques*, or heads of Indian villages, and their descendants. Schm.Civil Law, 309.

**CADASTRE.** Sp. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. Strother, v. Lucas, 12 Pet. 410, 428, note, 9 L.Ed. 1137.

**CADASTU.** In French law. An official statement of the quantity and value of realty made for purposes of taxation; same as *cadastre*, (*q. v.*).

**CADAVER.** A dead human body; a corpse. *Cadaver nullius in bonis*, no one can have a right of property in a corpse. 3 Co.Inst. 110, 2 Bl. Comm. 429; Griffith v. Railroad Co., 23 S.C. 32, 55 Am.Rep. 1.

**CADAVEROUS.** Pale, wan or ghastly appearance. Commonwealth v. Caldutte, 136 Pa.Super. 52, 7 A.2d 121, 123.

**CADERE.** Lat. To end; cease; fail; as in phrases such as *cadit actio*, (or *breve*), the action (or writ) falls; *cadit assisa*, the assise abates; *cadit quæstio*, the discussion ends, there is no room for further argument; *cadere ab actione* (literally, to fall from an action), to fail in an action; *cadere in partem*, to become subject to a division.

To be changed; to become; to be turned into. *Cadit assisa in juratum*, the assise is changed into a jury. Calvinus, Lex.

**CADET.** Students in the military academy at West Point are styled "cadets;" students in the naval academy at Annapolis, "cadet midshipmen."

In England. A younger brother; the younger son of a gentleman; particularly applied to a volunteer in the army, waiting for some post. Jacob.

**CADI.** A Turkish civil magistrate.

**CADIT.** Lat. It falls, abates, fails, ends, ceases. See Cadere.

**CADUCA.** In the civil law. Property of an inheritable quality; property such as descends to an heir. Also the lapse of a testamentary disposition or legacy. Also an escheat; escheated property.

**CADUCARY.** Relating to or of the nature of escheat, forfeiture, or confiscation. 2 Bl.Comm. 245.

**CÆDUA.** In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood.

**CÆSAR.** In the Roman law. A cognomen in the gens Julia, which was assumed by the successors of Julius. Tayl. Civil Law, 31.

**CÆSAREAN** (also spelled *Caesarian*) **OPERATION.** A surgical operation whereby the fœtus is

taken from the mother, with a view to save the lives of both, or either of them. Wharton.

**CÆTERUS.** Lat. Other; another; the rest.

**CÆTERIS PARIBUS.** Other things being equal.

**CÆTERIS TACENTIBUS.** The others being silent; the other judges expressing no opinion. Comb. 186.

**CÆTERORUM.** When a limited administration has been granted, and all the property cannot be administered under it, administration *cæterorum* (as to the residue) may be granted.

**CAFE.** A place where meals and drinks are served to the public generally or to selected portions of the public. In *re Bowers*, D.C.Cal., 33 F. Supp. 965, 966.

The word as ordinarily and popularly used means a restaurant or house for refreshments. *Proprietors' Realty Co. v. Wohltmann*, 95 N.J.Law, 303, 112 A. 410. The terms "restaurant" and "café" are substantially synonymous. *State v. Shoaf*, 179 N.C. 744, 102 S.E. 705, 9 A.L.R. 426.

**CAHIER.** In old French law. A list of grievances prepared for deputies in the states-general. A petition for the redress of grievances enumerated.

**CAHOOTS.** Partnership, teaming up, or combining efforts. *City of Abilene v. Luhn*, Tex.Civ.App., 65 S.W.2d 370, 371.

**CAIN, or CANE.** In Scotch law. Rent paid in kind, as in poultry, eggs, etc.; hence, any tax, tribute, or duty. Cent. Dict.

**CAIRNS' ACT.** An English statute for enabling the court of chancery to award damages. 21 & 22 Vict. c. 27. Repealed as having been superseded by the Judicature Act of 1873.

**CAISSON DISEASE.** A dizziness accompanied with partial paralysis of the limbs, caused by too rapid reduction of air pressure to which men have been accustomed. *Williams v. Missouri Bridge & Iron Co.*, 212 Mich. 150, 180 N.W. 357, 358. A condition caused by excessive air pressure wherein gas emboli or bubbles in the tissues of the body may induce severe pain and paralysis, *Cannella v. Gulf Refining Co. of Louisiana*, La.App., 154 So. 406, 413.

**CALABOOSE.** A term used vulgarly, and occasionally in judicial proceedings and law reports, to designate a jail or prison, particularly a town or city jail or lock-up. Supposed to be a corruption of the Spanish *calabozo*, a dungeon. See *Gilham v. Wells*, 64 Ga. 194.

**CALAMITY.** A state of deep distress or misfortune, produced by some adverse circumstance or event; misery; any great misfortune or cause of loss or misery; usually an event or disaster that produces extensive evil. *City of Muskegon Heights v. Danigelis*, 253 Mich. 260, 235 N.W. 83, 84, 73 A.L.R. 696.

**CALAMUS.** Lat. A reed; cane; hence, a reed pen; reed-pipe; arrow; small rod, etc. Harper,

Lat. Dict. Also, an ancient Greek measure of length of 10 feet. Cent. Dict.

**CALCETUM, CALCEA.** A causeway, or common hard-way, maintained and repaired with stones and rubbish.

**CALCULATE.** To compute mathematically; in its broader significance, to intend, to purpose, or to design. *State v. Smith*, 57 Mont. 349, 188 P. 644, 648.

**CALCULATED.** An act may produce a certain effect, whether intended or not; fitted, adapted, or suited. *Polly v. People*, 107 Colo. 6, 108 P.2d 220, 223. Likely or intended. *State v. Wyman*, 56 Mont. 600, 186 P. 1, 5; *Pouchan v. Godeau*, 167 Cal. 692, 140 P. 952, 953.

**CALE.** In old French law. A punishment of sailors, resembling the modern "keelhauling."

**CALEFAGIUM.** In old law. A right to take fuel yearly. Cowell; Blount.

**CALENDAR.** The established order of the division of time into years, months, weeks, and days; or a systematized enumeration of such arrangement; an almanac. *Rives v. Guthrie*, 46 N.C. 86; *Sculley v. Red Lodge-Rosebud Irr. Dist.*, 83 Mont. 282, 272 P. 543, 552.

#### Calendar Days

A calendar day contains 24 hours but "calendar days" may be synonymous with "working days." *Sherwood v. American Sugar Refining Co.*, C.C. A.N.Y., 8 F.2d 586, 588. The time from midnight to midnight, *Lanni v. Grimes*, 173 Misc. 614, 18 N.Y.S.2d 322, 327. So many days reckoned according to the course of the calendar.

#### Calendar Month

One of the months of the year as enumerated in the calendar. *Daley v. Anderson*, 7 Wyo. 1, 48 P. 840, 75 Am.St.Rep. 870.

#### Calendar Week

A block of seven days registered on calendar beginning with Sunday and ending with Saturday. *Sonoma County v. Sanborn*, 1 Cal.App.2d 26, 36 P.2d 419, 422. Term may consist of any seven days of given month. *Sonoma County v. Sanborn*, 1 Cal.App.2d 26, 36 P.2d 419, 422.

#### Calendar Year

The period from January 1 to December 31, inclusive. *Byrne v. Bearden*, 27 Ga.App. 149, 107 S. E. 782, 783; *Application of Title Guarantee & Trust Co.*, 183 Misc. 490, 48 N.Y.S. 374, 375. Ordinarily calendar year means 365 days except leap year, and is composed of 12 months varying in length. *Shaffner v. Lipinsky*, 194 N.C. 1, 138 S.E. 418, 419; *United States, for Use of Strona v. Bussey*, D.C.Cal., 51 F.Supp. 996, 999.

"Calendar year preceding election" means year beginning January 1 and ending December 31. *People v. Milan*, 89 Colo. 556, 5 P.2d 249, 253.

## CALENDAR

### Calendar of Causes

A list of the causes instituted in the particular court, and now ready for trial, drawn up before beginning of the term. It is sometimes called the "trial list," or "docket."

### Calendar of Prisoners

In English practice. A list kept by the sheriffs containing the names of all the prisoners in their custody, with the several judgments against each in the margin. *Staundef.P.C.* 182; 4 *Bl.Comm.* 403.

### Special Calendar

A calendar or list of causes, containing those set down specially for hearing, trial, or argument.

**CALEND.** Among the Romans the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together. And if *pridie*, the day before, he added to it, then it is the last day of the foregoing month, as *pridie calend.* *Septemb.* is the last day of August. If any number be placed with it, it signifies that day in the former month which comes so much before the month named, as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months. *Jacob.* See *Rives v. Guthrie*, 46 *N.C.* 87.

**CALEND, GREEK.** A metaphorical expression for a time never likely to arrive, inasmuch as the Greeks had no calends.

**CALF.** As used in an exemption statute, should be construed to include an animal sucking a cow that is being milked, even though the animal be a yearling. *Kiggins v. Henne & Meyer Co.*, *Tex. Civ.App.*, 199 *S.W.* 494, 496.

**CALICHE ROCK.** A substance containing calcium carbonate like that found in ordinary limestone. Board of Com'rs of Roosevelt County v. *Good*, 44 *N.M.* 495, 105 *P.2d* 470, 472.

**CALL, n.**

### Contract Language

As used in contract, means demand for payment of, especially by formal notice. *Keyes v. Kimmel*, 9 *N.J.Misc.R.* 604, 155 *A.* 19, 20.

### Conveyancing

A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond. Also the courses and distances designated. *King v. Watkins*, *C.C.Va.*, 98 *Fed.* 922. See, also, *Kentucky Union Co. v. Shepherd*, 192 *Ky.* 447, 234 *S.W.* 10, 13.

## Corporation Law

A demand by directors upon subscribers for shares for payment of a portion or installment; in this sense, it is capable of three meanings: (1) The resolution of the directors to levy the assessment; (2) its notification to the persons liable to pay; (3) the time when it becomes payable. *Railway Co. v. Mitchell*, 4 *Exch.* 543; *Hatch v. Dana*, *Ill.*, 101 *U.S.* 205, 25 *L.Ed.* 885; *Stewart v. Pub. Co.*, 1 *Wash.St.* 521, 20 *P.* 605.

Although the terms "call" and "assessment" are often used synonymously, the latter term applies with peculiar aptness to contributions above the par value of stock or the subscription liability of the stockholders. *Porter v. Northern Fire & Marine Ins. Co.*, 36 *N.D.* 199, 161 *N.W.* 1012, 1014. See *Assessment*.

### Dealings in Futures

Deposit of more margin. *Fenner v. Tucker*, 213 *N.C.* 419, 196 *S.E.* 357, 359.

### Dealings in Securities or Grain

Option or right to demand a certain amount of securities or grain at a fixed price at or within certain time agreed on. *Colston v. Burnet*, 61 *App. D.C.* 192, 59 *F.2d* 867, 868; *Dillon, Read & Co. v. Hoey*, *D.C.N.Y.*, 45 *F.Supp.* 475, 477.

### English Law

The election of students to the degree of barrister at law, hence the ceremony or epoch of election, and the number of persons elected.

### Mutual Act or Benefit Association Certificate

Official declaration that payment is required or demand for payment. *Pasley v. Brady Mut. Life Ass'n*, *Tex.Civ.App.*, 2 *S.W.2d* 278, 279.

**CALL, v.** To summon or demand by name; to demand the presence and participation of a number of persons by calling aloud their names, either in a pre-arranged and systematic order or in a succession determined by chance.

Terms "called" and "sold" as equivalent. *In re Gyllstrom's Will*, 15 *N.Y.S.2d* 801, 808, 172 *Misc.* 655.

### Call of the House

A call of the names of members of a legislative body in pursuance of a resolution requiring attendance of members.

### Calling a Summons

In Scotch practice. See this described in *Bell, Dict.*

### Calling an Election

Commonly construed as including, or as being synonymous with, the giving of notice of the election. *State v. Hall*, 73 *Or.* 231, 144 *P.* 475, 478; *People v. Gough*, 260 *Ill.* 542, 103 *N.E.* 685, 686.

### Calling the Docket

The public calling of the docket or list of causes at commencement of term of court for setting a



time for trial or entering orders of continuance, default, nonsuit, etc. *Blanchard v. Ferdinand*, 132 Mass. 391.

### Calling the Jury

Successively drawing out of a box the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn.

### Calling the Plaintiff

A formal method of causing a nonsuit to be entered. When a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call or demand the plaintiff, and if neither he, nor any person for him appear, he is nonsuited. The phrase "let the plaintiff be called" is to be explained by reference to this practice. See 3 Bla. Comm. 376; 2 C. & P. 403; *Porter v. Perkins*, 5 Mass. 236, 4 Am.Dec. 52.

### Calling to Testify

Under certain statutes, when adversary takes the witness' deposition, *Allen v. Pollard*, 109 Tex. 536, 212 S.W. 468; *Clayton v. Ogden State Bank*, 82 Utah 564, 26 P.2d 545, 548; or when he files interrogatories to the witness stating that his deposition will be taken in answer thereto, *Wyatt v. Chambers*, Tex.Civ.App., 182 S.W. 16, 18.

### Calling to the Bar

In English practice. Conferring the dignity or degree of barrister at law upon a member of one of the inns of court. *Holthouse*. "Calls to the bench and bar are to be made by the most ancient, being a reader, who is present at supper on call night." 1 Black Books of Lincoln's Inn. 339.

### Calling Upon a Prisoner

When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him.

**CALL PATENT.** One whose corners are all stakes, or all but one, or whose lines were not run out and marked at time. *Combs v. Combs*, 238 Ky. 362, 38 S.W.2d 243, 244.

**CALLABLE.** Option to pay before maturity on call. In re Opinions of the Justices, 231 Ala. 152, 164 So. 572, 578.

**CALLABLE BONDS.** Bonds which may be called for payment before their maturity. *Fales v. Multnomah County*, 119 Or. 127, 248 P. 151, 152.

**CALLED UPON TO PAY.** Compelled or required to pay. *Taylor v. Coon*, 79 Wis. 76, 48 N.W. 123, 128.

**CALLERS.** Persons employed by a motor carrier to unload truck or trailer bodies and advise checker of nature of items of freight unloaded. *Cream v. M. Moran Transp. Lines*, D.C.N.Y., 57 F.Supp. 212, 216.

**CALLING.** A business, occupation, or trade. *Gray v. Board of County Com'rs of Sedgwick County*, 101 Kan. 195, 165 P. 867, 868, L.R.A.1918F, 182. One's usual occupation, vocation, or business. *Crook v. Commonwealth*, 147 Va. 593, 136 S.E. 565, 567, 50 A.L.R. 1043. A profession, *Ex parte Galusha*, 184 Cal. 697, 195 P. 406, 407; *C. D. Shamburger Lumber Co. v. Delavan*, Tex.Civ.App., 106 S.W.2d 351, 355, 356.

**CALPES.** In Scotch law. A gift to the head of a clan, as an acknowledgment for protection and maintenance.

### CALUMNIA.

In the civil law calumny, malice, or ill design; a false accusation; a malicious prosecution. *Lanning v. Christy*, 30 Ohio St. 115, 27 Am.Rep. 431.

In the old common law. A claim, demand, challenge to jurors.

**CALUMNIÆ JURAMENTUM.** In the old canon law. An oath similar to the *calumniæ jusjurandum*, (*q. v.*).

**CALUMNIÆ JUSJURANDUM.** The oath of (against) calumny. An oath imposed upon the parties to a suit that they did not sue or defend with the intention of calumniating, (*calumniandi animo*), *i. e.*, with a malicious design, but from a firm belief that they had a good cause. Inst. 4, 16. The object was to prevent vexatious and unnecessary suits. It was especially used in divorce cases, though of little practical utility; *Bish. Marr. & Div. § 353*; 2 *Bish.Marr.Div. & Sep. § 264*. A somewhat similar provision is to be found in the requirement made in some states that the defendant shall file an affidavit of merits.

**CALUMNIATOR.** In the civil law. One who accused another of a crime without cause; one who brought a false accusation. Cod. 9, 46.

**CALUMNY.** Defamation; slander; false accusation of a crime or offense. See Calumnia.

**CALVIN'S CASE.** *Calvin v. Smith*, 7 Rep. 1; 2 S.T. 559, decided in 1608, in which it was held that persons born in Scotland after the accession of James I to the crown of England in 1603 were not aliens but were capable of inheriting land in England. *Wharton*.

**CALVO DOCTRINE.** The doctrine stated by the Argentine jurist, Carlos Calvo, that a government is not bound to indemnify aliens for losses or injuries sustained by them in consequence of domestic disturbances or civil war, where the state is not at fault, and that therefore foreign states are not justified in intervening, by force or otherwise, to secure the settlement of claims of their citizens on account of such losses or injuries. Such intervention, Calvo says, is not in accordance with the practice of European States towards one another, and is contrary to the principle of state sovereignty. 3 *Calvo* §§ 1280, 1297. The Calvo Doctrine is to be distinguished from the Drago Doctrine (*q. v.*).

See 18 Green Bag 377.

## CALYPSO

**CALYPSO SONG.** A song distinguished by a certain form, rhythm, and narrative style, apparently indigenous to the Island of Trinidad. *Baron v. Leo Feist, Inc.*, D.C.N.Y., 78 F.Supp. 686, 687.

**CAMARA.** In Spanish law. A treasury. *Las Partidas*, pt. 6, tit. 3, 1, 2.

The exchequer. White, *New Recop.* b. 3, tit. 8, c. 1.

**CAMBELLANUS, or CAMBELLARIUS.** A chamberlain. Spelman.

**CAMBER.** Ship's camber is convex arc of vessel's deck from side to side. *The Indien*, C.C.A.Cal., 71 F.2d 752, 757.

**CAMBIALE JUS.** The law of exchange.

**CAMBIATOR.** In old English law. An exchanger. *Cambiatores monetæ*, exchangers of money; money-changers.

**CAMBIO.** In Spanish law. Exchange. *Schm. Civil Law*, 148.

**CAMBIPARTIA.** Champerty; from *campus*, a field, and *partus*, divided. Spelman.

**CAMBIPARTICEPS.** A champertor.

**CAMBIST.** In mercantile law. A person skilled in exchanges; one who trades in promissory notes or bills of exchange; a broker.

**CAMBIUM.** In the civil law. Change or exchange. A term applied indifferently to the exchange of land, money, or debts. *Du Cange*.

*Cambium reale* or *manuale* was the term generally used to denote the technical common-law exchange of lands; *cambium locale*, *mercantile*, or *trajectitium*, was used to designate the modern mercantile contract of exchange, whereby a man agrees, in consideration of a sum of money paid him in one place, to pay a like sum in another place. *Poth. de Change*, n. 12; *Story, Bills*, § 2, et seq.

**CAMERA.** In old English law. A chamber, room, or apartment; a judge's chamber; a treasury; a chest or coffer. Also, a stipend payable from vassal to lord; an annuity. See *In Camera*.

**CAMERA REGIS.** In old English law. A chamber of the king; a place of peculiar privileges especially in a commercial point of view. The city of London was so called. *Year Book*, p. 7, Hen. VI, 27; *Burrill, Law Dic.*

**CAMERA SCACCARII.** The old name of the exchequer chamber.

**CAMERA STELLATA.** The star chamber (*q. v.*).

**CAMERALISTICS.** The science of finance or public revenue, comprehending the means of raising and disposing of it.

**CAMERARIUS.** A chamberlain; a keeper of the public money; a treasurer. *Spelman Gloss. Cambellarus*; 1 *Perr. & D.* 243. Also a bailiff or receiver.

**CAMINO.** In Spanish law. A road or highway. *Las Partidas*, pt. 3, tit. 2, l. 6.

**CAMOUFLAGE.** The art of disguising or concealing the nature of objects. *Palmer v. Commonwealth*, 240 Ky. 175, 41 S.W.2d 936, 938.

**CAMP.** The ground or spot on which huts, tents, are erected for shelter; single hut or shelter; to camp; to encamp; to lodge in a camp. *Jones v. State*, 64 Ga.App. 376, 13 S.E.2d 462, 465.

**CAMPAIGN.** All the things and necessary legal and factual acts done by a candidate and his adherents to obtain a majority or plurality of the votes to be cast; running for office, or candidacy for office. *Norris v. United States*, C.C.A.Neb., 86 F.2d 379, 382. Any organized effort to promote a cause or to secure some definite result with any group of persons. *State ex rel. Green v. City of Cleveland*, Ohio App., 33 N.E.2d 35, 36.

**CAMPANA.** In old European law. A bell. Spelman.

**CAMPANA BAJULA.** A small handbell used in the ceremonies of the Romish church; and, among Protestants, by sextons, parish clerks, and criers. *Cowell*.

**CAMPANARIUM, CAMPANILE.** A belfry, bell tower, or steeple; a place where bells are hung. Spelman; *Townsh.Pl.* 191, 213.

**CAMPARTUM.** A part of a larger field or ground, which would otherwise be in gross or in common. See *Champerty*; *Champerty*.

**CAMPBELL'S (LORD) ACTS.** English statutes, for amending the practice in prosecutions for libel, 9 & 10 Vict. c. 93; also 6 & 7 Vict. c. 96, providing for compensation to relatives in the case of a person having been killed through negligence; also 20 & 21 Vict. c. 83, in regard to the sale of obscene books, etc.

**CAMPERS.** A share; a champertor's share; a champertous division or sharing of land.

**CAMPERTUM.** A cornfield; a field of grain. *Blount*; *Cowell*; *Jacob*; *Whishaw*.

**CAMPFIGHT.** In old English law. The fighting of two champions or combatants in the field; the judicial combat, or *duellum*. 3 *Inst.* 221.

**CAMPUM PARTERE.** To divide the land. See *Champerty*.

**CAMPUS.** (Lat. A field.)

In old European law. An assembly of the people anciently held in the open air, in some plain.

In feudal and old English law. A field, or plain. The field, ground, or lists marked out for the combatants in the *duellum*, or trial by battle. *Burrill, Law Dict.*

**CAMPUS MAIL.** The field of May. An anniversary assembly of the Saxons, held on May-day, when they confederated for the defense of the kingdom against all its enemies.

**CAMPUS MARTII.** The field of March. See Champ de Mars.

**CAN.** As a noun, a contraption in which employees are lowered to the floor of a mine. *Eagle-Picher Mining & Smelting Co. v. Coffey*, 186 Okl. 214, 97 P.2d 48, 49.

**CAN.** As a verb, to be enabled by law; to have a right to, *Bailey Realty & Loan Co. v. Bunting*, 31 Ala.App. 450, 19 So.2d 607, 608. To put in a can or cans, to preserve by putting in sealed cans, to tin, *Henry v. Markesan State Bank, C.C.A.Minn.*, 68 F.2d 554, 557; is often interpreted as the equivalent of "may." *The Pantorium v. McLaughlin*, 116 Neb. 61, 215 N.W. 798, 799. See *Cannot*.

**CANA.** A Spanish measure of length varying (in different localities) from about five to seven feet.

**CAÑADA.** Sp. Valley. *Benavides v. State, Tex. Civ.App.*, 214 S.W. 568, 572.

**CANADIAN JUMPER.** A term applied to a nervous person who jumps when another touches him, shouting at the same time, or when anything thrown hits him, or when a loud noise is made. *Goupiel v. Grand Trunk Ry. Co.*, 94 Vt. 337, 111 A. 346, 347.

**CANAL.** An artificial ditch or trench in the earth, for confining water to a defined channel, to be used for purposes of transportation. See *Bishop v. Seeley*, 18 Conn. 394; *Hubbard v. Dunne*, 276 Ill. 598, 115 N.E. 210, 215; *Guinan v. Boston, Cape Cod & New York Canal Co., C.C.A.N.Y.*, 1 F.2d 239.

It includes the banks; it has reference to the excavation or channel as a receptacle for the water; it is an artificial thing. *Kennedy v. Indianapolis*, 103 U.S. 604, 26 L.Ed. 550. As used in statute concerning right of way over public lands for irrigation, it embraces whole project including reservoir. *U. S. v. Big Horn Land & Cattle Co., C.C.A.Colo.*, 17 F.2d 357, 364; *Johnson Irr. Co. v. Ivory*, 46 Wyo. 221, 24 P.2d 1053, 1056.

**CANCEL.** To obliterate; to strike or cross out; to destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it; to revoke or recall. *Ellsworth College v. Carleton*, 178 Iowa 845, 160 N.W. 222, 223; *Reliance Life Ins. Co. v. Thayer*, 84 Okl. 238, 203 P. 190, 192. To annul or destroy, make void or invalid, or set aside. *Irwin v. State Brokerage Co.*, 82 Ind.App. 687, 147 N.E. 531, 532; *In re Crawford's Will*, 80 Misc. 615, 142 N.Y.S. 1032, 1033; *Clegg v. Schvaneveldt*, 79 Utah 195, 8 P.2d 620, 621. To rescind or abandon. *Pearson v. Brown*, 27 Cal.App. 125, 148 P. 956, 958. To repeal, surrender, or waive. *Greib v. Dullea*, 66 Cal.App.2d 986, 153 P.2d 581, 590. To terminate. *Schwartz v. Van Winkle, Sup.*, 47 N.Y.S.2d 264, 265.

The term is sometimes equivalent to "discharge" or "pay." *Auburn City Bank v. Leonard*, 40 Barb., N.Y., 119; *Debes v. Texas Nat. Bank of Beaumont, Tex.Civ.App.*, 92 S.W.2d 476, 479.

Courts of equity frequently cancel instruments which have answered the end for which they were created, or instruments which are void or voidable, in order to prevent them from being vexatiously used against the person apparently bound by them. *Snell, Eq. 498*.

See Cancellation.

**CANCELLARIA.** Chancery; the court of chancery. *Curia cancellaria* is also used in the same sense. See 4 Bl.Comm. 46; *Cowell*.

**CANCELLARII ANGLIÆ DIGNITAS EST, UT SECUNDUS A REGE IN REGNO HABETUR.** The dignity of the chancellor of England is that he is deemed the second from the sovereign in the kingdom. 4 Inst. 78.

**CANCELLARIUS.** A chancellor; a scrivener, or notary. A janitor, or one who stood at the door of the court and was accustomed to carry out the commands of the judges. *Du Cange*.

In early English law, the keeper of the king's seal. In this sense only, the word chancellor seems to have been used in the English law; 3 Bl.Comm. 46. See 15 Harv.L. Rev. 109; 4 Co.Inst. 78; *Dugdale Orig. Jur. fol. 34*; and generally *Selden, Discourses; Inderwick, King's Peace; 3 Steph.Com. 346; 1 Poll. & Maitl. 172; 1 Stubbs, Const. Hist. 381; Campbell, Lives of the Lord Chancellors, vol. 1; Holdsw. Hist. E. L.; Pollock, Expans. of C. L.*

**CANCELLATION.** Abandonment of contract. *State ex rel. Pacific Mut. Life Ins. Co. v. Larson*, 152 Fla. 729, 12 So.2d 896, 897. Act of crossing out a writing, *Plaut v. Shirley*, 200 Ky. 619, 255 S.W. 273, 274; *In re Parsons' Will*, 119 Misc. 26, 195 N.Y.S. 742, 745; *Culp v. First Commercial Sav. Bank of Constantine*, 288 Mich. 646, 286 N.W. 113, 114; act which manifests an intent to annul and puts the instrument in condition where its invalidity appears on its face, *In re Akers' Will*, 74 App.Div. 461, 77 N.Y.Supp. 643; *Baldwin v. Howell*, 45 N.J.Eq. 519, 15 A. 236; *In re Tremain's Will, Surr.*, 7 N.Y.S.2d 781, 790; Annulment or abrogation, *Golden v. Fowler*, 26 Ga. 464, *Winton v. Spring*, 18 Cal. 455, *Sanborn v. Ballonfonte*, 98 Cal.App. 482, 277 P. 152, 155; defacement or mutilation of instrument, *Worcester Bank & Trust Co. v. Ellis*, 292 Mass. 88, 197 N.E. 637, 639. Reduction by insurer of amount of insurance, *Gill v. Fidelity Phenix Fire Ins. Co., D.C.Ky.*, 5 F.Supp. 1, 2; Suspension of insurance policy, *Federal Land Bank of Omaha v. Farmers' Mut. Ins. Ass'n of Adams and Adjoining Counties*, 217 Iowa 1098, 253 N.W. 52. Termination, *Otterbein v. Babor & Comeau Co.*, 272 N.Y. 149, 5 N.E.2d 71, 72, 107 A.L.R. 1510; words of revocation written across instrument, *In re Semler's Will*, 176 Misc. 687, 28 N.Y. S.2d 390, 392, 393.

Cancellation is properly distinguished from obliteration. *Townshend v. Howard*, 86 Me. 285, 29 A. 1077. Spoliation may amount to a cancellation. Cancellation does not revoke unless done with that intention. *In re Woods' Will, Sur.*, 11 N.Y.Supp. 157.

**CANCELLATURA.** In old English law. A canceling. *Bract. 398b*.

**CANCELLI.** The rails or lattice work or balusters inclosing the bar of a court of justice or the communion table. Also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.

## CANDIDATE

**CANDIDATE.** One who seeks or offers himself, or is put forward by others, for an office, privilege, or honor. *Starkweather v. Hoss*, 126 Or. 630, 270 P. 768, 770; *State ex rel. Ranney v. Corey*, Ohio App., 47 N.E.2d 799, 800; it is not necessary that he should have been nominated. *Leonard v. Com.*, 112 Pa. 624, 4 A. 224. A nominee, *State ex rel. Van Schoyck v. Board of Com'rs of Lincoln County*, 46 N.M. 472, 131 P.2d 278, 284. Under a presidential primary law, a person receiving the approval of the required number of petitioners may be deemed a candidate even contrary to his wishes. *McCament v. Olcott*, 80 Or. 246, 156 P. 1034, 1038, L.R.A.1916E, 706.

**CANDLEMAS-DAY.** In English law. A festival appointed by the church to be observed on the second day of February in every year, in honor of the purification of the Virgin Mary, being forty days after her miraculous delivery. At this festival, formerly, the Protestants went, and the Papists now go, in procession with lighted candles; they also consecrate candles on this day for the service of the ensuing year. It is the fourth of the four cross quarter-days of the year. *Whar-ton*.

**CANE.** In Scotch law. The same as *caim* (*q. v.*).

**CANFARA.** In old records. A trial by hot iron, formerly used in England. *Whishaw*.

**CANNOT.** Denotes that one is not able (to do some act). *Southern Pac. Co. v. Frye & Bruhn*, 82 Wash. 9, 143 P. 163, 165. But the term is often equivalent to "shall not." *Bragg v. Hatfield*, 124 Me. 391, 130 A. 233, 234.

## CANON.

### A Dignitary of the English Church

A dignitary of the English church, being a prebendary or member of a cathedral chapter. All members of chapters except deans are now entitled *canons*, in England. 2 Steph.Comm. 11th ed. 687, n.; 1 Bla.Comm. 382.

### A Law, Rule, etc.

A law, rule, or ordinance in general, and of the church in particular. An ecclesiastical law or statute. A rule of doctrine or discipline. The term is generally applied to designate the ordinances of councils and decrees of popes.

### A System or Aggregation of Correlated Rules

A system or aggregation of correlated rules, whether of statutory origin or otherwise, relating to and governing a particular department of legal science or a particular branch of the substantive law.

**Canon law.** A body of ecclesiastical jurisprudence. In England, according to Blackstone, there is a kind of national canon law. 1 Bl. Comm. 82. The canon law is contained in two principal parts,—the decrees or ecclesiastical constitutions made by the popes and cardinals; and

the decretals or canonical epistles written by the pope, or by the pope and cardinals, at the suit of one or more persons. As the decrees set out the origin of the canon law, and the rights, dignities, and decrees of ecclesiastical persons, with their manner of election, ordination, etc., so the decretals contain the law to be used in the ecclesiastical courts. *Jacob*. The canon law forms no part of the law of England, unless it has been brought into use and acted on there; 11 Q.B. 649. See generally *Encycl.Br.*, *sub voce*, Canon Law; *Maitland*, Canon Law; *Jenks' Teutonic Law*; 1 Sel. Essays on Anglo-Amer.Leg.Hist. 46; *Ayliffe*, Par.Jur.Can. Ang.; Preface to *Burn*, *Eccl.Law*, Tyrwhitt ed. 22; *Hale*, Civ.L. 26; *Bell's Case of a Putative Marriage*, 203; *Dict: du Droit Canonique*; *Stair*, Inst. b. 1, t. 1, 7; 1 Poll. & Maitl. 90.

**Canon religiosorum.** In ecclesiastical records. A book wherein the religious of every greater convent had a fair transcript of the rules of their order, frequently read among them as their local statutes. *Kennett*, Gloss.; *Cowell*.

**Canons of construction.** The system of fundamental rules and maxims which are recognized as governing the construction or interpretation of written instruments. In re *Clarke*, 174 App.Div. 736, 161 N.Y.S. 484, 487.

**Canons of descent.** The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir.

**Canons of inheritance.** The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 Bl.Comm. 208.

In Civil, Spanish, and Mexican Law an annual charge or rent; an emphyteutic rent.

In Old English records. A prestation, pension, or customary payment.

**CANONICAL.** Pertaining to, or in conformity to, the canons of the church.

**CANONICAL DISABILITY.** Incurable physical impotency or incapacity for copulation. *D. v. D.*, Del.Super., 2 Terry 263, 20 A.2d 139, 141.

**CANONICAL OBEDIENCE.** That duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop. *Wharton*.

**CANONICUS.** In old English law. A canon. *Fleta*, lib. 2, c. 69, § 2.

**CANONIST.** One versed and skilled in the canon law; a professor of ecclesiastical law.

**CANONRY.** In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. *Holthouse*.

**CANT.** In the civil law. A method of dividing property held in common by two or more joint owners. It may be avoided by the consent of all of those who are interested, in the same man-

ner that any other contract or agreement may be avoided. *Hayes v. Cuny*, 9 Mart.O.S. (La.) 87. See *Licitacion*.

**CANTEL, or CANTLE.** A lump, or that which is added above measure; also a piece of anything, as "cattel of bread," or the like. *Blount*.

**CANTERBURY, ARCHBISHOP OF.** In English ecclesiastical law. The primate of all England; the chief ecclesiastical dignitary in the church. His customary privilege is to crown the kings and queens of England. Has also, by 25 Hen. VIII, c. 21, the power to grant dispensations. *Wharton*.

**CANTRED.** A district comprising a hundred villages; a hundred. A term used in Wales in the same sense as "hundred" is in England. *Cowell*; *Termes de la Ley*.

**CANUM.** In feudal law. A species of duty or tribute payable from tenant to lord, usually consisting of produce of the land.

**CANVASS.** The act of examining and counting the returns of votes cast at a public election. *Bowler v. Eisenhood*, 1 S.Dak. 577, 48 N.W. 136, 12 L.R.A. 705; *In re Stewart*, 24 App.Div. 201, 48 N.Y.S. 957.

**CANVASSER.** Any of certain persons, as officers of a state, county, or district, intrusted with the duty of examining the returns of votes cast at an election. See *Canvass*.

One who, in a given town, city, or county, goes from house to house in an effort to take orders for goods; in this sense, to be distinguished from traveling salesmen. *City of El Dorado Springs v. Highfill*, 268 Mo. 501, 188 S.W. 68.

**CAP.** In mining, a square piece of plank or block wedged between the top of posts or props and the roof of the mine. *Big Branch Coal Co. v. Wrenchie*, 160 Ky. 668, 170 S.W. 14, 16.

**CAP BOARD.** Board about fourteen inches long and about four inches wide which is placed on top of a pillar in mines to prevent pillar from breaking through slate when weight comes against it. *Hall v. Proctor Coal Co.*, 236 Ky. 813, 34 S.W.2d 425, 426.

**CAP OF MAINTENANCE.** One of the regalia or ornaments of state belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England. *Enc.Lond.*

**CAPABLE.** Susceptible; competent; qualified; fitting; possessing legal power or capacity. *United States v. Sischo*, D.C.Wash., 262 F. 1001, 1005. Able, fit or adapted for. *U. S. v. Sischo*, C.C.A. Wash., 270 F. 958, 961; *State v. Wharton*, 132 Kan. 409, 295 P. 656, 658. "Capable of contracting" as meaning legally capable, not mentally capable. *Szweid v. Morris & Co.*, 187 Mo.App. 510, 174 S.W. 146, 148.

**CAPACITY.** A word having many meanings, dependent on its relationship to the subject-matter. *Campbell v. Cornish*, 163 Okl. 213, 22 P.2d 63.

It may mean: ability; actual production of an oil well, *Helis v. Ward*, D.C.La., 20 F.Supp. 514, 517; an intelligent perception and understanding of the dispositions made of property, etc., *In re Null's Estate*, 302 Pa. 64, 153 A. 137, 139. Qualification; size, space, or compass, strength, power or force, *Campbell v. Cornish*, 163 Okl. 213, 22 P.2d 63; sound mind, *Chambers v. Winn*, Tex.Civ.App., 133 S.W.2d 279, 282; the attribute of persons which enables them to perform civil or juristic acts. *Sargent v. Burdett*, 96 Ga. 111, 22 S.E. 667; 2 Com.Dig. 294.

"Capacity to sue" consists in right to come into court, *Braden v. Neal*, 132 Kan. 387, 295 P. 678, 680.

"Public capacity" of municipal property is such capacity as all the people of the state are alike interested in. *Board of Com'rs of Woodward County v. Willett*, 49 Okl. 254, 152 P. 365, 366, L.R.A.1916E, 92.

**CAPAX DOLI.** Lat. Capable of committing crime, or capable of criminal intent. The phrase describes the condition of one who has sufficient intelligence and comprehension to be held criminally responsible for his deeds.

**CAPAX NEGOTII.** Competent to transact affairs; having business capacity.

**CAPE.** In English practice. A judicial writ, now abolished, touching a plea of lands or tenements.

It was divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandant and *cape parvum*, or *petit cape*, after appearance or view granted, summoning the tenant to answer the default only. *Termes de la Ley*; 3 Steph.Comm. 606, note; *Fleta*, l. 6, c. 55, § 40; 2 Wms.Saund. 45 c, d; *Rosc. Real Act*, 165, et seq. It was called a "cape," from the word with which it commenced, and a "grand cape" (or *cape magnum*) to distinguish it from the *petit cape*, which lay after appearance.

**CAPE AD VALENTIAM.** A species of *cape magnum*.

**CAPELLA.** In old records. A box, cabinet, or repository in which were preserved the relics of martyrs. *Spelman*. A small building in which relics were preserved; an oratory or chapel. *Id.*

In old English law. A chapel. *Fleta*, lib. 5, c. 12, § 1; *Spelman*; *Cowell*.

**CAPERS.** Vessels of war owned by private persons, and different from ordinary privateers only in size, being smaller. *Beawes*, *Lex Merc.* 230.

**CAPIAS.** Lat. "That you take." The general name for several species of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody; they are writs of attachment or arrest.

In English practice, the process on an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute. 4 Steph.Comm. 383.

**Capias Ad Audiendum Judicium**

A writ issued, in a case of misdemeanor, after the defendant has appeared and is found guilty, to bring him to hear judgment if he is not present when called. 4 Bl.Comm. 368.

## CAPIAS

### Capias Ad Computandum

In the action of account render, after judgment of *quod computet*, if the defendant refuses to appear personally before the auditors and make his account, a writ by this name may issue to compel him. The writ is now disused. See *Thesaurus Brevium*, 38; *Coke*, Entries, 46, 47, *Rastell*, Entries, 14 b. 15.

### Capias Ad Respondendum

A judicial writ, (usually simply termed a "*capias*," and commonly abbreviated to *ca. resp.*) by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 Bl.Comm. 282; 1 Tidd, Pr. 128. It notifies defendant to defend suit and procures his arrest until security for plaintiff's claim is furnished. *Null v. Staiger*, 333 Pa. 370, 4 A.2d 883, 885.

### Capias Ad Satisfaciendum

A writ of execution, (usually termed, for brevity, a "*ca. sa.*") which commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the damages or debt and damages in certain actions. It deprives the party taken of his liberty until he makes the satisfaction awarded. 3 Bl.Comm. 414, 415; 2 Tidd, Pr. 993, 1025; Litt. § 504; *Co.Litt.* 289a; *Strong v. Einn*, 5 N.J.Law, 803. As a rule it lay in all cases where a *capias ad respondendum* lay. It was a very common form of execution; but its efficiency has been destroyed by statutes.

### Capias Extendi Facias

A writ of execution issuable in England against a debtor to the crown, which commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. *Man.Exch.Pr.* 5.

### Capias in Withernam

A writ, in the nature of a reprisal, which lies for one whose goods or cattle, taken under a distress, are removed from the county, so that they cannot be replevied, commanding the sheriff to seize other goods or cattle of the distrainer of equal value.

### Capias Pro Fine

(That you take for the fine or in mercy.) Formerly, if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but, if the verdict was for the plaintiff, then in all actions *vi et armis*, or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine*; and in all other cases the defendant was adjudged to be amerced. The insertion of the *misericordia* or of the *capiatur* in the judgment is now unnecessary. *Wharton*; 8 *Coke*, 60; 11 *Coke*, 43; *Co.Litt.* 131; 3 Bl.Comm. 398; 5

Mod. 285. A writ in all respects an execution for collection of fine. *Board of Councilmen of City of Frankfort v. Rice*, 249 Ky. 771, 61 S.W.2d 614, 615.

### Capias Utlagatum

(You take the outlaw.) In English practice. A writ which lies against a person who has been *outlawed* in an action, by which the sheriff is commanded to *take* him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. *Reg.Orig.* 138b; 3 Bl.Comm. 284.

**CAPIATUR PRO FINE.** (Let him be taken for the fine.) In English practice. A clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it. *Cro. Jac.* 64. See *Capias pro Fine*.

**CAPITA.** Heads, and, figuratively, entire bodies, whether of persons or animals. *Spelman*.

Persons individually considered, without relation to others, (polls;) as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, *in capita, per capita*, is derived from the civil law. *Inst.* 3, 1, 6.

**CAPITA, PER.** By heads; by the poll; as individuals. In the distribution of an intestate's personalty, the persons legally entitled to take are said to take *per capita*, that is, equal shares, when they claim, each in his own right, as in equal degree of kindred; in contradistinction to claiming by right of representation, or *per stirpes*.

**CAPITAL, n.** The word may have different meanings when used in different connections. *Commissioner of Corporations and Taxation v. Filoon*, 310 Mass. 374, 38 N.E.2d 693, 699, 700, 705.

It may mean: actual property or estate, *People v. Com'rs of Taxes*, 23 N.Y. 192; *State ex rel. Corinne Realty Co. v. Becker*, 320 Mo. 908, 8 S.W.2d 970, 972. Aggregate of property, *Southern Package Corporation v. State Tax Commission*, 195 Miss. 864, 15 So.2d 436; all capital invested plus surplus or undivided profits, *W. A. Gordon & Co. v. Lines*, D.C.La., 25 F.2d 894, 895; amount, or value, of property up to par value of paid up issued shares or stated value of no-par shares, *Randall v. Bailey*, 23 N.Y.S.2d 173, 182; assets, *Pace v. Pace Bros. Co.*, 91 Utah, 149, 63 P.2d 590, 591. Capital stock, *Security State Bank v. Breen*, 277 N.W. 497, 500, 65 S.D. 640; condemnation award, *In re Wacht's Estate*, 32 N.Y.S.2d 871, 903, 904; contributions by partners, *M. & C. Creditors Corporation v. Pratt*, 17 N.Y.S.2d 240, 258, 259, 172 Misc. 695. Dividends earned before creation of trust, *Huble's Guardian Ad Litem v. Wolfe*, 259 Ky. 574, 82 S.W.2d 830, 834, 101 A.L.R. 1359; dividends received by trustee stockholder in liquidation of corporation, *Anderson v. Bean*, 272 Mass. 432, 172 N.E. 647, 651, 72 A.L.R. 959; extraordinary dividends paid on reducing value of stock, *In re Sears' Will*, 26 N.Y.S.2d 912, 915, 176 Misc. 242. *Fund.* Civ.Code, art. 148. *French v. Wolf*, 181 La. 733, 160 So. 396, *Webb v. Armistead*, C.C.Va., 26 F. 70; gain from sale of realty, *United States v. National City Bank of New York*, D.C.N.Y., 21 F.Supp. 791, 794; means contributed by share owners, *Parkinson v. State Bank of Millard County*, 84 Utah, 278, 35 P.2d 814, 820, 94 A.L.R. 1112; money invested at interest; money required of partners by agreement, *M. & C. Creditors Corporation v. Pratt*, 17 N.Y.S.2d 240, 258, 259, 172 Misc. 695; money which one adventures in an undertaking; paid-up issued shares of stock, *Newfield v. Stieglitz*, D.C.N.Y., 47

F.Supp. 885, 886; place where legislative department holds its sessions and where chief offices of the executive are located; political and governmental metropolis; preferred stock received as dividend, *Burns v. Hines*, 298 Ill.App. 563, 19 N.E.2d 382, 392; principal sum of a fund of money; proceeds of sale or exchange of capital of trust property, *In re Clarke's Will*, 204 Minn. 574, 284 N.W. 876, 879; property, *Putnam v. U. S.*, C.C.A.Mass., 149 F.2d 721, 726; repayment of a debt, *Philadelphia Nat. Bank v. Rothensies*, D.C.Pa., 43 F.Supp. 923, 925; seat of government; stock dividends, *Gray v. Hemenway*, 268 Mass. 515, 163 N.E. 102, 103; subscribed, paid-up capital, *Child v. Ogden State Bank*, 81 Utah, 464, 20 P.2d 599, 607, 88 A.L.R. 1284; sum formed when profits apportioned to building and loan association shares coalesce with dues paid, *In re Sixth Ward Building & Loan Ass'n of Newark*, 134 N.J.Eq. 98, 34 A.2d 292, 295; sum total of corporate stock, *Haggard v. Lexington Utilities Co.*, 260 Ky. 261, 84 S.W.2d 84, 87; surplus used as capital, *Feeders' Supply Co. v. Commissioner of Internal Revenue*, C.C.A.8, 31 F.2d 274, 276; unamortized debt discount and expense, *State Tax Commission v. Mississippi Power & Light Co.*, 194 Miss. 260, 11 So.2d 828, 829.

In political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production.

The term does not embrace temporary loans. *Bailey v. Clark*, 21 Wall. 286, 22 L.Ed. 651. But see *Bridgewater Mfg. Co. v. Funkhouser*, 115 Va. 476, 79 S.E. 1074, 1075.

Income is the fruit of capital; capital is the source of income. *Carter v. Rector*, 88 Okl. 12, 210 P. 1035, 1037.

As to what is moneyed capital in a federal act respecting state taxation of national bank stock, see *First Nat. Bank v. Chapman*, 173 U.S. 214, 19 S.Ct. 407, 43 L.Ed. 669.

**CAPITAL**, *adj.* Affecting or relating to the head or life of a person; entailing the ultimate penalty. Principal; leading; chief; as "capital Burgess." 10 Mod. 100.

#### Capital Assets

All capital invested plus surplus or undivided profits. *Williams v. McGowan*, D.C.N.Y., 58 F. Supp. 692, 694, 695; Assets of a permanent or fixed nature or employed in carrying on business or trade. *Rathborne v. Collector of Revenue*, 196 La. 795, 200 So. 149, 153, 154; goodwill, *Williams v. McGowan*, D.C.N.Y., 58 F.Supp. 692, 694, 695, Commissioner of Internal Revenue v. Shapiro, C.C.A.6, 125 F.2d 532, 535, 536; property acquired and held for profit or investment for more than two years. *Sommers v. Commissioner of Internal Revenue*, C.C.A.10, 63 F.2d 551, 553; title to property held for profit. *Jones' Estate v. Commissioner of Internal Revenue*, C.C.A.Tex., 127 F.2d 231, 232.

#### Capital Case or Crime

One in or for which death penalty may, but need not necessarily, be inflicted, *Lee v. State*, 31 Ala.App. 91, 13 So.2d 583, 587.

#### Capital Expenditure

Cost of construction made with expectation of existence for an indefinite period, *E. W. Edwards & Son v. Clarke*, D.C.N.Y., 29 F.Supp. 671, 672, 673; expenditure in nature of an investment for the future, *Marin Union Junior College Dist. v. Gwinn*, 106 Cal.App. 12, 288 P. 799, 800.

#### Capital Gains

Additions to principal, *Holcombe v. Ginn*, 296 Mass. 415, 6 N.E.2d 351, 108 A.L.R. 1134; gains

from sale of capital assets in excess of appraisal values or costs, *In re Talbot's Will*, 170 Misc. 138, 9 N.Y.S.2d 806, 810.

#### Capital Impairment

Reduction of assets of corporation below aggregate of outstanding shares of capital stock. *Ashman v. Miller*, C.C.A.Mich., 101 F.2d 85, 90.

#### Capital Increase

An increase not attributable to earnings. *In re Lueders' Estate*, 337 Pa. 155, 10 A.2d 415, 417.

#### Capital Investment

Acquisition price of a "capital asset", *Commissioner of Internal Revenue v. Rowan Drilling Co.*, C.C.A.Tex., 130 F.2d 62, 64, 65; capital stock, surplus and undivided profits, *O'Connor v. Bankers Trust Co.*, 159 Misc. 920, 289 N.Y.S. 252, 276; money spent to increase an asset. *Peerless Stages v. Commissioner of Internal Revenue*, C.C.A.9, 125 F.2d 869, 871.

#### Capital Outlay

Money expended in acquiring, equipping, and promoting an enterprise. *Rideout v. Eich*, 105 Cal.App. 597, 288 P. 450, 454.

#### Capital Punishment

Punishment of death. *Ex parte Herndon*, 18 Okl.Cr. 68, 192 P. 820, 19 A.L.R. 804, *State v. Johnston*, 83 Wash. 1, 144 P. 944, 945.

#### Capital Recovery

Collection of charged-off bad debt where reserve account system is used. *National Bank of Tulsa v. Oklahoma Tax Commission*, Okl., 145 P.2d 768, 771, 772.

#### Capital Stock

The term has various meanings.

It may mean: amount fixed by charter to be subscribed and paid in or secured to be paid in by shareholders. *State ex rel. Corinne Realty Co. v. Becker*, 320 Mo. 908, 8 S.W.2d 970, 971. Amount of stock that corporation may issue. *Schwemer v. Fry*, 212 Wis. 88, 249 N.W. 62, 90 A.L.R. 308; amount subscribed, contributed or secured to be paid in. *Haggard v. Lexington Utilities Co.*, 260 Ky. 261, 84 S.W. 2d 84, 87; *Person v. Board of State Tax Com'rs*, 184 N.C. 499, 115 S.E. 336, 346; capital, *Central Illinois Public Service Co. v. Swartz*, 284 Ill. 108, 119 N.E. 990, 992; *Louisville & N. R. Co. v. Bosworth*, D.C.Ky., 209 F. 380, 411, corporate assets or property, *Bates v. Daley's Inc.*, 5 Cal. App.2d 95, 42 P.2d 706, 709; evidence of rights in property. *Southern Package Corporation v. State Tax Commission*, 195 Miss. 864, 15 So.2d 436; fund employed in carrying on business or enterprise, *Chicago, M., St. P. & P. R. Co. v. Harmon*, 89 Mont. 1, 295 P. 762, 769; liability of the corporation to its shareholders, after creditors' claims have been liquidated, *Department of Treasury of Indiana v. Crowder*, 214 Ind. 252, 15 N.E.2d 89, 91; valuation of the corporation as a business enterprise, *Commonwealth v. Columbia Gas & Electric Corporation*, 336 Pa. 209, 8 A.2d 404, 410.

#### Capital Stock Tax

Tax on privilege of doing business, *Wisconsin Cent. Ry. Co. v. U. S.*, Ct.Cl., 41 F.2d 870, 885.

## CAPITAL

### Capital Surplus

Property paid into corporation by shareholders in excess of capital stock liability. *Commissioner of Corporations and Taxation v. Filoon*, 310 Mass. 374, 38 N.E.2d 693, 699, 700.

**CAPITALE.** A thing which is stolen, or the value of it. Blount.

**CAPITALE VIVENS.** Live cattle. Blount.

**CAPITALIS.** In old English law. Chief; principal; at the *head*. A term applied to persons, places, judicial proceedings, and some kinds of property.

**CAPITALIS BARO.** In old English law. Chief baron. *Capitalis baro scaccarii domini regis*, chief baron of the exchequer. Townsh.Pl. 211.

**CAPITALIS CUSTOS.** Chief warden or magistrate; mayor. Fleta, lib. 2, c. 64, § 2.

**CAPITALIS DEBITOR.** The chief or principal debtor, as distinguished from a surety, (*plegius*.)

**CAPITALIS DOMINUS.** Chief lord. Fleta, lib. 1, c. 12, § 4; Id. c. 28, § 5.

**CAPITALIS JUSTICIARIUS.** The chief justice; the principal minister of state, and guardian of the realm in the king's absence.

This office originated under William the Conqueror; but its power was greatly diminished by *Magna Charta*, and finally distributed among several courts by Edward I. Spelman; 3 Bl.Comm. 38.

**CAPITALIS JUSTICIARIUS AD PLACITA CORAM REGE TENENDA.** Chief justice for holding pleas before the king. The title of the chief justice of the king's bench, first assumed in the latter part of the reign of Henry III. 2 Reeve, Eng. Law, 91, 285.

**CAPITALIS JUSTICIARIUS BANCI.** Chief justice of the bench. The title of the chief justice of the (now) court of common pleas, first mentioned in the first year of Edward I. 2 Reeve, Eng. Law, 48.

**CAPITALIS JUSTICIARIUS TOTIUS ANGLIÆ.** Chief justice of all England. The title of the presiding justice in the court of *aula regis*. 3 Bl.Comm. 38; 1 Reeve, Eng. Law, 48.

**CAPITALIS PLEGIUS.** A chief pledge; a head borough. Townsh.Pl. 35.

**CAPITALIS REDITUS.** A chief rent.

**CAPITALIS TERRA.** A head-land. A piece of land lying at the head of other land.

**CAPITALIST.** One exclusively dependent on accumulated property, whether denoting a person of large wealth or one having an income from investments. *Elliott v. Frankfort Marine, Accident & Plate Glass Ins. Co. of Frankfort-on-the-Main, Germany*, 172 Cal. 261, 156 P. 481, 483, L.R.A. 1916F, 1026. The word has no legal meaning. In re *Green's Estate*, 109 Misc. 112, 178 N.Y.S. 353, 361.

**CAPITALIZATION METHOD.** A method of measuring values of realty for purpose of determining values of mortgages by expertly estimating the gross income which property should throw off, and separately the expenses reasonably required to carry it, and thus arriving at a fair estimate of net income and using a capitalization figure or factor, expertly chosen. Depreciation must be taken into consideration in use of such method. In re *New York Title & Mortgage Co.* (Series B-K), 21 N.Y.S.2d 575, 594, 595.

**CAPITALIZE.** In one sense, to convert a periodical payment into a sum in hand. *Brown v. Erie R. Co.*, 87 N.J.Law, 487, 91 A. 1023, 1026, Ann.Cas. 1917C, 496.

**CAPITANEUS.** A tenant *in capite*. He who held his land or title directly from the king himself. A captain; a naval commander. This latter use began A. D. 1264. Spelman, Gloss. *Capitaneus, Admiralius*. A commander or ruler over others, either in civil, military, or ecclesiastical matters.

**CAPITARE.** In old law and surveys. To head, front, or abut; to touch at the head, or end.

**CAPITATIM.** Lat. By the head; by the poll; severally to each individual.

**CAPITATION TAX.** A poll tax. A tax or imposition upon the person. *Leedy v. Bourbon*, 12 Ind. App. 486, 40 N.E. 640; *Hattiesburg Grocery Co. v. Robertson*, 126 Miss. 34, 88 So. 4, 5, 25 A.L.R. 748. It is a very ancient kind of tribute, and answers to what the Latins called "*tributum*," by which taxes on persons are distinguished from taxes on merchandise, called "*vectigalia*." Wharton.

**CAPITE.** Lat. By the head.

Tenure *in capite* was an ancient feudal tenure, whereby a man held lands of the king immediately. It was of two sorts,—the one, principal and general, or of the king as the source of all tenure; the other, special and subaltern, or of a particular subject. It is now abolished. Jacob. As to distribution *per capita*, see *Capita*, *per*.

**CAPITE MINUTUS.** In the civil law. One who had suffered *capitis diminutio*, one who lost status or legal attributes. See Dig. 4, 5.

**CAPITIS DIMINUTIO.** In Roman law. A diminishing or abridgment of personality; a loss or curtailment of a man's status or aggregate of legal attributes and qualifications.

**CAPITIS DIMINUTIO MAXIMA.** The highest or most comprehensive loss of status. This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.

**CAPITIS DIMINUTIO MEDIA.** A lesser or medium loss of status. This occurred where a man lost his rights of citizenship, but without losing his liberty. It carried away also the family rights.

**CAPITIS DIMINUTIO MINIMA.** The lowest or least comprehensive degree of loss of status. This



occurred where a man's family relations alone were changed. It happened upon the arrogation of a person who had been his own master, (*sui juris*,) or upon the emancipation of one who had been under the *patria potestas*. It left the rights of liberty and citizenship unaltered. See Inst. 1, 16, pr.; 1, 2, 3; Dig. 4, 5, 11; Mackeld.Rom.Law, § 144.

**CAPITITIUM.** A covering for the head, mentioned in St. 1 Hen. IV. and other old statutes, which prescribe what dresses shall be worn by all degrees of persons. Jacob.

**CAPITULA.** Collections of laws and ordinances drawn up under heads of divisions. Spelman. The term is used in the civil and old English law, and applies to the ecclesiastical law also, meaning chapters or assemblies of ecclesiastical persons. Du Cange. The *Royal and Imperial Capitula* were the edicts of the Frankish Kings and Emperors.

**CAPITULA CORONÆ.** Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris (infra)* but of a more minute character.

**CAPITULA DE JUDÆIS.** A register of mortgages made to the Jews. 2 Bl.Comm. 343; Crabb, Eng.Law, 130, et seq.

**CAPITULA ITINERIS.** Articles of inquiry which were anciently delivered to the justices in eyre when they set out on their circuits. These schedules were designed to include all possible varieties of crime. 2 Reeve, Eng.Law, p. 4, c. 8.

**CAPITULA RURALIA.** Assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter. Cowell.

**CAPITULARY.** In French law. A collection and code of the laws and ordinances promulgated by the kings of the Merovingian and Carolingian dynasties.

Any orderly and systematic collection or code of laws.

In ecclesiastical law. A collection of laws and ordinances orderly arranged by divisions. A book containing the beginning and end of each Gospel which is to be read every day in the ceremony of saying mass. Du Cange.

**CAPITULATION.** In military law. The surrender of a fort, fortified town, or army in the field to a besieging or opposing army; the treaty or agreement between the commanding officers which embodies the terms and conditions on which the surrender is made.

In international law. *Capitulations* is the name used for treaty engagements between the Turkish government and the principal states of Europe by which subjects of the latter, residents in the territory of the former, were exempt from the laws

of the places where they dwelt. 1 Kinglake, Invasion of Crimea 116.

"The 'usages of the Franks' begin in what are known in international law as 'the capitulations,' granting rights of extritoriality to Christians residing or traveling in Mohammedan countries. \* \* \* By these \* \* \* capitulations a usage was established that Franks [a generic name for all participants in such privileges], being in Turkey, whether domiciled or temporarily, should be under the jurisdiction, civil and criminal, of their respective ministers and consuls." *Dainese v. United States*, 15 Ct.Cl. 64.

In the civil law. An agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered. Wolffius, § 989.

**CAPITULI AGRI.** Head-fields; lands lying at the head or upper end of furrows, etc.

**CAPITULUM.** Lat. A leading division of a book or writing; a chapter; a section. Tert.Adv.Jud. 9, 19. Abbreviated, Cap.

**CAPITULUM EST CLERICORUM CONGREGATIO SUB UNO DECANO IN ECCLESIA CATHEDRALI.** A chapter is a congregation of clergy under one dean in a cathedral church. Co.Litt. 98.

**CAPPA.** In old records. A cap. *Cappa honoris*, the cap of honor. One of the solemnities or ceremonies of creating an earl or marquis.

**CAPPER.** A decoy or lure for purpose of swindling. *Barron v. Board of Dental Examiners of California*, 109 Cal.App. 382, 293 P. 144, 145.

**CAPRICIOUS DISBELIEF.** A willful, deliberate disbelief of an apparently trustworthy witness. *Popilock v. Piernikoski*, 161 Pa.Super. 587, 56 A. 2d 326, 328.

**CAPTAIN.** A head-man; commander; commanding officer.

The captain of a war-vessel is the officer first in command. In the United States navy, the rank of "captain" is intermediate between that of "commander" and "commodore." The governor or controlling officer of a vessel in the merchant service is usually styled "captain" by the inferior officers and seamen, but in maritime business and admiralty law is perhaps more commonly designated as "master." In foreign jurisprudence his title is often that of "patron." In the United States army (and the militia) the captain is the commander of a company of soldiers, one of the divisions of a regiment. The term is also used to designate the commander of a squad of municipal police.

The "captain of the watch" on a vessel is a kind of foreman or overseer and is an officer within statutes regulating conduct of officers to seamen. *U. S. v. Trice*, D.C.Tenn., 30 Fed. 491.

**CAPTATION.** In French law. The act of one who succeeds in controlling the will of another, so as to become master of it; used in an invidious sense. Succession of Schlumbrecht, 138 La. 173, 70 So. 76, 79.

It was formerly applied to the first stage of the hypnotic or mesmeric trance.

**CAPTATOR.** A person who obtains a gift or legacy through artifice. See *Captation*.

## CAPTIO

**CAPTIO.** In old English law and practice. A taking or seizure; arrest; receiving; holding of court.

**CAPTION.** In Practice. That part of a legal instrument, as a commission, indictment, etc., which shows where, when, and by what authority it is taken, found, or executed. U. S. v. Beebe, 2 Dak. 292, 11 N.W. 505.

When used with reference to an indictment, caption signifies the style or preamble or commencement of the indictment; when used with reference to a commission, it signifies the certificate to which the commissioners' names are subscribed, declaring when and where it was executed. Brown. The caption is not a part of the indictment. Brown v. Hudspeth, C.C.A.Kan., 103 F.2d 958, 959, but is the formal history of its finding, and is to be distinguished from the introductory portion. Harrington v. U. S., C.C.A. Iowa, 267 F. 97, 100. Caption of indictment is entry of record showing when and where court is held, who presided, venire and indorsements, and who were summoned and sworn as grand jurors. Williams v. State, 20 Ala.App. 26, 100 So. 573, 574.

The caption of a pleading, deposition, or other paper connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case on the docket or calendar, etc. Quoted with approval in St. Louis Lightening Rod Co. v. Johnson, 18 Ga.App. 190, 89 S.E. 169, 170. The terms "title" and "caption" are synonymous. Id. The caption of depositions should state the title of the cause, the names of the parties, and at whose instance the depositions are taken: Knight v. Nichols, 34 Me. 208. See Waskern v. Diamond, 1 Hemp. 701, Fed.Cas.No.17,248. Generally, the title or caption is not part of the pleading, unless expressly made so by reference in the body thereof. Jackson v. Ashton, 8 Pet. 148, 8 L.Ed. 898.

Also signifies a taking, seizure, or arrest of a person. 2 Salk. 498. The word in this sense is now obsolete in English law.

In Scotch law. Caption is an order to incarcerate a debtor who has disobeyed an order, given to him by what are called "letters of horning," to pay a debt or to perform some act enjoined thereby. Bell.

**CAPTIVES.** Prisoners of war. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid. 2 Bl.Comm. 402.

**CAPTOR.** In international law. One who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. 2 Bl.Comm. 401; 1 Kent, Comm. 86, 96, 103. Consult Oakes v. U. S., 174 U.S. 778, 19 S.Ct. 864, 43 L.Ed. 1169. The term also designates a belligerent who has captured the person of an enemy.

**CAPTURE.** In international law. The taking or wresting of property from one of two belligerents by the other. Also a taking of property by a belligerent from an offending neutral.

In some cases, this is a mode of acquiring property. Thus every one may, as a general rule, on his own land, or on the sea, capture any wild animal, and acquire a qualified ownership in it by confining it, or absolute ownership by killing it. 2 Steph.Comm. 79.

Capture, in technical language, is a taking by military power; a seizure is a taking by civil authority. U. S. v. Athens Armory, 35 Ga. 344, Fed.Cas.No.14,473.

The sequestering of alien enemy property under vesting orders by the alien property custodian is in the nature of a "capture". Crowley v. Allen, D.C.Cal., 52 F.Supp. 850, 852.

**CAPUT.** A head; the head of a person; the whole person; the life of a person; one's personality; *status*; civil condition.

At common law. A head. *Caput comitatis*, the head of the county; the sheriff; the king. Spelman. A person; a life. The upper part of a town. Cowell. A castle. Spelman.

*Capitis æstimatio.* In Saxon law. The estimation or value of the head, that is, the price or value of a man's life.

*Caput anni.* The first day (or beginning) of the year.

*Caput baroniæ.* The castle or chief seat of a baron.

*Caput jejunii.* The beginning of the Lent fast, *i. e.*, Ash Wednesday.

*Caput loci.* The head or upper part of a place.

*Caput lupinum.* In old English law. A wolf's head. An outlawed felon was said to be *caput lupinum*, and might be knocked on the head like a wolf. 4 Bla.Comm. 320, 284.

*Caput mortuum.* A dead head; dead; obsolete.

*Caput portus.* In old English law. The head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it. Hale de Jure Mar. pt. 2, (*de portibus maris*,) c. 2.

*Caput, principium, et finis.* The head, beginning, and end. A term applied in English law to the king, as head of parliament. 4 Inst. 3; 1 Bl. Comm. 188.

In civil law. It signified a person's civil condition or *status*, and among the Romans consisted of three component parts or elements,—*libertas*, liberty; *civitas*, citizenship; and *familia*, family.

**CAPUTAGIUM.** In old English law. Head or poll money, or the payment of it. Cowell; Blount; Spelman, Gloss.

**CAPUTIUM.** In old English law. A head of land; a headland. Cowell.

**CAR.** A vehicle primarily intended for transportation of persons or freight, Hall v. Federal Life Ins. Co., Mo.App., 71 S.W.2d 762, 764; a vehicle moved on wheels, Burrus v. Continental Life Ins. Co., 225 Mo.App. 1129, 40 S.W.2d 493, 494.

The term may include a vehicle adapted to running on the rails of a railroad. State v. Tardiff, 111 Me. 552, 90 A. 424, 425, L.R.A.1915A, 817; a hand car, Boyd v. Missouri Pac. Ry. Co., 249 Mo. 110, 155 S.W. 13, 17, Ann.Cas.1914D, 37; a locomotive, U. S. v. Philadelphia & R. Ry. Co., D.C. Pa., 223 F. 215, 216; a tender and locomotive, Pennell v. Philadelphia & Reading Railway Co., 231 U.S. 675, 34 S.Ct. 220, 58 L.Ed. 430; an automobile. Monroe's Adm'r v. Federal Union Life Ins. Co., 251 Ky. 570, 65 S.W.2d 680, 681.

### Car Load

The quantity usually contained in an ordinary car used for transporting the particular commodi-

ty involved. *Ward v. Cotton Seed Products Co.*, 193 Ala. 101, 69 So. 514, 515.

#### General Service Cars

Cars serviceable as flat or gondola cars and also as dump cars. *National Dump Car Co. v. Pullman Co.*, C.C.A.Ill., 228 F. 122, 124.

#### CAR TRUST CERTIFICATES, OR SECURITIES.

A class of investment securities based upon the conditional sale or hire of railroad cars or locomotives with a reservation of title or lien in the vendor or bailor until the property is paid for. See *Fidelity Trust Co. v. Lederer*, D.C.Pa., 276 F. 51; *Commonwealth v. Philadelphia Rapid Transit Co.*, 287 Pa. 190, 134 A. 455.

**CARABUS.** In old English law. A kind of raft or boat. Spelman.

**CARAT.** A measure of weight for diamonds and other precious stones, equivalent to three and one-sixth grains Troy, though divided by jewelers into four parts called "diamond grains." Also a standard of fineness of gold, twenty-four carats being conventionally taken as expressing absolute purity, and the proportion of gold to alloy in a mixture being represented as so many carats.

**CARBON COPY.** A copy, as of a letter, produced by placing a sheet of carbon paper between two sheets of letter paper, so that the same impression produces both the letter and the carbon copy. *Engles v. Blocker*, 127 Ark. 385, 192 S.W. 193, 195. See, also, *Copy*.

**CARBONIC ACID.** See *Choke damp*.

**CARCAN.** In French law. An instrument of punishment, somewhat resembling a pillory. It sometimes signifies the punishment itself. *Biret*, *Vocab*.

**CARCANUM.** A gaol; a prison.

**CARCARE.** In old English law. To load; to load a vessel; to freight.

**CARCATUS.** Loaded; freighted, as a ship.

**CARCEL-AGE.** Gaol-dues; prison-fees.

**CARCER.** A prison or gaol. Strictly, a place of detention and safe-keeping, and not of punishment. *Co.Litt.* 620.

**CARCER AD HOMINES CUSTODIENDOS, NON AD PUNIENDOS, DARI DEBET.** A prison should be used for keeping persons, not for punishing them. *Co.Litt.* 260a. See *Dig.* 48. 19. 8. 9.

**CARCER NON SUPPLICII CAUSÀ SED CUSTODIÆ CONSTITUTUS.** A prison is ordained not for the sake of punishment, but of detention and guarding. *Lofft*, 119.

**CARDINAL.** In ecclesiastical law. A dignitary of the court of Rome, next in rank to the pope. There are cardinal bishops, cardinal priests, and cardinal deacons. See *Fleury, Hist. Ecclés.* liv. xxxv. n. 17, li. n. 19; *Thomassin*, part. ii. liv. i.

c. 53, part. iv. liv. i. cc. 79, 80; *Loiseau, Traité des Ordres*, c. 3, n. 31; *André Droit Canon*.

**CARDS.** In criminal law. Small papers or pasteboards of an oblong or rectangular shape, on which are printed figures or points, used in playing certain games. See *State v. Lewis*, 12 Wis. 434.

**CARE.** Attention, *Seaman v. State*, 106 Ohio St. 177, 140 N.E. 108, 111, *Lustenberger v. Boston Casualty Co.*, Mass., 14 N.E.2d 148, 151, 115 A.L.R. 1055; charge, *Emery v. Wheeler*, 152 A. 624, 626, 129 Me. 428, *Lustenberger v. Boston Casualty Co.*, Mass., 14 N.E.2d 148, 151, 115 A.L.R. 1055; custody, *Madison v. State*, 163 Tenn. 198, 42 S.W.2d 209, *Fox West Coast Theatres v. Union Indemnity Co.*, 167 Wash. 319, 9 P.2d 78, 81; diligence; discretion; heed, caution, concern, *Northern Indiana Power Co. v. West*, 218 Ind. 321, 32 N.E.2d 713, 720; inclination, wish or disposition, *Stella v. Downyflake Restaurant*, 126 Conn. 441, 11 A.2d 848, 849; maintenance, *Stafford v. Stovall*, 109 Okl. 234, 235 P. 238, 239; management, *Seaman v. State*, 106 Ohio St. 177, 140 N.E. 108, 111; opposite of negligence or carelessness, *Raymond v. Portland R. Co.*, 100 Me. 529, 62 A. 602, 605, 3 L.R.A., N.S., 94; oversight, *Emery v. Wheeler*, 129 Me. 428, 152 A. 624, 626, *Madison v. State*, 163 Tenn. 198, 42 S.W.2d 209; prudence, *Quanah, A. & P. Ry. Co. v. Eblen*, *Tex.Civ.App.*, 55 S.W.2d 1060, 1063; regard, *Lustenberger v. Boston Casualty Co.*, Mass., 14 N.E.2d 148, 151, 115 A.L.R. 1055, *Arnold v. United States*, C.C.A.Colo., 94 F.2d 499, 505; safekeeping, preservation, security, *Fox West Coast Theatres v. Union Indemnity Co.*, 167 Wash. 319, 9 P.2d 78, 81; to cause to have care; to trouble; to care for; to regard. *Arnold v. United States*, C.C.A.Colo., 94 F.2d 499, 505; vigilance; watchfulness.

There are three degrees of care which are frequently recognized, corresponding (inversely) to the three degrees of negligence, viz.: slight care, ordinary care, and great care.

Slight care is such as persons of ordinary prudence usually exercise about their own affairs of slight importance. 25 Okl.St. Ann. § 4. Or it is that degree of care which a person exercises about his own concerns, though he may be a person of less than common prudence or of careless and inattentive disposition. *Litchfield v. White*, 7 N.Y. 442, 57 Am. Dec. 534; *Bank v. Guilmartin*, 93 Ga. 503, 21 S.E. 55, 44 Am. St. Rep. 182.

Ordinary care is that degree of care which persons of ordinary care and prudence are accustomed to use and employ, under the same or similar circumstances. *Gunn v. Railroad Co.*, 36 W. Va. 165, 14 S.E. 465, 32 Am. St. Rep. 842; *Railroad Co. v. Howard*, 79 Ga. 44, 3 S.E. 426; *Liston v. Reynolds*, 69 Mont. 480, 223 P. 507, 509; *Pauls Valley Compress & Storage Co. v. Harris*, 62 Okl. 103, 162 P. 216, 218. Or it is that degree of care which may reasonably be expected from a person in the party's situation, that is, reasonable care. *Neal v. Gillett*, 1855, 23 Conn. 443.

Reasonable care is such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter, and the circumstances surrounding the transaction. See *Johnson v. Hudson River R. Co.*, 6 Duer, N.Y., 646; *Appel v. Eaton & Price Co.*, 97 Mo. App. 428, 71 S.W. 741; *Illinois Cent. R. Co. v. Noble*, 142 Ill. 578, 32 N.E. 684. It is such care as an ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act. *Midland Valley R. Co. v. Bell*, C.C.A.Okl., 242 F. 803, 808; *Loverage v. Carmichael*, 164 Minn. 76, 204 N.W. 921, 922. Substantially synonymous with ordinary or due care. *Kucera v. Grigsby*, 24 Ohio

## CARE

App. 457, 156 N.E. 249, 250; Wiley v. Rutland R. Co., 86 Vt. 504, 86 A. 808, 811.

Great care is such as persons of ordinary prudence usually exercise about affairs of their own which are of great importance; or it is that degree of care usually bestowed upon the matter in hand by the most competent, prudent, and careful persons having to do with the particular subject. Railway Co. v. Smith, 87 Tex. 348, 28 S.W. 520; Telegraph Co. v. Cook, Cal., 61 F. 628, 9 C.C.A. 680.

A high degree of care is not the legal equivalent of reasonable care. Gallatty v. Central R. of New Jersey, 86 N.J.Law, 416, 92 A. 279, 280. It is that degree of care which a very cautious, careful, and prudent person would exercise under the same or similar circumstances. Bryning v. Missouri, K. & T. Ry. Co. of Texas, Tex.Civ.App., 167 S.W. 826, 827; a degree of care commensurate with the risk of danger. New Jersey Fidelity & Plate Glass Ins. Co. v. Lehigh Valley R. Co., 92 N.J.Law, 467, 105 A. 206, 207.

Highest degree of care and utmost degree of care have substantially the same meaning. Brogan v. Union Traction Co., 76 W.Va. 698, 86 S.E. 753, 756. "Highest degree of care" only requires the care and skill exacted of persons engaged in the same or similar business. Birmingham Ry., Light & Power Co. v. Cockrell, 10 Ala.App. 578, 65 So. 704. It means the highest degree required by law where human safety is at stake, and the highest degree known to the usage and practice of very careful, skillful, and diligent persons engaged in the same business by similar means or agencies. Birmingham Ry., Light & Power Co. v. Barrett, 179 Ala. 274, 60 So. 262, 264.

This division into three degrees of care, however, does not command universal assent. Raymond v. Portland R. Co., 100 Me. 529, 62 A. 602, 605, 3 L.R.A., N.S., 94; Pomroy v. Bangor & Aroostook R. Co., 102 Me. 497, 67 A. 561, 562.

**CARELESS.** Synonymous with "negligent," the latter being probably the better word in pleadings. Delmore v. Kansas City Hardwood Flooring Co., 90 Kan. 29, 133 P. 151, 47 L.R.A., N.S., 1220. Absence of ordinary or proper care, Pelfrey v. Commonwealth, 247 Ky. 484, 57 S.W.2d 474. Reckless, Stout v. Gallemore, 138 Kan. 385, 26 P.2d 573, 577.

**CARELESSLY.** Without care. Seago v. Paul Jones Realty Co., 185 Mo.App. 292, 170 S.W. 372, 373. Negligently; denoting the absence of ordinary care. Jones v. Commonwealth, 213 Ky. 356, 281 S.W. 164, 167.

**CARENA.** A term used in the old ecclesiastical law to denote a period of forty days.

**CARENCE.** In French law. Lack of assets; insolvency.

A *procès-verbal de carence* is a document setting out that the *huissier* attended to issue execution upon a judgment, but found nothing upon which to levy. Arg.Fr. Merc.Law, 547.

**CARETA** (spelled, also, *Carreta* and *Carecta*). A cart; a cart-load.

**CARETORIUS, or CARECTARIUS.** A carter. Blount.

**CARGA.** In Spanish law. An incumbrance; a charge. White, New Recop. b. 2, tit. 13, c. 2, § 2.

**CARGAISON.** In French commercial law. Cargo; lading.

**CARGARE.** In old English law. To charge. Spelman.

**CARGO.** In mercantile law. The load or lading of a vessel; the goods, merchandise, or whatever is conveyed in a ship or other merchant vessel. Seamans v. Loring, 21 Fed.Cas. 920; Thwing v. Insurance Co., 103 Mass. 401, 4 Am.Rep. 567.

While "cargo" is primarily the load of the ship, it may have a varying meaning. Pennsylvania Sugar Co. v. Czarnikow-Rionda Co., C.C.A.Pa., 245 F. 913, 915. The term may be applied in such a sense as to include passengers, as well as freight, but in a technical sense it designates goods only. Wolcott v. Eagle Ins. Co., 4 Pick., Mass., 429. Thus, we say, A cargo of emigrants. See 7 M. & G. 729, 744; Davison v. Von Lingen, 113 U.S. 49, 5 S.Ct. 346, 28 L.Ed. 885.

**CARIAGIUM.** In old English law. Carriage; the carrying of goods or other things for the king.

**CARISTIA.** Dearth, scarcity, dearthness. Cowell.

**CARK.** In old English law. A quantity of wool, whereof thirty make a sarplar. (The latter is equal to 2,240 pounds in weight.) St. 27 Hen. VI. c. 2. Jacob.

**CARLISLE TABLES.** Life and annuity tables, compiled at Carlisle, England, about 1780. Used by actuaries, etc.

**CARMACK ACT.** An act of Congress, June 29, 1906, 49 U.S.C.A. § 20(11, 12), amending the Hepburn Act. It supersedes all state regulations; Chicago, B. & Q. R. Co. v. Miller, 226 U.S. 513, 33 S.Ct. 155, 57 L.Ed. 323.

**CARMEN.** In the Roman law. Literally, a verse or song. A formula or form of words used on various occasions, as of divorce. Tayl.Civil Law, 349.

**CARNAL.** Pertaining to the body, its passions and its appetites; animal; fleshly; sensual; impure; sexual. People v. Battilana, 52 Cal.App.2d 685, 126 P.2d 923, 928.

**CARNAL ABUSE.** An act of debauchery of the female sexual organs by those of the male which does not amount to penetration;—the offense commonly called statutory rape consists of carnal abuse. State v. Huggins, 84 N.J.Law, 254, 87 A. 630, 633. An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. Snyder v. State, 92 Ohio St. 167, 110 N.E. 644, 645. Carnal knowledge of a female child of tender age includes abuse. Dawkins v. State, 58 Ala. 376, 29 Am.Rep. 754.

**CARNAL KNOWLEDGE.** Coitus; copulation; the act of a man in having sexual bodily connection with a woman; sexual intercourse. State v. Normandale, 154 La. 523, 97 So. 798, 800; Patton v. State, 105 Tex.Cr.R. 128, 287 S.W. 51, 52. There is "carnal knowledge" if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male. It is not necessary that the vagina be entered or that the hymen be ruptured; the entering of the vulva or labia is sufficient. State v. Huggins, 84 N.J.Law, 254, 87 A. 630, 633.

**CARNALITER.** In old criminal law. Carnally. *Carnaliter cognovit*, carnally knew. Technical words in indictments for rape, and held essential. 1 Hale, P.C. 637-639.

**CARNALLY KNEW.** In pleading. A technical phrase in an indictment to charge the defendant with the crime of rape. Some authorities suggest that the words "carnally knew" are included in the term "rapuit" and are therefore unnecessary; 2 Hawk.P.C. c. 25, § 56; 2 Stark.Cr.Pl. 431, n. (e); at least in states in which the statutes do not designate the crime by the words "did ravish and carnally know"; 1 Hale, P.C. 628, 632; 3 Russell, Cr. (6th ed.) 230. See *Noble v. State*, 22 Ohio St. 545; *Dawkins v. State*, 58 Ala. 378, 29 Am.Rep. 754.

**CARNO.** In old English law. An immunity or privilege. Cowell.

**CAROOME.** In English law. A license by the lord mayor of London to keep a cart.

**CARPEMEALS.** Cloth made in the northern parts of England, of a coarse kind, mentioned in 7 Jac. I. c. 16. Jacob.

**CARRERA.** In Spanish law. A carriage-way: the right of a carriage-way. *Las Partidas*, pt. 3, tit. 31, l. 3.

**CARRIAGE.** A vehicle used especially for the transportation of persons either for pleasure or business, and drawn by horses or other draught animals over the ordinary streets and highways of the country; not including cars used exclusively upon railroads or street railroads expressly constructed for the use of such cars. *Snyder v. North Lawrence*, 8 Kan. 84; *Cream City R. Co. v. Chicago*, etc., R. Co., 63 Wis. 93, 23 N.W. 425, 53 Am.Rep. 267.

The act of carrying, or a contract for transportation of persons or goods.

As used in exemption statutes. Includes an automobile. *Patten v. Sturgeon*, C.C.A.Okl., 214 F. 65, 67, *Hammond v. Pickett*, Tex.Civ.App., 158 S.W. 174, 175, and it includes motor vehicles under various other circumstances. *Ansell v. City of Boston*, 254 Mass. 208, 150 N.E. 167, 168; *State v. Jarvis*, 89 Vt. 239, 95 A. 541, 543.

In admiralty, "carriage" includes ability to lift a cargo and hold it afloat, and does not necessarily involve any translation of the vessel from one place to another. *The Jungshoved*, D.C.N.Y., 272 F. 122, 124.

The business of carriage is that arising under contracts by which a person obligates himself, for an agreed price, to transport, or have transported, an object of some kind, to a designated place. *Kocke v. Garnier*, 15 La.App. 461, 131 So. 198, 199.

The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another. Civ.Code Cal. § 2085; Comp.Laws N.D.1913, § 6185; Comp.Laws S.D.1929, § 1108.

As to "carriage by land or water" within the Illinois Workmen's Compensation Act, see *Stevens v. Illinois Cent. R. Co.*, 306 Ill. 370, 137 N.E. 859, 861; *Mattoon Clear Water Co. v. Industrial Commission*, 291 Ill. 487, 126 N.E. 168, 169.

**CARRICLE, or CARRACLE.** A ship of great burden.

**CARRIER.** One undertaking to transport persons or property, *Windham v. Pace*, 192 S.E. 271, 6

S.E.2d 270, 274; or one employed in or engaged in the business of carrying goods for others for hire. *Roeske v. Lamb*, 39 N.M. 111, 41 P.2d 522, 523.

In common speech, "carriers" means transportation systems as distinguished from corporations owning or operating them. *Virginian Ry. Co. v. Mullens*, 271 U.S. 220, 46 S.Ct. 526, 529, 70 L.Ed. 915. And this is its meaning as used in the Federal Control Act, § 10. *Missouri Pac. R. Co. v. Ault*, 256 U.S. 554, 41 S.Ct. 593, 65 L.Ed. 1087; *Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co.*, D.C.Ga., 271 F. 731, 739 (Transportation Act). An electric railway that is part of the "general steam-railroad system" is a "carrier" subject to the Railway Labor Act, *Sprague v. Woll*, C.C.A.Ill., 124 F.2d 767, 769.

A school bus acts as a "carrier." *Leach v. School Dist. No. 322 of Thurston County*, 197 Wash. 384, 85 P.2d 666, 667.

Carriers are either common or private. *Standard Oil Co. v. Public Service Commission of Wisconsin*, 217 Wis. 563, 259 N.W. 598.

Common carriers are those that hold themselves out or undertake to carry persons or goods of all persons indifferently, or of all who choose to employ it. *Merchants Parcel Delivery v. Pennsylvania Public Utility Commission*, 150 Pa.Super. 120, 28 A.2d 340, 344; *Burnett v. Riter*, Tex.Civ.App., 276 S.W. 347, 349; or those whose occupation or business is transportation of persons or things for hire or reward, *In re Rodgers*, Neb., 279 N.W. 800, 803, 804.

Common carriers of passengers are those that undertake to carry all persons indifferently who may apply for passage, so long as there is room, and there is no legal excuse for refusal. *Lazor v. Banas*, 114 Pa.Super. 425, 174 A. 817, 819; *Anderson v. Fidelity & Casualty Co. of New York*, 100 Misc. 411, 166 N.Y.S. 640, 642.

Private carriers are those who transport or undertake to transport in a particular instance for hire or reward. *Allen v. Sackrider*, 37 N.Y. 341; *Columbus-Cincinnati Trucking Co. v. Public Utilities Commission*, 141 Ohio St. 228, 47 N.E.2d 623, 625, 626.

For "Extension", see that title.

**CARRIER'S LIEN.** The right to hold the consignee's cargo until payment is made for the work of transporting it. *Sommers Const. Co. v. Atlantic Coast Line R. Co.*, 62 Ga.App. 23, 7 S.E.2d 429, 431.

**CARROTED FUR.** Fur that has been treated by a solution of nitrate of mercury, so as to remove the water-repellant substance covering the fibers, making them more pliable and more easily to interlock with other fibers of fur, or of wool. *Matteawan Mfg. Co. v. Emmons Bros. Co.*, C.C.A. Mass., 253 F. 372, 375.

**CARRUCA.** See Caruca.

**CARRY.** To bear, bear about, sustain, transport, remove, or convey. To have or bear upon or about one's person, as a watch or weapon;—locomotion not being essential. *State v. Nieto*, 101 Ohio St. 409, 130 N.E. 663, 665. Compare *Heaton v. State*, 130 Tenn. 163, 169 S.W. 750. As applied to insurance, means "possess" or "hold." *San Francisco Realty Co. v. Linnard*, 98 Cal.App. 33, 276 P. 368, 370.

**CARRY A MEMBER.** To pay the assessments against a sick or indigent member, as of a beneficial association, the payment being made by the other members or the local lodge or camp on his behalf. *Bennett v. Sovereign Camp, Woodmen of the World*, Tex.Civ.App., 168 S.W. 1023, 1026.

## CARRY

**CARRY AN ELECTION.** For a candidate to be elected, or a measure carried, at an election, he or it must receive a majority or a plurality of the legal votes cast. *McKinney v. Barker*, 180 Ky. 526, 203 S.W. 303, 304, L.R.A.1918E, 581.

**CARRY ARMS OR WEAPONS.** To wear, bear, or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person. *State v. Carter*, 36 Tex. 89; *State v. Murray*, 39 Mo.App. 128.

**CARRY COSTS.** A verdict is said to carry costs when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict.

**CARRY ON TRADE OR BUSINESS.** To conduct, prosecute or continue a particular avocation or business as a continuous operation or permanent occupation. The repetition of acts may be sufficient. *Lichtenstein v. State*, 34 Ga.App. 138, 128 S.E. 704; *Ledgerwood v. Dashiell*, Tex.Civ.App., 177 S.W. 1010, 1012; *Martin v. Bankers' Trust Co.*, 18 Ariz. 55, 156 P. 87, 90, Ann.Cas.1918E, 1240; *Territory v. Harris*, 8 Mont. 140, 19 P. 286; *Hutchings v. Burnet*, 61 App.D.C. 109, 58 F.2d 514. To hold one's self out to others as engaged in the selling of goods or services. *Helvering v. Highland*, C.C.A.4, 124 F.2d 556, 561.

**CARRY PASSENGERS FOR A CONSIDERATION.** Transportation of persons under such conditions that operator owes them duty of carrier for hire. *Cartos v. Hartford Accident & Indemnity Co.*, 160 Va. 505, 169 S.E. 594, 597.

**CARRY STOCK.** To provide funds or credit for its payment for the period agreed upon from the date of purchase. *Saltus v. Genin*, 16 N.Y.Super. Ct. 260. And see *Pickering v. Demerritt*, 100 Mass. 421.

**CARRY THE IRON.** See *Fire Ordeal* under the title *Ordeal*.

**CARRYING AWAY.** In criminal law. The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it. *Gettinger v. State*, 13 Neb. 308, 14 N.W. 403.

**CART.** In its ordinary and primary acceptance, a carriage with two wheels; yet it may mean a carriage in general, *Favers v. Glass*, 22 Ala. 624, 58 Am.Dec. 272; but not an automobile, *Whitney v. Welnitz*, 153 Minn. 162, 190 N.W. 57, 28 A.L.R. 68. The vehicle in which criminals are taken to execution.

**CART BOTE.** Wood or timber which a tenant is allowed by law to take from an estate, for the purpose of repairing instruments, (including necessary vehicles,) of husbandry. 2 Bl.Comm. 35. See *Bote*.

## CARTA.

In old English law. A charter, or deed. Any written instrument.

In Spanish law. A letter; a deed; a power of attorney. *Las Partidas*, pt. 3, tit. 18, l. 30.

**CARTA MERCATORIA.** A grant (1303) to certain foreign merchants, in return for custom duties, of freedom to deal wholesale in all cities and towns of England, power to export their merchandise, and liberty to dwell where they pleased, together with other rights pertaining to speedy justice; 1 Holdsw.Hist.E.L. 311.

**CARTE.** In French marine law. A chart.

**CARTE BLANCHE.** A white sheet of paper; an instrument signed, but otherwise left blank. A sheet given to an agent, with the principal's signature appended, to be filled up with any contract or engagement as the agent may see fit. Hence, metaphorically, unlimited authority.

## CARTEL.

### In Trade and Commerce

A combination of producers of any product joined together to control its production, sale, and price, and to obtain a monopoly in any particular industry or commodity. Also, an association by agreement of companies or sections of companies having common interests, designed to prevent extreme or unfair competition and allocate markets, and to promote the interchange of knowledge resulting from scientific and technical research, exchange of patent rights, and standardization of products. *U. S. v. National Lead Co.*, D.C. N.Y., 63 F.Supp. 513.

### State of War

An agreement between two hostile powers for the delivery of prisoners or deserters, or authorizing certain non-hostile intercourse between each other which would otherwise be prevented by the state of war; for example, agreements for intercommunication by post, telegraph, telephone, railway. II Op. 282.

### Duel

A written challenge to a duel.

**CARTULARY.** A place where papers or records are kept.

In the plural: Ancient English records containing documents and legal proceedings—the muniments of title of the great landowners, and other miscellaneous documents. 2 Holdsw.Hist.E.L. 273. See 1 Poll. & Maitl. p. xxii.

**CARUCA, or CARUA.** A plow. A four-wheeled carriage. A team for a plow, or four oxen abreast. See *Carucata*.

**CARUCAGE.** In old English law. A kind of tax or tribute anciently imposed upon every plow, (*carue* or plow-land,) for the public service. Spelman. The act of plowing.

**CARUCATA, CARUCATE.** A certain quantity of land used as the basis for taxation. A cartload. As much land as may be tilled by a single plow in a year and a day. Skene, *de verb. sig.* A plow land of one hundred acres. Ken. Gloss. The

quantity varies in different counties from sixty to one hundred and twenty acres. Whart. See Littleton, Ten. cclxii; 2 Holdsw.Hist.E.L. 56; Maitl. Domesday Book and Beyond 395; 1 L.J.R. 96. Also, a team of cattle, or a cart-load. See Bovata terræ.

**CARUCATARIUS.** One who held lands in *carvage*, or plow-tenure. Cowell.

**CARUE.** A carve of land; plow-land. Britt. c. 84.

**CARVAGE.** The same as carucage, (*q. v.*) Cowell.

**CARVE.** In old English law. A carucate or plow-land.

**CAS FORTUIT.** Fr. In the law of insurance. A fortuitous event; an inevitable accident.

**CASATA.** In old English law. A house with land sufficient for the support of one family. Otherwise called "*hida*," a hide of land, and by Bede, "*familia*." Spelman.

**CASATUS.** A vassal or feudal tenant possessing a *casata*; that is, having a house, household, and property of his own.

**CASE.**

**Action, Cause, Suit, or Controversy**

A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. Quoted with approval in Kelly v. Roetzel, 64 Okl. 36, 165 P. 1150, 1153. See, also, Gebhard v. Sattler, 40 Iowa, 156; Martin v. Hunter, 1 Wheat. 352, 4 L.Ed. 97. A controversy that is litigated. City of Akron v. Roth, 88 Ohio St. 456, 103 N.E. 465, 467. A cause of action. Strother v. Union Pac. R. Co., D.C.Mo., 220 F. 731, 732; Colla v. Carmichael U-Drive Autos, 111 Cal.App. 378, 294 P. 378, 380.

The word "case" or "cause" means a judicial proceeding for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed, Ex parte Chesser, 93 Fla. 590, 112 So. 87, 90; any proceeding judicial in its nature, McCarthy v. Clancy, 110 Conn. 482, 148 A. 551, 557.

*Case of actual controversy.* The phrase in Federal Declaratory Judgment Act connotes controversy of justiciable nature, excluding advisory decree on hypothetical facts. John P. Agnew & Co., Inc. v. Hoage, App.D.C., 69 App.D. C. 116, 99 F.2d 349, 351.

*Case sufficient to go to a jury.* A case that has proceeded upon sufficient proof to that stage where it must be submitted to jury and not decided against the state as a matter of law. State v. McDonough, 129 Conn. 483, 29 A.2d 582, 584.

*Cases and controversies.* This term, as used in the constitution of the United States, embraces claims or contentions of litigants brought before the court for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs; and whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, it has become a case or controversy. Interstate Commerce Com'n v. Brimson, 154 U.S. 447, 14 Sup.Ct. 1125, 38 L.Ed. 1047. These two terms are to be distinguished; for there may be a "separable controversy" within a "case," which may be removed from a state court to a federal court, though the case as a whole is not re-

movable. Snow v. Smith, C.C.Va., 88 Fed. 658. The term "controversies", if distinguishable from "cases", is so in that it is less comprehensive than the term "cases" and includes only suits of a civil nature, Smith v. Blackwell, C.C.A.S.C., 115 F.2d 186, 188.

**Applications and Special Proceedings**

The word "case" may include application for divorce, applications for the establishment of highways, applications for orders of support of relatives, and other special proceedings unknown to the common law. S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A.2d 645, 648.

**Box or Container**

A box or container, as for cans or bottles filled with milk or other liquid goods. Ex parte Reiniger, 184 Cal. 97, 193 P. 81, 83.

**Event, Happening, etc.**

In ordinary usage, the word "case" means "event," "happening," "situation," "circumstances." Highfield v. Delaware Trust Co., Del.Super., 188 A. 919, 922.

**Form of Action**

A form of action which lies to recover damages for injuries for which the more ancient forms of action will not lie. Steph.Pl. 15. An abbreviated form of the title "trespass on the case," *q. v.* Munal v. Brown, C.C.Colo., 70 F. 968. See, also, Wadleigh v. Katahdin Pulp & Paper Co., 116 Me. 107, 100 A. 150, 151. Action where injury is merely consequential. Mawson v. Vess Beverage Co., Mo.App., 173 S.W.2d 606, 612, 613.

**Grand Jury Inquiry**

As used in statute authorizing a challenge to an individual grand juror, any matter that might become subject of inquiry by grand jury. People v. Prior, 268 App.Div. 717, 54 N.Y.S.2d 150, 153.

**Statement of Facts**

A statement of the facts involved in a transaction or series of transactions, drawn up in writing in a technical form, for submission to a court or judge for decision or opinion. Under this meaning of the term are included a "case made" for a motion for new trial, a "case reserved" on the trial of a cause, an "agreed case" for decision without trial, etc.

*Case agreed on.* A formal written enumeration of the facts in a case, assented to by both parties as correct and complete, and submitted to the court by their agreement, in order that a decision may be rendered without a trial, upon the court's conclusions of law upon the facts as stated.

*Case for motion.* In English divorce and probate practice, when a party desires to make a motion, he must file, among other papers, a case for motion, containing an abstract of the proceedings in the suit or action, a statement of the circumstances on which the motion is founded, and the prayer or nature of the decree or order desired. Browne, Div. 251; Browne, Prob.Pr. 295.

*Case-made.* A statement of facts in relation to a disputed point of law, agreed to by both parties and submitted to the court without a preceding action. This is found only in the Code states. See De Armond v. Whitaker, 99 Ala. 252, 13 So. 613; A complete record of each successive ac-

## CASE

tion of the trial court at the trial, including testimony. In re Opinion of the Judges, 29 Okl.Cr. 27, 232 P. 121, 122. A "case-made" consists of those things which transpired in court during the trial, and which are not a part of the record. Jones v. State, 9 Okl.Cr. 189, 130 P. 1173.

**Case on appeal.** In American practice. Before the argument in the appellate court of a case brought there for review, the appellant's counsel prepares a document or brief, bearing this name, for the information of the court, detailing the testimony and the proceedings below. In English practice. The "case on appeal" is a printed statement prepared by each of the parties to an appeal to the house of lords or the privy council, setting out methodically the facts which make up his case, with appropriate references to the evidence printed in the "appendix." The term also denotes a written statement, prepared and transmitted by an inferior court or judge raising a question of law for the opinion of a superior court.

**Case reserved.** A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial and could not then be satisfactorily decided, determined upon full argument before the court in *banc*. This is otherwise called a "special case;" and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a case to be made, instead of obtaining from the jury a special verdict. 3 Bl.Comm. 378; 3 Steph.Comm. 621; Steph.Pl. 92, 93; 1 Burrill, Pr. 242, 463.

**Case stated.** In practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as therein agreed upon and set forth. 3 Sharsw.Bla.Comm. 453, n.; 6 Term, 313. A case agreed upon. A statement of all the facts of a case, with the names of the witnesses, and a detail of the documents which are to support them. A statement of agreed facts. Caissie v. City of Cambridge, 317 Mass. 346, 58 N.E.2d 169. An auditor's report. Hanfin v. C. & R. Const. Co., 313 Mass. 651, 48 N.E.2d 913, 918. A brief. As to the distinction between submission on a case stated and a submission merely on agreed facts, see Frati v. Jannini, 226 Mass. 430, 115 N.E. 746, 747.

**Case to move for new trial.** In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial.

### Supplementary Proceedings

The word "cases" in section providing that "act shall apply in all cases now pending or hereafter instituted in which the final decree of divorce was recorded prior to the effective date of this act", is synonym of "supplementary proceedings". Chia-petta v. Jordan, 16 So.2d 641, 644, 153 Fla. 788.

**CASE LAW.** The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.

**CASE SYSTEM.** A method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method. It was introduced in the Law School of Harvard University in 1869-70 by Christopher C. Langdell, Dane Professor of Law.

**CASEMENT.** A window sash opening on hinges affixed to the upright side of the frame, and includes wooden as well as steel construction. Johnson Metal Products Co. v. Lundell-Eckberg Mfg. Co., D.C.N.Y., 18 F.Supp. 572, 574.

**CASH.** Money or its equivalent; usually ready money. Kerlin v. Young, 159 Ga. 95, 125 S.E. 204, 207; Britain v. Rice, Tex.Civ.App., 204 S.W. 254, 256.

Money in hand, either in current coin or other legal tender, or in bank bills or checks paid and received as money. Dunlap v. Whitmer, 133 La. 317, 62 So. 938, 943, Ann.Cas. 1915C, 990. Bank deposits. In re Feist's Will, 170 Misc. 497, 10 N.Y.S.2d 506, 508; Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 80. Bank notes or sight drafts, Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 80. Bank's deposit certificate. Bingham v. Montcalm County, 251 Mich. 651, 232 N.W. 348, check, Van Decar v. Streeter, 136 Misc. 206, 240 N.Y.S. 492, 497. Commercial paper. Commercial Credit Corporation v. Third & Lafayette Streets Garage, 131 Misc. 786, 228 N.Y.S. 166, 168. Currency, coin, specie. Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 80. Whatever can be used as money without being converted into another form. That which circulates as money, including bank bills. Hooper v. Flood, 54 Cal. 221; Dazel v. Landry, 21 Nev. 291, 30 Pac. 1064; United States v. Williams, D.C. Wash., 282 F. 324, 325. The term may include currency, municipal orders, warrants, or scrip. Arkansas Public Utilities Co. v. Incorporated Town of Heber Springs, 151 Ark. 249, 235 S.W. 999, 1001. It is frequently used as an antonym of "credit." Parrish v. American Ry. Employees' Pub. Corporation, 83 Cal.App. 298, 256 P. 590, 591; State v. Woodward, 208 Ala. 31, 93 So. 826.

**CASH ACCOUNT.** A record, in bookkeeping, of all cash transactions; an account of moneys received and expended.

**CASH BOOK.** In bookkeeping, an account book in which is kept a record of all cash transactions, or all cash received and expended.

The object of the cash book is to afford a constant facility to ascertain the true state of a man's cash. Pardessus, n. 87.

**CASH CONTRACT.** A "cash contract," as of a municipal corporation, is one not creating a debt within the constitution. Jeffersonville v. Cotton State Belting Supply Co., 30 Ga.App. 470, 118 S. E. 442.

**CASH DISCOUNT.** A deduction from billed price which seller allows for payment within a certain time. Leonard v. U. S., Ct.Cl., 7 F.Supp. 295, 297.

**CASH MARKET VALUE.** "Fair market value", "reasonable market value" or "fair cash market value" as synonymous. Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837. For "Fair Cash Market Value," see that title.

**CASH NOTE.** In England. A bank-note of a provincial bank or of the Bank of England.

**CASH PRICE.** A price payable in cash at the time of sale of property, in opposition to a barter or a sale on credit.

**CASH SALE.** A sale for money in hand. Steward v. Scudder, 24 N.J.Law, 101; Bass v. Green & Yates, 201 Ala. 515, 78 So. 869. A sale conditioned on payment concurrent with delivery. Weyerhaeuser Timber Co. v. First Nat. Bank, 150 Or. 172, 43 P.2d 1078, 1081. See, further, Sale.

**CASH SURRENDER VALUE.** The "cash surrender value" of a life policy is the reserve less a



surrender charge. *Guggenheim v. Rasquin*, U.S. N.Y., 312 U.S. 254, 61 S.Ct. 507, 508, 85 L.Ed. 813.

**CASH VALUE.** The cash value of an article or piece of property is the price which it would bring at private sale (as distinguished from a forced or auction sale) the terms of sale requiring the payment of the whole price in ready money, with no deferred payments. *Tax Com'rs v. Holliday*, 150 Ind. 216, 49 N.E. 14, 42 L.R.A. 826; *Cummings v. Bank*, 101 U.S. 162, 25 L.Ed. 903. For "Fair Cash Value," see that title.

Actual value or market value, *Fort Worth & D. N. Ry. Co. v. Sugg*, Tex.Civ.App., 68 S.W.2d 570, 572; *Yeoman Mut. Life Ins. Co. v. State Board of Assessment*, 229 Iowa 220, 294 N.W. 330, 334. Clear market value or fair market value. In re *Ryerson's Estate*, 239 Wis. 120, 300 N.W. 782, 784. Price property will bring on sale by one desiring, but not compelled, to sell to one desiring, but not compelled, to purchase. *Insurance Co. of North America v. McGraw*, 255 Ky. 839, 75 S.W.2d 518, 520. Saleable value, In re *Lang Body Co.*, C.C. A. Ohio, 92 F.2d 338, 340. Usual selling price at private sale and not at a forced or auction sale. *Volunteer State Life Ins. Co. v. Union Title Guarantee Co.*, 175 La. 183, 143 So. 43, value at which property would be taken in payment of just debt from solvent debtor. *Bank of Fairfield v. Spokane County*, 173 Wash. 145, 22 P.2d 646, 652.

**CASHIER, v.** In military law. To deprive a military officer of his rank and office.

**CASHIER, n.** An officer of a moneyed institution, or commercial house, or bank, who is intrusted with, and whose duty it is to take care of, the cash or money of such institution or bank. A custodian of the money of a bank, mercantile house, and the like. *Miller v. State*, 88 Tex.Cr. R. 69, 225 S.W. 379, 381, 12 A.L.R. 597.

The cashier of a bank is its chief executive officer. *Pemiscot County Bank v. Central-State Nat. Bank*, 132 Tenn. 152, 177 S.W. 74, 75; *Bank of Commerce of Chanute v. Sams*, 96 Kan. 437, 152 P. 28, 29. He is its chief financial agent, through whom its principal financial dealings are conducted; *Brown v. Mt. Holly Nat. Bank*, 288 Pa. 478, 136 A. 773, 775; and is peculiarly that agency authorized to make loans and collections, whose special duty it is to give direction to and further the stockholders' interests; *People's Bank of Calhoun v. Harry L. Winter, Inc.*, 161 Ga. 898, 132 S.E. 422, 424.

He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Tellers and other subordinate officers may be appointed, but they are under his direction, and are, as it were, the arms by which designated portions of his various functions are discharged. *Merchants' Nat. Bank v. State Nat. Bank*, 10 Wall. 650, 19 L.Ed. 1008.

**CASHIERED.** Dismissal with ignominy or dishonor, or in disgrace. *Metropolis Co. v. Croasdell*, 145 Fla. 455, 199 So. 568, 569.

**CASHIER'S CHECK.** See Check.

**CASHLITE.** An amercement or fine; a mulct.

**CASING-HEAD GAS.** Natural gas from an oil well, saturated with oil vapors or gasoline. 58 C.J.S. p. 26.

—**Casing-head gasoline.** Sometimes called natural gasoline. It is produced from casing-head gas by compression or separation of the gases which come from oil wells. 58 C.J.S. p. 21.

**CASKET.** In one sense, a coffin. *Ware v. State*, 31 Ga.App. 554, 121 S.E. 251.

**CASSARE.** To quash; to render void; to break. *Du Cange*.

**CASSATION.** In French law. Annuling; reversal; breaking the force and validity of a judgment. A decision emanating from the sovereign authority, by which a decree or judgment in the court of last resort is broken or annulled. *Merl. Report*.

**CASSATION, COURT OF.** (Fr. *cour de cassation*.) The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases.

**CASSETUR BILLA.** (Lat. That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, (*billa*.) 3 Bl.Comm. 303; *Steph.Pl.* 128, 131. The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting in fact to a discontinuance of the action. 2 Archb.Pr.K.B. 3, 236; 1 Tidd, Pr. 683.

**CASSETUR BREVE.** (Lat. That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ (*breve*). 3 Bl.Comm. 303; *Steph.Pl.* 107, 109.

A judgment sometimes entered against a plaintiff at his request when, in consequence of allegations of the defendant, he can no longer prosecute his suit with effect. 5 Term 634.

**CASSOCK, or CASSULA.** A garment worn by a priest.

**CAST, v.** In old English practice. To allege, offer, or present; to proffer by way of excuse (as to "cast an essoyn").

This word is now used as a popular, rather than a technical, term, in the sense of to overcome, overthrow, or defeat in a civil action at law. It also means to deposit formally or officially. *Maddox v. Board of State Canvassers*, Mont., 149 P.2d 112, 115; *Port of Palm Beach Dist. v. State*, 156 Fla. 99, 22 So.2d 581, 582. It is also used in connection with the imposition upon a party litigant of costs in the suit: as, A. is "cast" for the costs of the case.

**CAST AWAY.** To cast away a ship is to do such an act upon or in regard to it as causes it to perish or be lost, so as to be irrecoverable by ordinary means. The term is synonymous with "destroy," which means to unfit a vessel for service beyond the hope of recovery by ordinary means. *U. S. v. Vanranst*, 28 Fed.Cas. 360.

## CASTEL

**CASTEL, or CASTLE.** A fortress in a town; the principal mansion of a nobleman. 3 Inst. 31.

**CASTELLAIN.** In old English law. The lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.

**CASTELLANUS.** A castellain; the keeper or constable of a castle. Spelman.

**CASTELLARIUM, CASTELLATUS.** In old English law. The precinct or jurisdiction of a castle. Blount.

**CASTELLORUM OPERATIO.** In Saxon and old English law. Castle work. Service and labor done by inferior tenants for the building and upholding of castles and public places of defense. One of the three necessary charges, (*trinoda necessitas*), to which all lands among the Saxons were expressly subject. Cowell. Towards this some gave their personal service, and others, a contribution of money or goods. 1 Bla.Comm. 263.

**CASTIGATORY.** An engine used to punish women who have been convicted of being common scolds. It is sometimes called the trebucket, tumble, ducking-stool, or cucking-stool. U. S. v. Royall, 27 Fed.Cas. 907.

**CASTING VOTE.** Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member of the body. This is called the "casting vote." Brown v. Foster, 88 Me. 49, 33 A. 662, 31 L.R.A. 116.

**CASTLEGUARD.** In feudal law. An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle.

**CASTLEGUARD RENTS.** In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it.

**CASTRENSIS.** In the Roman law. Relating to the camp or military service.

*Castrense peculium*, a portion of property which a son acquired in war, or from his connection with the camp. Dig. 49, 17.

**CASTRUM.** Lat.

In Roman law. A camp.

In old English law. A castle. Bract. fol. 69b. A castle, including a manor. 4 Coke, 88.

**CASU CONSIMILI.** In old English law. A writ of entry, granted where tenant by the curtesy, or tenant for life, alienated in fee, or in tail, or for another's life, which was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime. Termes de la Ley. See Consimili Casu.

**CASU PROVISIO.** Lat. In the case provided for. A writ of entry framed under the provisions of the statute of Gloucester (6 Edw. I.) c. 7, which lay for the benefit of the reversioner when a tenant in dower alienated in fee or for life.

**CASUAL.** Accidental, Gray v. Greenwood, 32 A. 2d 347, 350, 21 N.J.Misc. 137; Texas & N. O. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; Sonnenberg v. Berg's Market, 227 Mo.App. 391, 55 S.W.2d 494; by chance, Texas & N. O. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; coming by chance, Lawrenz v. Langford Electric Co., 206 Minn. 315, 288 N.W. 727, 731; Norris v. Koenig, Mo.App., 183 S.W.2d 160, 162; fortuitous, Sonnenberg v. Berg's Market, 227 Mo.App. 391, 55 S.W.2d 494, 495. Happening or coming to pass without design and without being foreseen or expected. Root v. Topeka Ry. Co., 96 Kan. 694, 153 P. 550; Ranson-Rooney Co. v. Overseas Ry., 17 La.App. 205, 134 So. 765, 768; impermanent, Board of Sup'rs of Amherst County v. Boaz, 176 Va. 126, 10 S.E.2d 498, 500; incidental, Mason v. Wampler, 89 Ind.App. 483, 166 N.E. 885, 886, Coffin v. Hook, Ind.App., 45 N.E.2d 369, 372; indeterminate, Texas & N. O. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; irregular, Gardner v. Trustees of Main St. M. E. Church of Ottumwa, 217 Iowa, 1390, 250 N.W. 740; liable to happen, subject to chance or accident, Coffin v. Hook, 112 Ind.App. 549, 45 N.E. 2d 369, 372; occasional, Cardillo v. Mockabee, 70 App.D.C. 16, 102 F.2d 620, 622; uncertain, Coffin v. Hook, 112 Ind.App. 549, 45 N.E.2d 369, 372; unexpected, Gray v. Greenwood, 21 N.J.Misc. 137, 32 A.2d 347, 350; Texas & N. O. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; unforeseen, Texas & N. O. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; Lawrenz v. Langford Electric Co., 206 Minn. 315, 288 N.W. 727, 731; unpremeditated, Lawrenz v. Langford Electric Co., 206 Minn. 315, 288 N.W. 727, 731; without regularity, Norris v. Koenig, Mo.App., 183 S.W.2d 160, 162; Sonnenberg v. Berg's Market, 227 Mo.App. 391, 55 S.W.2d 494.

**CASUAL BETTOR.** An occasional and irregular bettor who is not guilty of crime of engaging in betting and gambling organized and carried on as a systematic business. Bamman v. Erickson, 288 N.Y. 133, 41 N.E.2d 920, 922.

**CASUAL DEFICIENCY OF REVENUE.** An unforeseen or unexpected deficiency, or an insufficiency of funds to meet some unforeseen and necessary expense. Atlanta Distributing Terminals v. Board of Com'rs etc., of Fulton County, 177 Ga. 250, 170 S.E. 52, 56.

**CASUAL DEFICIT.** A deficit happening by chance or accident and without design. State Budget Commission v. Lebus, 244 Ky. 700, 51 S.W.2d 965.

**CASUAL EJECTOR.** In practice. The nominal defendant in an action of ejectment. French v. Robb, 67 N.J.Law, 260, 51 A. 509, 57 L.R.A. 956.

**CASUAL EMPLOYEE.** Though courts have refrained from defining "casual employee" as such

term is used in the Workmen's Compensation Act, the test in the particular case is whether service rendered or work done, rather than contract of hiring, is of casual nature; infrequency of employment or its duration being immaterial. *Hygeia Ice & Coal Co. v. Schaeffer*, 152 Md. 231, 136 A. 548, 551.

As regards whether an employee is a "casual" employee the word "casual" means something happening without design and unexpectedly. *Ward v. Ocean Forest Club*, 188 S.C. 233, 198 S.E. 385.

**CASUAL EMPLOYMENT.** Employment at uncertain times or irregular intervals. *Johnson v. Wisconsin Lumber & Supply Co.*, 203 Wis. 304, 234 N.W. 506, 507, 72 A.L.R. 1279; employment by chance, fortuitously, and for no fixed time, *Boyd v. Philmont Country Club*, 129 Pa.Super. 135, 195 A. 156, 157, 158; employment casual and not in usual course of trade, business, occupation or profession of employer. *Kunkler v. Mauck*, 108 Ind.App. 98, 27 N.E.2d 97, 99. Employment for short time and limited and temporary purpose, *Moore v. Clarke*, 171 Md. 39, 187 A. 887, 894, 107 A.L.R. 924; fortuitous and irregular employment. *McCabe v. Timothy Shanahan & Son*, 147 Pa.Super. 491, 24 A.2d 16, 18; occasional, irregular or incidental employment, *Maguire v. Valley Forge Military Academy*, 116 Pa.Super. 495, 176 A. 865, 867.

The test is the nature of the work or an analysis of the contract of employment. *State Farm Mut. Automobile Ins. Co. v. Brooks*, D.C.Mo., 43 F.Supp. 870, 872; or whether the employment is necessary to carry out the employer's business in usual way. *Thompson v. G. Correale & Sons*, 130 N.J.L. 431, 33 A.2d 578, 579; or the scope of the contract of employment or the continuity of employment. *Cochrane v. William Penn Hotel, Hartford Accident & Indemnity Co., Intervener*, 140 Pa.Super. 323, 13 A.2d 875, 877; "Casual" means occasional; incidental; happening at uncertain times; not stated or regular; its antonyms being regular; systematic; periodic; certain, *Pooler's Case*, 122 Me. 11, 118 A. 590, 591; *Dial v. Coleman's Lunch*, 217 Iowa, 945, 251 N.W. 33; happening or coming to pass without design and without being foreseen or expected, accidental, fortuitous, coming by chance, coming without regularity, *Tokash v. General Baking Co.*, 349 Mo. 767, 163 S.W.2d 554, 556; The term refers to nature of employment and not to length. *Parks v. E. M. Carmell Co.*, 168 Tenn. 385, 79 S.W.2d 285, 287.

**CASUAL EVIDENCE.** A phrase used to denote all such evidence as happens to be adducible of a fact or event, but which was not prescribed by statute or otherwise arranged beforehand to be the evidence of the fact or event. *Brown*.

**CASUAL PAUPER.** A poor person who, in England, applies for relief in a parish other than that of his settlement. The ward in the work-house to which they are admitted is called the "casual ward."

**CASUAL POOR.** In English law. Those who are not settled in a parish. Such poor persons as are

suddenly taken sick, or meet with some accident, when away from home, and who are thus providentially thrown upon the charities of those among whom they happen to be. *Force v. Haines*, 17 N.J.Law, 405.

**CASUALTY.** Accident; event due to sudden, unexpected or unusual cause; event not to be foreseen or guarded against; inevitable accident; misfortune or mishap; that which comes by chance or without design. A loss from such an event or cause; as by fire, shipwreck, lightning, etc. *Story*, Bailm. § 240; *Gill v. Fugate*, 117 Ky. 257, 78 S.W. 191; *Farmers Co-op. Soc. No. 1 of Quannah v. Maryland Casualty Co.*, Tex.Civ.App., 135 S.W.2d 1033, 1036; *Matheson v. Commissioner of Internal Revenue*, C.C.A., 54 F.2d 537, 539; *Stieffen v. Darling*, 158 Va. 375, 163 S.E. 353, 354.

Chance; accident; contingency; also that which comes without design or without being foreseen. *Bennett v. Howard*, 175 Ky. 797, 195 S.W. 117, 118, L.R.A.1917E, 1075; *United States v. Rogers*, C.C.A. Cal., 120 F.2d 244, 246.

—**Casualties of superiority.** In Scotch law. Payments from an inferior to a superior, that is, from a tenant to his lord, which arise upon uncertain events, as opposed to the payment of rent at fixed and stated times. *Bell*.

—**Casualties of wards.** In Scotch law. The mails and duties due to the superior in wardholdings.

**CASUS.** Lat. Chance; accident; an event; a case; a case contemplated.

**CASUS BELLI.** An occurrence giving rise to or justifying war.

**CASUS FŒDERIS.** In international law. The case of the treaty. The particular event or situation contemplated by the treaty, or stipulated for, or which comes within its terms. *Grotius*, b. 2, c. 25; *Vattel*, b. 2, c. 12, § 168; 1 *Kent*, 49. In commercial law. The case or event contemplated by the parties to an individual contract or stipulated for by it, or coming within its terms.

**CASUS FORTUITUS.** An inevitable accident, a chance occurrence, or fortuitous event. A loss happening in spite of all human effort and sagacity. 3 *Kent*, Comm. 217, 300; *The Majestic*, 166 U.S. 375, 17 S.Ct. 597, 41 L.Ed. 1039.

**CASUS FORTUITUS NON EST SPERANDUS, ET NEMO TENETUR DEVINARE.** A fortuitous event is not to be expected, and no one is bound to foresee it. 4 *Coke*, 66.

**CASUS FORTUITUS NON EST SUPPONENDUS.** A fortuitous event is not to be presumed. *Hardr.* 82, arg.

**CASUS MAJOR.** In the civil law. A casualty; an extraordinary casualty, as fire, shipwreck, etc. *Dig.* 44, 7, 1, 4.

**CASUS OMISSUS.** A case omitted; an event or contingency for which no provision is made; particularly a case not provided for by the statute

## CASUS

on the general subject, and which is therefore left to be governed by the common law. 5 Co. 38; 11 East 1; Broom, Max. 46.

### CASUS OMISSUS ET OBLIVIONI DATUS DISPOSITIONI JURIS COMMUNIS RELINQUITUR.

A case omitted and given to oblivion (forgotten) is left to the disposal of the common law. 5 Coke, 38. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute. Broom, Max. 46; 1 Exch. 476.

**CASUS OMISSUS PRO OMISSO HABENDUS EST.** A case omitted is to be held as (intentionally) omitted. Tray.Lat.Max. 67.

**CAT.** A domestic animal that catches mice; a well known domesticated carnivorous mammal kept to kill mice and rats and as a house pet. Thurston v. Carter, 112 Me. 361, 92 A. 295, L.R.A. 1915C, 359.

An instrument with which criminals are flogged. It consists of nine lashes of whipcord, tied to a wooden handle, and is frequently called cat-o-nine-tails. It is used where the whipping-post is retained as a mode of punishment and was formerly resorted to in the navy.

**CATALLA.** In old English law. Chattels. The word among the Normans primarily signified only beasts of husbandry, or, as they are still called, "cattle," but, in a secondary sense, the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud. Wharton.

**CATALLA JUSTE POSSESSA AMITTI NON POSSUNT.** Chattels justly possessed cannot be lost. Jenk.Cent. 28.

**CATALLA OTIOSA.** Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plow; called also *animalia otiosa*. Bract. fols. 217, 217b; 3 Bl.Comm. 9.

**CATALLA REPUTANTUR INTER MINIMA IN LEGE.** Chattels are considered in law among the least (or minor) things. Jenk.Cent. 52.

**CATALLIS CAPTIS NOMINE DISTRICTIONIS.** An obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.

**CATALLIS REDDENDIS.** For the return of the chattels; an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand redelivered at the day. Reg. Orig. 39.

**CATALLUM.** A chattel. Most frequently used in the plural form, *catalla* (*q. v.*). Cowell; Du Cange.

**CATALLS.** Goods and chattels. See Catalla.

**CATANEUS.** A tenant *in capite*. A tenant holding immediately of the crown. Spelman.

**CATASCOPUS.** An old name for an archdeacon.

**CATASTROPHE.** A notable disaster; a more serious calamity than might ordinarily be understood from the term "casualty." Reynolds v. Board of Com'rs of Orleans Levee Dist., 139 La. 518, 71 So. 787, 791.

**CATCH TIME CHARTER.** One under which compensation is paid for the time the boat is actually used. Schoonmaker-Conners Co. v. New York Cent. R. Co., D.C.N.Y., 12 F.2d 314, 315.

**CATCHING BARGAIN.** See Bargain.

**CATCHINGS.** Things caught, and in the possession, custody, power, and dominion of the party, with a present capacity to use them for his own purposes. The term includes blubber, or pieces of whale flesh cut from the whale, and stowed on or under the deck of a ship. A policy of insurance upon outfits, and catchings substituted for the outfits, in a whaling voyage, protects the blubber. Rogers v. Insurance Co., 1 Story, 603; Fed.Cas.No. 12,016; 4 Law Rep. 297.

**CATCHLAND.** Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of preoccupation, enjoys them for that year. Cowell.

**CATCHPOLL.** A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minsheu.

**CATER COUSIN.** (From Fr. *Quatre cousin*.) A cousin in the fourth degree; hence any distant or remote relative. Bla.Law Tracts 6.

**CATHEDRAL.** In English ecclesiastical law. A tract set apart for the service of the church. The church of the bishop of the diocese, in which is his *cathedra*, or throne, and his special jurisdiction; in that respect the principal church of the diocese.

**CATHEDRAL PREFERMENTS.** In English ecclesiastical law. All deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop.

**CATHEDRATIC.** In English ecclesiastical law. A sum of 2s. paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals*. Wharton.

**CATHOLIC CREDITOR.** In Scotch law. A creditor whose debt is secured on all or several distinct parts of the debtor's property. Bell.

**CATHOLIC EMANCIPATION ACT.** The statute of 10 Geo. IV, c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in the state. 3 Steph.Comm. 109.

**CATONIANA REGULA.** In Roman law. The rule which is commonly expressed in the maxim, *Quod ab initio non valet tractu temporis non convalebit*, meaning that what is at the beginning void by reason of some technical (or other) legal defect will not become valid merely by length of time. The rule applied to the institution of *hæredes*, the bequest of legacies, and such like. The rule is not without its application also in English law; *e. g.*, a married woman's will (being void when made) is not made valid merely because she lives to become a widow. Brown.

**CATTLE.** A generic term for domestic quadrupeds; animals used by man for labor or food. In its primary sense, it embraces horses, mares, geldings, foals, or fillies, asses, and mules, as well as animals of the ox kind or bovine species. *Bell v. Erie R. Co.*, 183 App.Div. 608, 171 N.Y.S. 341, 343. The term may also include goats, swine, and sheep. *Ash Sheep Co. v. U. S.*, 252 U.S. 159, 40 S.Ct. 241, 243, 64 L.Ed. 507. Calves running with their mothers are cattle. *Peterson v. Citizens' Bank of Stuart*, 117 Neb. 327, 220 N.W. 575, 577.

In the narrower, popular sense, animals of the bovine genus. *State v. Eaglin*, 148 La. 75, 86 So. 658, 659; *Gragg v. State*, 112 Neb. 732, 201 N.W. 338, 340. This is the sense in which the term is generally used in the western United States, and it is said further that it is not generally, but may be, taken to mean calves, or animals younger than yearlings. *State v. District Court of Fifth Judicial Dist. in and for Nye County*, 42 Nev. 218, 174 P. 1023, 1025.

**CATTLE GATE.** In English law. A customary proportionate right of pasture enjoyed in common with others. 34 E. L. & Eq. 511; 1 Term 137. A right to pasture cattle in the land of another. It is a distinct and several interest in the land, passing by lease and release. 13 East, 159; 5 Taunt. 811.

**CATTLEGUARD.** A device to prevent cattle from straying along a railroad-track at a highway-crossing. *Heskett v. Railway Co.*, 61 Iowa, 467, 16 N.W. 525; *True v. Maine Cent. R. Co.*, 113 Me. 375, 94 A. 183, 184.

**CATTLE PASS.** As used in a statute, a narrow passage way under a railroad track high and wide enough to admit the passage of a cow, horse, or ox to and from a pasture. *True v. Maine Cent. R. Co.*, 113 Me. 375, 94 A. 183, 184.

**CATTLE RANGE.** Under a statute, a range the usual and customary use of which has been for cattle. *State v. Butterfield*, 30 Idaho 415, 165 P. 218, 219.

**CATTLE RUSTLING.** Stealing of bovine cattle, *Galeppi v. C. Swanston & Son*, 107 Cal.App. 30, 290 P. 116, 119.

**CAUCASIAN.** Pertaining to the white race, to which belong the greater part of European nations and those of western Asia. *Rice v. Gong Lum*,

139 Miss. 760, 104 So. 105, 110. The term is inapplicable to denote families or stocks inhabiting Europe, and speaking either the so-called Aryan or Semitic languages. *Ex parte Shahid*, D.C.S.C., 205 F. 812, 814.

**CAUCUS.** A meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the nomination of candidates for office.

**CAUDA TERRÆ.** A land's end, or the bottom of a ridge in arable land. Cowell.

**CAULCEIS.** Highroads or ways pitched with flint or other stones.

**CAUPO.** In the civil law. An innkeeper. Dig. 4, 9, 4, 5.

**CAUPONA.** In the civil law. An inn or tavern. Inst. 4, 5, 3.

**CAUPONES.** In the civil law. Innkeepers. Dig. 4, 9; Id. 47, 5; Story, Ag. § 458.

**CAURSINES.** Italian merchants who came into England in the reign of Henry III., where they established themselves as money lenders, but were soon expelled for their usury and extortion. Cowell; Blount.

## CAUSA.

### In General

Lat. A cause, reason, occasion, motive, or inducement.

### As Preposition

Used with the force of a preposition, it means by virtue of, on account of. Also with reference to, in contemplation of. *Causa mortis*, in anticipation of death.

### Condition, etc.

A condition; a consideration; motive for performing a juristic act. Used of contracts, and found in this sense in the Scotch law also. Bell.

### In the Civil Law and in Old English Law

The word signified a source, ground, or mode of acquiring property; hence a title; one's title to property. Thus, "*titulus est justa causa possidendi id quod nostrum est*," title is the lawful ground of possessing that which is ours. 8 Coke, 153. See Mackeld.Rom.Law, §§ 242, 283.

### In Old English Law

A cause; a suit or action pending. *Causa testamentaria*, a testamentary cause. *Causa matrimonialis*, a matrimonial cause. Bract. fol. 61.

### In Old European Law

Any movable thing or article of property.

See "Cause."

**CAUSA CAUSÆ EST CAUSA CAUSATI.** The cause of a cause is the cause of the thing caused. 12 Mod. 639. The cause of the cause is to be considered as the cause of the effect also. Freem. 329.

## CAUSA

**CAUSA CAUSANS.** The immediate cause; the last link in the chain of causation.

**CAUSA CAUSANTIS, CAUSA EST CAUSATI.** The cause of the thing causing is the cause of the effect. 4 Camp. 284; *Marble v. City of Worcester*, 4 Gray, Mass., 398.

**CAUSA DATA ET NON SECUTA.** In the civil law. Consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event was reclaimed if that event did not take place. Dig. 12, 4; Cod. 4, 6.

**CAUSA ECCLESIAE PUBLICIS AËQUIPARATUR; ET SUMMA EST RATIO QUÆ PRO RELIGIONE FACIT.** The cause of the church is equal to public cause; and paramount is the reason which makes for religion. Co.Litt. 341.

**CAUSA ET ORIGO EST MATERIA NEGOTII.** The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 Coke, 99; *Wing.Max.* 41, *Max.* 21.

**CAUSA HOSPITANDI.** For the purpose of being entertained as a guest. 4 Maule & S. 310.

**CAUSA JACTITATIONIS MARITAGII.** A form of action which anciently lay against a party who boasted or gave out that he or she was married to the plaintiff, whereby a common reputation of their marriage might ensue. 3 Bla.Comm. 93. See *Jactitation of Marriage*.

**CAUSA LIST.** See *Cause List*.

**CAUSA MATRIMONII PRÆLOCUTI.** A writ lying where a woman has given lands to a man in fee-simple with the intention that he shall marry her, and he refuses so to do within a reasonable time, upon suitable request. *Cowell*. Now obsolete. 3 Bla.Comm. 183, n.

**CAUSA MORTIS.** In contemplation of approaching death.

**CAUSA MORTIS DONATIO.** See *Donatio Mortis Causa*.

**CAUSA PATET.** The reason is open, obvious, plain, clear, or manifest. A common expression in old writers. *Perk. c. 1, §§ 11, 14, 97*.

**CAUSA PROXIMA.** The immediate, nearest, or latest cause. The efficient cause; the one that necessarily sets the other causes in operation. *Insurance Co. v. Boon*, 95 U.S. 117, 130, 24 L.Ed. 395.

**CAUSA PROXIMA NON REMOTA SPECTATUR.** An efficient adequate cause being found, it must be considered the true cause unless some other independent cause is shown to have intervened between it and the result. *Mead v. Chickasha Gas & Electric Co.*, 137 Okl. 74, 278 P. 286, 291. The immediate (or direct), not the remote, cause, is looked at, or considered. 12 East, 648; 3 Kent, Comm. 302; *Memphis & C. R. Co. v. Reeves*, 10 Wall. 191, 19 L.Ed. 909; L. R. 1 C. P. 320; 4 Am.

L.Rev. 201. For a distinction, however, between immediate and proximate cause, see "*Cause*."

**CAUSA REI.** In the civil law. Things accessory or appurtenant. The accessions, appurtenances, or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. *Inst.* 4, 17, 3; *Mackeld. Rom.Law*, § 166.

**CAUSA REMOTA.** A remote or mediate cause; a cause operating indirectly by the intervention of other causes.

**CAUSA SCIENTIÆ PATET.** The reason of the knowledge is evident. A technical phrase in Scotch practice, used in depositions of witnesses.

**CAUSA SINE QUA NON.** A necessary or inevitable cause; a cause without which the effect in question could not have happened. *Hayes v. Railroad Co.*, 111 U.S. 228, 4 S.Ct. 369, 28 L.Ed. 410. A cause without which the thing cannot be. With reference to negligence, it is the cause without which the injury would not have occurred. *Fisher v. Butte Electric Ry. Co.*, 72 Mont. 594, 235 P. 330, 332.

**CAUSA TURPIS.** A base (immoral or illegal) cause or consideration.

**CAUSA VAGA ET INCERTA NON EST CAUSA RATIONABILIS.** 5 Coke, 57. A vague and uncertain cause is not a reasonable cause.

**CAUSÆ DOTIS, VITÆ, LIBERTATIS, FISCO SUNT INTER FAVORABILIA IN LEGE.** Causes of dower, life, liberty, revenue, are among the things favored in law. Co.Litt. 341.

**CAUSAM NOBIS SIGNIFICES QUARE.** A writ addressed to a mayor of a town, etc., who was by the king's writ commanded to give seisin of lands to the king's grantee, on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty. *Blount; Cowell*.

**CAUSARE.** In the civil and old English law. To be engaged in a suit; to litigate; to conduct a cause.

**CAUSATOR.** A litigant; one who takes the part of the plaintiff or defendant in a suit.

In old European law. One who manages or litigates another's cause. *Spelman*.

**CAUSE, v.** To be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make. *La Page v. U. S.*, C.C.A. Minn., 146 F.2d 536, 538, 156 A.L.R. 965; *Huffman v. U. S.*, C.C.A.Colo., 259 F. 35, 38; *Shea v. U. S.*, C.C.A.Ohio, 251 F. 440, 447. To induce; to compel. *Hill v. Montgomery*, 352 Mo. 147, 176 S.W. 2d 284, 287.

**CAUSE, n.** (Lat. *causa*.) Each separate antecedent of an event, *Griffin v. Anderson Motor Service Co.*, 227 Mo.App. 855, 59 S.W.2d 805, 808.

Means, Metropolitan Life Ins. Co. v. Funderburk, Tex.Civ.App., 81 S.W.2d 132, 137. Motive, In re Canal Bank & Trust Co.'s Liquidation, 178 La. 575, 152 So. 297, 298. Probable cause, State v. Brockman, 231 Wis. 634, 283 N.W. 338, 340. Producing cause, Traders & General Insurance Co. v. Ray, Tex.Civ.App., 128 S.W.2d 80, 84. Sum of antecedents of an event, Burns v. Eminger, 84 Mont. 397, 276 P. 437, 442; Griffin v. Anderson Motor Service Co., 227 Mo.App. 855, 59 S.W.2d 805, 808. That which produces an effect; whatever moves, impels or leads. Weinberg v. Richardson, 291 Ill. App. 618, 10 N.E.2d 893; Merlo v. Public Service Co. of Northern Illinois, 381 Ill. 300, 45 N.E.2d 665, 675; State v. Craig, 161 S.C. 232, 159 S.E. 559, 560. The origin or foundation of a thing, as of a suit or action; a ground of action. State v. Dougherty, 4 Or. 203.

As used with reference to the removal of an officer or employee, "cause" means a just, not arbitrary, cause: one relating to a material matter, or affecting the public interest. Brokaw v. Burk, 89 N.J.Law, 132, 98 A. 11, 12; a cause relating to and affecting administration of office and of substantial nature directly affecting public's rights and interests, State ex rel. Rockwell v. State Board of Education, 213 Minn. 184, 6 N.W.2d 251, 260, 143 A.L.R. 503.

Conduct indicating unworthy or illegal motives or improper administration of power, Voorhees v. Koplér, 239 App.Div. 83, 265 N.Y.S. 532, 533; Tappan v. Helena Federal Savings & Loan Ass'n of Helena, Ark., 193 Ark. 1023, 104 S.W.2d 458, 459; Zurich General Accident & Liability Ins. Co. v. Kinsler, 12 Cal.2d 98, 81 P.2d 913, 915; misfeasance or nonfeasance, Schoonover v. City of Viroqua, 244 Wis. 615, 12 N.W.2d 912, 914; As used in fraternal benefit society by-law authorizing suspension of subordinate council and dissolution of its charter, "cause," means legal cause or just cause, a substantial, reasonable, or just cause. Wichita Council No. 120 of Security Ben. Ass'n v. Security Ben. Ass'n, 138 Kan. 841, 28 P.2d 976, 979, 94 A.L.R. 629.

"Cause" and "consequence" are correlative terms. Kelsey v. Rebuzzini, 87 Conn. 556, 89 A. 170, 171, 52 L.R.A., N.S., 103; In re Benson, 178 Okl. 299, 62 P.2d 962, 965.

Clause for termination of employment for "any cause" held to refer to cause justifying termination for employee's breach of contract, not arbitrarily. Parsil v. Emery, 242 App.Div. 653, 272 N.Y.S. 439, 440.

Statute permitting an award to be set aside for "cause" means for good cause or some such cause as fraud or surprise, Elsenpeter v. Potvin, 213 Minn. 129, 5 N.W.2d 499, 501.

### In Civil and Scotch Law

The consideration of a contract, that is, the inducement to it, or motive of the contracting party for entering into it. Dig. 2, 14, 7; Toullier, liv. 3, tit. 3, c. 2, § 4; 1 Abb. 28; Bell, Dict.

The civilians use the term "cause," in relation to obligations, in the same sense as the word "consideration" is used in the jurisprudence of England and the United States. It means the motive, the inducement to the agreement,—*id quod inducet ad contrahendum*. Mouton v. Noble, 1 La. Ann. 192. But see Ames, 3 Sel. Essays in Anglo-Amer. Leg. Hist. 279; Poll. Contr. 74.

Used also in the civil law in the sense of *res* (a thing). *Non porcellum, non agnellum nec alia causa* (not a hog, not a lamb, nor other thing). Du Cange.

### In Pleading

Reason; motive; matter of excuse or justification. See 8 Co. 67; 11 East 451; 1 Chit.Pl. 585.

### In Practice

A suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.

As used in venue statute, "cause" means "cause of action", which means the right which a party has to institute a judicial proceeding. Bergin v. Temple, 111 Mont. 539, 111 P.2d 286, 289, 133 A.L.R. 1115.

Cause imports a judicial proceeding entire, and is nearly synonymous with *lis* in Latin, or suit in English. "Case" not infrequently has a more limited signification, importing a collection of facts, with the conclusion of law thereon. See *Shirts v. Irons*, 47 Ind. 445; *Erwin v. U. S.*, D.C. Ga., 37 Fed. 470, 2 L.R.A. 229. But "cause" and "case" are often synonymous. *Zilz v. Wilcox*, 190 Mich. 486, 157 N.W. 77, 80; *Schmalz v. Arnwine*, 118 Or. 300, 246 P. 718, 719; *Cheney v. Richards*, 130 Me. 288, 155 A. 642, 644.

A distinction is sometimes taken between "cause" and "action." Burrill observes that a cause is not, like an action or suit, said to be commenced, nor is an action, like a cause, said to be tried. But, if there is any substantial difference between these terms, it must lie in the fact that "action" refers more peculiarly to the legal procedure of a controversy: "cause" to its merits or the state of facts involved. Thus, we cannot say "the cause should have been replevin." Nor would it be correct to say "the plaintiff pleaded his own action."

As to "Probable Cause" and "Proximate Cause," see those titles. As to challenge "for cause," see "Challenge."

**CAUSE-BOOKS.** Books kept in the central office of the English supreme court, in which are entered all writs of summons issued in the office. Rules of Court, v 8.

**CAUSE LIST.** In English practice. A printed roll of actions, to be tried in the order of their entry, with the names of the solicitors for each litigant. Similar to the calendar of causes, or docket, used in American courts.

**CAUSE OF ACTION.** A "cause of action" may mean one thing for one purpose and something different for another. *Venezuelan Meat Export Co. v. U. S.*, D.C.Md., 12 F.Supp. 379, 383; *U. S. v. Memphis Cotton Oil Co.*, Ct.Cl., 288 U.S. 62, 53 S. Ct. 278, 280, 77 L.Ed. 619.

It may mean: accident, *Maryland Casualty Co. v. Gerlaske*, C.C.A.Tex., 68 F.2d 497, 499; act causing injury, *Fiscus v. Kansas City Public Service Co.*, 153 Kan. 493, 112 P.2d 83, 85; action, *Wattman v. St. Luke's Hospital Ass'n*, 314 Ill.App. 244, 41 N.E.2d 314, 319; averment of facts sufficient to justify a court in rendering a judgment, *Mobley v. Smith*, 24 Ala.App. 553, 138 So. 551; *Vickers v. Vickers*, 45 Nev. 274, 202 P. 31, 32; breach of contract or agreement, *Press v. Davis*, Tex.Civ.App., 118 S.W.2d 982, 989, 990; breach of duty. *Shapiro v. McCarthy*, 279 Mass. 425, 181 N.E. 842, 844; case, *Colla v. Carmichael U-Drive Autos*, 111 Cal.App. 378, 294 P. 378, 380; claim, *Bishop v. Jensen*, 212 Wis. 30, 248 N.W. 771, 772; *East Side Mill & Lumber Co. v. Southeast Portland Lumber Co.*, 155 Or. 367, 64 P.2d 625, 627, 628; concept of law of remedies. *Rooney v. Maczko*, 315 Pa. 113, 172 A. 151, 153; *U. S. v. Memphis Cotton Oil Co.*, Ct.Cl., 288 U.S. 62, 53 S.Ct. 278, 280, 77 L.Ed. 619; concurrence of the facts giving rise to enforceable claim, *United States v. Standard Oil Co. of California*, D.C.Cal., 21 F.Supp. 645, 660; contract, *Stone Fort Nat. Bank of Nacogdoches v. Forbess*, 126 Tex. 568, 91 S.W.2d 674; demand, *State v. Vincent*, 152 Or. 205, 52 P.2d 203, 206; every fact which it is necessary to establish to support right or obtain judgment, *Beale v. Cherryhomes*, Tex.Civ.App., 21 S.W.2d 65, 66; *Dublin Mill & Elevator Co. v. Cornelius*, Tex.Civ.App., 5 S.W.2d 1027, 1028; fact, or a state of facts to which law, sought to be enforced against a person or thing, applies. *Gulf, C. & S. F. Ry. Co. v. Cities Service Co.*, D.C.Del., 270 F. 994, 995; *Condor Pe-*



## CAUSE OF ACTION

troleum Co. v. Greene, Tex.Civ.App., 164 S.W.2d 713, 718; Burns v. Duncan, 23 Tenn.App. 374, 133 S.W.2d 1000, 1004; facts constituting wrong, Whalen v. Strong, 230 App.Div. 617, 246 N.Y.S. 40, 45; facts which give rise to one or more relations of right-duty between two or more persons, Elliott v. Mosgrove, 162 Or. 507, 93 P.2d 1070, 1072, 1073, 1076; failure to perform legal obligation to do, or refrain from performance of, some act, In re Canfield's Will, 165 Misc. 66, 300 N.Y.S. 502; ground on which an action may be maintained or sustained, ground or reason for an action, East Side Mill & Lumber Co. v. Southeast Portland Lumber Co., 155 Or. 367, 64 P.2d 625, 627, 628. Juncture of wrong and damage, City of Newport v. Rawlings, 289 Ky. 203, 158 S.W.2d 12, 14; legal duty and breach of duty, Alford v. Zeigler, 65 Ga.App. 294, 16 S.E.2d 69, 74; legal liability arising out of facts, White v. Nemours Trading Corporation, D.C.Mass., 290 F. 250, 252; legal obligation, Hartford Accident & Indemnity Co. v. Clegg, 103 Utah 414, 135 P.2d 919, 922, 923; legal right in plaintiff and duty in defendant and violation or breach of right or duty, Evans v. Williams, 291 Ky. 484, 165 S.W.2d 52, 54; legal right of action. Inhabitants of Town of Milo v. Milo Water Co., 129 Me. 463, 152 A. 616, 617; legal right violated, Howard v. Brown, 172 Okl. 308, 44 P.2d 959, 961; legal wrong threatened or committed, Connor v. Williams, 187 S.C. 119, 197 S.E. 211, 214; matter for which action may be brought, Ex parte Teeters, 130 Or. 631, 280 P. 660, 662; Williams v. City of Dallas, Tex.Civ.App., 52 S.W.2d 373, 375; negligent act or acts, Cox v. Wilkes-Barre R. Corporation, 334 Pa. 568, 6 A.2d 538, 539; obligation, United States v. Standard Oil Co. of California, D.C.Cal., 21 F.Supp. 645, 660; occurrence which gives rise to litigation, Maryland Casualty Co. v. Gerlaske, C.C.A.Tex., 68 F.2d 497, 499; particular matter for which suit is brought, Severance v. Heyl & Patterson, 115 Pa.Super. 36, 174 A. 787, 789; power to enforce obligation, Woods v. Cook, 14 Cal.App.2d 560, 58 P.2d 965, 966; primary right and corresponding duty and delict or wrong, Vasu v. Kohlers, Inc., 145 Ohio St. 321, 61 N.E.2d 707, 714; redressible wrong, Meshek v. Cordes, 164 Okl. 40, 22 P.2d 921, 926; or breach of duty by defendant, Skalow-ski v. Joe Fisher, Inc., 152 S.C. 108, 149 S.E. 340, 344, 65 A. L.R. 1427; American Nat. Ins. Co. v. Warnock, Tex.Civ. App., 143 S.W.2d 624, 628; right of action or right of recovery, Williams v. City of Dallas, Tex.Civ.App., 52 S.W. 2d 373, 375; Graham v. Scripture, 26 How.Prac., N.Y., 501; right to bring suit, Viers v. Webb, 76 Mont. 38, 245 P. 257, 259; Grenada Bank v. Petty, 174 Miss. 415, 164 So. 316, 318; right to enforce obligations, Woods v. Cook, 14 Cal.App.2d 560, 58 P.2d 965, 966; right to prosecute an action with effect, Travelers' Ins. Co. v. Louis Padula Co., 224 N.Y. 397, 121 N.E. 348, 350; right to recover something from another, Universal Oil Products Co. v. Standard Oil Co. of Indiana, D.C.Mo., 6 F.Supp. 37, 39; right to relief in court, Kittinger v. Churchill Evangelistic Ass'n, 239 App.Div. 253, 267 N.Y.S. 719, 722; Mulligan v. Bond & Mortgage Guarantee Co., 193 App.Div. 741, 184 N.Y.S. 429, 431; subject matter of the controversy, Johnson v. Jordan, D.C.Okl., 22 F.Supp. 286, 289; subject-matter on which plaintiff grounds his right of recovery, Zelen v. Domestic Industries, 131 Neb. 123, 267 N.W. 352, 354; East Side Mill & Lumber Co. v. Southeast Portland Lumber Co., 155 Or. 367, 64 P.2d 625, 627, 628; that which creates necessity for bringing action, Brevick v. Cunard S. S. Co., 63 N.D. 210, 247 N.W. 373, 375; that which produces or effects result complained of, Jacobson v. Mutual Ben. Health & Accident Ass'n, 73 N.D. 108, 11 N.W.2d 442, 445, 446; unlawful violation of a right, Keith v. Texas & P. R. Co., 14 La.App. 290, 129 So. 190, 194; violation or invasion of right, East Side Lumber & Coal Co. v. Barfield, 193 Ga. 273, 18 S.E.2d 492, 496; wrong committed or threatened, Criswell v. Criswell, 101 Neb. 349, 165 N.W. 302.

It may sometimes mean a person having a right of action. Thus, where a legacy is left to a married woman, and she and her husband bring an action to recover it, she is called in the old books the "meritorious cause of action." 1 H.Bl. 108.

A distinction may be taken between "cause of action" and "right of action." Elliott v. Chicago, M. & St. P. Ry. Co., 35 S.D. 57, 150 N.W. 777, 779. The cause of action is distinct from the "remedy." Tonn v. Inner Shoe Tire Co., Tex.Civ.App., 260 S.W. 1078, 1080. And the cause of action may exist, though the remedy does not. Chandler v. Horne, 23 Ohio App. 1, 154 N.E. 748, 750.

Cause of action is not synonymous with chose in action. Bank of Commerce v. Rutland & W. R. Co., 10 How.Prac.,

N.Y., 1. But under a Montana statute, if the relief sought is the recovery of money or other personal property, the cause of action is designated a "thing in action." State v. District Court of Tenth Judicial Dist. in and for Fergus County, 74 Mont. 355, 240 P. 667, 669.

**CAUSE OF INJURY.** That which actually produces it, Anderson v. Byrd, 133 Neb. 483, 275 N. W. 825, 826.

**CAUSE SUIT TO BE BROUGHT.** Commence or begin, State v. Osen, 67 N.D. 436, 272 N.W. 783, 784.

**CAUSES CÉLÈBRES.** Celebrated cases. A work containing reports of the decisions of interest and importance in French courts in the seventeenth and eighteenth centuries.

Secondarily a single trial or decision is often called a "cause célèbre," when it is remarkable on account of the parties involved or the unusual, interesting, or sensational character of the facts.

**CAUSEWAY.** A raised roadbed through low lands; it differs from a levee. Board of Sup'rs of Quitman County v. Carrier Lumber & Mfg. Co., 103 Miss. 324, 60 So. 326, 327. See, also, Coleman-Fulton Pasture Co. v. Aransas County, Tex.Civ. App., 180 S.W. 312, 313.

**CAUSIDICUS.** In the civil law. A speaker or pleader; one who argued a cause *ore tenus*. See "Advocate."

**CAUTELA.** Lat. Care; caution; vigilance; provision.

**CAUTI JURATORIA.** See "Caution Juratory."

**CAUTIO.** In the Civil and French law. Security given for the performance of any thing; bail; a bond or undertaking by way of surety. Also the person who becomes a surety.

In Scotch law. A pledge, bond, or other security for the performance of an obligation, or completion of the satisfaction to be obtained by a judicial process. Bell, Dict.; 6 Mod. 162.

**CAUTIO FIDEJUSSORIA.** Security by means of bonds or pledges entered into by third parties. Du Cange.

**CAUTIO MUCIANA.** Security given by an heir or legatee, to obtain immediate possession of inheritance or legacy, for observance of a condition annexed to the bequest, where the act which is the object of the condition is one which he must avoid committing during his whole life, *e. g.*, that he will never marry, never leave the country, never engage in a particular trade, etc. See Mackeld. Rom.Law, § 705.

**CAUTIO PIGNORATITIA.** Security given by pledge, or deposit, as plate, money, or other goods.

**CAUTIO PRO EXPENSIS.** Security for costs, charges, or expenses.

**CAUTIO USUFRUCTUARIA.** Security, which tenants for life give, to preserve the property rented free from waste and injury. Ersk.Inst. 2, 9, 59.



**CAUTION.** In Scotch law, and in admiralty law. Surety; security; bail; an undertaking by way of surety. 6 Mod. 162. See Cautio. See also Prudence; Cautious.

To warn, exhort, to take heed, or give notice of danger. *Arnold v. United States*, C.C.A.Colo., 94 F.2d 499, 501.

**CAUTION JURATORY.** In Scotch law. Security given by oath. That which a suspender swears is the best he can afford in order to obtain a suspension. *Ersk.Pract.* 4, 3, 6.

**CAUTIONARY.** In Scotch law. An instrument in which a person binds himself as surety for another.

**CAUTIONARY JUDGMENT.** Where an action in tort was pending and the plaintiff feared the defendant would dispose of his real property before judgment, a cautionary judgment was entered with a lien on the property; *Seisner v. Blake*, 13 Pa.Co.Ct.R. 333; so in an action on a note against a religious association, where it was alleged that the defendant was endeavoring to sell its real estate before judgment on the note; *Witmer & Dundore v. Port Treverton Church*, 17 Pa.Co.Ct.R. 38.

**CAUTIONE ADMITTENDA.** In English ecclesiastical law. A writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future. *Reg.Orig.* 66; *Cowell*.

**CAUTIONER.** In Scotch law. A surety; a bondsman. One who binds himself in a bond with the principal for greater security. He is still a cautioner whether the bond be to pay a debt, or whether he undertake to produce the person of the party for whom he is bound. *Bell*.

**CAUTIONNEMENT.** In French law. The same as becoming surety in English law.

**CAUTIONRY.** In Scotch law. Suretyship.

**CAUTIOUS.** Careful; prudent. *Horton v. New York Cent. R. Co.*, 205 App.Div. 763, 200 N.Y.S. 365, 366.

The terms "cautious" and "prudent" may be used interchangeably in defining negligence. *Malcolm v. Mooresville Cotton Mills*, 191 N.C. 727, 133 S.E. 7, 9. But "cautious" differs from "prudent" in suggesting the idea of timidity, with its secondary meaning as overprudent; fearful. *People v. Anderson*, 58 Cal.App. 267, 208 P. 324, 325. See *Prudence*.

**CAVEAT.** Lat. Let him beware.

An intimation to a judge or officer notifying him to suspend a proceeding until merits of the caveat are determined. In *re Phillips' Estate*, 293 Pa. 351, 143 A. 9. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take an appeal, to prevent the grant of letters patent, etc. It is also used, in the American practice, as a kind of equitable pro-

cess, to stay the granting of a patent for lands. *Ex parte Crafts*, 28 S.C. 281, 5 S.E. 718; *In re McCahan's Estate*, 221 Pa. 188, 70 A. 711; See, also, 1 Burn, *Ecll.Law* 19, 263; *Nelson, Abr.*; *Dane, Abr.*; *Ayliffe, Parerg.*; 3 Bla. Comm. 246; 2 Chit.Pr. 502, note b; 3 Redf.Wills 119; *Poph.* 133; 1 Sid. 371.

In patent law. A formal written notice to officers of the patent-office, requiring them to refuse letters patent on a particular invention or device to any other person, until the party filing the caveat (called the "caveator") shall have an opportunity to establish his claim to priority of invention. The practice was abolished by act of June 25, 1910, c. 414, § 1, 36 Stat. 843.

**CAVEAT ACTOR.** Let the doer, or actor, beware.

**CAVEAT EMPTOR.** Let the buyer beware (or take care). *Kellogg Bridge Co. v. Hamilton*, 110 U.S. 108, 116, 3 S.Ct. 537, 28 L.Ed. 86.

This maxim summarizes the rule that a purchaser must examine, judge, and test for himself, *Miller v. Tiffany*, 1 Wall. 309, 17 L.Ed. 540; *Hargous v. Stone*, 5 N.Y. 82; *Humphrey v. Baker*, 71 Okl. 272, 176 P. 896; the purchaser at sheriff's sales must inform himself of extent of judgment debtor's title, *Brightwell v. First Nat. Bank, C. C.A.Fla.*, 109 F.2d 271, 273; the purchaser takes risk of quality and condition unless he protects himself by a warranty or there has been a false representation, *State ex rel. Jones Store Co. v. Shain, Mo.*, 179 S.W.2d 19, 20. There is no warranty of title. *McKnight v. Johnson*, 236 Ky. 763, 34 S.W.2d 239, 240.

**CAVEAT EMPTOR, QUI IGNORARE NON DEBUI QUOD JUS ALIENUM EMIT.** Hob. 99.

Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another. Let a buyer beware; for he ought not to be ignorant of what they are when he buys the rights of another. *Broom, Max.* 768; *Co.Litt.* 132 a; 3 *Taunt.* 439; *Sugd. V. & P.* 328; 1 *Story, Eq.Jur.* ch. 6.

**CAVEAT TO WILL.** A demand that will be produced and probated in open court. An attack on validity of alleged will. *Whitehurst v. Abbott*, 225 N.C. 1, 33 S.E.2d 129, 132.

**CAVEAT VENDITOR.**

In Roman law. A maxim, or rule, casting the responsibility for defects or deficiencies upon the seller of goods. See *Hargous v. Stone*, 5 N.Y. 73.

In English and American Jurisprudence. *Caveat venditor* is sometimes used as expressing, in a rough way, the rule which governs all those cases of sales to which *caveat emptor* does not apply.

**CAVEAT VIATOR.** Let the wayfarer beware. *Broom, Max.* 387, n.; 10 *Exch.* 774. This phrase has been used as a concise expression of the duty of a traveler on the highway to use due care to detect and avoid defects in the way. *Cornwell v. Com'rs*, 10 *Exch.* 771, 774.

**CAVEATOR.** One who files a caveat.

**CAVENDUM EST A FRAGMENTIS.** Beware of fragments. *Bac.Aph.* 26.

**CAVERE.** Lat. In the civil and common law. To take care; to exercise caution; to take care or provide for; to provide by law; to provide against; to forbid by law; to give security; to give caution or security on arrest.

## CAVERS

**CAVERS.** Persons stealing ore from mines in Derbyshire, punishable in the berghmote or miners' court; also officers belonging to the same mines. Wharton.

**CAYA.** In old English law. A quay, kay, key, or wharf. Cowell.

**CAYAGIUM.** In old English law. Cayage or kayage; a toll or duty anciently paid the king for landing goods at a quay or wharf. The barons of the Cinque Ports were free from this duty. Cowell.

**CEAP.** A bargain; anything for sale; a chattel; also cattle, as being the usual medium of barter. Sometimes used instead of ceapgild, (*q. v.*).

**CEAPGILD.** Payment or forfeiture of an animal. An ancient species of forfeiture. Cowell.

**CEASE.** To stop; to become extinct; to pass away; to come to an end. *MacDonald v. Aetna Indemnity Co.*, 90 Conn. 226, 96 A. 926, 927; *Martin v. Gray*, 193 Ark. 32, 97 S.W. 439, 441. Suspend or forfeit. *Marks v. La Guardia*, Sup., 31 N.Y.S.2d 336, 350. A cessation of activity. *Huasteca Petroleum Co. v. Cia de Navegacao Lloyd Brasileiro*, D.C.N.Y., 297 F. 318, 321; *In re Simpson*, 62 Cal.App. 549, 217 P. 789, 790.

*City of Macon v. Bunch*, 156 Ga. 27, 118 S.E. 769, held that a city detective, by being kept in jail for 31 days to answer an indictment, did not cease to perform the duties of his office so as to cause a vacancy therein.

**CEASE TO DO BUSINESS.** A going concern ceases to do business when it sells all its property, plant, assets of all kinds, including cash, and the buyer takes possession. *Van Oss v. Premier Petroleum Co.*, 113 Me. 180, 93 A. 72, 77.

**CEDE.** To yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another. *Goetze v. United States*, C.C.N.Y., 103 Fed. 72; *Baltimore v. Turnpike Road*, 80 Md. 535, 31 A. 420.

**CEDENT.** In Scotch law. An assignor. One who transfers a chose in action. *Kames*, Eq. 43.

**CEDO.** I grant. The word ordinarily used in Mexican conveyances to pass title to lands. *Mulford v. Le Franc*, 26 Cal. 88, 108.

### CEDULA.

In old English law. A schedule.

In Spanish law. An act under private signature, by which a debtor admits the amount of the debt, and binds himself to discharge the same on a specified day or on demand. Also the notice or citation affixed to the door of a fugitive criminal requiring him to appear before the court where the accusation is pending.

**CEDULE.** In French law. The technical name of an act under private signature. *Campbell v. Nicholson*, 3 La. Ann. 458.

**CELATION.** In medical jurisprudence. Concealment of pregnancy or delivery.

**CELDRA.** In old English law, a chaldron. In old Scotch law, a measure of grain, otherwise called a "chalder." See *1 Kames*, Eq. 215.

**CELEBRATION OF MARRIAGE.** The formal act by which a man and woman take each other for husband and wife, according to law; the solemnization of a marriage. The term is usually applied to a marriage ceremony attended with ecclesiastical functions. See *Pearson v. Howey*, 11 N.J. Law, 19.

**CELIBACY.** The condition or state of life of an unmarried person.

**CELLERARIUS.** A butler in a monastery; sometimes in universities called "manciple" or "caterer."

**CEMETERY.** A graveyard; burial ground. *Peterson v. Stolz*, Tex.Civ.App., 269 S.W. 113, 117; *Village of Villa Park v. Wanderer's Rest Cemetery Co.*, 316 Ill. 226, 147 N.E. 104, 105. Place or area set apart for interment of the dead. *City of Wichita v. Schwertner*, 130 Kan. 397, 286 P. 266, 268, *Damon v. State*, Tex.Com.App., 52 S.W.2d 368, 370.

Term includes not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes. *Ex parte Adlof*, 86 Tex. Cr.R. 13, 215 S.W. 222, 223. *Town of Blooming Grove v. Roselawn Memorial Park Co.*, 231 Wis. 492, 286 N.W. 43, 45. A place of burial, differing from a churchyard by its locality and incidents. *Wharton*. See *Winters v. State*, 9 Ind. 174; *Cemetery Ass'n v. New Haven*, 43 Conn. 243, 21 Am.Rep. 643.

Six or more human bodies being buried at one place constitutes the place a cemetery.

**CEMETERY WORK.** Platting, grading, planting, beautifying, and maintaining a tract of land in such manner as to render it a proper place for sepulture of the dead, and to preserve it as such. *Rosedale Cemetery Ass'n v. Industrial Accident Commission of California*, 37 Cal.App. 706, 174 P. 351, 352.

**CENDULÆ.** Small pieces of wood laid in the form of tiles to cover the roof of a house; shingles. Cowell.

**CENEGILD.** In Saxon law. An expiatory mulct or fine paid to the relations of a murdered person by the murderer or his relations. *Spelman*.

**CENELLÆ.** In old records. Acorns.

**CENNINGA.** A notice given by a buyer to a seller that the things which had been sold were claimed by another, in order that he might appear and justify the sale. *Blount*; *Whishaw*. But the exact significance of this term is somewhat doubtful. *Spelman*, Gloss.

**CENS.** In French Canadian law. An annual tribute or due reserved to a seignior or lord, and imposed merely in recognition of his superiority. *Guyot*, Inst. c. 9. The *cens* varies in amount and in mode of payment. 2 *Low.C.* 40. See *Censive*; *Censitaire*.

**CENSARIA.** In old English law. A farm, or house and land let at a standing rent. Cowell.

**CENSARII.** In old English law. Farmers, or such persons as were liable to pay a census, (tax.) Blount; Cowell.

**CENSERE.** In the Roman law. To ordain; to decree. Dig. 50, 16, 111.

**CENSITAIRE.** In Canadian law. A tenant by *cens*, (*q. v.*)

**CENSIVE.** In Canadian law. Tenure by *cens*, (*q. v.*)

**CENSO.** In Spanish and Mexican law. An annuity. A ground rent. The right which a person acquires to receive a certain annual pension, for the delivery which he makes to another of a determined sum of money or of an immovable thing. Civ.Code Mex. art. 3206. See Schm.Civil Law, 149, 309; White, New Recop. bk. 2, c. 7, § 4.

**CENSO AL QUITAR.** A redeemable annuity; otherwise called "censo redimible." Trevino v. Fernandez, 13 Tex. 630.

**CENSO CONSIGNATIVO.** A *censo* (*q. v.*) is called "*consignativo*" when he who receives the money assigns for the payment of the pension (annuity) the estate the fee in which he reserves. Civ.Code Mex. art. 3207.

**CENSO ENFITEUTICO.** In Spanish and Mexican law. An emphyteutic annuity. That species of *censo* (annuity) which exists where there is a right to require of another a certain canon or pension annually, on account of having transferred to that person forever certain real estate, but reserving the fee in the land. The owner who thus transfers the land is called the "*cenualisto*," and the person who pays the annuity is called the "*cenatario*." Hall, Mex.Law, § 756; Hart v. Burnett, 15 Cal. 557.

**CENSO RESERVATIO.** In Spanish and Mexican law. The right to receive from another an annual pension by virtue of having transferred land to him by full and perfect title. Trevino v. Fernandez, 13 Tex. 655.

**CENSORSHIP.** The denial of right of "freedom of the press" and of right of "freedom of speech", and of all those rights and privileges which are had under a free government. Esquire, Inc., v. Walker, D.C.D.C., 55 F.Supp. 1015, 1020.

**CENSUALES.** In old European law. A species of *oblato* or voluntary slaves of churches or monasteries; those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery.

**CENSUERE.** In Roman law. They have decreed. The term of art, or technical term for the judgment, resolution, or decree of the senate. Tayl. Civil Law, 566.

**CENSUMETHIDUS, or CENSUMORTHIDUS.** A dead rent, like that which is called "mortmain." Blount; Cowell.

**CENSURE.** In ecclesiastical law. A spiritual punishment.

It consists in withdrawing from a baptized person (whether belonging to the clergy or the laity) a privilege which the church gives him, or in wholly expelling him from the Christian communion. The principal varieties of censures are admonition, degradation, deprivation, excommunication, penance, sequestration, suspension. Phillim. Ecc.Law, 1367.

A custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 11d. per poll, and 1d. per annum.

**CENSUS.** The official counting or enumeration of people of a state, nation or district, Huntington v. Cast, 149 Ind. 255, 48 N.E. 1025; Republic v. Paris, 10 Hawaii, 581; Vale Independent Consol. School Dist. No. 2 of Butte County v. School Dist. No. 71 of Meade County, 54 S.D. 207, 222 N.W. 948. It is a finding of the population and not an "estimate." State ex rel. Reynolds v. Jost, 265 Mo. 51, 175 S.W. 591, 597, Ann.Cas.1917D, 1102.

In Roman law. A numbering or enrollment of the people, with a valuation of their fortunes.

In old European law. A tax, or tribute; a toll. Montesq. Esprit des Lois, liv. 30, c. 14.

**CENSUS REGALIS.** In English law. The annual revenue or income of the crown.

**CENT.** A coin of the United States, the least in value of those now minted. It is the hundredth part of a dollar. Its weight is 48 gr., and it is composed of ninety-five per centum of copper and of five per centum of tin and zinc in such proportions as shall be determined by the Director of the Mint. Act of Feb. 12, 1873, § 16. See Rev.Stat. § 3515, 31 U.S.C.A. § 317.

**CENTAL.** A weight of 100 pounds avoirdupois, used at Liverpool for corn. Cent.Dict. Usually called *hundredweight* in the United States.

**CENTENA.** A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks, and Lombards, for military and civil purposes, and answering to the Saxon "hundred." Spelman; 1 Bl.Comm. 115.

Also, in old records and pleadings, a hundred weight.

**CENTENARII.** Petty judges, under-sheriffs of counties, that had rule of a hundred, (*centena*), and judged smaller matters among them. 1 Vent. 211.

**CENTENI.** The principal inhabitants of a *centena*, or district composed of different villages, originally in number a hundred, but afterwards only called by that name.

**CENTER.** This term is often used, not in its strict sense of a geographical or mathematical center, but as meaning the middle or central point or

## CENTER

portion of anything. *Bass v. Harden*, 160 Ga. 400, 128 S.E. 397, 400; *Hill v. Ralph*, 165 Ark. 524, 265 S.W. 57, 58; *Darnell v. Ransdall*, Mo.App., 277 S.W. 372, 373.

The center of a section of land is the intersection of a straight line from the north quarter corner to the south quarter corner with a straight line from the east quarter corner to the west quarter corner. *Lunz v. Sandmeler's Estate*, 172 Minn. 338, 215 N.W. 426. Similarly, the center of a street intersection refers to the point where the center lines of the two streets cross. *Thrush v. Lingo Lumber Co.*, Tex.Civ.App., 262 S.W. 551, 552. The edges of the hardened surface of a road constitute the "bounds of the highway" in determining "center" of highway at an intersection. *Decker v. Roberts*, 126 Conn. 478, 12 A.2d 541, 543. The center of the main channel of a river, is the middle of broad and distinctly defined bed of main river. *Hill City Compress Co. v. West Kentucky Coal Co.*, 155 Miss. 55, 122 So. 747, 748.

**CENTESIMA.** In Roman law. The hundredth part.

*Usuriae centesimae.* Twelve per cent. per annum; that is, a hundredth part of the principal was due each month.—the month being the unit of time from which the Romans reckoned interest. 2 Bl.Comm. 462, note.

**CENTIME.** The name of a denomination of French money, being the one-hundredth part of a franc.

**CENTRAL CRIMINAL COURT.** Since 1834, an English court, having jurisdiction for the trial of crimes and misdemeanors committed in London and certain adjoining parts of Kent, Essex, and Sussex, and of such other criminal cases as may be sent to it out of the king's bench superseded the "Old Bailey."

**CENTRAL OFFICE.** The central office of the supreme court of judicature in England is the office established in pursuance of the recommendation of the legal departments commission in order to consolidate certain offices. It is divided into departments. Sweet.

**CENTRAL STATION.** A plant at which electric current is generated to supply consumers. *People ex rel. Taylor v. Walsh*, 140 Misc. 25, 248 N.Y.S. 753, 757.

**CENTRAL TRAFFIC CONTROL.** A system of railroad operation for directing the movement of trains by signals controlled from a central point. *Van Schaick v. McCarthy*, C.C.A.Colo., 116 F.2d 987, 990.

**CENTRAL VISION.** The exact and clear vision of the thing one looks directly at. *Baugh v. Glassell-Rogers Drilling Co.*, La.App., 190 So. 130, 132.

**CENTRALIZATION.** The system of government in a country where management of local matters is in the hands of functionaries appointed by the ministers of state, paid by the state, and in constant communication and under the constant control and inspiration of the ministers of state, and where the funds of the state are largely applied to local purposes. Wharton.

**CENTUMVIRI.** In Roman law. The name of an important court consisting of a body of one hundred and five judges. 3 Bla.Comm. 515.

**CENTURY.** One hundred. A body of one hundred men. The Romans were divided into *centuries* as the English were divided into hundreds.

Also a cycle of one hundred years.

**CEORL.** In Anglo Saxon law. A class of free-men personally free, but possessing no landed property. Guizot, Rep.Govt.

A tenant at will of free condition, who held land of the thane on condition of paying rent or services. Cowell.

A freeman of inferior rank occupied in husbandry. Spelman.

Under the Norman rule, this term, as did others which denoted workmen, especially those which applied to the conquered race, became a term of reproach, as is indicated by the popular signification of churl. Cowell; 1 Poll. & Maitl. 8; 2 *id.* 458.

**CEPI.** Lat. I have taken. This word was of frequent use in the returns of sheriffs when they were made in Latin, and particularly in the return to a writ of *capias*.

The full return (In Latin) to a writ of *capias* was commonly made in one of the following forms: *Cepi corpus*, I have taken the body, i. e., arrested the body of the defendant; *Cepi corpus et bail*, I have taken the body and released the defendant on a bail-bond; *Cepi corpus et committitur*, I have taken the body and he has been committed (to prison); *Cepi corpus et est in custodia*, I have taken the defendant and he is in custody; *Cepi corpus et est languidus*, I have taken the defendant and he is sick, i. e., so sick that he cannot safely be removed from the place where the arrest was made; *Cepi corpus et paratum habeo*, I have taken the body and have it (him) ready, i. e., in custody and ready to be produced when ordered.

## CEPIT.

In civil practice. He took. This was the characteristic word employed in (Latin) writs of trespass for goods taken, and in declarations in trespass and replevin.

Replevin in the *cepit* is a form of replevin which is brought for carrying away goods merely. Wells, Repl. § 53; *Ford v. Ford*, 3 Wis. 399.

In criminal practice. A technical word necessary in an indictment for larceny. The charge must be that the defendant took the thing stolen with a felonious design. Bac.Abr. "Indictment," G, 1.

**CEPIT ET ABDUXIT.** He took and led away. The emphatic words in writs in trespass or indictments for larceny, where the thing taken was a living chattel, *i. e.*, an animal.

**CEPIT ET ASPORTAVIT.** He took and carried away. Applicable in a declaration in trespass or an indictment for larceny where the defendant has carried away goods without right. 4 Bl. Comm. 231.

**CEPIT IN ALIO LOCO.** In pleading. A plea in replevin, by which the defendant alleges that he took the thing replevied in another place than that mentioned in the declaration. 1 Chit.Pl. 490; *Rast.Entr.* 554, 555; *Morris*, Repl. 141; *Wells Repl.* § 707.

**CEPPAGIUM.** In old English law. The stumps or roots of trees which remain in the ground after the trees are felled. *Fleta*, lib. 2, c. 41, § 24.

**CERA, or CERE.** In old English law. Wax; a seal.

**CERA IMPRESSA.** Lat. An impressed seal.

It may include an impression made on wafers or other adhesive substances capable of receiving an impression, or even paper. *Pierce v. Indseth*, 106 U.S. 546, 1 S.Ct. 418, 27 L.Ed. 254.

**CERAGRUM.** In old English law. A payment to provide candles in the church. *Blount*.

**CEREVISA.** In old English law. Ale or beer.

**CERT MONEY.** In old English law. Head money or common fine. Money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, (*pro certo letæ*;) and sometimes to the hundred. *Blount*; 6 *Coke*, 78; *Cowell*.

**CERTA DEBET ESSE INTENTIO, ET NARRATIO, ET CERTUM FUNDAMENTUM, ET CERTA RES QUÆ DEDUCITUR IN JUDICIUM.** The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court to be tried. *Co.Litt.* 303a.

**CERTA RES.** In old English law. A certain thing. *Fleta*, lib. 2, c. 60, §§ 24, 25.

**CERTAIN.** Ascertained; precise; identified; definitive; clearly known; unambiguous; or, in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given. *Losecco v. Gregory*, 108 La. 648, 32 So. 986; *White v. Wadhams*, 204 Mich. 381, 170 N.W. 60, 62. Not specifically named; indeterminate, indefinite; one or some. *Wilhite v. Armstrong*, 328 Mo. 1064, 43 S.W.2d 422, 423. Some among possible others, in re *Mineral Lac Paint Co.*, D.C.Pa., 17 F.Supp. 1, 2. That which may be made certain. *Brown v. City of Shreveport*, La. App., 15 So.2d 234, 236; *Singer v. Campbell*, 217 Ky. 830, 290 S.W. 667, 668; *Civ.Code La. art.* 3556; *Lee v. Pearson*, La.App., 143 So. 516, 518.

**CERTAIN SERVICES.** In feudal and old English law. Such services as were stinted (limited or defined) in quantity, and could not be exceeded on any pretense; as to pay a stated annual rent, or to plow such a field for three days. 2 *Bl.Comm.* 61.

**CERTAINTY.** Absence of doubt. *Bennett v. McKrell*, Tex.Civ.App., 125 S.W.2d 701, 707.

### In Pleading

Distinctness; clearness of statement; particularity.

Such precision and explicitness in the statement of alleged facts that the pleader's averments and contention may be readily understood by the pleader on the other side, as well as by the court and jury. *State v. Burke*, 151 Mo. 143, 52 S.W. 226.

This word is technically used in pleading in two different senses, signifying either distinctness, or particularity, as opposed to undue generality.

Certainty is said to be of three sorts: (1) *Certainty to a common intent* is such as is attained by using words in their ordinary meaning, but is not exclusive of another

meaning which might be made out by argument or inference. See 2 *H.Bl.* 530; *Andr.Steph.Pl.* 384. (2) *Certainty to a certain intent in general* is that which allows of no misunderstanding if a fair and reasonable construction is put upon the language employed, without bringing in facts which are possible, but not apparent. 1 *Wms.* *Saund.* 49; *Fuller v. Hampton*, 5 Conn. 423. (3) *Certainty to a certain intent in particular* is the highest degree of technical accuracy and precision. *Co.Litt.* 303; 2 *H.Bl.* 530; *State v. Parker*, 34 Ark. 158, 36 Am.Rep. 5; *Lawes*, Pl. 54. These definitions, which have been adopted from *Coke*, have been subjected to severe criticism, but are of some utility in drawing attention to the different degrees of exactness and fulness of statement required in different instances. 13 *East*, 112; 3 *Maule & S.* 14; *People v. Dunlap*, 13 *Johns.*, N.Y., 437.

### In Contracts

The quality of being specific, accurate, and distinct. As to uncertainty of contract, see *Davie v. Min. Co.*, 93 Mich. 491, 53 N.W. 625, 24 L.R.A. 357; *Van Schaick v. Van Buren*, 70 Hun, 575, 24 N.Y.S. 306.

A thing is certain when its essence, quality, and quantity are described, distinctly set forth, etc. *Dig.* 12, 1, 6. It is uncertain when the description is not that of an individual object, but designates only the kind. *Civ.Code La. art.* 3556, par. 7; 5 *Coke*, 121.

### In Determining Negotiability of Instrument

That is certain which may be rendered certain; a commercial, and not mathematical, certainty. *Gerrish v. Atlantic Ice & Coal Co.*, C.C.A.Ga., 80 F. 2d 648, 650.

**CERTIFICANDO DE RECOGNITIONE STAPULÆ.** In English law. A writ commanding the mayor of the staple to certify to the lord chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases. *Reg.Orig.* 148, 151, 152.

**CERTIFICATE.** A document in use in the English customhouse. No goods can be exported by *certificate*, except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. *Wharton*.

A ticket. *Hall v. U. S.*, D.C.Cal., 10 F.Supp. 739, 740.

A warrant. *Graham v. State*, 123 Tex.Cr.R. 121, 57 S.W.2d 850, 854.

A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with.

A written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer. *People v. Foster*, 27 *Misc.Rep.* 576, 58 N.Y.S. 574; *U. S. v. Ambrose*, 108 U.S. 336, 2 S.Ct. 682, 27 L.Ed. 746. A statement of some fact in a writing signed by the party certifying. *Nowell v. Mayor and Council of Monroe*, 177 Ga. 648, 171 S.E. 136, 141. A declaration in writing. *Ballen & Friedman v. Bank of Krenlin*, 37 Okl. 112, 130 P. 539, 540, 44 L.R.A., N.S., 621. A "certificate" by a public officer is a statement written and signed, but not necessarily or customarily sworn to, which is by law made evidence of the truth of the facts stated for all or for certain purposes. *State v. Abernethy*, 190 N.C. 768, 130 S.E. 619, 620.

## CERTIFICATE

A writing by which testimony is given that a fact has or has not taken place. *Laclede Land & Improvement Co. v. Morten*, 183 Mo.App. 637, 167 S.W. 658.

**CERTIFICATE FOR COSTS.** In English practice. A certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.

**CERTIFICATE INTO CHANCERY.** In English practice. This is a document containing the opinion of the common-law judges on a question of law submitted to them for their decision by the chancery court.

**CERTIFICATE LANDS.** In Pennsylvania, in the period succeeding the revolution, lands set apart in the western portion of the state, which might be bought with the certificates which the soldiers of that state in the revolutionary army had received in lieu of pay. Cent. Dict.

**CERTIFICATE OF ACKNOWLEDGMENT.** The certificate of a notary public, justice of the peace, or other authorized officer, attached to a deed, mortgage, or other instrument, setting forth that the parties thereto personally appeared before him on such a date and acknowledged the instrument to be their free and voluntary act and deed. *Read v. Loan Co.*, 68 Ohio St. 280, 67 N.E. 729, 62 L.R.A. 790. A verification of the act of the maker of an instrument. *Thane v. Dallas Joint Stock Land Bank of Dallas, Tex.Civ.App.*, 129 S.W.2d 795, 799.

**CERTIFICATE OF ASSIZE.** A writ granted for the re-examination or retrial of a matter passed by assize before justices. *Fitzh.Nat.Brev.* 181. It is now entirely obsolete. 3 Bla.Comm. 389. Consult, also, *Comyns, Dig. Assize* (B, 27, 28).

**CERTIFICATE OF DEPOSIT.** A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some other person or to his order, *Wheelock v. Cantley*, 227 Mo.App. 102, 50 S.W.2d 731, 734; *Mariland Finance Corporation v. People's Bank of Keyser*, 99 W.Va. 230, 128 S.E. 294, 295. A bank's promissory note, *Dickenson v. Charles*, 173 Va. 393, 4 S.E.2d 351, 353.

Documents showing deposits in building and loan association in form of passbooks or any other appropriate written recital. *Alter v. Security Building & Loan Co. of Defiance*, 58 Ohio App. 114, 16 N.E.2d 228, 233.

**CERTIFICATE OF DONATION.** A permit or right granted certificate holder to enter upon land belonging to state to make improvements required by law. *Young v. Pumphrey*, 191 Ark. 98, 83 S.W. 2d 84, 86.

**CERTIFICATE OF EVIDENCE.** Practically synonymous with bill of exceptions. *Yott v. Yott*, 257 Ill. 419, 100 N.E. 902, 903.

**CERTIFICATE OF HOLDER OF ATTACHED PROPERTY.** A certificate required by statute, in some states, to be given by a third person who is found in possession of property subject to an attachment in the sheriff's hands, setting forth the amount and character of such property and the nature of the defendant's interest in it. Code Civil Proc.N.Y. § 650, Civil Practice Act, § 918.

**CERTIFICATE OF INCORPORATION.** The instrument by which a private corporation is formed, under general statutes, executed by several persons as incorporators and filed in some designated public office as evidence of corporate existence. This is properly distinguished from a "charter," which is a direct legislative grant of corporate existence and powers to named individuals.

**CERTIFICATE OF INDEBTEDNESS.** An obligation sometimes issued by corporations having practically the same force and effect as a bond, though not usually secured on any specific property. *Christie v. Duluth*, 82 Minn. 202, 84 N.W. 754. It may, however, create a lien on all the property of the corporation issuing it, superior to the rights of general creditors. *Jefferson Banking Co. v. Trustees of Martin Institute*, 146 Ga. 383, 91 S.E. 463, 466.

**CERTIFICATE OF INTEREST.** An instrument evidencing a fractional or percentage interest in oil and gas production. *People v. Sidwell*, 27 Cal. 2d 121, 162 P.2d 913, 915.

**CERTIFICATE OF OCCUPANCY.** A paper certifying that premises complied with provisions of zoning ordinance. *Frank J. Durkin Lumber Co. v. Fitzsimmons*, 106 N.J.Law, 183, 147 A. 555, 557.

**CERTIFICATE OF PREFERRED STOCK.** Certificate that person is registered holder of designated number of shares of preferred capital stock. *Cring v. Sheller Wood Rim Mfg. Co.*, 98 Ind.App. 310, 183 N.E. 674, 677.

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.** A license or permit to use highways for stated purposes. Railroad Commission of Texas v. *Southwestern Greyhound Lines*, *Tex.Civ.App.*, 92 S.W.2d 296, 301, 302.

**CERTIFICATE OF PURCHASE.** A certificate issued by public officer to successful bidder at a judicial sale (such as a tax sale), which will entitle him to a deed upon confirmation of sale by the court, or (as the case may be) if the land is not redeemed within the time limited. *Lightcap v. Bradley*, 186 Ill. 510, 58 N.E. 221.

**CERTIFICATE OF REGISTRY.** In maritime law. A certificate of the registration of a vessel according to the registry acts, for the purpose of giving her a national character. 3 Steph.Comm. 274; 3 Kent, Comm. 139-150.

**CERTIFICATE OF SALE.** The same as "certificate of purchase," *supra*.

**CERTIFICATE OF STOCK.** A certificate of a corporation or joint-stock company that named person is owner of designated number of shares of stock. *Gibbons v. Mahon*, 136 U.S. 549, 10 S.Ct. 1057, 34 L.Ed. 525; *Edwards v. Wabash Ry. Co.*, C.C.A.N.Y., 264 F. 610, 613. A written instrument stating or acknowledging that named person is owner of designated number of shares of stock. It is merely written evidence of ownership of stock, and of the rights and liabilities resulting from such ownership. It is merely a paper representation of an incorporeal right, and stands on the footing similar to that of other muniments of title. *Whitehead v. Gormley*, 116 Okl. 287, 245 P. 562, 565, 47 A.L.R. 171; *Misenheimer v. Alexander*, 162 N.C. 226, 78 S.E. 161, 164; *Home for Destitute Crippled Children v. Boomer*, 308 Ill.App. 170, 31 N.E.2d 812, 820; *Warren v. New Jersey Zinc Co.*, N.J.Ch., 116 N.J.Eq. 315, 173 A. 128, 132.

**CERTIFICATE SENT TO 1 B.** Notation reading "Certificate Sent to 1 B" meant that certificate was to be sent to single beneficiary if war risk insurance application should be accepted. *McCormack v. U. S.*, C.C.A.N.Y., 66 F.2d 519, 521.

**CERTIFICATE, TRIAL BY.** A mode of trial now little in use; it is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. *Brown*.

**CERTIFICATION.** In Scotch practice. This is the assurance given to a party of the course to be followed in case he does not appear or obey the order of the court.

**CERTIFICATION OF ASSIZE.** In English practice. A writ anciently granted for the re-examining or retrial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial. See *Certificate of Assize*.

**CERTIFICATS DE COUTUME.** In French law. Certificates given by a foreign lawyer, establishing the law of the country to which he belongs upon one or more fixed points. These certificates can be produced before the French courts, and are received as evidence in suits upon questions of foreign law. *Arg.Fr.Merc.Law*, 548.

**CERTIFIED CARRIERS.** Carriers using highways of state to whom certificates of public convenience and necessity have been issued. *People v. Henry*, 131 Cal.App. 82, 21 P.2d 672.

**CERTIFIED CHECK.** A depositor's check recognized and accepted by bank officer as valid appropriation of the amount specified and as drawn against funds held by bank.

The usual method of certification is for cashier or teller to write across face of check, over his signature, statement that it is good when properly indorsed. See *McAdoo v. Farmers' State Bank of Zenda*, 106 Kan. 662, 189 P. 155, 156; *Bathgate v. Exchange Bank of Chula*, 199 Mo.App. 583, 205 S.W. 875, 876.

The certification of a check is a statement of fact, amounting to an estoppel of the bank to deny liability. *Bank of Bay Biscayne v. Ball*, 99 Fla. 745, 128 So. 491, 492. A warranty that sufficient funds are on deposit and have been set aside. *World Exchange Bank v. Commercial Casualty Ins. Co.*, 255 N.Y. 1, 173 N.E. 902, 904. It means that bank holds money to pay check and is liable to pay it to proper party. *Sundial Const. Co. v. Liberty Bank of Buffalo*, 277 N.Y. 137, 13 N.E.2d 745, 746.

**CERTIFIED COPY.** A copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted. *People v. Foster*, 27 Misc. 576, 58 N.Y.Supp. 574; *Ehrlich v. Mulligan*, 104 N.J.Law, 375, 140 A. 463, 465, 57 A.L.R. 596.

**CERTIFIED PUBLIC ACCOUNTANT.** A trained accountant who examines the books of accounts of corporations and others and reports upon them.

**CERTIFY.** To testify in writing; to make known or establish as a fact. *Smith v. Smith*, Ind.App., 110 N.E. 1013, 1014. To vouch for a thing in writing. *State ex inf. Carnahan ex rel. Webb v. Jones*, 266 Mo. 191, 181 S.W. 50, 52. To give a certificate, or to make a declaration about a writing. *Ainsa v. Mercantile Trust Co. of San Francisco*, 174 Cal. 504, 163 P. 898, 901. To warrant. *Ettman v. Federal Life Ins. Co.*, D.C.Mo., 48 F. Supp. 578, 580.

**CERTIORARI.** Lat. (To be informed of, to be made certain in regard to.) The name of a writ of review or inquiry. *Leonard v. Willcox*, 101 Vt. 195, 142 A. 762, 766; *Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America*, 229 Iowa 1028, 295 N.W. 858.

*Certiorari* is an appellate proceeding for re-examination of action of inferior tribunal or as auxiliary process to enable appellate court to obtain further information in pending cause. *Shapleigh Hardware Co. v. Brumfield*, 159 Miss. 175, 130 So. 98. A writ directed only to an inferior tribunal. *Stewart v. Johnston*, C.C.A.Cal., 97 F.2d 548. It is a discretionary writ, *Lennon v. School Dist. No. 11, Greer County*, 189 Okl. 37, 113 P.2d 382, 384. Issued only for good cause on showing negating laches in prosecuting appeal. *In re Snelgrove*, 208 N.C. 670, 182 S.E. 335, 336. It is available for review of official, judicial or quasi judicial actions. *State v. Canfield*, 166 Minn. 414, 208 N.W. 181; *People ex rel. Elmore v. Allman*, 382 Ill. 156, 46 N.E.2d 974, 975. It brings into superior court the record of the administrative or inferior judicial tribunal for inspection. *Murphy v. Cuesta Rey & Co.*, 381 Ill. 162, 45 N.E.2d 26, 28. It lies as a substitute for an appeal. *Pue v. Hood*, 222 N.C. 310, 22 S.E.2d 896, 898. To correct errors of law. *Dube v. Mayor of City of Fall River*, 308 Mass. 12, 30 N.E.2d 817, 818; to restrain excesses of jurisdiction. *Stacy v. Mayor of City of Haverhill*, 317 Mass. 188, 57 N.E.2d 564. To review erroneous or unwarranted acts or proceedings. *State ex rel. Allen v. Rose*, 123 Fla. 544, 167 So. 21, 24. To review questions of law. *Public Welfare Commission v. Civil Service Commission*, 289 Mich. 101, 286 N.W. 173, 175. Where circumstances are so exceptional that an immediate review is in interest of justice. *Vingl v. Read*, 68 R.I. 484, 29 A.2d 637, 639; where judgment is a miscarriage of justice or will result in substantial injury to legal rights. *Goodkind v. Wolkowsky*, 151 Fla. 62, 9 So.2d 553, 562; or where applicant for writ lost right of appeal through no fault of his own. *McCain v. Collins*, 204 Ark. 521, 164 S.W.2d 448, 451. It lies to determine whether inferior tribunal acted within or abused or exceeded jurisdiction. *Brundage v. O'Berry*, 101 Fla. 320, 134 So. 520, 521; *Pierce v. Green*, 229 Iowa 22, 294 N.W. 237, 253, 131 A.L.R. 335; or proceeded illegally. *Board of Zoning Appeals of City of Indianapolis v. Waintrup*, 99 Ind.App. 576, 193 N.E. 701, 705; or proceeded regularly. *In re Revocation of Restaurant*

## CERTIORARI

Liquor License No. R-8981, Issued to John Mami, 144 Pa.Super. 285, 19 A.2d 549, 552; or whether judgment is prejudicial and materially harmful, Jacksonville American Pub. Co. v. Jacksonville Paper Co., 143 Fla. 835, 197 So. 672, 674. It performs the office of the common-law writ of error, Berry v. Recorder's Court of Town of West Orange, 124 N.J.L. 385, 11 A.2d 743, 745. Limited review only is involved in the writ, Brundage v. O'Berry, 101 Fla. 320, 134 So. 520, 521. Quashal of record or proceeding is the only relief available, State ex rel. St. Louis County v. Evans, 346 Mo. 209, 139 S.W.2d 967, 969.

Originally, and in English practice, an original writ commanding judges or officers of inferior courts to certify or to return records or proceedings in a cause for judicial review of their action. Jacob; Ashworth v. Hatcher, 98 W.Va. 323, 128 S.E. 93. For other common-law definitions, see F. N. B. 554 A; Bac.Abr. 162, 168, citing 4 Burr. 2244; In re Dance, 2 N.D. 184, 49 N.W. 733, 33 Am.St.Rep. 768.

In Florida the writs of "certiorari" in use are the common-law writs, the statutory writ to review judgments of civil courts of record, the rule certiorari to review interlocutory appeals in equity, the rule certiorari for supplying omitted parts of records on appeals or writs of error, and writs of certiorari issued to review quasi judicial judgments or orders of quasi judicial bodies or officers. Kilgore v. Bird, 149 Fla. 570, 6 So.2d 541, 544, 545.

In Massachusetts it is a writ by the supreme judicial court commanding inferior tribunal to certify and return its records in a particular case that any errors or irregularities which appear in the proceedings may be corrected. Pub.St.Mass.1882, p. 1288; Coolidge v. Bruce, 249 Mass. 465, 144 N.E. 397.

In Texas, the ordinary office of writ of "certiorari" is to perfect the record on appeal. Rev.St.1925, art. 932. Zamora v. Garza, Tex.Civ.App., 117 S.W.2d 165.

In some states the writ has been abolished by statute so far as the common-law name is concerned, but the remedy is preserved under the new name of "writ of review"; Southwestern Telegraph & Telephone Co. v. Robinson, Tex., 1 C.C.A. 91, 48 F. 771.

**CERTIORARI, BILL OF.** In English chancery practice. An original bill praying relief. It was filed for the purpose of removing a suit pending in some inferior court of equity into the court of chancery, on account of some alleged incompetency or inconvenience.

**CERTIORARI FACIAS.** Cause to be certified. The command of a writ of certiorari.

**CERTUM EST QUOD CERTUM REDDI POTEST.** That is certain which can be rendered certain. Co.Litt. 45 b, 96 a, 142 a; 2 Bla.Comm. 143; 2 M. & S. 50; 3 Term 463; 3 M. & K. 353; President, etc., of Lechmere Bank v. Boynton, 11 Cush., Mass., 380.

**CERURA.** A mound, fence, or inclosure.

**CERVISARI.** In Saxon law. Tenants who were bound to supply drink for their lord's table. Cowell.

**CERVISIA.** Ale, or beer. Sometimes spelled "cerevisia."

**CERVISIARIUS.** In old records. An alehouse keeper. A beer or ale brewer. Blount; Cowell.

**CERVUS.** Lat. A stag or deer.

**CESAREVITCH, CESAREWITCH.** Originally, a title introduced in Russia in 1799 by Paul I (1754-1801) for his second son, the Grand Duke Constantine. Afterward the title of the czar's eldest son,

or the heir apparent to the Russian throne. 6 New Internatl.Encyc. 420.

**CESAREVNA.** In Imperial Russia, the title of the wife of the cesarevitch, or heir apparent. 6 New Internatl.Encyc. 420.

**CESIONARIO.** In Spanish law. An assignee. White, New Recop. b. 3, tit. 10, c. 1, § 3.

**CESS, v.** In old English law. To cease, stop, determine, fail.

**CESS, n.** An assessment or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.

**CESSA REGNARE, SI NON VIS JUDICARE.** Cease to reign, if you wish not to adjudicate. Hob. 155.

**CESSANTE CAUSA, CESSAT EFFECTUS.** The cause ceasing, the effect ceases. Broom, Max. 160; 1 Exch. 430.

**CESSANTE RATIONE LEGIS, CESSAT ET IPSA LEX.** The reason of the law ceasing, the law itself also ceases. Broom, Max. 159; 4 Co. 38; Appeal of Cummings, 11 Pa. 273; Nice's Appeal, 54 Pa. 201. See Dig. 35, 1, 72, 6.

**CESSANTE STATU PRIMITIVO, CESSAT DERIVATIVUS.** When the primitive or original estate determines, the derivative estate determines also. 8 Coke, 34; Broom, Max. 495; 4 Kent 32.

**CESSARE.** L. Lat. To cease, stop, or stay.

**CESSAVIT PER BIENNIUM.** In practice. An obsolete writ, which could formerly have been sued out when the defendant had for two years *ceased* or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. Fitzh.Nat.Brev. 208. It also lay where a religious house held lands on condition of performing certain spiritual services which it failed to do. 3 Bl.Comm. 232. Emig v. Cunningham, 62 Md. 460.

**CESSE.** (1) An assessment or tax; (2) a tenant of land was said to *cesse* when he neglected or *ceased* to perform the services due to the lord. Co.Litt. 373a, 380b.

**CESSER.** Neglect; a ceasing from, or omission to do, a thing. 3 Bl.Comm. 232. The determination of an estate. 1 Coke, 84; 4 Kent, Comm. 33, 90, 105, 295. The determination or ending of a term, annuity, etc. Sweet.

As to the *cesser* clause in a charter party, see Steamship Rutherglen Co. v. Howard Houlder & Partners, N.Y., 122 C.C.A. 166, 203 F. 848; The Marpesia, C.C.A.N.Y., 292 F. 957, 973.

**CESSER, PROVISO FOR.** A provision in a settlement creating long terms that when the trusts are satisfied, the term should cease and determine. Sweet. This proviso generally expresses three events: (1) The trusts never arising; (2) their



becoming unnecessary or incapable of taking effect; (3) the performance of them. Sugd.Vend. (14th Ed.) 621-623.

**CESSET EXECUTIO.** (Let execution stay.) In practice. A stay of execution; or an order for such stay; the entry of such stay on record. 2 Tidd, Pr. 1104.

**CESSET PROCESSUS.** (Let process stay.) A stay of proceedings entered on the record. See 2 Dougl. 627; 11 Mod. 231. Formal order for stay of process or proceedings, Brooks v. Super Service, 183 Miss. 833, 183 So. 484.

**CESSIO.** Lat. A cession; a giving up, or relinquishment; a surrender; an assignment.

**CESSIO BONORUM.** In Roman law. Cession of goods. A surrender, relinquishment, or assignment of all his property and effects made by an insolvent debtor for the benefit of his creditors. The term is commonly employed in modern continental jurisprudence to designate a bankrupt's assignment of property to be distributed among his creditors, and is used in the same sense by some English and American writers, but here rather as a convenient than as a strictly technical term. See 2 Bl.Comm. 473; Dig. 2, 4, 25; 48, 19, 1; Nov. 4. 3; La.Civ.Code art. 2166 (Civ.Code, art. 2170); Sturges v. Crowninshield, 4 Wheat, 122, 4 L.Ed. 529.

**CESSIO IN JURE.** In Roman law. A fictitious suit, in which the person who was to acquire the thing claimed (*vindicabat*) the thing as his own, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant. Sandars' Just.Inst., 5th Ed., 89, 122.

**CESSION.** The act of ceding; a yielding or giving up; surrender; relinquishment of property or rights.

**In the Civil Law**

An assignment. The act by which a party transfers property to another. The surrender or assignment of property for the benefit of one's creditors. See Cessio Bonorum.

**In Ecclesiastical Law**

A giving up or vacating a benefice, by accepting another without a proper dispensation. 1 Bl. Comm. 392; Latch. 234; Cowell.

**In Public Law**

The assignment, transfer, or yielding up of territory by one state or government to another. Municipality of Ponce v. Church, 210 U.S. 310, 28 S.Ct. 737, 52 L.Ed. 1068.

**CESSION DES BIENS.** In French law. The voluntary or compulsory surrender which a debtor in insolvent circumstances makes of all his goods to his creditors.

**CESSION OF GOODS.** The surrender of property; the relinquishment that a debtor makes of

all his property to his creditors, when he finds himself unable to pay his debts. Civil Code La. art. 2170.

**CESSIONARY.** In Scotch law. An assignee. Bell.

**CESSIONARY BANKRUPT.** One who gives up his estate to be divided among his creditors.

**CESSMENT.** An assessment, or tax.

**CESSOR.** One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law. O. N. B. 136.

**CESSURE.** L. Fr. A receiver; a bailiff. Kelham.

**C'EST ASCAVOIR.** L. Fr. That is to say, or to wit. Generally written as one word, *cestascavoir*, *cestascavoire*.

**C'EST LE CRIME QUI FAIT LA HONTE, ET NON PAS L'ÉCHAFAUD.** Fr. It is the offense which causes the shame, and not the scaffold.

**CESTUI, CESTUY.** He. Used frequently in composition in law French phrases.

**CESTUI QUE TRUST.** He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. 2 Washb. Real Prop. 163. The person who possesses the equitable right to property and receives the rents, issues, and profits thereof, the legal estate of which is vested in a trustee. Bernardsville Methodist Episcopal Church v. Seney, 85 N.J.Eq. 271, 96 A. 388, 389; Moore v. Shifflett, 187 Ky. 7, 216 S.W. 614, 616. Beneficiary of trust, Ulmer v. Fulton, 129 Ohio St. 323, 195 N.E. 557, 564, 97 A.L.R. 1170.

**CESTUI QUE USE.** He for whose use and benefit lands or tenements are held by another. The *cestui que use* has the right to receive the profits and benefits of the estate, but the legal title and possession (as well as the duty of defending the same) reside in the other. 2 Bla.Comm. 330; 2 Washb. Real Prop. 95.

**CESTUI QUE VIE.** He whose life is the measure of the duration of an estate. 1 Washb. Real Prop. 88. The person for whose life any lands, tenements, or hereditaments are held.

**CESTUY QUE DOIT INHERITER AL PÈRE DOIT INHERITER AL FILS.** He who would have been heir to the father of the deceased shall also be heir of the son. Fitzh. Abr. "Descent," 2; 2 Bl. Comm. 239, 250.

**CF.** An abbreviated form of the Latin word *confer*, meaning "compare." Directs the reader's attention to another part of the work, to another volume, case, etc., where contrasted, analogous, or explanatory views or statements may be found.

**CH.** This abbreviation most commonly stands for "chapter," or "chancellor," but it may also mean "chancery," or "chief."

**CHACE.** L. Fr. A chase or hunting ground.

## CHACEA

**CHACEA.** In old English law. A station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a "drove-way." Blount.

**CHACEA EST AD COMMUNEM LEGEM.** A chase is by common law. Reg.Brev. 806.

**CHACEABLE.** L. Fr. That may be chased or hunted.

**CHACER.** L. Fr. To drive, compel, or oblige; also to chase or hunt.

**CHACURUS.** L. Lat. A horse for the chase, or a hound, dog, or courser.

**CHAFEWAX.** An officer in the English chancery whose duty was to prepare wax to seal the writs, commissions, and other instruments thence issuing. The office was abolished by St. 15 & 16 Vict. c. 87, § 23.

**CHAFFERS.** An ancient term for goods, wares, and merchandise; hence the word *chaffering*, which is yet used for buying and selling, or beating down the price of an article. The word is used in Stat. 3 Edw. III. c. 4.

**CHAFFERY.** Traffic; the practice of buying and selling.

**CHAIN.** A measure used by engineers and surveyors, being twenty-two yards in length.

**CHAIN OF TITLE.** Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder. Capper v. Poulsen, 321 Ill. 480, 152 N.E. 587, 588; Maturi v. Fay, 96 N.J.Eq. 472, 126 A. 170, 173; Havis v. Thorne Inv. Co., Tex.Civ. App., 46 S.W.2d 329, 332.

**CHAIN STORE.** A store in a group of stores, one or more of which is located within the state, under the same management, supervision, or ownership. Lee v. Herndon, 151 Fla. 657, 10 So.2d 305, 306.

**CHAIRMAN.** A name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors, committee, etc.

**CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE.** In English parliamentary practice. In the commons, this officer, always a member, is elected by the house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside.

**CHALDRON, CHALDERN, or CHALDER.** Twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon 12 barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton. Wharton.

A measure of capacity, equal to fifty-eight and two-thirds cubic feet, nearly. Cowell.

**CHALLENGE, v.** To object or except to; to prefer objections to a person, right, or instrument; to formally call into question the capability of a person for a particular function, or the existence of a right claimed, or the sufficiency or validity of an instrument; to call or put in question; to put into dispute; to render doubtful.

**CHALLENGE, n.** A request by one person to another to fight a duel. Ivey v. State, 12 Ala. 276; Hawk.Pl.Cr. b. 1, c. 3, § 3; State v. Farrier, 8 N.C. 487; 2 Bish.Cr.Law, § 312.

An objection or exception.

The objection or exception may be:

1. Against a person who presents himself at the polls as a voter, in order that his right to cast a ballot may be inquired into.

2. Against legal documents, as a declaration, count, or writ. But this use of the word is now obsolescent. See, however, Adkins v. Wayne County Court, 94 W.Va. 460, 119 S.E. 284, 285.

3. Taken to the personal qualification of a judge or magistrate about to preside at the trial of a cause; as on account of personal interest, his having been of counsel, bias, etc. See Bank of North America v. Fitzsimons, 2 Binn., Pa., 454; Pearce v. Affleck, 4 id. 349.

4. Taken to the jurors summoned and returned for the trial of a cause, People v. Travers, 88 Cal. 233, 26 P. 88. See 2 Poll. & Maitl. 619, 646; Co.Litt. 155b.

### *Challenge for Cause*

A challenge to a juror for which some cause or reason is alleged. Termes de la Ley; Bl.Comm. 353. Thus distinguished from a peremptory challenge. Turner v. State, 114 Ga. 421, 40 S.E. 308; Cr. Code N. Y. § 374.

### *Challenge Propter Affectum*

A challenge on account of bias or partiality or prejudice. State v. Sawtelle, 66 N.H. 488, 32 A. 831.

### *Challenge Propter Defectum*

A challenge on account of some legal disqualification, such as infancy or alienage.

### *Challenge Propter Delictum*

A challenge on account of crime; that is, disqualification arising from the conviction of an infamous crime. Co.Litt. 155 *b et seq.*; State v. Levy, 187 N.C. 581, 122 S.E. 386, 389.

### *Challenge Propter Honoris Respectum*

A challenge on account of party's social rank.

### *Challenge to the Array*

An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return. 3 Bl.Comm. 359; Co.Litt. 155b; Moore v. Guano Co., 130 N.C. 229, 41 S.E. 293; Durrah v. State, 44 Miss. 789. A challenge to the form and manner of making up the panel. Cobb v. Atlanta Coach Co., 46 Ga.App. 633, 168 S.E. 126, 127. A challenge that goes to illegality of drawing, selecting, or impaneling array. Lake v. State, 100 Fla. 386, 129 So. 833, 834.

### *Challenge to the Favor*

A challenge based on circumstances of suspicion, as acquaintance, and the like. 3 Bl.Comm. 363; 4 Bl.Comm. 353; State v. Sawtelle, 66 N.H. 488, 32 A. 831; Cobb v. Atlanta Coach Co., 46 Ga.App. 633, 168 S.E. 126, 127.

### *Challenge to the Panel*

The same as a challenge to the array, *supra*. See Pen. Code Cal. § 1058; Pate v. State, 15 Okl.Cr. 90, 175 P. 122, 123.

*Challenge to the Poll*

A challenge made to an individual juror. *State v. Carline*, 99 N.J.Law, 292, 122 A. 830, 831; *Cobb v. Atlanta Coach Co.*, 46 Ga.App. 633, 168 S.E. 126, 127.

*General Challenge*

A species of challenge for cause, being an objection to a particular juror, to the effect that the juror is disqualified from serving in any case. Pen. Code Cal. § 1071.

*Peremptory Challenge*

In criminal practice. A species of challenge which the prosecution or the prisoner is allowed to have against a certain number of jurors, without assigning any cause. *Lewis v. U. S.*, 146 U.S. 370, 13 S.Ct. 136, 36 L.Ed. 1011; *Turpin v. State*, 55 Md. 462; *Leary v. Railway Co.*, 69 N.J.Law, 67, 54 A. 527.

*Principal Challenge*

A challenge of a juror for a cause which carries with it, *prima facie*, evident marks of suspicion either of malice or favor; as that a juror is of kin to either party within the ninth degree; that he has an interest in the cause, etc. 3 Bl.Comm. 363. A species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. 4 Bl.Comm. 353; *Co.Litt. 156 a, b*. A challenge based on alleged facts from which, if proven to be true, incapacity to serve is conclusively presumed. *Cobb v. Atlanta Coach Co.*, 46 Ga.App. 633, 168 S.E. 126, 127. A challenge for principal cause. *Butler v. Greensboro Fire Ins. Co.*, 196 N.C. 203, 145 S.E. 3, 4.

**CHALLENGE TO FIGHT.** A summons or invitation, given by one person to another, to engage in a personal combat; a request to fight a duel. A criminal offense. See *Steph.Crim.Dig. 40*; 3 East, 581; *State v. Perkins*, 6 Blackf.Ind. 20.

**CHAMBER.** A room or apartment in a house. A private repository of money; a treasury. A compartment; a hollow or cavity. *Proudfit Loose Leaf Co. v. Kalamazoo Loose Leaf Binder Co.*, C.C. A.Mich., 230 F. 120, 131. Also used to designate a court, a commission, or an association of persons habitually meeting together in an apartment, *e. g.*, the "star chamber," "chamber of deputies," "chamber of commerce."

**CHAMBER BUSINESS.** A term applied to all such judicial business as may properly be transacted by a judge at his chambers or elsewhere, as distinguished from such as must be done by the court in session. *In re Neagle*, C.C.Cal., 39 Fed. 855, 5 L.R.A. 78.

**CHAMBER OF ACCOUNTS.** In French law. A sovereign court, of great antiquity, in France, which took cognizance of and registered the accounts of the king's revenue; nearly the same as the English court of exchequer. Enc. Brit.

**CHAMBER OF COMMERCE.** An association (which may or may not be incorporated) comprising the principal merchants, manufacturers, and traders of a city, designed for convenience in buying, selling and exchanging goods, and to foster the commercial and industrial interests of the place. Similar societies are known by various names, as, Board of Trade, etc. A board or association to promote the commercial interests of a locality, county, or the like, or a society of a city who meet to promote the general trade and commerce of the place. *Retailers Credit Ass'n of Ala-*

*meda County v. Commissioner of Internal Revenue*, C.C.A.9, 90 F.2d 47, 51, 111 A.L.R. 152.

**CHAMBER SURVEYS.** In Pennsylvania, false and fraudulent pretenses of surveys of public lands by surveyors. *Schraeder Min. & Mfg. Co. v. Packer*, 129 U.S. 688, 9 S.Ct. 385, 32 L.Ed. 760.

**CHAMBER, WIDOW'S.** A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber, is called in London the "widow's chamber." 2 Bl.Comm. 518.

This custom in London of reserving her apparel and furniture for the widow of a freeman was abolished by 19 & 20 Vict. c. 94.

**CHAMBERDEKINS, or CHAMBER DEACONS.** In old English law. Certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England. 1 Hen. V. cc. 7, 8. Wharton.

**CHAMBERLAIN.** Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera*) of the prince or state; otherwise called "treasurer." Cowell.

The name of several high officers of state in England, as the lord great chamberlain of England, lord chamberlain of the household, chamberlain of the exchequer. Cowell; Blount.

The word is also used in some American cities as the title of an officer corresponding to "treasurer."

**CHAMBERLARIA.** Chamberlainship; the office of a chamberlain. Cowell.

**CHAMBERS.**

**In Practice**

The private room or office of a judge; any place in which a judge hears motions, signs papers, or does other business pertaining to his office, when he is not holding a session of court. Business so transacted is said to be done "in chambers." Quoted with approval in *Chapman v. Chattoga Oil-Mill Co.*, 22 Ga.App. 446, 96 S.E. 579, 580. See, also, *Atchison, T. & S. F. Ry. Co. v. Long*, 122 Okl. 86, 251 P. 486, 491; *Hoskins v. Baxter*, 64 Minn. 226, 66 N.W. 969; *In re Verdigris Conservancy Dist.*, 131 Kan. 214, 289 P. 966, 968. The term is also applied, in England, to the private office of a barrister.

**In International Law**

Portions of the sea cut off by lines drawn from one promontory to another, or included within lines extending from the point of one cape to the next, situate on the sea-coast of the same nation, and which are claimed by that nation as asylums for merchant vessels, and exempt from the operations of belligerents.

**CHAMBERS OF THE KING.** See *King's Chambers*.

**CHAMBIUM.** In old English law. Change, or exchange. *Bract. fols. 117, 118.*

## CHAMBRE

**CHAMBRE DEPEINTE.** A name anciently given to St. Edward's chamber, called the "Painted Chamber," destroyed by fire with the houses of parliament.

**CHAMFER.** A small gutter, furrow, or groove; the slope or bevel produced by cutting off the edge of anything which was originally right angled. *Syracuse Chilled Plow Co. v. Robinson*, C.C.N.Y., 35 F. 502, 503.

**CHAMOTTE.** A clay which has been burned to an extent which deprives it of further shrinkage on being again subjected to heat. *Panzl v. Battle Island Paper & Pulp Co.*, D.C.N.Y., 132 F. 607, 609. As used in the arts, see *Id.*, C.C.A.N.Y., 138 F. 48, 50.

**CHAMP DE MAL.** (Lat. *Campus Maii*.) The field or assembly of May. The national assembly of the Franks, held in the month of May.

**CHAMP DE MARS.** (Lat. *Campus Martii*.) The field or assembly of March. The national assembly of the Franks, held in the month of March, in the open air.

**CHAMPART.** In French law. The grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. 18 *Toullier*, n. 182.

### CHAMPERT.

In old English law. A share or division of land; champerty.

In old Scotch law. A gift or bribe, taken by any great man or judge from any person, for delay of just actions, or furthering of wrongous actions, whether it be lands or any goods movable. *Skene*.

**CHAMPERTOR.** In criminal law. One who makes or brings pleas or suits, or causes them to be moved or brought, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gains or of the land in dispute. One guilty of champerty. *St. 33 Edw. I. c. 2*; *In re Aldrich*, 86 *Vt.* 531, 86 *A.* 801, 802.

**CHAMPERTOUS.** Of the nature of champerty; affected with champerty.

The conveyance of land which is in the adverse possession of another is "champertous". *Reynolds v. Thomas Forman Co.*, 295 *Ky.* 41, 174 *S.W.2d* 132, 134.

**CHAMPERTY.** A bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. *Small v. Mott*, 22 *Wend.*, N.Y., 405; *Gilman v. Jones*, 87 *Ala.* 691, 5 *So.* 785, 7 *So.* 48, 4 *L.R.A.* 113; *Jamison Coal & Coke Co. v. Goltra*, C.C.A.Mc., 143 *F.2d* 889, 895, 154 *A.L.R.* 1191. An agreement between owner of claim and volunteer that latter may collect claim at his own expense and divide proceeds. *Gibson v. Gillespie*, 4 *W.W. Harr.* (Del.) 331, 152 *A.* 589, 593.

The purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. 7 *Bing.* 378.

"Maintenance" consists in maintaining, supporting, or promoting the litigation of another. "Champerty" is a bargain to divide the proceeds of litigation between the owner of the liquidated claim and a party supporting or enforcing the litigation. *Draper v. Zebec*, 219 *Ind.* 362, 37 *N.E.2d* 952, 956.

**CHAMPION.** A person who fights a combat in his own cause, or in place of another. The person who, in the trial by battle, fought either for the tenant or demandant. 3 *Bl.Comm.* 339; *Bracton*, l. 4, t. 2, c. 12.

A person who engages in any contest; a combatant; a fighter; one who acts or speaks in behalf of a person, or a cause; defender; an advocate. *Egan v. Signal Pub. Co.*, 140 *La.* 1069, 74 *So.* 556, 558.

**CHAMPION OF THE KING OR QUEEN.** An ancient officer, whose duty it was at the coronation to challenge "that, if any man shall deny the king's title to the crown, he is there ready to defend it in single combat." *Wharton*.

**CHANCE.** Absence of explainable or controllable causation; accident; fortuity; hazard; result or issue of uncertain and unknown conditions or forces; risk; unexpected, unforeseen, or unintended consequence of an act. The opposite of intention, design, or contrivance.

But it has been held that there is a wide difference between *chance* and *accident*. *Harless v. U. S.*, *Morris*, *Iowa*, 169, 173.

**CHANCE BARGAIN.** The entering into a contract for better or worse, accompanied by the taking of chances as to the true facts and situation of the thing or article bargained about. *Marr v. Lawson*, 290 *Ky.* 342, 161 *S.W.2d* 42, 44.

**CHANCE-MEDLEY.** In criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens in defending one's self. 4 *Bl.Comm.* 184.

**CHANCE VERDICT.** See *Verdict*.

**CHANCEL.** In ecclesiastical law. The part of a church in which the communion table stands; it belongs to the rector or the impropiator. 2 *Broom & H. Comm.* 420.

**CHANCELLOR.** In American law, this is the name given in some states to the judge (or the presiding judge) of a court of chancery.

In England, besides being the designation of the chief judge of the court of chancery, the term is used as the title of several judicial officers attached to bishops or other high dignitaries and to the universities. The title is also used in some of the dioceses of the Protestant Episcopal Church in the United States to designate a member of the legal profession who gives advice and counsel to the bishop and other ecclesiastical authorities.

In Scotland, this title is given to the foreman of an assize or jury. *Bisph.Eq.* 7.

An officer bearing this title is to be found in some countries of Europe, and is generally invested with extensive political authority.

### *Chancellor of a Cathedral*

In English ecclesiastical law. One of the *quatuor personae*, or four chief dignitaries of the cathedrals of the old foundation.

*Chancellor of a Diocese*

In ecclesiastical law, the officer appointed to assist a bishop in matters of law, and to hold his consistory courts for him. 1 Bl.Comm. 382; 2 Steph.Comm. 672.

*Chancellor of a University*

In English law. The official head of a university.

*Chancellor of the Duchy of Lancaster*

In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. Hob. 77; 3 Bl.Comm. 78.

*Chancellor of the Exchequer*

In English law. A high officer of the crown, who formerly sat in the exchequer court. Cowell. In modern times his duties are such as pertain to a minister of state charged with the management of the national revenue and expenditure. 2 Steph.Com. 467.

*Chancellor of the Order of the Garter and Other Military Orders*

In England, an officer who seals the commissions and the mandates of the chapter and assembly of the knights, keeps the register of their proceedings, and delivers their acts under the seal of their order.

*Chancellor, the Lord High*

In England, the highest judicial functionary in the kingdom.

He exercises many functions and powers over and above the jurisdiction which he exercises in his judicial capacity in the supreme court of judicature, of which he is the head. Wharton.

*Vice-Chancellor*

In English law. A judge of the court of chancery, acting as assistant to the lord chancellor, and holding a separate court. 3 Steph.Comm. 418.

**CHANCELLOR'S COURTS IN THE TWO UNIVERSITIES.** In English law. Courts of local jurisdiction, resembling borough courts, in and for the two universities of Oxford and Cambridge in England. 3 Bl.Comm. 83; Odgers, C.L. 1030; 12 East, 12; 13 East, 635; 15 East, 634; 10 Q.B. 292.

**CHANCER.** To adjust according to principles of equity, as would be done by a court of chancery. Cent. Dict.

The practice arose in parts of New England when the courts, without equity jurisdiction, were compelled to act upon equitable principles. See Lewiston v. Gagne, 89 Me. 395, 36 A. 629, 56 Am.St.Rep. 432; In re Appel, Mass., 90 C.C.A. 172, 163 F. 1002, 20 L.R.A.,N.S., 76.

**CHANCERY.** Equity; equitable jurisdiction; a court of equity; the system of jurisprudence administered in courts of equity. Kenyon v. Kenyon, 3 Utah, 431, 24 P. 829. See Court of Chancery.

**CHANGE.** As a noun. An alteration; a modification or addition; substitution of one thing for another. Exchange of money against money of a different denomination. Also small coin. Also an abbreviation of *exchange*.

As a verb. Alter; cause to pass from one place to another; exchange; make different; put one thing in place of another; vacate.

**CHANGE OF BENEFICIARY.** A divesting of beneficial interest held by one person and a vesting of that interest in another. Goldman v. Moses, 287 Mass. 393, 191 N.E. 873, 874.

**CHANGE OF DOMICILE.** Change of abode or residence and intention to remain. In re Fischer's

Estate, 151 Misc. 74, 271 N.Y.S. 101. Shenton v. Abbott, 178 Md. 526, 15 A.2d 906, 908, 909.

**CHANGE OF GRADE.** Usually understood as an elevation or depression of the surface of a street, or a change of the natural contour of its face so as to facilitate travel over it. McCabe v. City of New York, 155 App.Div. 262, 140 N.Y.S. 127, 131.

It is essential that there shall have been a previously established grade and that a new grade be physically made. Gas Engine & Power Co. v. City of New York, 166 App.Div. 297, 151 N.Y.S. 310, 313; Berglar v. University City, Mo.App., 190 S.W. 620, 623.

**CHANGE OF LOCATION.** Removal from old to new location. Weber County v. Ritchie, 98 Utah 272, 96 P.2d 744.

**CHANGE OF VENUE.** Properly speaking, the removal of a suit begun in one county or district to another county or district for trial, though the term is also sometimes applied to the removal of a suit from one court to another court of the same county or district. Felts v. Railroad Co., 195 Pa. 21, 45 A. 493; State v. Wofford, 119 Mo. 375, 24 S. W. 764.

**CHANGER.** An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others.

**CHANNEL.** The bed in which the main stream of a river flows, rather than the deep water of the stream as followed in navigation. Bridge Co. v. Dubuque County, 55 Iowa, 558, 8 N.W. 443. See The Oliver, D.C.Va., 22 F. 849; Iowa v. Illinois, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55.

But the term is sometimes used to designate the customary and traveled fairway. The Arlington, C.C.A.N.Y., 19 F.2d 285, 286, 54 A.L.R. 101. It may also be used as a generic term applicable to any water course, whether a river, creek, slough, or canal. McKissick Cattle Co. v. Alsaga, 41 Cal.App. 380, 182 P. 793, 797. The "channel" of a river is to be distinguished from a "branch." U. S. v. Hutchings, D.C.Okl., 252 F. 841, 844.

**Main Channel**

That bed of the river over which the principal volume of water flows. St. Louis & St. P. Packet Co. v. Keokuk & H. Bridge Co., C.C.Iowa, 31 F. 757. Compare State of Oklahoma v. State of Texas, 258 U.S. 574, 42 S.Ct. 406, 414, 66 L.Ed. 771.

The main channel of a navigable stream, called for as a boundary between states, means the "thalweg," or deepest and most navigable channel as it then existed. Whiteside v. Norton, C.C.A.Minn., 205 F. 5, 9.

**Natural Channel**

The channel of a stream as determined by the natural conformation of the country through which it flows. See Larrabee v. Cloverdale, 131 Cal. 96, 63 P. 143. The floor or bed on which the water flows, and the banks on each side thereof as carved out by natural causes. Pima Farms Co. v. Proctor, 30 Ariz. 96, 245 P. 369, 372.

**CHANTER.** The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

## CHANTRY

**CHANTRY.** A church or chapel endowed with lands for the maintenance of priests to say mass daily for the souls of the donors. *Termes de la Ley*; Cowell.

**CHAPEL.** A place of worship; a lesser or inferior church, sometimes a part of or subordinate to another church. Webster. *Rex v. Nixon*, 7 Car. & P. 442; *In re Atkinson's Will*, 120 Misc. 186, 197 N.Y.S. 831, 832.

### Chapel of Ease

In English ecclesiastical law. A chapel built in aid of original church for parishioners who had fixed their residence at some distance. 3 Steph. Comm. 151.

### Free Chapels

So called from their freedom or exemption from all ordinary jurisdiction.

### Private Chapels

Chapels owned by private persons, and used by themselves and their families. 2 Steph. Comm. 745.

### Proprietary Chapels

In English law. Those belonging to private persons who have purchased or erected them with a view to profit or otherwise.

### Public Chapels

In English law, chapels founded later than the church for parishioners who fixed their residence at a distance; and chapels so circumstanced were described as "chapels of ease." 3 Steph. Comm. (7th Ed.) 745.

**CHAPELRY.** The precinct and limits of a chapel. The same thing to a chapel as a parish is to a church. Cowell; Blount; *Termes de la Ley*.

**CHAPERON.** A hood or bonnet anciently worn by the Knights of the Garter; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral. Wharton.

**CHAPITRE.** A summary of matters to be inquired of or presented before justices in eyre, justices of assise, or of the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest. Brit. c. iii.

**CHAPLAIN.** An ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel. 4 Coke, 90. A clergyman officially attached to a ship of war, to an army, (or regiment,) or to some public institution, for the purpose of performing divine service. Webster.

**CHAPMAN.** An itinerant vendor of small wares. A trader who trades from place to place. Say, 191, 192.

**CHAPTER.** In ecclesiastical law. A congregation of ecclesiastical persons in a cathedral church, con-

sisting of canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop. And they are termed "*capitulum*," as a kind of head, instituted not only to assist the bishop but also anciently to rule and govern the diocese in the time of vacation. Burn, Dict.; Coke, Litt. 103.

**CHARACTER.** Class or division to which claim belongs, Jackson State Nat. Bank of Jackson, Miss., v. Merchants' Bank & Trust Co. of Jackson, Miss., 177 La. 975, 149 So. 539, 541.

The aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes.

That moral predisposition or habit, or aggregate of ethical qualities, which is believed to attach to a person, on the strength of the common opinion and report concerning him. A person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise, is obtained. Keith v. State, 127 Tenn. 40, 152 S.W. 1029, 1030.

The estimate attached to an individual or thing the community. Biddle v. Riley, 118 Ark. 206, 176 S.W. 134, 137, L.R.A.1915F, 992; Rogers v. State, 126 Tex.Cr.R. 39, 70 S.W.2d 188, 189; H. L. Shaffer & Co. v. Prosser, 99 Colo. 335, 62 P.2d 1161, 1183. The opinion generally entertained of a person derived from the common report of the people who are acquainted with him. Smith v. State, 88 Ala. 73, 7 So. 52; State v. Turner, 36 S.C. 534, 15 S.E. 602.

Although "character" is often used in the sense of "reputation," Garrison v. State, 217 Ala. 322, 116 So. 705; Commonwealth v. Harvie, 345 Pa. 516, 28 A.2d 926, 927; the terms are distinguishable, State v. Taylor, 267 Mo. 41, 183 S.W. 299, 301; Commonwealth v. Webb, 252 Pa. 187, 97 A. 189, 192.

Though, in a subjective sense, character, general character, and general report or reputation are the same. Powers v. Leach, 26 Vt. 278; and though general character has always been proved by proving general reputation. Leve-rich v. Frank, 6 Or. 213. See, also, Richardson v. State, 94 Tex.Cr.R. 616, 253 S.W. 273, 277. "Character" is what a man is, and "reputation" is what he is supposed to be. State v. Pickett, 202 Iowa, 1321, 210 N.W. 782, 783. "Character" depends on attributes possessed, and "reputation" on attributes which others believe one to possess. Bills v. State, 187 Ind. 721, 119 N.E. 465. The former signifies reality and the latter merely what is accepted to be reality at present. State v. Leabo, 120 Or. 160, 249 P. 363.

**CHARBON.** Another name for anthrax (*q. v.*).

**CHARGE, v.** To impose a burden, duty, obligation, or lien; to create a claim against property; to claim; to demand; to accuse; to instruct a jury on matters of law. To impose a tax, duty, or trust. *Ex parte Horn*, D.C.Wash., 292 F. 455, 457. In commercial transactions, to bill or invoice. *George M. Jones Co. v. Canadian Nat. Ry. Co.*, D. C.Mich., 14 F.2d 852, 855.

A jury is "charged" with duty of trying prisoner (or, as otherwise expressed, with his fate or his "deliverance") as soon as they are impaneled and sworn; this is a different matter from "charging" the jury in the sense of giving them instructions. *Tomasson v. State*, 112 Tenn. 596, 79 S.W. 803. And see *Keith v. Commonwealth*, 197 Ky. 362, 247 S.W. 42, 44.

To load, as a firearm. *People v. Limeberry*, 298 Ill. 355, 131 N.E. 691, 696.

**CHARGE, n.** An incumbrance, lien, or claim; a burden or load; an obligation or duty; a liability; an accusation. *Darling v. Rogers*, 22 Wend. (N. Y.) 491. Custody. *Randazzo v. U. S.*, C.C.A.Mo.,

300 F. 794, 797; In re Boulware's Will, 258 N.Y.S. 522, 144 Misc. 235. Price. Aiken Mills v. United States, D.C.S.C., 53 F.Supp. 524, 526. Rate. Borough of Mechanicsburg v. Valley Rys., 109 Pa. Super. 48, 165 A. 541, 542.

Conversion of electrical energy into chemical energy within a cell or storage battery. Elliott Works v. Frisk, D.C.Iowa, 58 F.2d 820, 822.

*In Common-law Practice*

The final address by judge to jury before verdict, in which he sums up the case, and instructs jury as to the rules of law which apply to its various issues, and which they must observe. The term also applies to the address of court to grand jury, in which the latter are instructed as to their duties.

*In Contracts*

An obligation. Com.Dig. "Rent," c. 6; 2 Ball & B. 223; Termes de la Ley. An undertaking to keep the custody of another person's goods. State v. Clark, 86 Me. 194, 29 A. 984.

*In Criminal Law*

An accusation or oral charge. People v. Ross, 235 Mich. 433, 209 N.W. 663, 666; Haggard v. First Nat. Bank of Mandan, 72 N.D. 434, 8 N.W.2d 5, 9. A formal complaint, information, or indictment. People v. Lepori, 35 Cal.App. 60, 169 P. 692, 694. A count. State v. Thornton, 142 La. 797, 77 So. 634, 636; State v. Pucketty, 39 N.M. 511, 50 P.2d 964, 965. Accused or arraigned. Code Cr.Proc. § 57. People v. Hickox, 10 N.Y.S.2d 318, 320, 170 Misc. 354.

*In Equity Pleading*

An allegation in the bill of matters which disprove or avoid a defense which it is alleged the defendant is supposed to pretend or intend to set up. Story, Eq.Pl. § 31; Cooper, Eq.Pl. 11; 1 Dan.Ch.Pr. 372, 1883, n.; 11 Ves.Ch. 574.

*In Equity Practice*

A written statement presented to a master in chancery by a party of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. A charge may embrace the whole liabilities of the accounting party. Hoff.Mast. 36.

*In Scotch Law*

The command of the king's letters to perform some act; as a *charge* to enter heir. Also a messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. Bell.

*In the Law of Wills*

A responsibility or liability imposed by the testator upon a devisee personally, or upon the land devised. Potter v. Gardner, 12 Wheat. 498, 6 L.Ed. 706; Boal v. Metropolitan Museum of Art of City of New York, C.C.A.N.Y., 298 F. 894, 908. A pecuniary burden. In re Clark's Will, 37 N.Y.S.2d 522, 523, 179 Misc. 75.

A devise for beneficial enjoyment of devisee subject to payment of a sum of money or performance of a particular duty. Howells State Bank v. Pont, 113 Neb. 181, 202 N.W. 457, 459.

*General Charge*

The charge or instruction of the court to the jury upon the case, as a whole, or upon its general features and characteristics.

*Public Charge*

A person whom it is necessary to support at public expense by reason of poverty, insanity and poverty, disease and poverty, or idiocy and poverty. Wallis v. U. S., ex rel. Mannara, C.C.A.N.Y., 273 F. 509, 511. As used in Immigration Act Feb. 5, 1917, § 19, 8 U.S.C.A. § 155, one who produces a money charge on, or an expense to, the public for support and care. Ex parte Klehmiantz, D.C.Cal., 283 F. 697, 698. As so used, the term is not limited to paupers or those liable to become such, but includes those who will not undertake honest pursuits, or who are likely to become periodically the inmates of prisons. Ex parte Horn, D.C. Wash., 292 F. 455, 457. But see Ng Fung Ho v. White, C.C.A.Cal., 266 F. 765, 769.

*Special Charge*

A charge or instruction given by the court to the jury, upon some particular point or question involved in the case, and usually in response to counsel's request for such instruction.

**CHARGE AND DISCHARGE.** Under former equity practice, in taking an account before a master, a written statement of items for which plaintiff asked credit and a counter-statement, exhibiting claims or demands defendant held against plaintiff.

**CHARGÉ DES AFFAIRES, or CHARGÉ D'AFFAIRES.** The title of a diplomatic representative of inferior rank. In re Baiz, 135 U.S. 403, 10 S.Ct. 854, 34 L.Ed. 222; Du Pont v. Pichon, 4 Dall. 321, 1 L.Ed. 851.

**CHARGE-OFF.** Anything manifesting intent to eliminate an item from assets. Rubinkam v. Commissioner of Internal Revenue, C.C.A.7, 118 F.2d 148, 149.

**CHARGE-SHEET.** A paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. Wharton.

**CHARGE TO ENTER HEIR.** In Scotch law. A writ commanding a person to enter heir to his predecessor within forty days, otherwise an action to be raised against him as if he had entered.

**CHARGEABLE.** This word, in its ordinary acceptance, as applicable to the imposition of a duty or burden, signifies capable of being charged, subject to be charged, liable to be charged, or proper to be charged. Gilfillan v. Chatterton, 38 Minn. 335, 37 N.W. 583.

**CHARGEANT.** Weighty; heavy; penal; expensive. Kelham.

**CHARGES.** The expenses which have been incurred, or disbursements made, in connection with a contract, suit, or business transaction. Spoken of an action, it is said that the term includes more than what falls under the technical description of "costs."

Instructions. Standard v. Texas Pacific Coal & Oil Co., Tex.Civ.App., 47 S.W.2d 443, 447.

**CHARGING LIEN.** A lien is a charging lien where the debt is a charge upon the specific property although it remains in the debtor's possession. See, also, Attorney's Lien.

**CHARGING ORDER.** See Order.

**CHARITABLE.** Having the character or purpose of a charity (*q. v.*).

The term is sometimes deemed to be synonymous with "eleemosynary," Hamburger v. Cornell University, 166 N.Y.S. 46, 48, 99 Misc. 564; with "benevolent," In re Dol's Estate, 182 Cal. 159, 187 P. 428, 431; with "beneficent," People v. Thomas Walters Chapter of Daughters of American Revolution, 311 Ill. 304, 142 N.E. 566.

**CHARITABLE BEQUEST.** A bequest is charitable if its aims and accomplishments are of

## CHARITABLE

religious, educational, political, or general social interest to mankind and if the ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof. In re Henderson's Estate, 17 Cal.2d 853, 112 P.2d 605, 607, 609. See, also, Charity.

**CHARITABLE CORPORATION.** One that freely and voluntarily ministers to the physical needs of those pecuniarily unable to help themselves. In re Rockefeller's Estate, 177 App.Div. 786, 165 N.Y.S. 154, 158. One which, by its powers, or usage, is charged with administering charitable relief. In re Beekman's Estate, 196 App.Div. 681, 188 N.Y.S. 178, 179. One organized for the purpose, among other things, of promoting the welfare of mankind at large, or of a community, or of some class from a part of it indefinite as to number of individuals. In re Dol's Estate, 186 Cal. 64, 198 P. 1039.

**CHARITABLE GIFT.** See Charity.

**CHARITABLE HOSPITAL OR SANITARIUM.** One maintained for gratuitous treatment of sick and needy. Moss v. Youngblood, 187 Ga. 188, 200 S.E. 689, 694. One not maintained for a gain, profit or private advantage. In re Farmers' Union Hospital Ass'n of Elk City, 190 Okl. 661, 126 P.2d 244, 246. One operated by means of contributions, Bedford v. Colorado Fuel & Iron Corporation, 102 Colo. 538, 81 P.2d 752, 759, 760. One when charges collected are no more than needed for maintenance. Gundry v. R. B. Smith Memorial Hospital Ass'n, 293 Mich. 36, 291 N.W. 213, 214, 215. One when income from patients able to pay is used for maintenance or extension of facilities devoted to charitable purposes. Benton County v. Allen, 170 Or. 481, 133 P.2d 991, 992, 993, 995. One which does not deny treatment to persons unable to pay though it charges those able to pay. Commissioner of Internal Revenue v. Battle Creek, C.C.A. Fla., 126 F.2d 405, 406.

**CHARITABLE INSTITUTION.** One supported in whole or in part at public expense or by charity. City of Vicksburg v. Vicksburg Sanitarium, 117 Miss. 709, 78 So. 702. One for the relief of a certain class of persons, either by alms, education, or care. Utica Trust & Deposit Co. v. Thompson, 87 Misc. 31, 149 N.Y.S. 392, 398. One administering a public or private charity; an eleemosynary institution. St. Albans Hospital v. Town of Enosburg, 96 Vt. 389, 120 A. 97, 99. One performing service of public good or welfare without profit. Society of Cincinnati v. Exeter, 92 N.H. 348, 31 A.2d 52, 55.

**CHARITABLE ORGANIZATION.** One which has no capital stock and no provision for making dividends and profits, but derives its funds mainly from public and private charity, and holds them in trust for the objects and purposes expressed in its charter. Congregational Sunday School & Publishing Soc. v. Board of Review, 290 Ill. 108, 125 N.E. 7, 9. One conducted not for profit, but for promotion of welfare of others. Stearns v. Association of Bar of City of New York, 154 Misc. 71, 276 N.Y.S. 390.

**CHARITABLE SCHOOL OR EDUCATIONAL INSTITUTION.** A college preparatory school operated without profit some of whose students paid no tuition, College Preparatory School for Girls of Cincinnati v. Evatt, 144 Ohio St. 408, 59 N.E.2d 142, 145. One devoted to public education without private gain. Southern Methodist University v. Clayton, 142 Tex. 179, 176 S.W.2d 749, 750. One supported wholly or in part by public subscriptions or endowment, New York University v. Taylor, 251 App.Div. 444, 296 N.Y.S. 848, 849; or by private charity. Bodenheimer v. Confederate Memorial Ass'n, D.C.Va., 5 F.Supp. 526, 528.

**CHARITABLE SOCIETY.** An educational institution is a charitable society. In re Cooper's Estate, 229 Iowa 921, 295 N.W. 448, 454.

**CHARITABLE USES OR PURPOSES.** Originally those enumerated in the statute 43 Eliz. c. 4, and afterwards those which, by analogy, come within its spirit and purpose. Boyle, Char. 17. See, also, Charity.

**CHARITABLE TRUST.** A fiduciary relationship subjecting holder of property to deal with it for a charitable purpose. In re White's Estate, 340 Pa. 92, 16 A.2d 394, 396, 397. A trust for benefit of public or of some portion thereof. Delaware Trust Co. v. Fitzmaurice, Del.Ch., 31 A.2d 383, 388. Its characteristics are the expression of a definite charitable purpose and the indefiniteness of the beneficiaries. Woodcock v. Wachovia Bank & Trust Co., 214 N.C. 224, 199 S.E. 20.

A cemetery corporation is a "charitable trust". De Geeter v. Wolklin, 133 N.J.Eq. 510, 42 A.2d 561, 562. So, too, a Christian church. Burgie v. Muench, 65 Ohio App. 176, 29 N.E.2d 439, 440.

**CHARITY.** The word "charity" may be used in a subjective or an objective sense.

It may mean or apply to:

Accomplishment of some social interest, In re Tollinger's Estate, 349 Pa. 393, 37 A.2d 500, 501, 502. Act or feeling of benevolence, Southern Methodist Hospital and Sanatorium of Tucson v. Wilson, 51 Ariz. 424, 77 P.2d 458. Advancement of purposes beneficial to public, Rabinowitz v. Wollman, 174 Md. 6, 197 A. 566, 568. All good affections men ought to bear towards each other. Morice v. Bishop of Durham, 9 Ves. 399. All which aids man and seeks to improve his condition. Waddell v. Young Women's Christian Ass'n, 133 Ohio St. 601, 15 N.E.2d 140, 142. Almsgiving, In re Rathbone's Estate, 11 N.Y.S.2d 506, 527, 170 Misc. 1030. Amelioration of persons in unfortunate circumstances, Second Nat. Bank v. Second Nat. Bank, 171 Md. 547, 190 A. 215, 111 A.L.R. 711. An institution founded by a gift and intended for public use as a hospital, library, school, or museum, Southern Methodist Hospital and Sanatorium of Tucson v. Wilson, 51 Ariz. 424, 77 P.2d 458, 460, 461. Any purpose in which the public has an interest, Collins v. Lyon, Inc., 181 Va. 230, 24 S.E.2d 572, 580. Any purpose of general benefit untainted by motives of private gain. Stearns v. Association of Bar of City of New York, 276 N.Y.S. 390, 395, 154 Misc. 71. Any scheme or effort to better the condition of society or any considerable part thereof. Tharpe v. Central Georgia Council of Boy Scouts of America, 185 Ga. 810, 196 S.E. 762, 764, 116 A.L.R. 373. Assistance to persons in establishing. Bruce v. Young Men's Christian Ass'n, 51 Nev. 372, 277 P. 798, 799; assistance to the needy. Benefit of handcraftsmen. Benefit of an indefinite number of persons, Morgan v. National Trust Bank of Charleston, 331 Ill. 182, 162 N.E. 888, 890. Benefit of minister. In re Edge's Estate, 288 N.Y.S. 437, 440, 159 Misc. 505. Benevolence, philanthropy, and good will. Santa Fe Lodge No. 460, B. P. O. E., v. Employment Sec.



Commission, 49 N.M. 149, 159 P.2d 312, 315. Benevolent or philanthropic, Beckwith v. Parish, 69 Ga. 569; Price v. Maxwell, 28 Pa. 23. Dissemination of knowledge; Christian love, Boruch v. SS. Peter & Paul's Orthodox Russian Church, 111 N.J.L. 116, 166 A. 723. Conferring advantages of a social character. La Societe Francaise De Bienfaisance Mutuelle v. California Employment Commission, 56 Cal.App.2d 534, 133 P.2d 47, 51, 52. Eleemosynary, Collier v. Lindley, 203 Cal. 641, 266 P. 526, 528. General public use which extends to the rich as well as to the poor. Hamilton v. Corvallis General Hospital Ass'n, 146 Or. 168, 30 P.2d 9, 14. Gift for benefit of indefinite number, St. Louis Union Trust Co. v. Burnet, C.C.A., 59 F.2d 922, 926. Gift to the general public use. Maretick v. South Chicago Community Hospital, 297 Ill.App. 488, 17 N.E.2d 1012, 1014. Gift without consideration or expectation of return, State v. Texas Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W.2d 405, 410. Improvement of man. Boston Symphony Orchestra v. Board of Assessors of City of Boston, Mass., 1 N.E.2d 6, 9. Improvement of spiritual, mental, social and physical conditions. Andrews v. Young Men's Christian Ass'n of Des Moines, 226 Iowa 374, 284 N.W. 186, 192. Lessening burdens of government. Stork v. Schmidt, 129 Neb. 311, 261 N.W. 552, 554. Physical, mental or moral betterment, In re Tollinger's Estate, 349 Pa. 393, 37 A.2d 500, 501, 502. Promotion of government or municipal purposes, Powers v. First Nat. Bank, Tex.Civ.App., 137 S.W.2d 839, 842. Promotion of happiness of man. Old Colony Trust Co. v. Welch, D.C.Mass., 25 F.Supp. 45, 48. Promotion of philanthropic and humanitarian purposes. Jackson v. Phillips, 14 Allen, Mass., 556. Promotion of well-doing and well-being of social man. Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E.2d 193, 199. Promotion or fostering science, education, enlightenment, benefit, of mankind, Irwin v. Swinney, D.C.Mo., 44 F.2d 172, 174. Property held for public purposes. St. Louis Union Trust Co. v. Burnet, C.C.A.8, 59 F.2d 922, 927. Public benefit, convenience, utility, or comfort, Camp v. Presbyterian Soc. of Sackets Harbor, 173 N.Y.S. 581, 584, 105 Misc. 139. Reclamation of criminals. Relief of persons in unfortunate circumstances, Second Nat. Bank v. Second Nat. Bank, 171 Md. 547, 190 A. 215, 111 A.L.R. 711. Religious, educational, benevolent, and humanitarian objects. In re Jordan's Estate, 329 Pa. 427, 197 A. 150. Services accorded to the needy. Unselfish things as are wont to be done by those who are animated by love. Bok v. McCaughn, C.C.A.Pa., 42 F.2d 616, 619. What is done out of good will and a desire to add to the improvement of moral, mental, and physical welfare of public. Old Colony Trust Co. v. Welch, D.C.Mass., 25 F.Supp. 45, 48. Whatever is given for love of God or love of your neighbor, free from every consideration that is personal, private, or selfish. Vidal v. Girard, 2 How. 128, 11 L.Ed. 205, appr. Price v. Maxwell, 28 Pa. 35. Whatever proceeds from sense of moral duty or feeling of kindness and humanity for relief or comfort of another, Doyle v. Railroad Co., 118 Mass. 195, 198, 19 Am. Rep. 431. Uncertainty regarding beneficiaries is distinct feature. Goode's Adm'r v. Goode, 238 Ky. 620, 38 S.W.2d 691, 694.

**Foreign Charity**

One created or endowed in a state or country foreign to that of the domicile of the benefactor. Taylor's Ex'rs v. Trustees of Bryn Mawr College, 34 N.J.Eq. 101.

**Public Charity**

A charity wherein the benefit is conferred on indefinite persons composing the public or some part of the public. Continental Illinois Nat. Bank & Trust Co. v. Harris, 359 Ill. 86, 194 N.E. 250, 253.

A gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, by bringing their minds under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, or by assisting them to establish themselves in life, or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government. Robinson v. Crutcher, 277 Mo. 1, 209 S.W. 104, 105.

A "purely public charity" which Legislature may exempt from taxation is a charity indiscriminately dispensed to some portion or group of public where ends accomplished are wholly benevolent and are accomplished

without profit or gain and, the beneficiaries are saved from becoming burdens upon society and the state. City of Houston v. Scottish Rite Benev. Ass'n, 111 Tex. 191, 230 S.W. 978, 981.

**Pure Charity**

One which is entirely gratuitous, and which dispenses its benefits without any charge or pecuniary return whatever. See In re Lenox's Estate, Sur., 9 N.Y.S. 895, 31 St.R. 959; Kentucky Female Orphan School v. Louisville, 100 Ky. 470, 36 S.W. 921, 40 L.R.A. 119.

**CHARLATAN.** One who pretends to more knowledge or skill than he possesses; a "quack." Brinkley v. Fishbein, C.C.A.Tex., 110 F.2d 62, 64.

**CHARLEY.** A familiar nickname or substitute for "Charles." Carroll v. State, 24 Okl.Cr. 26, 215 P. 797, 798.

**CHARRE OF LEAD.** A quantity consisting of 36 pigs of lead, each pig weighing about 70 pounds.

**CHART.** The word "chart," as used in the copyright law, does not include sheets of paper exhibiting tabulated or methodically arranged information. Taylor v. Gilman, C.C.N.Y., 24 Fed. 632.

**CHARTA.**

**In Old English Law**

A charter or deed; an instrument written and sealed; the formal evidence of conveyances and contracts. Also any signal or token by which an estate was held.

The term came to be applied, by way of eminence, to such documents as proceeded from the sovereign, granting liberties or privileges, and either where the recipient of the grant was the whole nation, as in the case of *Magna Charta*, or a public body, or private individual, in which case it corresponded to the modern word "charter."

**In the Civil Law**

Paper, suitable for the inscription of documents or books; hence, any instrument or writing. See Dig. 32, 52, 6; Nov. 44, 2.

*Charta Communis*

In old English law. An indenture; a common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. Bract. fols. 33b, 34.

*Charta Cyrographata (or Chyrographata)*

In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, (*scinditur per medium*,) where the word "cyrographum," or "chirographum," was written in large letters. Bract. fol. 34; Fleta, lib. 3, c. 14, § 3. See Chirograph.

*Charta De Foresta*

A collection of the laws of the forest, made in the 9th Hen. III, and said to have been originally a part of *Magna Charta*.

The *charta de foresta* was called the Great Charter of the woodland population, nobles, barons, freemen, and slaves, loyally granted by Henry III. early in his reign (A.D.1217). Inderwick, King's Peace 159; Stubb's Charters 847. There is a difference of opinion as to the original charter of the forest similar to that which exists respecting the true and original *Magna Carta (q. v.)*, and for the same reason, viz., that both required repeated confirmation by the kings, despite their supposed inviolability. This justifies the remark of recent historians as to the great charter that "this theoretical sanctity and this practical insecurity are

## CHARTA

shared with 'the Great Charter of Liberties' by the Charter of the Forest which was issued in 1217." 1 Poll. & Maitl. 158. It is asserted with great positiveness by Inderwick that no forest charter was ever granted by King John, but that Henry III. issued the charter of 1217 (which he puts in the third year of the reign, which, however, only commenced Oct. 28, 1216), in pursuance of the promises of his father; and Lord Coke, referring to it as a charter on which the lives and liberties of the woodland population depended, says that it was confirmed at least thirty times between the death of John and that of Henry V.; 4 Co.Inst. 303.

Webster, under the title Magna Charta, says that the name is applied to the charter granted in the 9th Hen. III. and confirmed by Edw. I. Prof. Maitland, in speaking of Magna Carta, refers to "the sister-charter which defined the forest law" as one of the four documents which, at the death of Henry III., comprised the written law of England. 1 Soc. England 410. Edward I. in 1297 confirmed "the charter made by the common consent of all the realm in the time of Henry III. to be kept in every point without breach." Inderwick, King's Peace 160; Stubb's Charters 486. The Century Dictionary refers to this latter charter of Edw. I. as *the Charter of the Forest*; but it was, as already shown, only a confirmation of it, and a comparison of the authorities leaves little if any doubt that the date was as above stated and the history as here given. Its provisions may be found in Stubb's Charters and they are summarized by Inderwick, in his work above cited.

### *Charta De Una Parte*

A deed-poll; a deed of one part. Formerly used to distinguish a *deed poll*—that is, an agreement made by one party only—from a deed *inter partes*. Co.Litt. 229.

### *Charta Partita*

(Literally, a deed divided.) A charter-party. 3 Kent, Comm. 201.

**CHARTA DE NON ENTE NON VALET.** A deed of a thing not in being is not valid. Co.Litt. 36.

**CHARTA NON EST NISI VESTIMENTUM DONATIONIS.** A deed is nothing else than the vestment of a gift. Co.Litt. 36.

**CHAUSSÉE.** Fr. A levee of earth, made to retain the water of a river or pond; a levee made in low, wet, and swampy places to serve as a road. *Armas v. New Orleans*, 3 La. 86, 99.

**CHARTÆ LIBERTATUM.** The charters (grants) of liberties. These are *Magna Charta* and *Charta de Foresta*.

**CHARTARUM SUPER FIDEM, MORTUIS TESTIBUS, AD PATRIAM DE NECESSITUDINE RECURRENDUM EST.** Co.Litt. 36. The witnesses being dead, the truth of charters must of necessity be referred to the country, *i. e.*, a jury.

**CHARTE.** Fr. A chart, or plan, which mariners use at sea.

**CHARTE-PARTIE.** Fr. In French marine law. A charter-party.

**CHARTEL.** A variant of "cartel" (*q. v.*).

**CHARTER, v.** In mercantile law. To hire or lease a vessel for a voyage. Thus, a "chartered" is distinguished from a "seeking" ship. 7 East, 24.

**CHARTER, n.** An instrument emanating from the sovereign power, in the nature of a grant, either to the whole nation, or to a class or portion of the people, or to a colony or dependency, and assuring to them certain rights, liberties, or

powers. Such was the "Great Charter" or "*Magna Charta*," and such also were the charters granted to certain of the English colonies in America. See Story, Const. § 161; 1 Bla.Comm. 108.

A charter differs from a constitution, in that the former is granted by the sovereign, while the latter is established by the people themselves.

A city's organic law. *Hudson Motor Car Co. v. City of Detroit*, 282 Mich. 69, 275 N.W. 770, 773, 113 A.L.R. 1472.

An act of a legislature creating a corporation, or creating and defining the franchise of a corporation. *Baker v. Smith*, 41 R.I. 17, 102 A. 721, 723; *Bent v. Underdown*, 156 Ind. 516, 60 N.E. 307. Also a corporation's constitution or organic law; *Schultz v. City of Phoenix*, 18 Ariz. 35, 156 P. 75, 76; *C. J. Kubach Co. v. McGuire*, 199 Cal. 215, 248 P. 676, 677; that is to say, the articles of incorporation taken in connection with the law under which the corporation was organized; *Chicago Open Board of Trade v. Imperial Bldg. Co.*, 136 Ill.App. 606; *In re Hanson's Estate*, 38 S.D. 1, 159 N.W. 399, 400. The authority by virtue of which an organized body acts. *Ryan v. Witt*, Tex. Civ.App., 173 S.W. 952, 959. A contract between the state and the corporation, between the corporation and the stockholders, and between the stockholders and the state. *Bruun v. Cook*, 280 Mich. 484, 273 N.W. 774, 777.

### **In Old English Law**

A deed or other written instrument under seal; a conveyance, covenant, or contract. *Cowell*; *Spelman*; Co.Litt. 6; 1 Co. 1; *F. Moore* 687.

### **In Old Scotch Law**

A disposition made by a superior to his vassal, for something to be performed or paid by him. 1 Forb.Inst. pt. 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. *Ersk. Inst.* 2, 3, 19.

### **Blank Charter**

A document given to the agents of the crown in the reign of Richard II. with power to fill up as they pleased.

#### *Charter of Pardon*

In English law. An instrument under the great seal, by which a pardon is granted to a man for a felony or other offense.

#### *Charter of the Forest*

See *Charta de foresta*.

#### *Charter Rolls*

Ancient English records of royal charters, granted between the years 1199 and 1516.

**CHARTER-HOUSE.** Formerly a convent of Carthusian monks in London; now a college founded and endowed by Thomas Sutton. The governors of the charter-house are a corporation aggregate without a head, president, or superior, all the members being of equal authority. 3 Steph. Comm. (7th Ed.) 14, 97.

**CHARTER-LAND.** In English law. Otherwise called "book-land." Property held by deed under

certain rents and free services. It, in effect, differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 Bl.Comm. 90.

**CHARTER-PARTY.** A contract by which a ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places. *Fish v. Sullivan*, 40 La. Ann. 193, 3 So. 730; *Vang v. Jones & Laughlin Steel Corporation*, D.C.Pa., 7 F.Supp. 475, 478.

A specific and express contract by which the owner lets a vessel or some particular part thereof to another person for a specified time or use. *Jones & Laughlin Steel Corporation v. Vang*, C.C.A.Pa., 73 F.2d 88, 91.

A written agreement by which a ship-owner lets the whole or a part to a merchant for the conveyance of goods in consideration of payment of freight. *Maude & P. Mer. Shipp.* 227; *Parker v. Washington Tug & Barge Co.*, 85 Wash. 575, 148 P. 896, 898. 3 Kent Comm. 201.

The contract by which a ship owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer. Civil Code Cal. § 1959; Civil Code Dak. § 1127.

"A charter party may be a contract for the lease of the vessel, or for a special service to be rendered by the owner of the vessel. Where, as is very frequently the case, the shipowner undertakes to carry a cargo, to be provided by the charterer, on a designated voyage, the arrangement is \* \* \* a mere contract of affreightment." *United States v. Hvoslef*, 237 U.S. 1, 35 S.Ct. 459, 460, 59 L.Ed. 813, Ann. Cas. 1916A, 286.

**CHARTERED SHIP.** A ship hired or freighted; a ship which is the subject-matter of a charter-party.

**CHARTERER.** In mercantile law. One who char- ters (*i. e.*, hires or engages) a vessel for a voyage; a freighter. 2 Steph.Comm. 184; 3 Kent, Comm. 137; *Turner v. Cross*, 83 Tex. 218, 18 S.W. 578, 15 L.R.A. 262.

**CHARTIS REDDENDIS.** (For returning the char- ters.) An ancient writ which lay against one who had charters of feoffment intrusted to his keeping and refused to deliver them. Reg.Orig. 159.

**CHARTOPHYLAX.** In old European law. A keeper of records or public instruments; a chartu- lary; a registrar. Spelman.

**CHARUE.** In old English law. A plow. *Bestes des charues*; beasts of the plow.

**CHASE.** The liberty or franchise of hunting, one's self, and keeping protected against all other persons, beasts of the chase within a specified dis- trict, without regard to the ownership of the land. 2 Bl.Comm. 414-416.

The act of acquiring possession of animals *feræ naturæ* by force, cunning, or address.

A privileged place for preservation of deer and beasts of the forest. It is commonly less than a forest and of larger compass than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not inclosed, yet it must have certain metes and bounds. Man- wood, 49; *Termes de la Ley*.

**Common Chase**

In old English law. A place where all alike were entitled to hunt wild animals.

**CHASSIS.** As applied to a motor car, the rec- tangular metal framework, as distinguished from its body and seats, but including its accessories for propulsion, as the tanks, motor, etc., and gen- eral running gear. *Kansas City Automobile School Co. v. Holcker-Elberg Mfg. Co.*, Mo.App., 182 S.W. 759, 761.

**CHASTE.** Never voluntarily having had unlawful sexual intercourse. *Marchand v. State*, 113 Neb. 87, 201 N.W. 890, 891. An unmarried woman who has had no carnal knowledge of men. *New v. State*, 141 Tex.Cr.R. 536, 148 S.W.2d 1099, 1101.

One who falls from virtue and afterwards reforms is chaste within the meaning of the seduction statutes. *Wood v. State*, 48 Ga. 288, 15 Am.Rep. 664; *People v. Weinstock*, 27 N.Y.Cr.R. 53, 140 N.Y.S. 453, 456.

**CHASTE CHARACTER.** Denoting purity of mind and innocence of heart;—not limited merely to un- lawful sexual intercourse. *State v. Wilcoxon*, 200 Iowa, 1250, 206 N.W. 260, 261.

As used in statutes, means actual personal virtue. It may include the character of one who was formerly unchaste but is reformed. *Boak v. State*, 5 Iowa, 430; *People v. Nelson*, 153 N.Y. 90, 46 N.E. 1040, 60 Am.St.Rep. 592.

**CHASTITY.** Purity; continence.

It means that virtue which prevents the unlawful inter- course of the sexes; the state of purity or abstinence from unlawful sexual connection. *People v. Kehoe*, 123 Cal. 224, 55 P. 911, 69 Am.St.Rep. 52; actual personal virtue and character, and not a mere external reputation for chastity. *People v. Weinstock*, 27 N.Y.Cr.R. 53, 140 N.Y.S. 453, 457. See Chaste.

**CHATTEL.** An article of personal property; any species of property not amounting to a freehold or fee in land. *People v. Holbrook*, 13 Johns., N.Y., 94; *U. S. v. Sischo*, C.C.A.Wash., 270 F. 958, 961. A thing personal and movable. *Castle v. Castle*, C.C.A.Haw., 267 F. 521, 522. Things which in law are deemed personal property, they are divisible into chattels real and chattels personal.

The term "chattels" is a more comprehensive one than "goods," as it includes animate as well as inanimate prop- erty. 2 Chit.Bl.Comm. 383, note. In a devise, however, they may be of the same import. *Shep.Touch.* 447; 2 Fonbl.Eq. 335.

**Chattel Interest**

An interest in corporeal hereditaments less than a freehold. 2 Kent, Comm. 342.

**Personal Chattels**

Movable things. 2 Bl.Comm. 387; 2 Kent, 340; *Co.Litt.* 48a; 4 Co. 6; *In re Gay*, 5 Mass. 419; *Miller v. Hirschmann*, 170 Md. 145, 183 A. 259, 263.

Evidences of debt are chattels personal. *Greene Line Terminal Co. v. Martin*, 122 W.Va. 483, 10 S.E.2d 901, 906.

**Real Chattels**

Such as concern, or savor of, the realty, such as leasehold estates; interests issuing out of, or annexed to, real estate; such chattel interests as

## CHATTEL

devolve after the manner of realty. *Mozley & Whitley*; 2 Bl.Comm. 386; In re *Dalton's Estate*, 183 Iowa, 1013, 168 N.W. 332, 334; Intermountain Realty Co. v. Allen, 60 Idaho 228, 90 P.2d 704, 706, 122 A.L.R. 647; *Keystone Pipe & Supply Co. v. Crabtree*, 174 Okl. 562, 50 P.2d 1086, 1088. An interest in real estate less than freehold, *Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Nathan*, 215 Ind. 178, 19 N.E.2d 243, 249.

**CHATTEL MORTGAGE.** A mortgage on chattels. *O'Connor v. Hassett*, 207 Iowa, 155, 222 N.W. 530. A transfer of some legal or equitable right in personal property or creation of a lien thereon as security for payment of money or performance of some other act, *Miller v. Eagle, Star & British Dominions Ins. Co., Limited*, of London, England, United States Branch, New York, 146 S.C. 123, 143 S.E. 663, 666; *Columbia Cas. Co. v. Sodini*, 159 Kan. 478, 156 P.2d 524, 528; *Anglo-American Mill Co. v. First Nat. Bank*, 76 Colo. 57, 230 P. 118, 120; subject to defeasance on performance of the conditions. *Personal Finance Co. of Providence v. Henley-Kimball Co., R.I.*, 1 A.2d 121, 124, 117 A.L.R. 1476; *Thomas, Mortg.* 427.

An instrument of sale of personalty conveying title to mortgagee with terms of defeasance; and, if the terms of redemption are not complied with, then, at common law, the title becomes absolute. *Stewart v. Slater*, 6 Duer (N. Y.) 99; In re *Packard Press, C.C.A.N.Y.*, 5 F.2d 633, 635. A bill of sale with a defeasance clause incorporated in it. *Monongahela Ins. Co. v. Batson*, 111 Ark. 167, 163 S.W. 510, 511; *Bank of Dillon v. Murchison, C.C.A.4*, 213 F. 147, 151.

An absolute pledge, to become an absolute interest if not redeemed at a fixed time. *Cortelyou v. Lansing*, 2 Caines, Cas., N.Y., 200, per Kent, Ch.

A conditional sale of chattel as security for debt or performance of some other obligation. *Jones, Chat. Mortg.* § 1. *Allen v. Steiger*, 17 Colo. 552, 31 P. 226; *Adler, Salzman & Adler v. Ammerman Furniture Co.*, 100 Conn. 223, 123 A. 268, 269.

A pledge is distinguished from a chattel mortgage in that in a mortgage, the title is transferred; in a pledge, the possession. *Jones, Mortg.* § 4; *Security Trust Co. v. Edwards*, 90 N.J.Law, 558, 101 A. 384, 385, L.R.A.1917F. 273; *Thompson v. Dolliver*, 132 Mass. 103; *Thoen v. First Nat. Bank*, 199 Minn. 47, 271 N.W. 111, 113; In pledge, the pawnee has only a special property in the thing deposited. *Evans v. Darlington*, 5 Blackf., Ind., 320.

A conditional sale is distinguished from a chattel mortgage in that the purchaser has merely a right to purchase, and no debt or obligation exists on the part of the vendor. *Weathersly v. Weathersly*, 40 Miss. 462, 90 Am.Dec. 344; *Gomez v. Kamping*, 4 Daly, N.Y., 77. In mortgage, title passes; in conditional sale possession is transferred and title retained. *Kettwig v. Aero Inv. Co.*, 191 Minn. 500, 254 N.W. 629.

**CHATTEL REAL.** All interests in real estate of lesser dignity than a freehold estate, and which lesser estates or interest descended under the rules for devaluation of personal property and not as freehold or fee simple estates. Intermountain Realty Co. v. Allen, 60 Idaho 228, 90 P.2d 704, 705, 122 A.L.R. 647.

**CHAUD-MEDLEY.** A homicide committed in the heat of an affray and while under the influence of passion; it is thus distinguished from *chance-medley*, which is the killing of a man in a casual affray in self-defense. 4 Bl.Comm. 184. It has been said, however, that the distinction is of no great importance. See 1 Russ.Crimes, 660.

**CHAUFFEUR.** An operator who directly or indirectly receives compensation for operating motor vehicle. *Turner v. State*, 226 Ala. 269, 146 So. 601. Operators who drive jitneys in cities and towns for hire, *Day v. Bush*, 18 La.App. 682, 139 So. 42, 44. Person employed or paid to operate, drive and attend car. *People v. Fulton*, 96 Misc. 663, 162 N.Y.S. 125, 126; *Des Moines Rug Cleaning Co. v. Automobile Underwriters*, 215 Iowa 246, 245 N.W. 215, 217; *State v. Depew, Md.*, 175 Md. 274, 1 A.2d 626, 627.

Test whether person is a chauffeur is whether he operated motor vehicle in whole or part-time employment, whether he was at such time an employee, servant, agent, or independent contractor, and whether he was paid for his service. *Maryland Casualty Co. v. Cronholm, D.C.Tex.*, 32 F.Supp. 375, 377.

**CHAUMPERT.** A kind of tenure mentioned in a patent of 35 Edw. III. *Cowell*; *Blount*.

**CHAUNTRY RENTS.** Money paid to the crown by the servants or purchasers of chantry-lands. See Chantry.

**CHEAT, v.** To deceive and defraud. *State v. Mastin*, 277 Mo. 495, 211 S.W. 15, 18; *Moore v. State*, 92 Ind.App. 150, 168 N.E. 202, 203. It necessarily implies a fraudulent intent. *Clolinger v. Callahan*, 204 Ky. 33, 263 S.W. 700, 702.

The words "cheat and defraud" usually mean to induce a person to part with the possession of property by reason of intentionally false representations relied and acted upon by such person to his harm. *Antonio Pepe Co. v. Apuzzo*, 98 Conn. 807, 120 A. 681, 682; They include not only the crime of false pretenses, but also all civil frauds. *Hinshaw v. State*, 188 Ind. 147, 122 N.E. 418, 419. They include all tricks, devices, artifices, or deceptions used to deprive another of property or other right. *State v. Parker*, 114 Conn. 354, 158 A. 797, 800.

**CHEAT, n.** Swindling; defrauding. "Deceitful practices in defrauding or endeavoring to defraud another of his known right, by some *willful device*, contrary to the plain rules of common honesty." *Hawk.P.C. b. 2, c. 23, § 1.* "The fraudulent obtaining the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public." *Steph.Crim. Law*, 93.

Cheats, punishable at common law, are such cheats (not amounting to felony) as are effected by deceitful or illegal symbols or tokens which may affect the public at large, and against which common prudence could not have guarded. 2 *Whart.Crim.Law*, § 1116; 2 *East, P.C.* 818; *Von Mumm v. Frash, C.C.N.Y.*, 56 F. 836; *State v. Parker*, 43 N.H. 85.

**CHEATERS, or ESCHEATORS,** were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb to *cheat* was derived. *Wharton*.

**CHECK, v.** To control or restrain; to hold within bounds. To verify or audit; to verify, guard, or examine the work of another. *Marsh v. State*, 125

Ark. 282, 188 S.W. 815, 816; State v. Hearn, 115 Ohio St. 340, 154 N.E. 244, 245. Particularly used with reference to the control or supervision of one department, bureau, office, or person over another.

As used in initiative statute, to compare names of signer of petition against official registration list. Halgren v. Welling, 91 Utah, 16, 63 P.2d 550, 554.

**CHECK, n.** A commercial device intended for use as a temporary expedient for actual money, and generally designed for immediate payment, and not for circulation. Kennedy v. Jones, 140 Ga. 302, 78 S.E. 1069, 1070, Ann.Cas.1914D, 355; Merchants' Nat. Bank v. Bank, 10 Wall. 647, 19 L.Ed. 1008.

A draft for payment of money. Wright v. Loring, 351 Ill. 584, 184 N.E. 865, 866. An order for payment of money. Glennan v. Rochester Trust & Safe Deposit Co., 209 N.Y. 12, 102 N.E. 537, 539, 52 L.R.A., N.S., 302, Ann.Cas.1915A, 441; Weiss v. Fenwick, 111 N.J.Eq. 385, 162 A. 609, 611; Anderson v. National Bank of Tacoma, 146 Wash. 520, 264 P. 8, 10. A request to pay money, Standard Factors Corporation v. Manufacturers Trust Co., 182 Misc. 701, 50 N.Y. S.2d 10, 13.

A draft or order upon a bank or banking-house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand. 2 Daniel, Neg.Inst. § 1566; Bank v. Wheaton, 4 R.I. 33; Economy Fuse & Mfg. Co. v. Standard Electric Mfg. Co., 359 Ill. 504, 194 N.E. 922, 924.

A bill of exchange drawn on a bank payable on demand. Commercial & Savings Bank Co. of Bellafontaine, Ohio, v. Citizens' Nat. Bank of Franklin, 68 Ind.App. 417, 120 N.E. 670, 674; Bell-Wayland Co. v. Bank of Sugden, 95 Okl. 67, 218 P. 705, 706; Thomas v. Berger, 118 Pa.Super. 422, 180 A. 32. A check differs from an ordinary bill of exchange in that it is drawn on a bank or bankers, and is payable immediately on presentment, without days of grace; it is payable immediately on presentment, and no acceptance as distinct from payment is required; it is supposed to be drawn upon a previous deposit of funds, and is an absolute appropriation of so much money in the hands of the bankers to the holder of the check. Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 647, 19 L.Ed. 1008; People v. Compton, 123 Cal. 403, 56 P. 44.

The term "check," within the ordinary meaning of that term, includes "draft," the only distinction being that in a draft the drawer is a bank, while in the ordinary check the drawer is an individual. Leach v. Mechanics' Sav. Bank, 202 Iowa, 899, 211 N.W. 506, 508, 50 A.L.R. 388.

A check is a contract. Deal v. Atlantic Coast Line R. Co., 225 Ala. 533, 144 So. 81, 82, 86 A.L.R. 455; Roff v. Crenshaw, Cal.App., 159 P.2d 661, 662.

*Cashier's Check*

One issued by an authorized officer of a bank directed to another person, evidencing that the payee is authorized to demand and receive upon presentation from the bank the amount of money represented by the check. State v. Tyler County State Bank, Tex.Com.App., 277 S.W. 625, 627, 42 A.L.R. 1347. A form of a check by which the bank lends its credit to the purchaser of the check, the purpose being to make it available for immediate use in banking circles. Duke v. Johnson, 127 Wash. 601, 221 P. 321, 322. A bill of exchange drawn by a bank upon itself, and accepted by the act of issuance. Anderson v. Bank of Tupelo, 135 Miss. 351, 100 So. 179; In its legal effect, it is the same as a certificate of deposit, certified check or draft. Montana-Wyoming Ass'n of Credit Men v. Commercial Nat. Bank of Miles City, 80 Mont. 174, 259 P. 1060, 1061. An acknowledgment of a debt drawn by bank upon itself. In re Liquidation of State Bank of Binghamton, 152 Misc. 579, 274 N.Y.S. 41.

*Crossed Check*

A check crossed with two lines, between which are either the name of a bank or the words "and company," in full or abbreviated. In the former case, the banker on whom it is drawn must not pay the money for the check to any

other than the banker named; in the latter case, he must not pay it to any other than a banker. 2 Steph.Comm. 118, note c. And see 7 Exch. 389; [1903] A.C. 240; Farmers' Bank v. Johnson, King & Co., 134 Ga. 486, 68 S.E. 85, 30 L.R.A., N.S., 697.

*Forged Check*

A check on which the maker's name is forged—not one which has forged indorsements. Kleinman v. Chase Nat. Bank of City of New York, 124 Misc. 173, 207 N.Y.S. 191, 193. See, also, International Union Bank v. National Surety Co., 245 N.Y. 368, 157 N.E. 269, 270. A check which is created as a result of a criminal act of forgery. Samples v. Milton County Bank, 34 Ga.App. 248, 129 S.E. 170.

*Memorandum Check*

A check given by a borrower to a lender, for the amount of a short loan, with the understanding that it is not to be presented at the bank, but will be redeemed by the maker himself when the loan falls due. This understanding is evidenced by writing the word "Mem." on the check. This is not unusual among merchants. See U. S. v. Isham, 17 Wall. 502, 21 L.Ed. 728; Franklin Bank v. Freeman, 16 Pick., Mass., 539; Story, Pr.Notes § 499.

*Traveler's Check*

See that title.

**CHECK-BOOK.** A book containing blank checks on a particular bank or banker.

**CHECK-OFF SYSTEM.** Deduction by employer from pay of employees of sums and payment of such sums to union. Pacific Mills v. Textile Workers' Union of America, Local No. 254, 197 S.C. 330, 15 S.E.2d 134, 136, 135 A.L.R. 497; Local 60 of Industrial Union of Marine and Shipbuilding Workers of America v. Welin Davit and Boat Corporation, 133 N.J.Eq. 551, 33 A.2d 708, 709; Borderland Coal Corporation v. International Organization of United Mine Workers of America, D. C.Ind., 275 F. 871, 873.

**CHECK-ROLL.** In English law. A list or book, containing the names of such as are attendants on, or in the pay of, the queen or other great personages, as their household servants.

**CHECKER.** The old Scotch form of exchequer.

**CHECKERBOARD SYSTEM.** This term, with reference to entries on lands, means one entry built on another, and a third on the second. Sequatchie & South Pittsburg Coal & Iron Co. v. Tennessee Coal, Iron & R. Co., 131 Tenn. 221, 174 S.W. 1122.

**CHEFE.** In Anglo-Norman law. Were or were-gild; the price of the head or person, (*capitis pretium*.)

**CHEMERAGE.** In old French law. The privilege or prerogative of the eldest. A provincial term derived from *chemier*, (*q. v.*) Guyot, Inst.

**CHEMIER.** In old French law. The eldest born. A term used in Poitou and other places. Guyot, Inst.

**CHEMIN.** Fr. The road wherein every man goes; the king's highway. Called in law Latin *via regia*. Termes de la Ley; Cowell; Spelman, Gloss.

**CHEMIS.** In old Scotch law. A chief dwelling or mansion house.

## CHEQUE

**CHEQUE.** A variant of check (*q. v.*).

**CHEROKEE NATION.** One of the civilized Indian tribes. See Indians; Indian Tribe.

**CHEVAGE.** A sum of money paid by villeins to their lords in acknowledgment of their bondage.

It was exacted for permission to marry, and also permission to remain without the dominion of the lord. When paid to the king, it was called subjection. *Termes de la Ley*; Co.Litt. 140 a.; Spelman, Gloss.

*Chevage* seems also to have been used for a sum of money yearly given to a man of power for his countenance and protection as a chief or leader. *Termes de la Ley*; Cowell.

**CHEVANTIA.** In old records. A loan or advance of money upon credit. Cowell.

**CHEVISANCE.** An agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, etc.; also an unlawful bargain or contract. Wharton.

**CHEVITLÆ.** In old records. Pieces of ground, or *heads* at the end of plowed lands. Cowell.

**CHEZE.** A homestead or homesfall which is accessory to a house.

**CHICANE.** Swindling; shrewd cunning. The use of tricks and artifice.

**CHICKASAW NATION.** One of the civilized Indian tribes. See Indians; Indian Tribe.

**CHIEF.** One who is put above the rest. Principal; leading; head; eminent in power or importance; the best or most important or valuable of several; paramount; of leading importance.

*Declaration in chief* is a declaration for the principal cause of action. 1 Tidd, Pr. 419.

*Examination in chief* is the first examination of a witness by the party who produces him. 1 Greenl.Ev. § 445.

*Tenant in chief.* See "Chief, tenant in," *infra*.

**CHIEF BARON.** The presiding judge of the English court of exchequer; answering to the chief justice of other courts. 3 Bl.Comm. 44; 3 Steph. Comm. 401.

**CHIEF CLERK.** The principal clerical officer of a bureau or department, who is generally charged, subject to the direction of his superior officer, with the superintendence of the administration of the business of the office.

**CHIEF JUDGE.** In some states, the presiding judge, as in the New York Court of Appeals and the Maryland Court of Appeals. The term is also used in 1 Tyler (Vt.) with "assistant" judge for the puisne. It is likewise applied to the judge of the London bankruptcy court. In general, the term is equivalent to "presiding justice" or "presiding magistrate." *Bean v. Loryea*, 81 Cal. 151, 22 P. 513.

**CHIEF JUSTICE.** The presiding, eldest, or principal judge of a court of justice.

**CHIEF JUSTICE OF ENGLAND.** The presiding judge in the king's bench division of the high court of justice, and, in the absence of the lord chancellor, president of the high court, and also an *ex officio* judge of the court of appeals. The full title is "Lord Chief Justice of England."

**CHIEF JUSTICE OF THE COMMON PLEAS.** In England. The presiding judge in the court of common pleas, and afterwards in the common pleas division of the high court of justice, and one of the *ex officio* judges of the high court of appeal.

**CHIEF JUSTICIAR.** In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 Bl.Comm. 38.

**CHIEF LORD.** The immediate lord of the fee, to whom the tenants were directly and personally responsible. *Burton*, R.P. 317.

**CHIEF MAGISTRATE.** The head of the executive department of government of a nation, state, or municipal corporation. *McIntire v. Ward*, 3 Yeates, Pa., 424.

**CHIEF OFFICE.** Office of paramount importance or the leading office. *City of Newark v. New Jersey Inv. Co.*, 18 N.J.Misc. 182, 11 A.2d 730, 731.

**CHIEF PLEDGE.** The borsholder, or chief of the borough. Spelman.

**CHIEF RENTS.** In English law. Were the annual payments of freeholders of manors; and were also called "quit-rents," because by paying them the tenant was freed from all other rents or services. 2 Bl.Comm. 42.

**CHIEF, TENANT IN.** In English feudal law. All the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the "Lord Paramount," or "Lord Above All;" and those that held immediately under him, in right of his crown and dignity, were called his tenants "*in capite*" or "in chief," which was the most honorable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did. *Brown*. One who held directly of the king. 1 Washb.R.P. \*19.

**CHIEFRIE.** In feudal law. A small rent paid to the lord paramount.

**CHILD.** See Children.

**CHILDREN.** Progeny

### Child of tender age or years

Such a child must be less than 14 years old. *Barnhill's Adm'r v. Mt. Morgan Coal Co.*, D.C.Ky., 215 F. 608, 610. A minor more than 15 years of age is not included within the meaning of the term. *Paulk & Fossil v. Lee*, 31 Ga.App. 629, 121 S.E. 845.

**Child's Part**

A "child's part," which a widow, by statute in some states, is entitled to take in lieu of dower or the provision made for her by will, is a full share to which a child of the decedent would be entitled, subject to the debts of the estate and the cost of administration up to and including distribution. *Benedict v. Wilmarth*, 46 Fla. 535, 35 So. 84.

**Illegitimate Child**

A bastard (*q. v.*).

**Legitimate Child**

One born in lawful wedlock.

**Natural Child**

A bastard (*q. v.*); a child born out of lawful wedlock. But in a statute declaring that adopted shall have all the rights of "natural" children, the word "natural" was used in the sense of "legitimate." *Barns v. Allen*, 9 Am.Law Reg., O.S., 747. In Louisiana. Illegitimate children who have been acknowledged by the father. Civ.Code La. art. 202. In the civil law. A child by natural relation or procreation; a child by birth, as distinguished from a child by adoption. Inst. 1, 11, pr.; Id. 3, 1, 2; Id. 3, 8 pr. See, also, *Conner v. Parsley*, 192 Ky. 827, 234 S.W. 972, 974; *Middletown Trust Co. v. Gaffey*, 96 Conn. 61, 112 A. 689, 691.

A child by concubinage, in contradistinction to a child by marriage. Cod. 5, 27.

**Posthumous Child**

One born after the father's death.

**Quasi Posthumous Child**

In the civil law. One who, born during the life of his grandfather, or other male ascendant, was not his heir at the time he made his testament, but who by the death of his father became his heir in his life-time. Inst. 2, 13, 2; Dig. 28, 3, 13.

The word "child" in statutes often means either child or children. *Cunningham v. Dunn*, 84 W.Va. 593, 100 S.E. 410, 411. See Children.

"Children" is ordinarily a word of description, limited to persons standing in the same relation, and has the same effect as if all the names were given. *Rowley v. Currie*, 94 N.J.Eq. 606, 120 A. 653, 656.

The words "child or children," in their usual sense, are words of purchase. *Phillips v. Mercantile Trust Co.* of Baltimore, 195 A. 394, 395, 173 Md. 290; *Kelly v. Kelly*, 176 Ark. 548, 3 S.W.2d 305; *Deener v. Watkins*, 191 Ark. 776, 87 S.W.2d 994, 995; they may, however, be used as words of limitation, *Bonds v. Hutchison*, 199 S.C. 197, 18 S.E.2d 661, 662, 663; *Crawford v. Withrow*, 314 Pa. 497, 171 A. 894, 895; *Young v. Munsey Trust Co.*, 72 App.D.C. 73, 111 F.2d 514, 515.

The terms "child" or "children" may include or apply to:

Adopted children, *Dyer v. Lane*, 202 Ark. 571, 151 S.W.2d 678, 680; *Ex parte Cline*, 213 Ala. 599, 105 So. 686, 687; *Ryan v. Foreman*, 262 Ill. 175, 104 N.E. 189; but some decisions hold that adopted children are not included in absence of manifest intention, *Savells v. Brown's Guardian*, 187 Ky. 134, 218 S.W. 462, 463; *Melek v. Curators of University of Missouri*, 213 Mo.App. 572, 250 S.W. 614, 615; for cases holding that "child" or "children" does not include adopted children, see *Everitt v. LaSpeyre*, 195 Ga.

377, 24 S.E.2d 381, 383; *Moffet v. Cash*, 346 Ill. 287, 178 N.E. 658, 659; *In re Sandford's Estate*, 160 Misc. 898, 290 N.Y.S. 959, 960; *Adult child, Mindlin v. Consolidated Taxpayers Mut. Ins. Co.*, 173 Misc. 961, 19 N.Y.S.2d 340, 342; *State ex rel. Buerk v. Calhoun*, 330 Mo. 1172, 52 S.W.2d 742, 83 A.L.R. 1393; *after-born child, Westport Paper-Board Co. v. Staples*, 127 Conn. 115, 15 A.2d 1, 5; *contra, Albers v. Donovan*, 371 Ill. 458, 21 N.E.2d 563, 565; all lineal descendants. *Boston Safe Deposit & Trust Co. v. Park*, 307 Mass. 255, 29 N.E.2d 977, 980; *blood relations. In re Fletcher's Estate*, 103 Pa.Super. 69, 157 A. 810, 811; *child by second marriage, Nelson v. Estill*, 175 Ga. 526, 165 S.E. 820, 823; *child that would inherit from an intestate parent, In re Gossett's Estate*, 46 N.M. 344, 129 P.2d 56, 58, 60, 142 A.L.R. 1441; *child en ventre sa mere, Valley Nat. Bank v. Hartford Accident & Indemnity Co.*, 57 Ariz. 276, 113 P.2d 359, 361; *Thomson v. Elliott*, 152 Misc. 188, 273 N.Y.S. 898; *children born in wedlock, Bell v. Phyn*, 7 Ves. 458; *In re Silva's Estate*, 32 Ariz. 573, 261 P. 40, 41. *Children by former marriage, In re Freisinger's Will*, 263 App. Div. 970, 33 N.Y.S.2d 196, 197; *children by various marriages of parent named, McMullen v. Block, Tex.Civ.App.*, 168 S.W.2d 667, 670; *children in first degree. In re Brown's Estate*, 133 Misc. 587, 233 N.Y.S. 426, 430; *Children regardless of age, Citizens' Bank of Lancaster v. Foglesong*, 326 Mo. 581, 31 S.W.2d 778, 783; *correlative of "parent;" descendant or descendants of first degree, Benners v. First Nat. Bank of Birmingham*, 247 Ala. 74, 22 So.2d 435, 442; *first degree descendants, Spencer v. Title Guarantee Loan & Trust Co.*, 222 Ala. 485, 132 So. 730, 731; *first generation of offspring, New York Life Ins. Co. v. Beebe*, D.C.Md., 57 F.Supp. 754, 757.

*Grandchildren, Holbrook v. Shepard*, 245 N.Y. 618, 157 N.E. 882; *Tucker v. Tucker*, 259 Ky. 361, 82 S.W.2d 458, 459, 460; *Cherokee Brick Co. v. Bishop*, 156 Tenn. 168, 299 S.W. 770; but, ordinarily, grandchildren are not included, *Lowrey v. Le Flore*, 48 Okl. 235, 149 P. 1112, 1114, Ann. Cas.1918E, 1001; *Sabit v. Safe Deposit & Trust Co. of Baltimore*, 184 Md. 24, 40 A.2d 231, 238; *In re Blodgett's Will*, 250 App.Div. 324, 294 N.Y.S. 358, 366; as used in deeds or wills especially, the term "children" will not be construed to mean grandchildren, unless a strong case of intention or context requires it. *Greenfield v. Lauritsen*, 306 Ill. 279, 137 N.E. 818, 819; *Davis v. Mitchell*, Tenn. App., 178 S.W.2d 889, 904; *In re Reed's Estate*, 342 Pa. 54, 19 A.2d 365, 366.

*Heirs or heirs of the body, Beall v. Beall*, 331 Ill. 28, 162 N.E. 152, 154; *Schwarz v. Rabe*, 129 Kan. 430, 283 P. 642, 643; *Conover v. Code*, 184 Ind. 604, 112 N.E. 7, 12; *Darragh v. Barmore, Tex.Com.App.*, 242 S.W. 714, 718; but the intention to use "children" in the sense of "heirs" must be made clear. *Farrell v. Farles, Del.*, 22 A.2d 380, 384, 385. So, too, the term "heirs" may mean "children." *Albers v. Donovan*, 371 Ill. 458, 21 N.E.2d 563, 565; *Lane v. Citizen's & Southern Nat. Bank*, 195 Ga. 828, 25 S.E.2d 800, 804; but the intention to so use the word must be manifest. *Welles v. Pape*, 63 Ohio App. 432, 27 N.E.2d 169, 172; For cases holding that "heirs" does not mean "children" see *Erwin Nat. Bank v. Riddle*, 18 Tenn.App. 561, 79 S.W.2d 1032, 1038; *Triplett v. Triplett*, 332 Mo. 870, 60 S.W.2d 13, 15.

*Illegitimate children, State ex rel. Herbert v. Hocking Valley Mining Co.*, 73 Ohio App. 483, 57 N.E.2d 236, 238; *In re Anonymous*, 165 Misc. 62, 300 N.Y.S. 292; but other decisions have held that the terms exclude illegitimate children, *Bank of Montclair v. McCutcheon*, 107 N.J.Eq. 564, 152 A. 379, 380; *Jacobs v. United States, C.C.A.La.*, 112 F. 2d 51; *Gee v. Commonwealth*, 263 Ky. 808, 94 S.W.2d 17, 19; *illegitimate children that have been acknowledged or adopted, Weyerhaeuser Timber Co. v. Marshall, C.C.A. Wash.*, 102 F.2d 78, 81; *Jenkins v. City of Los Angeles*, 60 Cal.App.2d 50, 40 P.2d 45, 46; *Hastings v. Rathbone*, 194 Iowa, 177, 188 N.W. 960, 962, 23 A.L.R. 392; *immediate offspring or progeny, McQueen v. Stephens, Tex.Civ.App.*, 100 S.W.2d 1053, 1055; *In re Conant's Estate*, 144 Misc. 743, 259 N.Y.S. 885; *infant offspring. In re Berg's Estate*, 72 N.D. 52, 4 N.W.2d 575, 580, 140 A.L.R. 1312; *Issue, Woodley v. Howse*, 133 Kan. 639, 3 P.2d 475, 476; *Hodge v. Lovell's Trustee*, 262 Ky. 509, 90 S.W.2d 683, 686. So too, "issue" may mean "children." *Pierson v. Jones*, 108 N.J.Eq. 453, 155 A. 541, 542; *In re Morningstar's Will*, 143 Misc. 620, 257 N.Y.S. 240, 249. *Legitimate children, Dunlavy v. Lowrie*, 372 Ill. 622, 25 N.E.2d 67, 71; *Town of Plymouth v. Hey*, 285 Mass. 357, 189 N.E. 100, 101; *Middletown v. Luckenbach S. S. Co., C.C.A.N.Y.*, 70 F.2d 326, 328;



## CHILDREN

legitimated child, *Brown v. Shwinogee*, 128 Okl. 149, 261 P. 920, 921; living children, *In re Schuette's Estate*, 138 Neb. 568, 293 N.W. 421, 422; *Ward v. Ward*, 176 Ga. 849, 169 S.E. 120, 121, 122; male or female, *Turner v. Metropolitan Life Ins. Co.*, 56 Cal.App.2d 862, 133 P.2d 859, 861; *Curtis v. Safe Deposit & Trust Co. of Baltimore*, 178 Md. 360, 13 A.2d 546, 548; married child, *Killian v. Burnham*, 191 Okl. 248, 130 P.2d 538, 539; *In re Drye*, 250 Mich. 210, 229 N.W. 623, 625; minor or minors, *Walsh v. Walsh*, Cal.App., 105 P.2d 763, 764; *State v. Flath*, 59 N.D. 121, 228 N.W. 847, 849; "natural-born children." *In re Corr's Estate*, 338 Pa. 337, 12 A.2d 76, 78; natural offspring of parentage, *In re Wait's Estate*, Sur., 42 N.Y.S.2d 735, 738, 739; offspring of either sex and of any age, *Morris v. Williams*, Tex.Civ.App., 92 S.W.2d 541, 544; opposite of "adult," *Miller v. Finegan*, 26 Fla. 29, 7 So. 140, 6 L.R.A. 813; *Potter v. Golden Rule Grocery Co.*, 169 Tenn. 240, 84 S.W.2d 364, 365; person under age of 18 years, *State v. Flath*, 59 N.D. 121, 228 N.W. 847, 848; person under age of majority, *Wade v. State*, 24 Ala.App. 176, 132 So. 71, 72; posthumous child, *Travelers Ins. Co. v. Dudley*, 180 Tenn. 191, 173 S.W.2d 142, 144; posthumous, illegitimate child, *Morgan v. Susino Const. Co.*, 130 N.J.L. 418, 33 A.2d 607, 610.

*Contra*, *Gierak v. Lehigh & Wilkes-Barre Coal Co.*, 101 Pa.Super. 397, 399; *Staker v. Industrial Commission of Ohio*, 127 Ohio St. 13, 186 N.E. 616; quick child, *Guifrida v. State*, 61 Ga.App. 595, 7 S.E.2d 34, 35; sons and daughters, *Kimberlin v. Hicks*, 150 Kan. 449, 94 P.2d 335, 340; Stepchildren, *Newark Paving Co. v. Klotz*, 85 N.J.Law, 432, 91 A. 91, 92; *Travelers Ins. Co. v. E. I. Du Pont De Nemours & Co.*, Del., 1 Terry 285, 9 A.2d 88, 91.

**CHILDWIT.** In Saxon law. The right which a lord had of taking a fine of his bondwoman gotten with child without his license. *Termes de la Ley*.

The custom in Essex county, England, whereby every reputed father of a bastard child was obliged to pay a small fine to the lord. *Cowell*.

**CHILLING A SALE.** The act of bidders or others who combine or conspire to suppress fair competition at a sale, for the purpose of acquiring the property at less than its fair value. *Vette v. Hackman*, 292 Mo. 138, 237 S.W. 802, 805.

**CHILTERN HUNDREDS.** In English law. The offices of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham; or the steward of the Manor of Northsted. Chiltern Hundreds is an appointment under the hand and seal of the Chancellor of the Exchequer. *May*, Parl.Pr. 642.

The stewardship of the Chiltern Hundreds is a nominal office in the gift of the crown, usually accepted by members of the house of commons desirous of vacating their seats. By law a member once elected to parliament is compelled to discharge the duties of the trust conferred upon him, and is not enabled at will to resign it. But by statute, if any member accepts any office of profit from the crown, (except officers in the army or navy accepting a new commission,) his seat is vacated. If, therefore, any member wishes to retire from the representation of the county or borough by which he was sent to parliament, he applies to the lords of the treasury for the stewardship of one of the Chiltern Hundreds, which having received, and thereby accomplished his purpose, he again resigns the office. *Brown*.

**CHIMIN.** In old English law. A road, way, highway. It is either the king's highway (*chiminus regis*) or a private way. The first is that over which the subjects of the realm, and all others under the protection of the crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that

in which one person or more have liberty to pass over the land of another, by prescription or charter. *Wharton*. See *Chemin*.

**CHIMINAGE.** A toll for passing on a way through a forest; called in the civil law "*pedagogium*." *Cowell*. See *Co.Litt.* 56 *a*; *Spelman*, *Gloss.*; *Termes de la Ley*; *Baldwin's Ed. of Britton*, 63.

**CHIMINUS.** The way by which the king and all his subjects and all under his protection have a right to pass, though the property of the soil of each side where the way lieth may belong to a private man. *Cowell*.

**CHIMNEY MONEY, or HEARTH MONEY.** A tax upon chimneys or hearth; an ancient tax or duty upon houses in England, now repealed. See *Hearth Money*; *Fuage*.

**CHIPPINGAVEL.** In old English law. A tax upon trade; a toll imposed upon traffic, or upon goods brought to a place to be sold; a toll for buying and selling. *Whishaw*; *Blount*.

**CHIRGEMOT, CHIRCHGEMOT.** (Also spelled *Chirgemote*, *Chirchgemote*, *Circgemote*, *Kirkmote*.) In Saxon law. An ecclesiastical assembly or court. *Spelman*. A synod or meeting in a church or vestry. 4 *Inst.* 321; *Blount*; *Spelman*, *Gloss.*; *Hen. I. cc. 4, 8*; *Cunningh.Law Dict.*

**CHIROGRAPH.** In Civil and Canon law. An instrument written out and subscribed by the hand of the party who made it, whether the king or a private person. *Du Cange*; *Cowell*.

In old English law. A deed or indenture; also the last part of a fine of land, called more commonly, perhaps, the foot of the fine. *Cruise*, *Dig. t. 35, c. 2, s. 52*.

An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, which was in Saxon times called "*chirographum*," and which, being somewhat changed in form and manner by the Normans, was by them styled "*charta*." Anciently when they made a chirograph or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrariwise, leaving a space between, in which they wrote in capital letters the word "chirograph," and then cut the parchment in two through the middle of the word, giving a part to each party. *Cowell*; 2 *Bla.Comm.* 296. See, also, *Charta cyrographata*.

In Scotch law. A written voucher for a debt. *Bell*.

**CHIROGRAPHIA.** In Roman law. Writings emanating from a single party, the debtor.

**CHIROGRAPHER OF FINES.** In English law. The title of the officer of the common pleas who engrossed fines in that court so as to be acknowledged into a perpetual record. *Cowell*.

**CHIROGRAPHUM.** In Roman law. A handwriting; that which was written with a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to repay. An evidence or voucher of debt; a security for debt. *Dig.* 26, 7, 57, pr. A right of action for debt.



**CHIROGRAPHUM APUD DEBITOREM REPERTUM PRÆSUMITUR SOLUTUM.** An evidence of debt found in the debtor's possession is presumed to be paid. Halk.Max. 20; Bell, Dict. See 14 M. & W. 379.

**CHIROGRAPHUM NON EXTANS PRÆSUMITUR SOLUTUM.** An evidence of debt not existing is presumed to have been discharged. Tray. Lat.Max. 73.

**CHIROPODIST.** One who treats diseases or malformations of the hands or feet, especially a surgeon for the feet, hands, and nails; a cutter or extractor of corns and callosities. State v. Armstrong, 38 Idaho 493, 225 P. 491, 33 A.L.R. 835.

**CHIROPODY.** The art of removing corns and callouses. State v. Armstrong, 38 Idaho 493, 225 P. 491, 33 A.L.R. 835.

**CHIROPRACTIC, CHIROPRACTICS.** A system of healing that treats disease by manipulation of the spinal column. Joyner v. State, 181 Miss. 245, 179 So. 573, 575, 115 A.L.R. 954. A system of therapeutic treatment, through adjusting of articulations of human body, particularly those of the spine. Walkenhorst v. Kesler, 92 Utah 312, 67 P.2d 654, 662. The specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae. State v. Boston, 226 Iowa 429, 284 N.W. 143, 144.

**CHIROPRACTOR.** One who practices the system of chiropractic. Cummings v. State, 214 Ala. 209, 106 So. 852, 854. One professing a system of manipulations which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebrae, to their normal relation. Board of Medical Examiners of State of Utah v. Freenor, 47 Utah, 430, 154 P. 941, 942, Ann. Cas.1917E, 1156.

**CHIRURGEON.** The ancient denomination of a surgeon.

**CHIVALRY.** In feudal law. Knight-service Tenure in chivalry was the same as tenure by knight-service. 2 Bl.Comm. 61, 62.

**CHIVALRY, COURT OF.** See Court of Chivalry.

**CHIVALRY, TENURE BY.** Tenure by knight-service. Co.Litt.

**CHOATE LIEN.** Lien which is perfected so that nothing more need be done to make it enforceable. Identity of lienor, property subject to lien and amount of lien are all established. Walker v. Paramount Engineering Co., C.A.Mich., 353 F.2d 445, 449; U. S. v. City of New Britain, Conn., Conn., 74 S.Ct. 367, 369, 347 U.S. 81, 98 L.Ed. 520. The lien must be definite and not mere ascertainable in the future by taking further steps. Gower v. State Tax Commission, 295 P.2d 162, 207 Or. 288.

**CHOKE DAMP.** A common name for carbonic acid;—so called from its extinguishing of flame and animal life. Wells' Adm'r v. Sutherland Coal & Coke Co., 116 Va. 1003, 83 S.E. 384, 385.

**CHOP-CHURCH.** A word mentioned in 9 Hen. VI. c. 65, by the sense of which it was in those days a kind of trade, and by the judges declared to be lawful. But Brooke, in his abridgment, says it was only permissible by law. It was, without doubt, a nickname given to those who used to change benefices, as to "chop and change" is a common expression. Jacob.

**CHOPS.** The mouth of a harbor. Pub.St.Mass. 1882, p. 1238.

**CHORAL.** In ancient times a person admitted to sit and worship in the choir; a chorister.

**CHOREPISCOPUS.** In old European law. A rural bishop, or bishop's vicar. Spelman; Cowell.

**CHOSE.** Fr. A thing; an article of personal property. A chose is a chattel personal, (Williams, Pers.Prop. 4,) and is either in action or in possession. See Chose in Action and Chose in Possession, *infra*.

**Chose local.** A local thing; a thing annexed to a place, as a mill. Kitchin, fol. 18; Cowell; Blount.

**Chose transitory.** A thing which is movable, and may be taken away or carried from place to place. Cowell; Blount.

**CHOSE IN ACTION.** A personal right not reduced into possession, but recoverable by a suit at law. North Carolina Bank & Trust Co. v. Williams, 160 S.E. 484, 485, 201 N.C. 464. A right to personal things of which the owner has not the possession, but merely a right of action for their possession. 2 Bl.Comm. 389, 397; 1 Chit.Pr. 99. The phrase includes all personal chattels which are not in possession; 11 App.Cas. 440; Powers v. Fisher, 279 Mich. 442; 272 N.W. 737, 739; and all property in action which depends entirely on contracts express or implied; Castle v. Castle, C.C.A. Hawaii, 267 F. 521, 523. A right to receive or recover a debt, demand, or damages on a cause of action *ex contractu* or for a tort or omission of a duty. Comyns, Dig. *Biens*. Moran v. Adkerson, 168 Tenn. 372, 79 S.W.2d 44, 45. Pickering v. Peskind, 43 Ohio App. 401, 183 N.E. 301, 303. A right to recover by suit a personal chattel. Garford Motor Truck Co. v. Buckson, 4 W.W.Harr. 103, 143 A. 410, 411. Assignable rights of action *ex contractu* and perhaps *ex delicto*. Coty v. Cogswell, 100 Mont. 496, 50 P.2d 249, 250. Personality to which the owner has a right of possession in future, or a right of immediate possession, wrongfully withheld. And see Tummy v. Mayer, 289 Ill. 458, 124 N.E. 661, 662.

**CHOSE IN POSSESSION.** A personal thing of which one has possession. A thing in possession, as distinguished from a thing in action. Vawter v. Griffin, 40 Ind. 601. See Chose in Action. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. 2 Bl.Comm. 408.

**CHOSEN FREEHOLDERS.** Under the municipal organization of the state of New Jersey, each

## CHOUT

county has a board of officers, called by this name, composed of representatives from the cities and townships within its limits, and charged with administering the revenues of the county. They correspond to the "county commissioners" or "super-visors" in other states.

**CHOUT.** In Hindu law. A fourth, a fourth part of the sum in litigation. The "Mahratta chout" is a fourth of the revenues exacted as tribute by the Mahrattas.

**CHOW SUM.** A Chinese name for ginseng roots which have been dried and treated with sugar and honey, such treatment having the purpose and effect of enhancing their value commercially but not therapeutically. *Tong & Co. v. U. S.*, 12 Ct. Cust.App. 32, 33.

**CHRENECRUDA.** Under the Salic law. This was a ceremony performed by a person who was too poor to pay his debt or fine, whereby he applied to a rich relative to pay it for him. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand.

**CHRISTIAN.** Pertaining to Jesus Christ or the religion founded by him; professing Christianity. As a noun, it signifies one who accepts and professes to live by the doctrines and principles of the Christian religion; it does not include Mohammedans, Jews, pagans, or infidels. *State v. Buswell*, 40 Neb. 158, 58 N.W. 728, 24 L.R.A. 68. One who believes or professes or is assumed to believe in Jesus Christ, and the truth as taught by Him. *Conway v. Third Nat. Bank & Trust Co.*, 118 N.J.Eq. 61, 177 A. 113, 116.

**CHRISTIAN NAME.** The baptismal name as distinct from the surname. *Stratton v. Foster*, 11 Me. 467. The name which is given one after his birth or at baptism, or is afterward assumed by him in addition to his family name. *Badger Lumber Co. v. Collinson*, 97 Kan. 791, 156 P. 724, 725.

A Christian name may consist of a single letter. *Wharton; People v. Rellly*, 257 Ill. 538, 101 N.E. 54, Ann.Cas. 1914A, 1112. There is no presumption that letters are not themselves Christian names, and where a letter or letters appear before a surname they are treated, in the absence of any showing to the contrary, as the Christian name. *Riley v. Litchfield*, 168 Iowa, 187, 150 N.W. 81, 82, Ann.Cas. 1917B, 172.

**CHRISTIANITATIS CURIA.** The court Christian. An ecclesiastical court, as opposed to a civil or lay tribunal. *Cowell*. See, also, *Court Christian*.

**CHRISTIANITY.** The religion founded and established by Jesus Christ. *Hale v. Everett*, 53 N. H. 9, 54, 16 Am.Rep. 82; *People v. Ruggles*, 8 Johns. (N.Y.) 297, 5 Am.Dec. 335.

**CHRISTMAS DAY.** A festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ.

**CHROME YELLOW.** A metal largely used as a yellow pigment. It is an active poison. *U. S. v. R. C. Boeckel & Co.*, C.C.A.Mass., 221 F. 885, 888.

**CHROMO.** A chromolithograph;—a picture produced from drawings on stones, each color being represented by a different stone. *Stecher Lithographic Co. v. Dunston Lithograph Co.*, D.C.N.Y., 233 F. 601, 602.

**CHRONIC.** With reference to diseases, of long duration, or characterized by slowly progressive symptoms; deep-seated and obstinate, or threatening a long continuance;—distinguished from acute. *Golden v. Lerch Bros.*, 211 Minn. 30, 300 N.W. 207, 211.

**CHURCH.** In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate his doctrines and ordinances.

It may also mean a body of communicants gathered into church order, *Stebbins v. Jennings*, 10 Pick. (Mass.) 193; body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies, *McNelly v. First Presbyterian Church in Brookline*, 243 Mass. 331, 137 N.E. 691, 694; building, *Combined Congregations of District of Columbia v. Dent*, 140 F.2d 9, 10, 78 U.S.App. D.C. 254; congregation, *Trustees of Pencader Presbyterian Church in Pencader Hundred v. Gibson*, Del., 22 A.2d 782, 787, 788; organization for religious purposes, *Williams v. Williams*, 215 N.C. 739, 3 S.E.2d 334, 338; place where persons regularly assemble for worship, *Stubbs v. Texas Liquor Control Board*, Tex.Civ.App., 166 S.W.2d 178, 180; religious society or body, *In re Werner's Will*, Sur., 181 N. Y.S. 433, 434; society of persons who profess the Christian religion, *Church of the Holy Faith v. State Tax Commission*, 39 N.M. 403, 48 P.2d 777, 784.

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 Steph. Comm. 54. The word "church" is said to mean, in strictness, not the material fabric, but the cure of souls and the right of tithes. 1 Mod. 201.

A congregational church is a voluntary association of Christians united for discipline and worship, connected with, and forming a part of, some religious society, having a legal existence. *Anderson v. Brock*, 3 Me. 248.

### Church Building Acts

Statutes passed in England in and since the year 1818, to extend the accommodation afforded by the national church. 3 Steph.Comm. 152-164.

### Church Discipline Act

The statute 3 & 4 Vict. c. 86, containing regulations for trying clerks in holy orders charged with offenses against ecclesiastical law, and for enforcing sentences pronounced in such cases. *Phillim. Ecc.Law*, 1314.

### Church of England

A distinct branch of Christ's church, it is also an institution of the state of which the sovereign is the supreme head. *Wharton. Pawlet v. Clark*, 9 Cranch 292, 3 L.Ed. 735.

### Church Property

Within constitutional exemption from taxation, it means property used for religious worship and instruction. *Church of the Holy Faith v. State Tax Commission*, 39 N.M. 403, 48 P.2d 777, 784.

**Church Rate**

In English law. A sum assessed for the repair of parochial churches by the representatives of the parishioners in vestry assembled. Wharton.

**Church Reeve**

A church warden; an overseer of a church. Now obsolete. Cowell.

**Church-Scot**

In old English law. Customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

**Church Wardens**

A species of ecclesiastical officers who are intrusted with the care and guardianship of the church building and property. See 3 Steph.Comm. 90; 1 Bla.Comm. 394; Cowell; Terrett v. Taylor, 9 Cranch, 43, 3 L.Ed. 650.

**Church-Yard**

See Cemetery.

**Community Church**

A name signifying a federation of churches retaining their separate identity and distinctive doctrines. Christian Church of Vacaville v. Crystal, 78 Cal.App. 1, 247 P. 605, 608.

**CHURCHESSET.** In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to Fleta, was paid as well in the time of the Britons as of the English. Fleta, lib. 1, c. 47, § 28.

**CHURL.** In Saxon law. A freeman of inferior rank, chiefly employed in husbandry. 1 Reeve, Eng.Law, 5. A tenant at will of free condition, who held land from a thane, on condition of rents and services. Cowell. See Ceorl.

**CI.** Fr. So; here. *Ci Dieu Vous eyde*, so help you God. *Ci devant*, heretofore. *Ci bien*, as well.

**CIBARIA.** Lat. In the civil law. Food; victuals. Dig. 34, 1.

**CICATRIX.** In medical jurisprudence. A scar; the mark left in the flesh or skin after the healing of a wound, and having the appearance of a seam or of a ridge of flesh.

**CIDER.** Formerly, any liquor made of fruit juices; now, the juice of apples either before or after fermentation. People v. Tretneck, 22 N.Y.S. 2d 720, 721, 175 Misc. 41; People v. McCoy, 217 Mich. 575, 187 N.W. 338.

Cider vinegar. Vinegar made from apple cider. People v. Douglas Packing Co., 194 N.Y.S. 633, 635, 118 Misc. 775.

Hard cider. Fermented cider, a strong, spirituous, and intoxicating drink. Monroe Cider Vinegar &

Fruit Co. v. Riordan, D.C.N.Y., 274 F. 736, 737; People v. Emmons, 144 N.W. 479, 481, 178 Mich. 126, Ann.Cas.1915D, 425.

Sweet cider. Cider before fermentation, or cider in which fermentation has been prevented—cider not yet become hard. U. S. v. Dodson, D.C.Cal., 268 F. 397, 403. A nonalcoholic beverage composed of the expressed juice of apples. Monroe Cider Vinegar & Fruit Co. v. Riordan, C.C.A.N.Y., 280 F. 624, 626.

**CINQUE PORTS.** Certain important ports or havens on the south-east coast of England, towards France. 3 Bl.Comm. 79. Their representatives in parliament and inhabitants were termed barons. Brande; Cowell; Termes de la Ley. And see Round, Feudal England 563.

The 18 & 19 Vict. c. 48, (amended by 20 & 21 Vict. c. 1,) abolished jurisdiction and authority of the lord warden of the Cinque Ports.

**CIPHER.** Ordinarily, a secret or disguised written communication, unintelligible to one without a key. As applied to telegrams, a "cipher" message is one that is unintelligible. Western Union Telegraph Co. v. Geo. F. Fish, Inc., 148 Md. 210, 128 A. 14, 16.

**CIPPI.** An old English law term for the stocks, an instrument in which the wrists or ankles of petty offenders were confined.

**CIRCADA.** A tribute anciently paid to the bishop or archbishop for visiting churches. Du Fresne.

**CIRCA.** Lat. About; around; also, concerning; with relation to. Commonly used before a given date when the exact time is not known; as, *circa* 1800. Abbreviated *circ.* or *c.*

**CIRCAR.** In Hindu law. Head of affairs; the state or government; a grand division of a province; a headman. A name used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. Wharton.

**CIRCUIT.** A division of the country, appointed for a particular judge to visit for the trial of causes or for the administration of justice. See 3 Bla. Comm. 58; State v. Mappus, 107 S.C. 345, 92 S.E. 1053.

Circuits, as the term is used in England, may be otherwise defined to be the periodical progresses of the judges of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice. 3 Bla.Comm. 57; 3 Steph.Comm. 321.

**CIRCUIT COURTS.** Courts whose jurisdiction extends over several counties or districts, and of which terms are held in the various counties or districts to which their jurisdiction extends.

In several of the states, the name given to a tribunal, the territorial jurisdiction of which may comprise several counties or districts, and whose sessions are held in such counties or districts alternately. These courts usually have general orig-

## CIRCUIT

inal jurisdiction. *Renshaw v. Reynolds*, 317 Mo. 484, 297 S.W. 374, 376.

The name of a former system of courts of the United States, invested with general original jurisdiction of such matters and causes as are of Federal cognizance, except the matters specially delegated to the district courts. 1 Kent, Comm. 301-303.

**CIRCUIT COURTS OF APPEALS.** See Courts of Appeals.

**CIRCUIT JUDGE.** The judge of a circuit court. *Crozier v. Lyons*, 72 Iowa 401, 34 N.W. 186.

**CIRCUIT JUSTICE.** In federal law and practice. The justice of the supreme court who is allotted to a given circuit. 28 U.S.C.A. § 42.

**CIRCUIT PAPER.** In English practice. A paper containing a statement of the time and place at which the several assises will be held, and other statistical information connected with the assises. Holthouse.

**CIRCUITUS EST EVITANDUS; ET BONI JUDICIS EST LITES DIRIMERE, NE LIS EX LITE ORIATUR.** 5 Coke, 31. Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another. *Co.Litt.* 384 a; *Wing.Max.* 179; *Broom, Max.* 343; 15 M. & W. 208; 5 Exch. 829.

**CIRCUITY OF ACTION.** A complex, indirect, or roundabout course of legal proceeding, making two or more actions necessary in order to effect that adjustment of rights between all the parties concerned in the transaction which, by a more direct course, might have been accomplished in a single suit. *Fellows v. Fellows*, 4 Cow. (N.Y.) 682, 15 Am.Dec. 412.

**CIRCULAR INSANITY.** Maniac depressive psychosis. *Turley v. Turley*, 374 Ill. 571, 30 N.E.2d 64, 65.

**CIRCULAR LETTER OF CREDIT.** A letter authorizing one person to pay money or extend credit to another on the credit of the writer. *Pines v. United States*, C.C.A.Iowa, 123 F.2d 825, 828.

**CIRCULAR NOTES.** Instruments similar to "letters of credit." They are drawn by resident bankers upon their foreign correspondents, in favor of persons traveling abroad. *Brown*.

**CIRCULATED.** A thing is "circulated" when it passes, as from one person or place to another, or spreads, as a report or tale. *Willard v. State*, 129 Tex.Cr.R. 384, 87 S.W.2d 269, 270.

**CIRCULATION.** As used in statutes providing for taxes on the circulation of banks, this term includes all currency or circulating notes or bills, or certificates or bills intended to circulate as money. *U. S. v. Wilson*, 106 U.S. 620, 2 S.Ct. 85, 27 L. Ed. 310. As used in newspaper and magazine publishing businesses, a body of subscribers and an established advertising clientele. *Meredith Pub. Co. v. Commissioner of Internal Revenue*, C.C.A., 64 F.2d 890, 893. Reading of libelous document

with defendant's consent in hearing of others. *Myre v. State*, 126 Tex.Cr.R. 157, 70 S.W.2d 428.

**Circulating medium.** This term is more comprehensive than the term "money," as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

**CIRCULATORY HEATING SYSTEM.** One in which the heating box, being outside the room to be heated, heats a body of air in passing over it, which body of air is then conducted to the room to be heated, thus indirectly accomplishing the result;—distinguished from a "radiating" or direct system, in which the heating body or box is in the room intended to be heated. *Pelton v. Williams*, C.C.A.Ohio, 235 F. 131, 132.

**CIRCUMDUCTION.** In Scotch law. A closing of the period for lodging papers, or doing any other act required in a cause. *Paters. Comp.*

**CIRCUMDUCTION OF THE TERM.** In Scotch practice. The sentence of a judge, declaring the time elapsed within which a proof ought to have been led, and precluding the party from bringing forward any further evidence. *Bell*.

**CIRCUMFERENTIAL.** Etymologically inclusive of spiral. See *George W. Todd & Co. v. J. Whitaker Mfg. Co.*, D.C.Pa., 226 F. 791, 794.

**CIRCUMSPECTE AGATIS.** The title of a statute passed 13 Edw. I (1285) and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. 2 Reeve, Eng.Law, 215, 216. See, however, 2 Holdsw.Hist.E.L. 246. And see Articles of the clergy.

**CIRCUMSTANCES.** Attendant facts. *Pope v. Reading Co.*, 304 Pa. 326, 156 A. 106, 109. The surroundings at the commission of an act.

The terms "circumstance" and "fact" are, in many applications, synonymous; but the true distinction of a circumstance is its *relative* character. "Any fact may be a circumstance with reference to any other fact." 1 Benth. Jud.Evid. 42, note; Id. 142. "Circumstances" are minor facts, *Pulliam v. State*, 196 Ga. 782, 28 S.E.2d 139, 147; related or accessory facts, occurrences or things which stand around, or about, which attend upon, which closely precede or follow, which surround and accompany, which depend upon, or which support or qualify a principal fact or event, *Salter v. State*, 163 Ga. 80, 135 S.E. 408, 409.

As used in a statute for an allowance for the wife in a divorce action, having regard to the "circumstances" of the parties, it includes practically everything which has a legitimate bearing on present and prospective matters relating to the lives of both parties. *Lamborn v. Lamborn*, 80 Cal.App. 494, 251 P. 943, 945.

The "circumstances of the transaction itself," as used in the doctrine of dying declarations, are the circumstances or facts leading up to, causing, or attending the homicide, and are not confined to occurrences at the very time thereof. *Pendleton v. Commonwealth*, 131 Va. 676, 109 S.E. 201, 209.

Thrift, integrity, good repute, business capacity, and stability of character, for example, are "circumstances" which may be very properly considered in determining the question of "adequate security." *Martin v. Duke*, 5 Redf. Sur. (N.Y.) 600.

**CIRCUMSTANTIAL EVIDENCE.** The term includes all evidence of indirect nature. *Milligan v. State*, 109 Fla. 219, 147 So. 260, 263.

It is direct evidence as to facts deposed to but indirect as to the factum probandum, *Brown v. State*, 126 Tex. Cr. R. 449, 72 S.W.2d 269, 270; evidence of facts or circumstances from which the existence or nonexistence of fact in issue may be inferred. *People v. Steele*, 37 N.Y.S.2d 199, 200, 179 Misc. 587; *Wolff v. Employers Fire Ins. Co.*, 282 Ky. 824, 140 S.W.2d 640, 645, 130 A.L.R. 682; *Scott v. State*, 57 Ga.App. 489, 195 S.E. 923, 924; inferences drawn from facts proved, *Hatfield v. Levy Bros.*, 18 Cal.2d 798, 117 P. 2d 841, 845; preponderance of probabilities, *Hercules Powder Co., v. Nieratko*, 113 N.J.L. 188, 173 A. 606, 610; process of decision by which court or jury may reason from circumstances known or proved, to establish by inference the principal fact, *People v. Taddio*, 292 N.Y. 488, 55 N.E. 2d 749, 750.

It means that existence of principal facts is only inferred from circumstances. *Twin City Fire Ins. Co. v. Lonas*, 255 Ky. 717, 75 S.W.2d 348, 350.

When the existence of the principal fact is deduced from evidentiary by a process of probable reasoning, the evidence and proof are said to be presumptive. *Best, Pres.* 246; *Id.* 12. All presumptive evidence is circumstantial because necessarily derived from or made up of *circumstances*, but all circumstantial evidence is not presumptive. *Burrill*.

The proof of various facts or circumstances which usually attend the main fact in dispute, and therefore tend to prove its existence, or to sustain, by their consistency, the hypothesis claimed. Or as otherwise defined, it consists in reasoning from facts which are known or proved to establish such as are conjectured to exist.

**CIRCUMSTANTIBUS, TALES DE.** See *Tales*.

**CIRCUMVENTION.** In Scotch law. Any act of fraud whereby a person is reduced to a deed by decret. It has the same sense in the civil law. *Dig.* 50, 17, 49, 155. And see *Oregon v. Jennings*, 7 S.Ct. 124, 119 U.S. 74, 30 L.Ed. 323.

**CIRCUS.** A large inclosure with one end rounded for races, a show in which feats of horsemanship, tumbling, strength, etc., are exhibited. *Zucarro v. State*, 82 Tex. Cr. R. 1, 197 S.W. 982, 985, L.R.A. 1918B, 354.

**CIRIC.** In Anglo-Saxon and old English law, a church.

**CIRIC-BRYCE.** Any violation of the privileges of a church.

**CIRIC SCEAT.** Church-scot, or shot; an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.

**CIRLISCUS.** A ceorl (*q. v.*).

**CISTA.** A box or chest for the deposit of charters, deeds, and things of value.

**CITACION.** In Spanish law. Citation; summons; an order of a court requiring a person against whom a suit has been brought to appear and defend within a given time.

It is synonymous with the term *emplazamiento* in the old Spanish law, and the *in jus vocatio* of the Roman law.

**CITATIO.** Lat. A citation or summons to court.

**CITATIO AD REASSUMENDAM CAUSAM.** A summons to take up the cause. A process, in the civil law, which issued when one of the parties to

a suit died before its determination, for the plaintiff against the defendant's heir, or for the plaintiff's heir against the defendant, as the case might be; analogous to a modern bill of revivor, which is probably borrowed from this proceeding.

**CITATIO EST DE JURI NATURALI.** A summons is by natural right. Cases in *Banco Regis Wm.* III. 453.

**CITATION.** A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. *Proctor, Prac. Sheldon v. Sheldon*, 100 N.J.Eq. 24, 134 A. 904, 907. An order or summons by which a defendant is directed or notified to appear. *Adams v. Citizens Bank*, 136 So. 107, 109, 17 La.App. 422; *Burrage v. Hunt Production Co.*, Tex.Civ.App., 114 S.W.2d 1228, 1239. The act by which a person is so summoned or cited.

It is usually original process in any proceeding where used, and in such respect is analogous to a writ of *capias* or summons at law and subpoena in chancery. *Gondas v. Gondas*, 99 N.J.Eq. 473, 134 A. 615, 618.

As the act of the court through its proper officer commanding the appearance of defendant at the time and place named to answer to plaintiff's petition, it has the dignity of official character and weight of superior authority. *Moran Oil & Gas Co. v. Anderson*, Tex.Civ.App., 223 S.W. 1031, 1032. It is used in this sense, in American law, in the practice upon writs of error from the United States supreme court, and in the proceedings of courts of probate in many of the states. *Durfee v. Durfee*, 293 Mass. 472, 200 N.E. 395, 397; *Schwartz v. Lake*, 109 La. 1081, 34 So. 96.

It is also the name of the process used in the English ecclesiastical, probate, and divorce courts to call the defendant or respondent before them. 3 Bl.Comm. 100; 3 Steph. Comm. 720. And in Scotch practice it is the calling of a party to an action done by an officer of the court under a proper warrant; the service of a writ or bill of summons. *Paters. Comp.*

**CITATION OF AUTHORITIES.** The reading, or production of, or reference to, legal authorities and precedents, (such as constitutions, statutes, reported cases, and elementary treatises,) in arguments to courts, or in legal text-books, to establish or fortify the propositions advanced.

**CITATIONS, LAW OF.** In Roman law. An act of Valentinian, passed A. D. 426, providing that the writings of only five jurists, viz., Papinian, Paul, Gaius, Ulpian, and Modestinus, should be quoted as authorities. The majority was binding on the judge. If they were equally divided the opinion of Papinian was to prevail; and in such a case, if Papinian was silent upon the matter, then the judge was free to follow his own view of the matter. *Brown*.

**CITATIONES NON CONCEDANTUR PRIUS QUAM EXPRIMATUR SUPER QUA RE FIERI DEBET CITATIO.** Citations should not be granted before it is stated about what matter the citation is to be made. (A maxim of ecclesiastical law.) 12 Coke, 44.

**CITE.** L. Fr. City; a city. *Cite de Loundr'*, city of London.

## CITE

**CITE.** To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto. See *In re Eno's Estate*, 180 N.Y.S. 889, 890, 111 Misc. 69. To read or refer to legal authorities, in an argument to a court or elsewhere, in support of propositions of law sought to be established.

**CITIZEN.** A member of a free city or jural society, (*civitas*), possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties. "Citizens" are members of community inspired to common goal, who, in associated relations, submit themselves to rules of conduct for the promotion of general welfare and conservation of individual as well as collective rights. In *re McIntosh*, D.C.Wash., 12 F. Supp. 177.

The term appears to have been used in the Roman government to designate a person who had the freedom of the city, and the right to exercise all political and civil privileges of the government. There was also, at Rome, a partial citizenship, including civil, but not political rights. Complete citizenship embraced both. *Thomasson v. State*, 15 Ind. 451; 17 L.Q.Rev. 270; 1 Sel.Essays in Anglo-Amer. L.H. 578.

A member of a nation or body politic of the sovereign state or political society who owes allegiance, *Luria v. U. S.*, 34 S.Ct. 10, 19, 231 U.S. 9, 58 L.Ed. 101; *U. S. v. Polzin*, D.C.Md., 48 F.Supp. 476, 479.

A member of the civil state entitled to all its privileges. *Cooley, Const.Lim.* 77. One of the sovereign people. A constituent member of the sovereignty synonymous with the people. *Scott v. Sandford*, 19 How. 404, 15 L.Ed. 691.

### In American Law

One who, under the constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. *Amy v. Smith*, 1 Litt. (Ky.) 331; *Minor v. Happersett*, 21 Wall. 162, 22 L.Ed. 627.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Amend. XIV, Const.U.S.; *Nyman v. Erickson*, 100 Wash. 149, 170 P. 546, 547.

The term may include or apply to an elector qualified to vote in an election, *Belmont v. Town of Gulfport*, 97 Fla. 688, 122 So. 10; children of alien parents born in United States, *Von Schwerdtner v. Piper*, D.C.Md., 23 F.2d 862, 863; *U. S. v. Minoru Yasui*, D.C.Or., 48 F.Supp. 40, 54; children of American citizens born outside United States, *Hoaland v. Attorney General of United States*, D.C.Md., 42 F.Supp. 13, 22; Indians, *United States v. Hester*, C.C.A. Okl., 137 F.2d 145, 147; *State v. McAlhaney*, 220 N.C. 387, 17 S.E.2d 352, 354; national banks, *American Surety Co. v. Bank of California*, C.C.A.Or., 133 F.2d 160, 162; *Ezzell v. First Nat. Banks*, 218 Ala. 462, 119 So. 2, 3; negroes and whites, *United States v. Ellis*, D.C.S.C., 43 F.Supp. 321, 324; nonresident who has qualified as administratrix of estate of deceased resident, *Williams' Code Tenn.* § 8236. *Hunt v. Noll*, C.C.A.Tenn., 112 F.2d 288, 289; persons entitled to privileges and immunities conferred upon same terms upon which they are conferred upon other citizens, *Austin v. United States*, D.C.Ill., 40 F.Supp. 777, 778.

The terms "citizen" and "citizenship" are distinguishable from "resident" or "inhabitant." *Jeffcott v. Donovan*, C.C.A.Ariz., 135 F.2d 213, 214; and from "domicile," *Wheeler v. Burgess*, 263 Ky. 693, 93 S.W.2d 351, 354; *First Carolinas Joint Stock Land Bank of Columbia v. New York Title & Mortgage Co.*, D.C.S.C., 59 F.2d 350, 351. The words "citizen" and "citizenship," however, usually

include the idea of domicile, *Delaware, L. & W. R. Co. v. Petrowsky*, C.C.A.N.Y., 250 F. 554, 557; citizen inhabitant and resident often synonymous, *Jonesboro Trust Co. v. Nutt*, 118 Ark. 368, 176 S.W. 322, 324; *Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co.*, D.C.Md., 49 F. Supp. 807, 809; and citizenship and domicile are often synonymous. *Messick v. Southern Pa. Bus Co.*, D.C.Pa., 59 F.Supp. 799, 800.

A corporation is a citizen of state under whose laws it is created and a nonresident of every other state. *Jackson Securities & Investment Co. v. State*, 241 Ala. 288, 2 So.2d 760, 764. It is not a citizen within meaning of federal constitution declaring citizens of each state entitled to privileges and immunities of citizens in the several states or within Fourteenth Amendment prohibiting states from abridging privileges and immunities of citizens of United States, *J. D. L. Corporation v. Bruckman*, 11 N.Y. S.2d 741, 746, 171 Misc. 3; but see in *re Thermodyne Radio Corporation*, D.C.Del., 26 F.2d 713, 714; nor within statute authorizing citizens of United States to prosecute appeal to Circuit Court of Appeals without prepaying costs or giving security, *Atlantic S. S. Corporation v. Kelley*, C.C.A.Fla., 79 F.2d 339, 340; nor within statute authorizing permission to citizens to sue in forma pauperis, *Quittner v. Motion Picture Producers & Distributors of America*, C.C.A.2, 70 F.2d 331, 332; nor within statute requiring suit in district wherein either plaintiff or defendant resides, *Standard Stoker Co. v. Lower*, D.C.Md., 46 F.2d 678, 684; *Sutherland v. U. S.*, C.C.A.Neb., 74 F.2d 89, 92. Insurance companies, incorporated under state law, are "citizens of this state" within statute requiring foreign insurance companies to file bonds for payment of their obligations to such citizens. *Republic Ins. Co. v. Cunningham*, Tex.Civ.App., 62 S.W.2d 339, 343. The term "citizen" will not be construed to include a corporation, unless the general purpose and import of the statutory or constitutional provision seems to require it. *St. Louis & S. F. R. Co. v. State*, 120 Ark. 182, 179 S.W. 342, 343, Ann.Cas.1917C, 873; *Jennings v. Idaho Ry., Light & Power Co.*, 26 Idaho, 703, 146 P. 101, 102, L.R.A.1915D, 115, Ann.Cas.1916E, 359.

Neither a corporation nor a partnership is a citizen of the United States entitled to immunity from service of summons by substituted service, *Western Mut. Fire Ins. Co. v. Lamson Bros. & Co.*, D.C.Iowa, 42 F.Supp. 1007, 1012.

Filipinos are not citizens of United States, *De Cano v. State*, 7 Wash.2d 613, 110 P.2d 627, 631; *People v. Cordero*, 50 Cal.App.2d 146, 122 P.2d 648, 649; but see holding that Filipinos are within provision of Neutrality Act defining "citizen" as including any individual owing allegiance to the United States, *Suspine v. Compania Transatlantica Centroamericana, S. A.*, D.C.N.Y., 37 F.Supp. 268, 271.

A state cannot be a citizen. *Query v. 206 Cases of Assorted Liquor*, D.C.S.C., 49 F.Supp. 693, 695.

But a state and the federal government each has citizens of its own, and the same person may be at the same time a citizen of the United States and a citizen of a state. The government of the United States can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the states. *U. S. v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588.

With reference to the jurisdiction and power of federal courts and removal of actions a citizen of the District of Columbia is not a "citizen of a state", *Neild v. District of Columbia*, 110 F.2d 246, 249, 71 App.D.C. 306; *Glaeser v. Acacia Mut. Life Ass'n*, D.C.Cal., 55 F.Supp. 925, 926; a corporation is a citizen of the state where it is organized, and a foreign corporation does not become a citizen of another state where it is authorized to carry on business, *Van Buren v. Connecticut Gen. Life Ins. Co.*, D.C.Mass., 42 F.Supp. 279, 280; a municipal subdivision, such as county, city, town, or school district, is a citizen, *Siegel v. City of Detroit*, Department of Street Railways, D.C.Mich., 52 F.Supp. 669; *Pettibone v. Cook County*, Minn., C.C.A. Minn., 120 F.2d 850, 852; a national bank is a citizen of state where it has its principal place of business, *American Surety Co. of New York v. Bank of California*, D.C.Or., 44 F.Supp. 81, 83; *Atwood v. National Bank of Lima*, C.C.A. Ohio, 115 F.2d 861, 862; a state is not a citizen, *Board of Health of Township of Hillside v. Mundet Cork Corporation*, 126 N.J.Eq. 100, 8 A.2d 105, 106, 107; *State of North Dakota v. National Milling & Cereal Co.*, C.C.A.N.D., 114

F.2d 777, 779; State Highway Commission of Wyoming v. Utah Const. Co., (Wyo.) 49 S.Ct. 104, 106, 278 U.S. 194, 73 L.Ed. 262; a turnpike commission is a citizen, *Hunkin-Conkey Const. Co. v. Pennsylvania Turnpike Commission*, D.C.Pa., 34 F.Supp. 26, 28; an association is not a citizen, *Rife v. Lumber Underwriters*, C.C.A.Tenn., 204 F. 32, 35; *Village Mills Co. v. Houston Oil Co. of Texas*, Tex.Civ. App., 186 S.W. 785, 788; domicile and citizen are synonymous in federal courts, *Earley v. Hershey Transit Co.*, D.C. Pa., 55 F.Supp. 981, 982; inhabitant, resident and citizen are synonymous, *Standard Stoker Co. v. Lower*, D.C.Md., 46 F.2d 678, 683.

**In English Law**

An inhabitant of a city. 1 Rolle, 138. The representative of a city, in parliament. 1 Bl.Comm. 174.

The word "subject" is used to designate an inhabitant of the country, or one amenable to the laws of the nation.

**CITIZENSHIP.** The status of being a citizen (q. v.).

**CITY.**

**In England**

An incorporated town or borough which is or has been the see of a bishop. Co.Litt. 108; 1 Bl. Comm. 114; Cowell; 1 Steph.Comm. 115. State v. Green, 126 N.C. 1032, 35 S.E. 462.

There is said, however, to be no necessary connection between a city and a see. Oxford Dict., citing Freeman.

A large town incorporated with certain privileges. The inhabitants of a city. The citizens. Worcester.

**In America**

A municipal corporation; *Streat v. Vermilya*, 268 Mich. 1, 255 N.W. 604, 606; also the territory within the corporate limits. *Municipal Power Transmission Co. v. City of Lyndon*, 127 Kan. 59, 272 P. 158, 160.

A large town or municipal corporation, *State v. Haynes*, 175 Ark. 645, 300 S.W. 380, 382; a political entity or subdivision for governmental purposes, *Nolan v. Jones*, 215 Ky. 238, 284 S.W. 1054, 1056; a public institution for self-government, *Loeb v. City of Jacksonville*, 101 Fla. 429, 134 So. 205, 207; a public corporation for public purposes, *Chase v. Inhabitants of Town of Litchfield*, 134 Me. 122, 182 A. 921, 924.

A state agency for carrying on local government. *Hudson Motor Car Co. v. City of Detroit*, 282 Mich. 69, 275 N. W. 770, 773, 113 A.L.R. 1472; a voluntary association or corporation. *State ex rel. McQueen v. Brandon*, 244 Ala. 62, 12 So.2d 319, 322; *Leviton v. Board of Education of City of Chicago*, 374 Ill. 594, 30 N.E.2d 497, 500.

The fundamental distinction between town and city organization is that in the former all the qualified inhabitants meet together to deliberate and vote as individuals, each in his own right, while in the latter all municipal functions are performed by deputies; the one being direct, the other representative. In re Opinion of the Justices, 229 Mass. 601, 119 N.E. 778, 781.

The word "city," however, is often used to include an incorporated town. *Noble v. State*, 112 Tex.Cr.R. 676, 18 S. W.2d 619, 620; and to include villages, *People v. City of Chicago*, 349 Ill. 304, 182 N.E. 419, 431. It has also been held that, under statutes, the term includes all municipal corporations and corporate authorities, such as a board of park commissioners; *People v. Kesner*, 321 Ill. 230, 151 N. E. 481, 483; but that it does not include a village; *Village of Depue v. Banschbach*, 273 Ill. 574, 113 N.E. 156, 159.

**In Medieval History**

In the Middle Ages in Germany, fortified places in the enjoyment of market-jurisdiction.

The German as well as the French cities are a creation of the Middle Ages; there was an organic connection with the Roman town-system. Schröder, *Lehrbuch des Deutschen Rechtsgeschichte* 588.

**CITY COUNCIL.** The name of a group of municipal officers constituting primarily a legislative and administrative body, but which is often charged with judicial or quasi judicial functions, as when sitting on charges involving the removal of an officer for cause. *Rutter v. Burke*, 89 Vt. 14, 93 A. 842, 849.

**CITY ELECTION.** Any election in a city at which people of the city may vote, *Wing v. Ryan*, 6 N. Y.S.2d 825, 829, 255 App.Div. 163.

**CITY OF LONDON COURT.** A court having a local jurisdiction within the city of London. It is to all intents and purposes a county court, having the same jurisdiction and procedure.

**CITY REAL ESTATE.** Property owned and used for municipal purposes. *McSweeney v. Bazinet*, 55 N.Y.S.2d 558, 561, 269 App.Div. 213.

**CITY WARRANT.** A command of council to treasurer to pay amount. *State v. McCarthy*, 282 P. 1045, 1048, 86 Mont. 100.

**CIUDADES.** Sp. In Spanish law, cities; distinguished from towns (pueblos) and villages (villas.) *Hart v. Burnett*, 15 Cal. 537.

**CIVIC.** Pertaining to a city or citizen, or to citizenship. *Cleveland Opera Co. v. Cleveland Civic Opera Ass'n*, 22 Ohio App. 400, 154 N.E. 352, 353.

**CIVIC ENTERPRISE.** A project or undertaking in which citizens of a city co-operate to promote the common good and general welfare of the people of the city. *James McCord Co. v. Citizens' Hotel Co.*, Tex.Civ.App., 287 S.W. 906, 908.

**CIVIL.** Originally, pertaining or appropriate to a member of a *civitas* or free political community; natural or proper to a *citizen*. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.

The word is derived from the Latin *civilis*, a citizen. *Byers v. Sun Savings Bank*, 41 Okl. 728, 139 P. 948, 949, 52 L.R.A., N.S., 320, Ann.Cas.1916D, 222. In law, it has various significations. In contradistinction to *barbarous* or *savage*, it indicates a state of society reduced to order and regular government. In contradistinction to *criminal*, it indicates the private rights and remedies of men. It is also used in contradistinction to *military*, *ecclesiastical*, *natural*, or *foreign*. Story, Const. § 791; 1 Bl.Comm. 6, 125, 251; Montesquieu, Sp. of Laws, b. 1, c. 3; Rutherford, Inst. b. 2, c. 2; *id.* c. 3; *id.* c. 8, p. 359; Heineccius, Elem. Jurisp.Nat. b. 2, ch. 6.

A prisoner's statutory obligation to pay for his keep and maintenance is civil. *Auditor General v. Hall*, 300 Mich. 215, 1 N.W.2d 516, 518, 139 A.L.R. 1022.

As to civil "Commotion," "Conspiracy," "Contempt," "Corporations," "Death," "Injury," "Liberty," "Obligation," "Officer," "Possession," "Remedy," "Rights," and "War," see those titles. See, also, the following titles beginning with "Civil."

**CIVIL ACTION.**

**In general**

An action wherein an issue is presented for trial formed by averments of complaint and de-



## CIVIL ACTION

nials of answer or replication to new matter, *White v. White*, 98 Ind.App. 587, 186 N.E. 349, 351; an adversary proceeding for declaration, enforcement, or protection of a right, or redress, or prevention of a wrong, *People v. Barker*, 29 Cal.App. 2d Supp. 766, 77 P.2d 321, 323; *Lee v. Lang*, 140 Fla. 782, 192 So. 490, 491; *Johnston v. State*, 212 Ind. 375, 8 N.E. 590, 592. Every action other than a criminal action, *City of Neenah v. Krueger*, 206 Wis. 473, 240 N.W. 402, 404; *Gillson v. Vendome Petroleum Corporation*, D.C.La., 35 F.Supp. 815, 819.

Both actions at law and actions in equity. *Klepinger v. Rhodes*, 140 F.2d 697, 698, 78 U.S.App.D.C. 340.

### In the Civil Law

A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil. *Pothier, Introd. Gen. aux Cont.* 110.

### At Common Law

One which seeks the establishment, recovery, or redress of private and civil rights. One brought to recover some civil right, or to obtain redress for some wrong not being a crime or misdemeanor. *Wheeling Traction Co. v. Pennsylvania Co.*, D.C.Ohio, 1 F.2d 478, 479.

Civil suits relate to and affect only individual rights whereas criminal prosecutions involve public wrongs. *Cancemi v. People*, 18 N.Y. 128. They include all cases, both at law and in equity, which cannot legally be denominated "criminal cases." *Fenstermacher v. State*, 19 Or. 504, 25 P. 142; *Welford v. Havard*, 127 Miss. 83, 89 So. 812, 813.

### In Code Practice

The one form of action for enforcement or protection of private rights and prevention or redress of private wrongs. Code N.Y. § 69. It may also be brought for the recovery of a penalty or forfeiture.

"Civil action" implies adversary parties and an issue, and is designed for the recovery or vindication of a civil right or the redress of some civil wrong. *Bopst v. Williams*, 287 Mo. 317, 229 S.W. 796, 798. It is a generic term, and does not necessarily imply jury trial. *State Board of Medical Examiners v. Macy*, 92 Wash. 614, 159 P. 801, 804.

**CIVIL BILL COURT.** A tribunal in Ireland with a jurisdiction analogous to that of the county courts in England. The judge of it is also chairman of quarter sessions (where the jurisdiction is more extensive than in England), and performs the duty of revising barrister. *Wharton*.

**CIVIL DAMAGE ACTS.** Acts which provide in certain cases an action for damages to one injured because of the furnishing of liquor. *Tarwater v. Atlantic Co.*, 176 Tenn. 510, 144 S.W.2d 746, 747.

**CIVIL DAY.** See the title Day.

**CIVIL ENFORCEMENT PROCEEDING.** The penalty actions under Emergency Price Control Act. *Bowles v. Barde Steel Co.*, 177 Or. 421, 164 P.2d 692, 715, 162 A.L.R. 328.

**CIVIL INFORMATION.** A legal proceeding in chancery, older than the court of equity. *Wilson v. State Water Supply Commission*, 84 N.J.Eq. 150, 93 A. 732, 733.

**CIVIL INQUEST.** A proceeding to determine whether an individual is a criminal sexual psychopathic person within statute providing for confinement and treatment of such persons. *People v. Chapman*, 301 Mich. 584, 4 N.W.2d 18, 26.

**CIVIL LAW.** "Civil Law," "Roman Law" and "Roman Civil Law" are convertible phrases, meaning the same system of jurisprudence.

That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law. See *Bowyer, Mod. Civil Law*, 19; *Sevier v. Riley*, 189 Cal. 170, 244 P. 323, 325.

That division of municipal law which is occupied with the exposition and enforcement of civil rights as distinguished from criminal law.

The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors,—comprising the Institutes, Code, Digest, and Novels, and collectively denominated the "*Corpus Juris Civilis*,"—as distinguished from the common law of England and the canon law.

The word "civil," as applied to the laws in force in Louisiana, before the adoption of the Civil Code, is not used in contradistinction to the word "criminal," but must be restricted to the Roman law. It is used in contradistinction to the laws of England and those of the respective states. *Jennison v. Warmack*, 5 La. 493.

**CIVIL LIABILITY.** The amenability to civil action as distinguished from amenability to criminal prosecution. *Com. v. Shimpeno*, 160 Pa.Super. 104, 50 A.2d 39, 43. A sum of money assessed either as general, special or liquidated damages, either single, double or treble for violation such as overcharges. *Lewis v. Anderson*, D.C.Cal., 72 F.Supp. 119, 123.

**CIVIL LIST.** In English public law. An annual sum granted by parliament, at the commencement of each reign, for the expense of the royal household and establishment, being a provision made for the crown out of the taxes in lieu of its proper patrimony. 2 Steph.Comm. 591; 1 Bl.Comm. 332.

**CIVIL NUISANCE.** At common law, anything done to hurt or annoyance of lands, tenements, or hereditaments of another. *Brownsey v. General Printing Ink Corporation*, 118 N.J.L. 505, 193 A. 824, 826.

**CIVIL OBLIGATION.** One which binds in law, and may be enforced in a court of justice. *Pothier, Obl.* 173, 191.

**CIVIL OFFICE.** An office, not merely military in its nature, that pertains to the exercise of the powers or authority of civil government. *State ex rel. Landis v. Futch*, 122 Fla. 837, 165 So. 907, 909. Requisites are continuity, creation and definition of powers and duties by Constitution or Legislature, or their authority, possession of governmental power, and independence unless controlled by superior officers. *State ex rel. McIntosh v. Hutchinson*, 187 Wash. 61, 59 P.2d 1117, 1118, 105 A.L.R. 1234.

**CIVIL OFFICER.** See Officer.



**CIVIL POSSESSION.** See Possession.

**CIVIL RESPONSIBILITY.** The liability to be called upon to respond to an action at law for an injury caused by a delict or crime, as opposed to criminal responsibility, or liability to be proceeded against in a criminal tribunal.

**CIVIL RIGHTS.** See Right.

**CIVIL SERVICE.** This term properly includes all functions under the government, except military functions. In general it is confined to functions in the great administrative departments of state. *People v. Cram*, 61 N.Y.S. 858, 29 Misc. 359. But in enlarged sense means all service rendered to and paid for by state, nation, or political subdivisions thereof, except that pertaining to naval or military affairs. *Long v. Wells*, 186 Ga. 602, 198 S.E. 763, 768.

**CIVIL SERVICE REFORM.** Substitution of business principles and methods for spoils system in conduct of civil service, especially in matter of appointments. *Ward v. Leche*, 189 La. 113, 179 So. 52, 55.

**CIVIL SIDE.** When the same court has jurisdiction of both civil and criminal matters, proceedings of the first class are often said to be on the civil side; those of the second, on the criminal side.

**CIVIL TOWNSHIP.** A legal subdivision of the county for governmental purposes. Appeal of Trustees of Iowa College, 185 Iowa 434, 170 N.W. 813, 814.

**CIVIL YEAR.** See Year.

**CIVILIAN.** One who is skilled or versed in the civil law. A doctor, professor, or student of the civil law. Also a private citizen, as distinguished from such as belong to the army and navy or (in England) the church.

**CIVILIS.** Lat. Civil, as distinguished from criminal. *Civilis actio*, a civil action. Bract. fol. 101b.

**CIVILISTA.** In old English law. A civil lawyer, or civilian. Dyer, 267.

**CIVILITER.** Civilly. In a person's civil character or position, or by civil (not criminal) process or procedure. This term is used in distinction or opposition to the word "*criminaliter*,"—criminally,—to distinguish civil actions from criminal prosecutions. 2 East, 104.

**CIVILITER MORTUUS.** Civilly dead; dead in the view of the law. The condition of one who has lost his civil rights and capacities, and is accounted dead in law. *Razor v. Razor*, 173 S.C. 365, 175 S.E. 545.

**CIVILIZATION.**

#### In Practice

A law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary. Wharton.

#### In Public Law

A term which covers several states of society; it is relative, and has no fixed sense, but implies an improved and progressive condition of the people, living under an organized government. *Roche v. Washington*, 19 Ind. 56, 81 Am.Dec. 376. It consists not merely in material achievements, in accomplishment and accumulation of wealth, or in advancement in culture, science, and knowledge, but also in doing of equal and exact justice. *Stiglitz v. Schardien*, 239 Ky. 799, 40 S.W.2d 315, 321.

**CIVIS.** Lat. In the Roman law. A citizen; as distinguished from *incola*, (an inhabitant;) origin or birth constituting the former, domicile the latter. Code, 10, 40, 7. And see *U. S. v. Rhodes*, 27 Fed.Cas. 788.

**CIVITAS.** Lat. In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis*, the law of a state; civil law. Inst. 1, 2, 1, 2. *Civitates foederatæ*, towns in alliance with Rome, and considered to be free. Butl.Hor.Jur. 29.

Citizenship; one of the three *status*, conditions, or qualifications of persons. Mackeld.Rom.Law, § 131.

A term in the Anglo-Saxon land books, commonly applied to Worcester, Canterbury and other such places, which are both bishop's sees and the head places of large districts. Maitland, *Domesday and Beyond* 183. See 17 L.Q.R. 274. Oxford Dict. s. v. *City*.

See *City*.

**CLAIM, n.** A broad, comprehensive word, *Wheeler v. Equitable Life Assur. Soc. of United States*, 211 Minn. 474, 1 N.W.2d 593, 596.

**CLAIM, v.** To demand as one's own; to assert, *Hill v. Henry*, 66 N.J.Eq. 150, 57 Atl. 555. To state; to urge; to insist.

It may embrace or apply to a call, *In re Heim's Estate*, 3 N.Y.S.2d 134, 138, 166 Misc. 931; a demand, *Moulding-Brownell Corporation v. E. C. Delfosse Const. Co.*, 291 Ill. App. 343, 9 N.E.2d 459, 461, a pretense; a right or title, *Orenberg v. Thecker*, 143 F.2d 375, 377, 79 U.S.App.D.C. 149; *Lawrence v. Miller*, 2 N.Y. 245, 254; an account, *In re Stratman's Estate*, 231 Iowa 480, 1 N.W.2d 636, 642; an action on account, *Coleman v. Kansas City*, 351 Mo. 254, 173 S.W.2d 572, 576; an assertion, *Ritter v. Albuquerque Gas & Electric Co.*, 47 N.M. 329, 142 P.2d 919, 922; both the principal amount of judgment and interest thereon, *Powell v. Link, C.C.A.Va.*, 114 F.2d 550, 554; cause of suit or cause of action, *Jacobson v. Mutual Ben. Health & Accident Ass'n*, 73 N.D. 108, 11 N.W.2d 442, 446; challenge of property or ownership of a thing which is wrongfully withheld, *Douglas v. Beasley*, 40 Ala. 147; *Prigg v. Pennsylvania*, 16 Pet. 615, 10 L.Ed. 1060; challenge of something as right, *Uintah State Bank v. Ajax*, 77 Utah, 455, 297 P. 434, 438. Claims *ex delicto* as well as *ex contractu*, *Williams v. Williams*, 217 Ind. 581, 29 N.E.2d 557, 558. Debt, *Tanner v. Best's Estate*, 40 Cal.App.2d 442, 104 P.2d 1084, 1087. But not all valid "claims" are "debts," *State Banking Co. v. Hinton*, 178 Ga. 68, 172 S.E. 42, 47, 91 A.L.R. 596; existing right, *Mellus v. Potter*, 91 Cal.App. 700, 267 P. 563, 564; judgment, *Jennings v. Loucks*, 297 N.Y.S. 893, 896, 163 Misc. 791; legal capability to require a positive or negative act of another person, *Kocourek, Jural Relations*, 2d Ed., 7; legal claim, right. *In re Heinemann's Will*, 201 Wis. 484, 230 N.W. 698, 700; means by or through which claimant obtains possession or enjoyment of privilege or thing, *Lawrence v. Miller*, 2 N.Y. 245, 254; valid claim,

## CLAIM

Tennessee Consol. Coal Co. v. Commissioner of Internal Revenue, C.C.A.6, 117 F.2d 452, 454.

In patent law, specification by applicant for patent of particular things in which he insists his invention is novel and patentable; the clause in application in which applicant defines precisely what his invention is. Westinghouse Electric & Mfg. Co. v. Metropolitan Electric Mfg. Co., C.C.A.N.Y., 290 F. 661, 664.

Under Compensation Acts, a claim for which an amount of compensation may be deductible. Texas Employers Ins. Ass'n v. Booth, Tex.Civ.App., 113 S.W.2d 231, 241.

A demand for compensation, Georgia Casualty Co. v. Ward, Tex.Civ.App., 220 S.W. 380, 381; or for payment of medical expenses, Schmidt v. City of Lincoln, 137 Neb. 546, 290 N.W. 250, 253; A notice that claimant is claiming compensation and benefits, Kaplan v. Kaplan Knitting Mills, 248 N.Y. 10, 161 N.E. 204, 206; A provision that no claim for compensation shall be assignable before payment, covers both claims and awards. Pacific Electric R. Co. v. Commonwealth Bonding & Casualty Ins. Co., 55 Cal.App. 704, 204 P. 262, 263.

Under land laws, tract of land taken up by a preemptoner or other settler (and also his possession of it). Railroad Co. v. Abink, 14 Neb. 95, 15 N.W. 317.

Under mechanic's lien law of some states, a demand put on record by a mechanic or material-man against a building for work or material contributed to its erection.

Under statute authorizing the courts to order a bill of particulars of the "claim" of either party, "claim" is co-extensive with "case," and embraces all causes of action and all grounds of defense, the pleas of both parties, and pleas in confession and avoidance, no less than complaints and counter-claims. Orvis v. Jennings, 6 Daly (N.Y.) 446.

When applied to estate of decedent, asserted but unadjudicated obligation, In re Franks' Estate, 277 N.Y.S. 573, 154 Misc. 472; debt or demand of a pecuniary nature, Tinkham v. Tinkham, 112 Ind.App. 532, 45 N.E.2d 357, 360; debts already due and unmatured debts, Roth v. Ravich, 111 Conn. 649, 151 A. 179, 180, 74 A.L.R. 364.

Within statute concerning presentation of false claim to political unit or officer, one which upon its face purports to be charge for which county would be liable. State ex rel. Welling v. Third Judicial District Court in and for Salt Lake County, 87 Utah 416, 49 P.2d 950, 952.

Within World War Veterans' Act any physical writing which furnishes the desired information, Cable v. United States, C.C.A.Ill., 104 F.2d 541, 545; assertion of a present claim demand, Werner v. United States, C.C.A.N.Y., 86 F. 2d 113; Cannon v. United States, D.C.Pa., 45 F.Supp. 106, 108.

An adverse claim is one set up by a stranger to goods upon which the sheriff has levied an execution or attachment. It is also applied to claims to real property.

For "Counter-claim" and "False Claim," and "False or Fraudulent Claim," see those titles.

**CLAIM ACCRUED.** Damage accrued. Megerell v. State, Ct.Cl., 46 N.Y.S.2d 685, 688; Edlux Const. Corporation v. State, 300 N.Y.S. 509, 511, 252 App. Div. 373.

**CLAIM BOND.** A bond primarily in the nature of a forthcoming bond. Liability can be based thereon when the court adjudges the failure of the claimant in trial of right of property to establish his right to it. Sanders v. Farrier, Tex.Civ. App., 271 S.W. 293, 298.

**CLAIM JUMPING.** The location on ground, knowing it to be excess ground, within the staked boundaries of another mining claim initiated prior thereto, because law governing manner of making location had not been complied with, so that

location covers the workings of the prior locators. Nelson v. Smith, 42 Nev. 302, 176 P. 261, 265.

**CLAIM PROPERTY BOND.** A bond filed by a defendant in cases of replevin and of execution to procure return of goods. Snyder v. Frankenfield, 4 Pa.Dist.R. 767; Weaver v. Lawrence, 1 Dall. 156, 1 L.Ed. 79; 1 Dall.U.S. (4th Ed. by Brightly) 156, 157, note.

**CLAIM AND DELIVERY.** Action at law for recovery of specific personal chattels wrongfully taken and detained, with damages which the taking or detention has caused; a modification of common-law action of replevin. Railroad Co. v. Gila County, 8 Ariz. 292, 71 P. 913; Farmers & Depositors Bank v. Taylor, 290 Ky. 774, 162 S.W.2d 764, 765.

**CLAIM IN EQUITY.** In English practice. In simple cases, the summary proceeding by claim was sometimes adopted. This summary practice was created by orders 22d April, 1850. See Smith, Ch. Pr. 664. By Consolid.Ord.1860, viii, r. 4, claims were abolished. Wharton.

**CLAIM OF COGNIZANCE OR OF CONUSANCE.** An intervention by a third person, claiming jurisdiction or demanding judicature in cause, which plaintiff has commenced out of the claimant's court. Now obsolete. 2 Wils. 409; 2 Bl.Comm. 350, note; 3 Bl.Comm. 298.

**CLAIM OF LIBERTY.** In English practice. A suit or petition to the queen, in the court of exchequer, to have liberties and franchises confirmed there by the attorney general.

**CLAIM OF OWNERSHIP, RIGHT AND TITLE.** As regards adverse possession, claim of land as one's own to hold it for oneself. Peters v. Gil-lund, Tex.Civ.App., 186 S.W.2d 1019, 1020. Claim of right, claim of title and claim of ownership are synonymous. Ewing v. Tanner, 193 S.E. 243, 247, 184 Ga. 773; City of Rock Springs v. Sturm, 39 Wyo. 494, 273 P. 908, 911. Claimant's intention to claim in hostility to real owner, Bowden-Gazzam Co. v. Hogan, 22 Wash.2d 27, 154 P.2d 285, 289, 290. Color of title and claim of title are synonymous. Sullivan v. Neel, 105 Mont. 253, 73 P.2d 206, 208; Walton v. Sikes, 165 Ga. 422, 141 S.E. 188, 190. Intention of disseisor to appropriate and use land as his own, irrespective of any semblance of color, or right, or title. Marion Inv. Co. v. Virginia Lincoln Furniture Corporation, 171 Va. 170, 198 S.E. 508, 513, 118 A.L.R. 939.

**CLAIMANT.** As used in escheat proceeding, persons interested in the estate as heirs. In re Peers' Estate, 234 Iowa 403, 12 N.W.2d 894, 895. As used in statute regarding processing tax refunds, one from whom tax has been collected. Upchurch Packing Co. v. United States, D.C.Ga., 53 F.Supp. 791, 793. One who claims or asserts a right, demand or claim though sometimes "claimant" has a more restricted meaning. Weisgerber v. Workmen's Compensation Bureau, 70 N.D. 165, 292 N.W. 327, 630, 128 A.L.R. 1482.

In admiralty practice. A person who lays claim to property seized on a libel *in rem*, and is authorized and admitted to defend the action. *The Conqueror*, 17 S.Ct. 510, 166 U.S. 110, 41 L.Ed. 937; *Thirty Hogsheads of Sugar, Bentzon, Claimant v. Boyle*, 9 Cranch, 191, 3 L.Ed. 701.

**CLAIMANT ADJUSTER.** One who will obtain, secure, enforce, or establish a right, claim, or demand for an individual against an insurance company. *Wilkey v. State ex rel. Smith*, 244 Ala. 568, 14 So.2d 536, 543.

**CLAM.** Lat. In the civil law. Covertly; secretly.

**CLAM FACTUM ID VIDETUR ESSE, QUOD QUISQUE, QUUM CONTROVERSIAM HABERET, HABITURUMVE SE PUTARET, FECIT.** That appears to be covertly (secretly) done, which anyone did, when he had a legal dispute, or thought he would have one. *Adams Gloss*.

**CLAM, VI, AUT PRECARIO.** A technical phrase of the Roman law, meaning by force, stealth, or importunity.

**CLAM DELINQUENTES MAGIS PUNIUNTUR QUAM PALAM.** 8 Coke, 127. Those sinning secretly are punished more severely than those sinning openly.

**CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM.** An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person. *Reg.Orig.* 19.

**CLAMOR.** In old English law. A claim or complaint; an outcry; clamor.

In the civil law. A claimant. A debt; anything claimed from another. A proclamation; an accusation. *Du Cange*.

**CLANDESTINE.** Secret; hidden; concealed. The "clandestine importation" of goods is a term used in English statutes as equivalent to "smuggling." *Keck v. U. S.*, 19 S.Ct. 254, 172 U.S. 434, 43 L.Ed. 505. A clandestine marriage is (legally) one contracted without observing the conditions precedent prescribed by law, such as publication of bans, procuring a license, or the like. *Hay v. State*, 68 Fla. 458, 67 So. 107.

**CLAP.** Vulgar name for gonorrhoea. *Sally v. Brown*, 220 Ky. 576, 295 S.W. 890, 891.

**CLARE CONSTAT.** (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. *Ersk.Inst.* 3, 8, 71.

**CLAREMETHEN.** In old Scotch law. The warranty of stolen cattle or goods; the law regulating such warranty. *Skene*.

**CLARENDON, ASSIZE OF.** A statute (1166) the principal feature of which was an improvement of judicial procedure in the case of criminals. It was a part of the same scheme of reform as the Constitution of Clarendon. See *James C. Carter, The Law, etc.*, 65.

**CLARENDON, CONSTITUTIONS OF.** Certain statutes made in the reign of Henry II. of England, at a parliament held at Clarendon, (A. D. 1164,) by which the king checked the power of the pope and his clergy, and greatly narrowed the exemption they claimed from secular jurisdiction. 4 Bl.Comm. 422; *Fitz Stephen* 27; 2 *Lingard* 59; 1 *Hume* 382; *Wilkins* 321; 1 *Poll. & M.* 430-440, 461; 2 *id.* 196.

**CLARIFICATIO.** Lat. In old Scotch law. A making clear; the purging or clearing (clenging) of an assise. *Skene*.

**CLASS.** The order or rank according to which persons or things are arranged or assorted.

Also a body of persons uncertain in number, *Weaver v. Liberty Trust Co.*, 183 A. 544, 548, 170 Md. 212; a group of persons, things, qualities, or activities, having common characteristics or attributes. *Inter-County Rural Electric Co-op. Corporation v. Reeves*, 294 Ky. 458, 171 S.W.2d 978, 982. Also grade, *Commonwealth ex rel. Margiotti v. Sutton*, 327 Pa. 337, 193 A. 250, 252. Also same descriptive properties. *Cheek-Neal Coffee Co. v. Hal Dick Mfg. Co., Cust. & Pat.App.*, 40 F.2d 106, 107.

**CLASS ACTION.** An action brought on behalf of other persons similarly situated. *Mitchell v. Wright, D.C.Ala.*, 62 F.Supp. 580, 582; *Calabrese v. Chiumento, D.C.N.J.*, 3 F.R.D. 435, 437.

**CLASS GIFT.** A gift of aggregate sum to body of persons, uncertain in number at time thereof, to be ascertained at future time, *Hepburn v. Winthrop*, 83 F.2d 566, 570, 65 App.D.C. 309, 105 A.L.R. 310.

**CLASS LEGISLATION.** Legislation limited in operation to certain persons or classes of persons, natural or artificial, or to certain districts of territory or state, *Vardaman v. McBee*, 198 Miss. 251, 21 So.2d 661, 664. Legislation operating upon portion of particular class of persons or things. *Shaw v. Fox*, 246 Ky. 342, 55 S.W.2d 11.

The term is applied to enactments which divide the people or subjects of legislation into classes, with reference either to the grant of privileges or the imposition of burdens, upon an arbitrary, unjust, or invidious principle, or which make arbitrary discriminations between those persons or things coming within the same class. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P.2d 41, 45; *People v. Marcello, Mag.Ct.N.Y.*, 25 N.Y.S.2d 533, 537, 538, 539.

**CLASS or REPRESENTATIVE ACTION.** One in which one or more members of a class sue either for themselves or for themselves and other members of a class. *Huester v. Gilmour, D.C.Pa.*, 13 F. Supp. 630, 631; *City of Dallas v. Armour & Co., Tex.Civ.App.*, 216 S.W. 222, 224. The plaintiff in a representative action before judgment is, as a rule, *dominus litis*, (*q. v.*) and may discontinue or compromise the action as he pleases. *Sweet*.

**CLASS REPRESENTATION.** Where members of class sue or are sued on behalf of other members

## CLASS

judgment is conclusive for and against those members of class thus represented, in absence of fraud or collusion. *Barnes v. Fort*, 181 S.W.2d 881, 884, 181 Tenn. 522; *Grand International Brotherhood of Locomotive Engineers v. Mills*, 43 Ariz. 379, 31 P.2d 971, 982.

**CLASS SUIT.** See *Class or Representative Action*.

**CLASSIARIUS.** A seaman or soldier serving at sea.

**CLASSICI.** In the Roman law. Persons employed in servile duties on board of vessels. *Cod.* 11, 12.

**CLASSIFICATION.** A grouping into classes. *Davison v. Parke Austin & Lipscomb*, 19 N.Y.S.2d 117, 121, 173 Misc. 782.

It is the grouping of things in speculation or practice because they agree with one another in certain particulars and differ from other things in those particulars. *Southern Package Corporation v. State Tax Commission*, 164 So. 45, 47, 174 Miss. 212; *Anderson v. Board of Public Instruction of Hillsborough County*, 102 Fla. 695, 136 So. 334. The putting together of like subjects or facts under common designation, *Tuttle v. Board of Education of Salt Lake City*, 77 Utah, 270, 294 P. 294, 299.

The word may have two meanings, one primarily signifying a division required by statutes, fundamental and substantial, and the other secondary, signifying an arrangement or enumeration adopted for convenience only. In *re Wichita Falls & Southern Ry. Co.*, D.C.Tex., 30 F.Supp. 750, 751.

In the practice of the English chancery division, where in an administration action, it appears to the judge (or chief clerk) that any of the parties form a class having the same interest, he may require them to be represented by one solicitor, to prevent expense of each attending by separate solicitors. In practice the term is also applied to the directions given by the chief clerk as to which of the parties are to attend on each of the accounts and inquiries directed by the judgment. *Sweet*.

**CLASSIFICATION OF RISKS.** Term in fire insurance to the nature and situation of the articles insured, and in accident insurance to the occupation of the applicant. *Hopkins v. Connecticut General Life Ins. Co.*, 225 N.Y. 76, 121 N.E. 465, 467.

**CLASSIFIED.** Grouped in classes. *People v. Johnson*, 42 Cal.App.2d Supp. 827, 109 P.2d 770, 774.

**CLASSIFIED CIVIL SERVICE.** The primary meaning is that there be classification, while secondary meaning is mere arrangement or enumeration in schedule of titles of positions. *Matter of Merriweather v. Roberts*, 274 N.Y.S. 188, 190, 152 Misc. 57.

**CLASSIFY.** Group. *Breslav v. New York & Queens Electric Light & Power Co.*, 291 N.Y.S. 932, 935, 249 App.Div. 181; *Esquire, Inc., v. Walker*, D.C.D.C., 55 F.Supp. 1015, 1021.

**CLAUSE.** A single paragraph or subdivision of a legal document, such as a contract, deed, will, constitution, or statute. Sometimes a sentence or part of a sentence. *Bee Line Transp. Co. v. Connecticut Fire Ins. Co. of Hartford*, C.C.A.N.Y., 76 F.2d 759, 760.

**CLAUSE IRRITANT.** In Scotch law. By this clause, in a deed or settlement, the acts or deeds

of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the "resolutive" clause such right becomes resolved and extinguished. *Bell*.

**CLAUSE POTESTATIVE.** In French law. The name given to the clause whereby one party to a contract reserves to himself the right to annul it.

**CLAUSE ROLLS.** In English law. Rolls which contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.

**CLAUSULA.** A clause; a sentence or part of a sentence in a written instrument or law.

**CLAUSULA DEROGATIVA.** A clause in a will which provides that no will subsequently made is to be valid. The latter would still be valid, but there would be ground for suspecting undue influence. *Grotius*.

**CLAUSULA GENERALIS DE RESIDUO NON EA COMPLECTITUR QUÆ NON EJUSDEM SINT GENERIS CUM IIS QUÆ SPECIATIM DICTA FUERANT.** A general clause of remainder does not embrace those things which are not of the same kind with those which had been specially mentioned. *Lofft*, Appendix, 419.

**CLAUSULA GENERALIS NON REFERTUR AD EXPRESSA.** 8 Coke, 154. A general clause does not refer to things expressed.

**CLAUSULA QUÆ ABROGATIONEM EXCLUDIT AB INITIO NON VALET.** A clause [in a law] which precludes its abrogation is void from the beginning. *Bac.Max.* 77.

**CLAUSULA VEL DISPOSITIO INUTILIS PER PRÆSUMPTIONEM REMOTAM, VEL CAUSAM EX POST FACTO NON FULCITUR.** A useless clause or disposition [one which expresses no more than the law by intendment would have supplied] is not supported by a remote presumption, [or foreign intendment of some purpose, in regard whereof it might be material,] or by a cause arising afterwards, [which may induce an operation of those idle words.] *Bac.Max.* 82, regula 21.

**CLAUSULÆ INCONSUETÆ SEMPER INDUCUNT SUSPICIONEM.** Unusual clauses [in an instrument] always induce suspicion. 3 Coke, 81.

**CLAUSUM.** Lat. Close, closed up, sealed. Inclosed, as a parcel of land.

In old English law. Close. Closed.

A writ was either *clausum* (close) or *apertum* (open). Grants were said to be by *literæ patentæ* (open grant) or *literæ clausæ* (close grant); 2 Bla.Comm. 346. Occurring in the phrase *quare clausum fregit* (*Rucker v. McNeely*, 4 Blackf. [Ind.] 181), it denotes in this sense only realty in which the plaintiff has some exclusive interest, whether for a limited or unlimited time or for special or for general purposes; 1 Chit.Pl. 174; *Austin v. Sawyer*, 9 Cow. (N.Y.) 39; 6 East, 606.

**CLAUSUM FREGIT.** L. Lat. (He broke the close.) In pleading and practice. Technical

words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit* (q. v.).

**CLAUSUM PASCHLÆ.** In English law. The morrow of the *utias*, or eight days of Easter; the end of Easter; the Sunday after Easter-day. 2 Inst. 157.

**CLAUSURA.** In old English law. An inclosure. *Clausura heyæ*, the inclosure of a hedge. Cowell.

**CLAVES CURIÆ.** The keys of the court. They were the officers of the Scotch courts, such as clerk, doomster, and serjeant. Burrill.

**CLAVES INSULÆ.** In Manx law. The keys of the Island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

**CLAVIA.** In old English law. A club or mace; tenure *per serjeantiam claviæ*, by the serjeanty of the club or mace. Cowell.

**CLAVIGERATUS.** A treasurer of a church.

**CLAWA.** A close, or small inclosure. Cowell.

**CLEAN.** Irreproachable; innocent of fraud or wrongdoing; free from defect in form or substance; free from exceptions or reservations. It is a very elastic adjective, however, and is particularly dependent upon context. *Clampitt v. St. Louis Southwestern R. Co. of Texas*, Tex.Civ.App., 185 S.W. 342, 344.

**CLEAN BILL OF HEALTH.** One certifying that no contagious or infectious disease exists, or certifying as to healthy conditions generally without exception or reservation.

**CLEAN BILL OF LADING.** One without exception or reservation as to the place or manner of stowage of the goods, and importing that the goods are to be (or have been) safely and properly stowed under deck. *The Delaware*, 14 Wall. 596, 20 L.Ed. 779; *The St. Johns N. F.*, C.C.A. N.Y., 272 F. 673, 674. One which contains nothing in the margin qualifying the words in the bill of lading itself. *The Isla de Panay*, C.C.A.N.Y., 292 F. 723, 730; *Thomas Roberts & Co. v. Calmar S. S. Corp.*, D.C.Pa., 59 F.Supp. 203, 209.

**CLEAN HANDS.** Equitable relief may be denied on ground of deceit or impurity of motive, *O'Brien v. Hamill*, 264 N.Y.S. 557, 147 Misc. 709; fraud or wilful misconduct, *Eresch v. Braecklein*, C.C.A. Kan., 133 F.2d 12, 14; *Margolis v. Burke*, Sup., 53 N.Y.S.2d 157, 161, 162; unjust and unfair conduct, *Dutch Maid Bakeries v. Schleicher*, 58 Wyo. 374, 131 P.2d 630, 634; unlawful or inequitable conduct, *Rhodes v. Miller*, 179 So. 430, 432, 189 La. 288; *Lodati v. Lodati*, 52 N.Y.S.2d 119, 120, 268 App. Div. 1003; wrongdoing, *Dales v. Muir*, 351 Pa. 187, 40 A.2d 476, 477.

The maxim is confined to misconduct in relation to or connected with the matter in litigation. *Teuscher v. Grogg*, 136 Okl. 129, 276 P. 753, 760, 66 A.L.R. 143; *Hartman v. Cohn*, 350 Pa. 41, 38 A.2d 22, 25. It is inapplicable where to withhold relief would offend public morals more than to grant relief, *Furman v. Furman*, 34 N.Y.S.2d 699,

704, 178 Misc. 582; and where result will be to leave property in hands of one having no claim thereto or require further litigation, *Harrell v. Allen*, 183 Va. 722, 33 S.E.2d 222, 226. The act must prejudicially affect defendant, *Wiley v. Wiley*, 59 Cal.App.2d 840, 139 P.2d 950, 951. But it has been held that application of maxim is not limited to a case where the iniquitous action is one of which the moving party may personally complain. *Leo Feist, Inc. v. Young*, D.C.Wis., 46 F.Supp. 622, 623.

**CLEAN OIL.** Oil which has 3 per cent. or less by volume of water and sediment. *Alamitos Land Co. v. Shell Oil Co.*, 3 Cal.2d 396, 44 P.2d 573, 575.

**CLEAN WATER.** Water that is not filthy or polluted. *U. S. v. Durst*, D.C.W.Va., 59 F.Supp. 891, 894.

**CLEAR.** Obvious; beyond reasonable doubt; perspicuous; plain.

Free from all limitation, qualification, question, or shortcoming. *Condorodis v. Kling*, 33 Ohio App. 452, 169 N.E. 836, 838. Ex parte *Williams*, 128 Tex.Cr.R. 148, 79 S.W.2d 325, 326; Free from incumbrance, obstruction, burden, limitation, etc., *Frank v. Murphy*, 64 Ohio App. 501, 29 N.E. 2d 41, 43; Plain, evident, free from doubt or conjecture, also unincumbered, free from deductions or drawbacks, *Ketch v. Smith*, 131 Okl. 263, 268 P. 715, 717. That which can be seen without dimness, *Bremner v. Marc Eidlitz & Son*, 118 Conn. 666, 174 A. 172, 174.

**CLEAR AND CONVINCING PROOF.** Generally, this phrase and its numerous variations mean proof beyond a reasonable, *i. e.*, a well-founded doubt. *Southwestern Bell Telephone Co. v. City of San Antonio, Tex.*, D.C.Tex., 4 F.Supp. 570, 573. Some cases give a less rigorous, but somewhat uncertain, meaning, *viz.*, more than a preponderance but less than is required in a criminal case. *O'Briant v. Lee*, 212 N.C. 793, 195 S.E. 15, 20.

A higher degree of proof than weight of the evidence. *Snyderwine v. McGrath*, 343 Pa. 245, 22 A.2d 644, 647. Independent facts and circumstances which are, in opinion of court and jury, strong, *Wright v. Austin*, Tex.Civ.App., 175 S.W.2d 281, 284; it shall be found that witnesses are credible, that they distinctly remember facts to which they testify, that they narrate details exactly, and that their statements are true, *McDonnell v. General News Bureau*, C.C.A.Pa., 93 F.2d 898, 901. The degree of proof which will produce in the mind of the court a firm belief or conviction. In re *Chappell*, Ohio App., 33 N.E.2d 393, 397. Evidence that convinced a presumably unbiased and unprejudiced jury, *Pegues v. Dilworth*, 134 Tex. 169, 132 S.W.2d 582, 586. Proof sufficient to convince ordinarily prudent minded people. *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9. The proof need not be conclusive. *Hobart v. Hobart Estate Co.*, 26 Cal.2d 412, 159 P.2d 958, 976.

**CLEAR AND PRESENT DANGER.** Immediately serious violence is expected or is advocated or past conduct furnishes reason to believe such advocacy is contemplated. *United States v. Korner*, D.C.Cal., 56 F.Supp. 242, 248.

**CLEAR ANNUAL VALUE.** The net yearly value to the possessor of the property, over and above taxes, interest on mortgages, and other charges and deductions. *Shelton v. Campbell*, 109 Tenn. 690, 72 S.W. 112.

**CLEAR ANNUITY.** The devise of an annuity "clear" means an annuity free from taxes (*Hodgworth v. Crawley*, 2 Atk. 376) or free or clear of legacy or inheritance taxes. In re *Bispham's Estate*, 24 Wkly.Notes Cas. (Pa.) 79.

## CLEAR

**CLEAR CHANCE.** A chance is a clear chance if exercise of vigilance would have discovered help- less peril and avoided the injury. *Leinbach v. Pickwick Greyhound Lines*, 138 Kan. 50, 23 P.2d 449, 456, 92 A.L.R. 1.

**CLEAR DAYS.** If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last. *Hodgins v. Hancock*, 14 Mees. & W. 120; *State v. Marvin*, 12 Iowa 502.

**CLEAR EVIDENCE OR PROOF.** Evidence which is positive, precise and explicit, which tends di- rectly to establish the point to which it is adduced and is sufficient to make out a prima facie case. *Reynolds v. Blaisdell*, 23 R.I. 16, 49 A. 42.

It necessarily means a clear preponderance. It may mean no more than a fair preponderance of proof but may be construed as requiring a higher degree of proof. It may convey the idea, under emphasis, of certainty. It may be understood as meaning beyond doubt. The expres- sion is equivocal and mischievous. *Aubin v. Duluth St. Ry. Co.*, 169 Minn. 342, 211 N.W. 580, 583.

**CLEAR LEGAL RIGHT.** A right inferable as a matter of law from uncontroverted facts. *Federal Land Bank of Springfield v. Pickard*, 9 N.Y.S. 2d 696, 707, 169 Misc. 753.

**CLEAR MARKET PRICE.** Fair market price. *In re Spitley's Estate*, 124 Cal.App. 642, 13 P.2d 385, 386.

**CLEAR MARKET VALUE.** With regard to in- heritance tax, highest price obtainable. *In re Nicklas' Estate*, 132 N.J.L. 450, 41 A.2d 122, 124; net value, *Hamlen v. Martin*, 128 N.J.Eq. 393, 16 A.2d 457, 459; sum which property would bring on a fair sale by a willing seller not obliged to sell to a willing buyer not obliged to buy, or fair mar- ket value, or cash value, *In re Ryerson's Estate*, 239 Wis. 120.

**CLEAR RESIDUE.** Addition of income from funds, used to pay decedent's debts, administra- tion expenses, and general legacies, to residue of estate. *In re Foster's Will*, 256 N.Y.S. 383, 385, 143 Misc. 191.

**CLEAR TITLE.** Good title, *Clark v. Ray*, Tex. Civ.App., 96 S.W.2d 808, 813; marketable title, *Gantt v. Harper*, 82 Mont. 393, 267 P. 296, 298; contra, *Frank v. Murphy*, 64 Ohio App. 501, 29 N.E. 2d 41, 43; one free from incumbrance, obstruction, burden, or limitation. *Frank v. Murphy*, 64 Ohio App. 501, 29 N.E.2d 41, 43.

For a clear deed, see *Rohr v. Kindt*, 3 Watts & S. (Pa.) 563, 39 Am.Dec. 53; clear of expense; 2 Ves. & B. 341; clear of assessments; *Peart v. Phipps*, 4 Yeates (Pa.) 386; clear bill of lading; *William Zoller Co. v. Hartford Fire Ins. Co.*, 272 Pa. 386, 116 A. 359, 362. See, also, *Clean Bill of Lading*.

**CLEAR TITLE OF RECORD.** Freedom from ap- parent defects, grave doubts, and litigious uncer- tainties; such title as a reasonably prudent per- son, with full knowledge, would accept. *Tull v. Milligan*, 173 Okl. 131, 48 P.2d 835, 842.

**CLEAR VALUE.** With regard to net value after payment of debts and expenses of administration,

*Bouse v. Hutzler*, 180 Md. 682, 26 A.2d 767, 769, 141 A.L.R. 843; sum which, after deducting amount necessary for payment of such taxes, yielded the amount of the specific legacies where will di- rected that taxes should not be deducted from leg- acies. *Bouse v. Hutzler*, 180 Md. 682, 26 A.2d 767, 769, 141 A.L.R. 843.

**CLEARANCE.** In Maritime law. The right of a ship to leave port. The act of clearing or leav- ing port. The certificate issued by the collector of a port evidencing the power of the ship to leave port. *Hamburg-American Steam Packet Co. v. U. S.*, C.C.A.N.Y., 250 F. 747, 759. Worcester, Dict.

In contract for exhibition of motion pictures, the interval of time between conclusion of exhibition in one theater and commencement of exhibition at another theater. *Waxmann v. Columbia Pictures Corporation, D.C.Pa.*, 40 F.Supp. 108, 111.

**CLEARANCE CARD.** A letter given to an em- ployee by his employer, at the time of his dis- charge or end of service, showing the cause of such discharge or voluntary quittance, the length of time of service, his capacity, and such other facts as would give to those concerned information of his former employment. *Cleveland, C., C. & St. L. R. Co. v. Jenkins*, 174 Ill. 398, 51 N.E. 811, 62 L.R.A. 922, 66 Am.St.Rep. 296.

**CLEARING.** The departure of a vessel from port, after complying with the customs and health laws and like local regulations.

In mercantile law. A method of making ex- changes and settling balances, adopted among banks and bankers.

**CLEARING-HOUSE.** A device or an association, usually unincorporated, for adjustment and pay- ment of daily balances between banks in a city. *Andrew v. Farmers' & Merchants' Sav. Bank of Moravia*, 215 Iowa 1336, 245 N.W. 226, 229.

**CLEARING LOAN.** One made to a bond dealer while an issue of bonds are being sold. *In re Stone's Will*, 211 Wis. 518, 248 N.W. 446, 447.

**CLEARING TITLE.** Acts or proceedings neces- sary to render title marketable. *Johnston v. Cox*, 114 Fla. 243, 154 So. 206.

**CLEARINGS.** Method of making exchanges and settling balances among banks and bankers. *Andrew v. Farmers' & Merchants' Sav. Bank of Moravia*, 215 Iowa 1336, 245 N.W. 226, 228.

**CLEARLY.** Visible, unmistakable, in words of no uncertain meaning. *Johnson v. Grady County*, 50 Okl. 188, 150 P. 497.

Beyond a question or beyond a reasonable doubt, *John- son v. Grady County*, 50 Okl. 188, 150 P. 497, 502; honestly, straightforwardly, and frankly, *Huntington Securities Corporation v. Busey, C.C.A.Ohio*, 112 F.2d 368, 370; plainly, *Huntington Securities Corporation v. Busey, C.C.A.Ohio*, 112 F.2d 368, 370; without obscurity, without obstruction, without entanglement or confusion, without uncertainty. *Commonwealth v. Scovern*, 292 Pa. 26, 140 A. 611, 614.

**CLEARLY ERRONEOUS.** Findings when based upon substantial error in proceedings or misappli-

cation of law, *Kauk v. Anderson*, C.C.A.N.D., 137 F.2d 331, 333; or when unsupported by substantial evidence, or contrary to clear weight of evidence or induced by erroneous view of the law. *Gasifier Mfg. Co. v. General Motors Corporation*, C.C.A. Mo., 138 F.2d 197, 199; *Smith v. Porter*, C.C.A. Ark., 143 F.2d 292, 294.

**CLEARLY EXPRESSED IN TITLE.** Title must so express subject that lawmakers and people may not be left in doubt as to matters treated. *Home Insurance Co. of New York v. Dahmer*, 167 Misc. 893, 150 So. 650, 651.

**CLEARLY PROVED.** Preponderance of the evidence. *Olson v. Union Oil Co. of California*, Cal. App., 25 Cal.App.2d 627, 78 P.2d 446, 447.

Proof sufficient to satisfy mind of finder of facts, that its weight is such as to cause a reasonable person to accept the fact as established. *In re Frihauf*, 58 Wyo. 479, 135 P. 2d 427, 433.

**CLEARLY REFLECTS THE INCOME.** Any method of accounting which clearly reflects a reasonable allowance for depreciation. *Chicago & N. W. R. Co. v. Commissioner of Internal Revenue*, C.C. A.7, 114 F.2d 882, 885.

**CLEMENT'S INN.** An inn of chancery. See *Inns of Chancery*.

**CLEMENTINES.** In canon law. The collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

**CLENGE.** In old Scotch law. To clear or acquit of a criminal charge. Literally, to cleanse or clean.

**CLEP AND CALL.** In old Scotch practice. A solemn form of words prescribed by law, and used in criminal cases, as in pleas of wrong and unlaw.

**CLERGY.** The whole body of clergymen or ministers of religion. Also an abbreviation for "benefit of clergy." See *Benefit of Clergy*.

*Regular clergy.* Monks who lived *secundum regulas* (according to the rules) of their respective houses or societies were so denominated in old English Law in contradistinction to the parochial clergy, or "secular" clergy. 1 Chit. Bl. 387, note.

**CLERGYABLE.** In old English law. Allowing of, or entitled to, the benefit of clergy (*privilegium clericale*). Used of persons or crimes. 4 Bla. Com. 371. See *Benefit of Clergy*.

**CLERGYMAN.** Spiritual representative of church. *In re Swenson*, 183 Minn. 602, 237 N.W. 589, 591.

**CLERICAL.** Pertaining to clergymen; or pertaining to the office or labor of a clerk.

**CLERICAL ERROR.** Generally, a mistake in writing or copying. 1 L.Raym. 183; *Los Angeles Shipbuilding & Dry Dock Corporation v. Los Angeles County*, 22 Cal.App.2d 418, 71 P.2d 282; *Franklin v. State*, 240 Ala. 57, 197 So. 58, 59.

It may include error apparent on face of instrument, record, indictment or information. *In re Goldberg's Estate*, 10 Cal.2d 709, 76 P.2d 508, 512; error in respect of matters of record, *Shotwell v. State*, 135 Tex.Cr.R. 366, 120

S.W.2d 97; errors, mistakes, or omissions by clerk, writer, counsel, or judge which are not the result of exercise of judicial function; *Pacific Finance Corporation of California v. La Monte*, 64 Idaho 438, 133 P.2d 921, 922; *Wilson v. City of Fergus Falls*, 181 Minn. 329, 232 N.W. 322, 323; failure of clerk to enter order, *Keller v. Cleaver*, 67 P.2d 131, 133; 20 Cal.App.2d 364; omission in statutory provision, *Craig v. State*, 164 S.W.2d 1007, 1008, 204 Ark. 798; order fixing tax rate below statutory rate, *In re Jagnow's Estate*, 266 N.Y.S. 785, 788, 148 Misc. 657; placing of case on calendar without notice, *New England Furniture & Carpet Co. v. Willcuts*, D.C.Minn., 55 F.2d 983, 987; purported order incongruous and irrelevant to surrounding recitals, *Carpenter v. Pacific Mut. Life Ins. Co. of California*, 14 Cal.2d 704, 96 P.2d 796, 799; signature by judge to judgment which does not express judicial desire or intention, *Bastajian v. Brown*, 19 Cal.2d 209, 120 P.2d 9, 12.

**CLERICAL MISPRISION.** Mistake or fraud perpetrated by clerk of court which is susceptible of demonstration by face of record, or a clerical error, which is an error by clerk in transcribing or otherwise apparent on the face of the record. *Ballew v. Fowler*, 285 Ky. 149, 147 S.W.2d 65, 66. But see *Newman v. Ohio Valley Fire & Marine Ins. Co.*, 221 Ky. 616, 299 S.W. 559, 560.

**CLERICAL TONSURE.** The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 Bl.Comm. 24, note *t*; 4 Bl. Comm. 367.

**CLERICALE PRIVILEGIUM.** In old English law. The clerical privilege; the privilege or benefit of clergy.

**CLERICI DE CANCELLARIA; CLERICI DE CURSU.** Clerks of the chancery. See *Cursitors*.

**CLERICI NON PONANTUR IN OFFICIIS.** Co. Litt. 96. Clergymen should not be placed in offices; *i. e.*, in secular offices. See *Lofft*, 508.

**CLERICI PRÆNOTARII.** The six clerks in chancery. 2 Reeve, Eng.Law, 251.

**CLERICO ADMITTENDO.** See *Admittendo Clerico*.

**CLERICO CAPTO PER STATUTUM MERCATORUM.** A writ for the delivery of a clerk out of prison, who was taken and incarcerated upon the breach of a statute merchant. *Reg.Orig.* 147.

**CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARIJ DELIBERANDO.** An ancient writ, that lay for the delivery to his ordinary of a clerk convicted of felony, where the ordinary did not challenge him according to the privilege of clerks. *Reg.Orig.* 69.

**CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM.** A writ directed to those who had thrust a bailiwick or other office upon one in holy orders, charging them to release him. *Reg.Orig.* 143.

**CLERICUS.** In old English law. A clerk or priest; a person in holy orders; a secular priest; a clerk of a court. An officer of the royal household, having charge of the receipt and payment of



## CLERICUS

moneys, etc. Fleta enumerates several of them, with their appropriate duties; as *clericus coquinae*, clerk of the kitchen; *clericus panetr' et butelr'*, clerk of the pantry and buttery. Lib. 2, cc. 18, 19. In Roman law. A minister of religion in the Christian church; an ecclesiastic or priest. Cod. 1, 3; Nov. 3, 123, 137. A general term, including bishops, priests, deacons, and others of inferior order. Brissonius. Also of the amanuenses of the judges or courts of the king. Du Cange.

**CLERICUS ET AGRICOLA ET MERCATOR, TEMPORE BELLII, UT ORET, COLAT, ET COMMUTET, PACE FRUUNTUR.** 2 Inst. 58. Clergymen, husbandmen, and merchants, in order that they may preach, cultivate, and trade, enjoy peace in time of war.

**CLERICUS MERCATI.** In old English law. Clerk of the market. 2 Inst. 543.

**CLERICUS NON CONNUMERETUR IN DUABUS ECCLESIIS.** 1 Rolle. A clergyman should not be appointed to two churches.

**CLERICUS PAROCHIALIS.** In old English law. A parish clerk.

**CLERIGOS.** In Spanish law. Clergy; men chosen for the service of God. White, New Recop. b. 1, tit. 5, ch. 4.

**CLERK.** One who sells goods, waits on customers, or engages in clerical work such as bookkeeping, copying, transcribing, letter writing, tabulating, etc., a stenographer, etc., Appeal of Walker, 294 Pa. 385, 144 A. 288, 289; In re Goldman Stores, D.C.La., 3 F.Supp. 936, 937.

In New England, used to designate a corporation official who performs some of the duties of a secretary. As used in statute service on clerk of corporation, some general officer of the corporation, Baker v. New York Cent. R. Co., 16 N.Y.S.2d 78, 79, 258 App.Div. 854.

A person employed in a public office, or as an officer of a court, whose duty is to keep records or accounts. In re Allen, N.J.Supp., 95 A. 215, 216; Crawford v. Roloson, 254 Mass. 163, 149 N.E. 707, 709. See Clerk of Court.

A person serving a practicing solicitor under binding articles in England, for the purpose of being admitted to practice as a solicitor. Under exemption provision of Civil Service Law a private or confidential clerk of elective judicial officer. Neary v. O'Connor, 18 N.Y.S.2d 634, 637, 173 Misc. 696.

A person in holy orders; a clergyman; an individual attached to the ecclesiastical state, and who has the clerical tonsure. See 4 Bl.Comm. 366, 367.

**CLERK OF ARRAIGNS.** In English law. An assistant to the clerk of assise. His duties are in the crown court on circuit.

**CLERK OF ASSISE.** In English law. Officers who officiate as associates on the circuits. They record all judicial proceedings done by the judges on the circuit.

**CLERK OF COURT.** An officer of a court of justice who has charge of the clerical part of its business, who keeps its records and seal, issues proc-

ess, enters judgments and orders, gives certified copies from the records, etc. Ross v. Heathcock, 57 Wis. 89, 15 N.W. 9; Gordon v. State, 2 Tex. App. 154. An assistant whose principal duty is to make correct memorial of court's orders and directions. People's Ditch Co. v. Foothill Irr. Dist., 123 Cal.App. 251, 11 P.2d 86, 88.

**CLERK OF ENROLLMENTS.** In English law. The former chief officer of the English enrollment office, (*q. v.*) He now forms part of the staff of the central office.

**CLERK OF THE CROWN IN CHANCERY.** See Crown Office in Chancery.

**CLERK OF THE HOUSE OF COMMONS.** An officer of the English house of commons appointed by the crown. He makes entries, remembrances, and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents. May, Parl.Pr. 236.

**CLERK OF THE MARKET.** The overseer or superintendent of a public market. In old English law, he was a *quasi* judicial officer, having power to settle controversies arising in the market between persons dealing there. Called "*clericus mercati.*" 4 Bl.Comm. 275.

**CLERK OF THE PARLIAMENTS.** One of the chief officers of the house of lords. He is appointed by the crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. May, Parl.Pr. 238.

**CLERK OF THE PEACE.** In English law. An officer whose duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county.

**CLERK OF THE PETTY BAG.** See Petty Bag Office.

**CLERK OF THE PRIVY SEAL.** These officers attend the lord privy seal, or, in absence of the lord privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty's affairs. Cowell.

**CLERK OF THE SIGNET.** An officer, in England, whose duty it is to attend on the king's principal secretary, who has the custody of the privy signet, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed. Cowell.

**CLERK OF THE TABLE.** An official of the British House of Commons who advises the speaker on all questions of order.



**CLERKS OF INDICTMENTS.** Officers attached to the central criminal court in England, and to each circuit. They prepare and settle indictments against offenders, and assist the clerk of arraigns.

**CLERKS OF RECORDS AND WRITS.** Officers formerly attached to the English court of chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, etc. By the judicature (officers') act, 1879, they have been transferred to the central office of the supreme court, under the title of "Masters of the Supreme Court," and the office has been abolished. Sweet.

**CLERKS OF SEATS.** In the principal registry of the probate division of the English high court, they discharge the duty of preparing and passing the grants of probate and letters of administration, take bonds from administrators, receive *caveats* against a grant being made, etc. Sweet.

**CLERKSHIP.** The period which must be spent by a law-student in the office of a practising attorney before admission to the bar. 1 Tidd Pr. 61, et seq. In re Dunn, 43 N.J.Law, 359, 39 Am.Rep. 600.

In old English practice. The art of drawing pleadings and entering them on record in Latin. In the ancient court hand; otherwise called "skill of pleading in actions at the common law."

**CLIENS.** Lat. In the Roman law. A client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties. Dionys. ii. 10; Adams, Rom.Ant. 33.

**CLIENT.** A person who employs or retains an attorney, or counsellor, to appear for him in courts, advise, assist, and defend him in legal proceedings, and to act for him in any legal business. McCreary v. Hoopes, 25 Miss. 428; McFarland v. Crary, 6 Wend., N.Y., 297; Cross v. Riggins, 50 Mo. 335. It should include one who disclosed confidential matters to attorney while seeking professional aid, whether attorney was employed or not. Sitton v. Peyree, 117 Or. 107, 241 P. 62, 64.

**CLIENTELA.** In old English law. Clientship, the state of a client; and, correlatively, protection, patronage, guardianship.

**CLIFFORD'S INN.** An inn of chancery. See Inns of Chancery.

**CLINICAL TESTS.** Observations made of patient by physician or surgeon without the aid of instruments, apparatus or chemical examinations for the discovery of the existence or progress of disease or the patient's condition. Peterson v. Witude, 157 Wis. 641, 147 N.W. 966, 970, 52 L.R.A., N.S., 778.

**CLIPPED SOVEREIGNTY.** In the relations of the several states of the United States to other nations, the states have what is termed a clipped sovereignty. Anderson v. N. V. Transandine Handelmaatschappij, Sup., 28 N.Y.S.2d 547, 552.

**CLITO.** In Saxon law. The son of a king or emperor. The next heir to the throne; the Saxon adeling. Spelman.

**CLOERE.** A jail; a prison or dungeon.

**CLOSE, v.** To finish, terminate, complete, wind up; as, to "close" an account, a bargain, an estate, or public books, such as tax books. Bilafsky v. Abraham, 183 Mass. 401, 67 N.E. 318.

To shut up, so as to prevent entrance or access by any person; as in statutes requiring saloons to be "closed" at certain times, which further implies an entire suspension of business, Texas Co. v. Texarkana Mach. Shops, Tex.Civ.App., 1 S.W. 2d 923, 931.

**CLOSE, n.** A portion of land, as a field, inclosed, as by a hedge, fence, or other visible inclosure, 3 Bl.Comm. 209, or by an invisible ideal boundary founded on limit of title.

The interest of a person in any particular piece of ground, whether actually inclosed or not. Meade v. Watson, 67 Cal. 591, 8 Pac. 311.

In practice. The word means termination; winding up. Thus the close of the pleadings is where the pleadings are finished, *i. e.*, when issue has been joined.

**CLOSE, adj.** In practice. Closed or sealed up. A term applied to writs and letters, as distinguished from those that are open or patent.

**CLOSE COPIES.** Copies of legal documents which might be written closely or loosely at pleasure; as distinguished from *office* copies.

**CLOSE CORPORATION.** See Corporation.

**CLOSE-HAULED.** In admiralty law, this nautical term means the arrangement or trim of a vessel's sails when she endeavors to make a progress in the nearest direction possible towards that point of the compass from which the wind blows. But a vessel may be considered as close-hauled, although she is not quite so near to the wind as she could possibly lie. Chadwick v. Packet Co., 6 El. & Bl. 771.

**CLOSE JAIL EXECUTION.** A body execution which has indorsed in or upon it the statement that the defendant ought to be confined in close jail. Ex parte Thompson, 111 Vt. 7, 9 A.2d 107.

**CLOSE MOLDS.** Molds in two parts, called the drag and the case (or cope) forming together a two-part flask, one part being placed over the other and each being impressed with one half of the matrix or pattern. Cole v. U. S., C.C.A.Colo., 269 F. 250, 252.

**CLOSE ROLLS.** Rolls containing the record of the close writs (*literæ clausæ*) and grants of the king, kept with the public records. 2 Bl. Comm. 346.

**CLOSE SEASON.** The season of the year or period of time in which the taking of particular game or fish is prohibited, or in which all hunting

## CLOSE

or fishing is forbidden by law. *State v. Theriault*, 70 Vt. 617, 41 A. 1030, 43 L.R.A. 290, 67 Am.St.Rep. 695. Cf. *Fence-Month*.

**CLOSE TO.** Near; very near; immediately adjoining. *Govier v. Brechler*, 159 Wis. 157, 149 N.W. 740, 742.

**CLOSE WRIT.** See *Writ*.

**CLOSED COURT.** A term sometimes used to designate the Common Pleas Court of England when only serjeants could argue cases, which practice persisted until 1833.

**CLOSED SEASON.** The same as "close season" (*q. v.*).

**CLOSED SHOP.** Such shop exists where worker must be member of union as condition precedent to employment. *Miners in General Group v. Hix*, 123 W.Va. 637, 17 S.E.2d 810, 813.

**CLOSED SHOP CONTRACT.** A contract requiring employer to hire only union members and to discharge non-union members and requiring that employees, as a condition of employment, remain union members. *Silva v. Mercier*, Cal.App., 187 P.2d 60, 64.

**CLOTHING WOOL.** Short-stapled wool prepared by carding, as distinguished from "combing wool," which is long-stapled wool prepared by combing. *U. S. v. Stone & Downer Co.*, 12 Ct.Cust.App. 557, 558.

**CLOTURE.** The procedure in deliberative assemblies whereby debate is closed.

Introduced in the English parliament in the session of 1882.

It is generally effected by moving the previous question. See *Roberts, Rules of Order* §§ 20, 58a.

**CLOUD ON TITLE.** An outstanding claim or incumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question. A conveyance, mortgage, judgment, tax-levy, etc., may all, in proper cases, constitute a cloud on title. *Parker v. Vallerand*, 136 Me. 519, 8 A.2d 594; *Anderson v. Guenther*, 144 Or. 446, 25 P.2d 146.

It is not necessary in West Virginia that claim be valid on its face. *Gardner v. Buckeye Savings & Loan Co.*, 108 W.Va. 673, 152 S.E. 530, 532.

**CLOUGH.** A valley. Also an allowance for the turn of the scale, on buying goods wholesale by weight.

**CLUB.** A voluntary, incorporated or unincorporated association of persons for purposes of a social, literary, or political nature, or the like. A club is not a partnership. 2 *Mees. & W.* 172.

*Unincorporated Members' Club.* A society of persons each of whom contributes to the fund out of which the expenses of conducting the society are paid. *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693, 695, L.R.A.1918E, 639.

*Unincorporated Proprietary Club.* One the property and funds of which belong to a proprietor who usually con-

ducts the club with a view to profit. *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693, 695.

**CLUB-LAW.** Rule of violence; regulation by force; the law of arms.

**CLUTCH.** A device introduced in the transmission, some place between the mechanism in which power is created and the mechanism to which it is applied, and which serves to make and break the connection between the two. *Eclipse Mach. Co. v. Harley Davidson Motor Co.*, C.C.A.Pa., 252 F. 805, 806.

**CLYPEUS, or CLIPEUS.** In old English law. A shield; metaphorically one of a noble family. *Clypei prostrati*, noble families extinct. *Mat. Paris*, 463.

**C/O.** A symbol meaning "care of." *International Store Co. v. Barnes*, Mo.App., 3 S.W.2d 1039, 1041.

**CO.** A prefix meaning with, in conjunction, joint, jointly, unitedly, and not separately, *e. g.*, co-trustees, co-executors, co-brokers. *Brandenburger & Marx v. Heimberg*, Mun.Ct.N.Y., 34 N.Y.S.2d 935, 938.

Also an abbreviation for "county," (*Gilman v. Sheets*, 78 Iowa 499, 43 N.W. 299.) and for "company," (*Railroad Co. v. People*, 155 Ill. 299, 40 N.E. 599). It may also indicate a partnership (*Jennette v. Coppersmith*, 176 N.C. 82, 97 S.E. 54, 55).

**COACH.** Coach is a generic term. It is a kind of carriage, and is distinguished from other vehicles, chiefly, as being a covered box, hung on leathers, with four wheels. *Turnpike Co. v. Neil*, 9 Ohio 12; *Turnpike Co. v. Frink*, 15 Pick. (Mass.) 444. A term applied both to vehicles traveling over roads and upon rails. *Bruce Transfer Co. v. Johnston*, 287 N.W. 278, 280, 227 Iowa 50.

**COADJUTOR.** An assistant, helper, or ally; particularly a person appointed to assist a bishop who from age or infirmity is unable to perform his duty. *Olcott v. Gabert*, 86 Tex. 121, 23 S.W. 985. Also an overseer, (coadjutor of an executor,) and one who disseses a person of land not to his own use, but to that of another.

**CO-ADMINISTRATOR.** One who is a joint administrator with one or more others.

**COADUNATIO.** A uniting or combining together of persons; a conspiracy. 9 *Coke*, 56.

**CO-ADVENTURER.** One who takes part with others in an adventure or in a venture or business undertaking attended with risk. *McRee v. Quitman Oil Co.*, 16 Ga.App. 12, 84 S.E. 487; *Easter Oil Corporation v. Strauss*, Tex.Civ.App., 52 S.W.2d 336, 344.

**COAL NOTE.** A species of promissory note, formerly in use in the port of London, containing the phrase "value received in coals." By the statute 3 Geo. II. c. 26, §§ 7, 8, these were to be protected and noted as inland bills of exchange. But this was repealed by the statute 47 Geo. III. sess. 2, c. 68, § 28.

**COALITION.** In French law. An unlawful agreement among several persons not to do a thing except on some conditions agreed upon; particularly, industrial combinations, strikes, etc.; a conspiracy.

**CO-ASSIGNEE.** One of two or more assignees of the same subject-matter.

**COAST, v.** To slide down hill upon snow or ice as on a sled; to ride, glide or move by or as by the force of gravity as on a bicycle without pedaling. *Samuelson v. Sherrill*, 225 Iowa 421, 280 N.W. 596, 599.

**COAST, n.** The edge or margin of a country bounding on the sea.

The term includes small islands and reefs naturally connected with the adjacent land, and rising above the surface of the water, but not shoals perpetually covered by water. *U. S. v. Pope*, 28 Fed.Cas. 630; *Hamilton v. Menifee*, 11 Tex. 751.

This word is particularly appropriate to the edge of the sea, while "shore" may be used of the margins of inland waters.

**COAST GUARD.** In English law. A body of officers and men raised and equipped by the commissioners of the admiralty for the defense of the coasts of the realm, and for the more ready manning of the navy in case of war or sudden emergency, as well as for the protection of the revenue against smugglers. *Mozley & Whitley*.

**COAST WATERS.** Tide waters navigable from the ocean by sea-going craft, the term embracing all waters opening directly or indirectly into the ocean and navigable by ships coming in from the ocean of draft as great as that of the larger ships which traverse the open seas. *The Britannia*, 153 U.S. 130, 14 S.Ct. 795, 38 L.Ed. 660; *The Victory*, D.C.Va., 63 F. 636; *The Garden City*, D.C. N.Y., 26 F. 773.

**COASTER.** A vessel plying exclusively between domestic ports, and usually engaged in domestic trade; not including pleasure yachts. *Belden v. Chase*, 150 U.S. 674, 14 S.Ct. 264, 37 L.Ed. 1218.

**COASTING.** Sliding down hill or incline on sled or car or riding bicycle, without working the pedals; *Samuelson v. Sherrill*, 225 Iowa 421, 280 N.W. 596, 599. Movement of sled or vehicle by momentum due to previously exerted force or force of gravity. *Tyne v. B. F. Goodrich Co.*, 297 N.Y.S. 425, 428, 252 App.Div. 24; *Bryant v. Market St. Ry. Co.*, Cal.App., 158 P.2d 18, 22.

**COASTING TRADE.** In maritime law. Commerce and navigation between different places along the coast of the United States. Commercial intercourse between different districts in different states, different districts in same state, or different places in same district, on sea-coast or on navigable river. *Shannon v. Streckfus Steamers*, 131 S.W.2d 833, 836, 279 Ky. 649.

**COASTWISE.** Vessels "plying coastwise" are those engaged in domestic trade, or plying between port and port in the United States. *San*

*Francisco v. California Steam Nav. Co.*, 10 Cal. 504; *Petition of Canadian Pac. Ry. Co.*, D.C.Wash., 278 F. 180, 202.

**COAT ARMOR.** Heraldic ensigns, introduced by Richard I. from the Holy Land, where they were first invented. Originally painted on shields of the Christian knights who went to the Holy Land during the crusades, to identify them. *Wharton*.

**COBRA-VENOM REACTION.** In medical jurisprudence. A method of serum-diagnosis of insanity from hæmolysis by injections of venom of cobras or other serpents.

**COCKBILL.** To place the yards of a ship at an angle with the deck. *Pub.St.Mass.1882*, p. 1288.

**COCKET.** In English law. A seal belonging to the custom-house, or rather a scroll of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandises are entered; likewise a sort of measure. *Fleta*, lib. 2, c. ix.

**COCKPIT.** A name which used to be given to the judicial committee of the privy council, the council-room being built on the old cockpit of Whitehall Place.

**COCKSETUS.** A boatman; a cockswain. *Cowell*.

**COCOTTE.** A woman who leads a fast life, one who gives herself up for money. Also a poached egg. *Rovira v. Boget*, 240 N.Y. 314, 148 N.E. 534, 535.

**CODE.** A collection, compendium or revision of laws. *Chumbley v. People's Bank & Trust Co.*, 60 S.W.2d 164, 166, 166 Tenn. 35. A complete system of positive law, scientifically arranged, and promulgated by legislative authority. *Abbott*; a system of rules. *Wilentz v. Crown Laundry Service*, 172 A. 331, 332, 116 N.J.Eq. 40. Any systematic body of law. *Wall v. Close*, 14 So.2d 19, 26, 203 La. 345.

A "Code" implies compilation of existing laws, systematic arrangement into chapters, subheads, table of contents, and index, and revision to harmonize conflicts, supply omissions, and generally clarify and make complete body of laws designed to regulate completely subjects to which they relate. *Gibson v. State*, 214 Ala. 38, 106 So. 231, 235.

The collection of laws and constitutions made by order of the Emperor Justinian is distinguished by the appellation of "The Code," by way of eminence. See *Code of Justinian*.

A code is to be distinguished from a *digest*. Digests of statutes consist of a collection of existing statutes, while a code is promulgated as one new law covering the whole field of jurisprudence.

**Code civil.** The code which embodies the civil law of France.

It was promulgated in 1804. When Napoleon became emperor, the name was changed to "Code Napoléon," by which it is still often designated, though it is now officially styled by its original name of "Code Civil."

**Code de commerce.** A French code, enacted in 1807, as a supplement to the Code Napoléon, regulating commercial transactions, the laws of business, bankruptcies, and the jurisdiction and procedure of the courts dealing with these subjects.

**Code de procédure civile.** That part of the Code Napoléon which regulates the system of courts, their organization,

## CODE

civil procedure, special and extraordinary remedies, and the execution of judgments.

*Code d'instruction criminelle.* A French code, enacted in 1808, regulating criminal procedure.

*Code Napoléon.* See Code Civil.

*Code noir.* Fr. The black code. A body of laws which formerly regulated the institution of slavery in the French colonies.

*Code of Justinian.* The Code of Justinian (*Codex Justinianus*) was a collection of imperial constitutions, compiled, by order of that emperor, by a commission, and promulgated A. D. 529. It comprised twelve books, and was the first of the four compilations of law which make up the *Corpus Juris Civilis*. This name is often met in a connection indicating that the entire *Corpus Juris Civilis* is intended, or, sometimes, the *Digest*; but its use should be confined to the *Codex*.

*Code pénal.* The penal or criminal code of France, enacted in 1810.

**CODEX.** Lat. A code or collection of laws; particularly the Code of Justinian. Also a roll or volume, and a book written on paper or parchment.

**CODEX GREGORIANUS.** A collection of imperial constitutions made by Gregorius, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. Mackeld.Rom.Law, § 63.

**CODEX HERMOGENIANUS.** A collection of imperial constitutions made by Hermogenes, a jurist of the fifth century. It was nothing more than a supplement to the Codex Gregorianus, (supra,) containing the constitutions of Diocletian and Maximilian. Mackeld.Rom.Law, § 63.

**CODEX JUSTINIANEUS.** A collection of imperial constitutions, made by a commission of ten persons appointed by Justinian, A.D. 528.

**CODEX REPETITÆ PRÆLECTIONIS.** The new code of Justinian; or the new edition of the first or old code, promulgated A.D. 534, being the one now extant. Mackeld.Rom.Law, § 78. Tayl.Civil Law, 22.

**CODEX THEODOSIANUS.** A code compiled by the emperor Theodosius the younger, A.D. 438. 1 Bl.Comm. 81.

It was a collection of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being during that interval confined to the East. 1 Bl.Comm. 81.

**CODEX VETUS.** The old code. The first edition of the Code of Justinian; now lost. Mackeld. Rom.Law, § 70.

**CODICIL.** A supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in will. In re Phelps' Will, 232 N.Y.S. 418, 421, 133 Misc. 450; Butler University v. Danner, 114 Ind.App. 236, 50 N.E.2d 928, 932; In re Cazaurang's Estate, 42 Cal.App.2d 796, 110 P.2d 138; Blackford v. Anderson, 226 Iowa 1138, 286 N.W. 735, 743; Adams v. Foley, 360 Ohio App. 295, 173 N.E. 197, 198.

Usually it does not supersede or totally revoke the will. Holcomb v. Holcomb, 159 So. 564, 566, 173 Miss. 192; but is

part of the will, Knebelkamp v. Acosta, 114 S.W.2d 737, 739, 272 Ky. 506; Succession of Patterson, 188 La. 635, 177 So. 692, 694; Simmons v. Gunn, 156 Va. 305, 157 S.E. 573, 574; and may confirm, reexecute, revive or republish the will, Des Portes v. Des Portes, 157 S.C. 407, 154 S.E. 426, 429; In re Warne's Estate, 302 Pa. 386, 153 A. 688, 690; United States v. Moore, 197 Ark. 664, 124 S.W.2d 807, 809. It must be executed with same solemnity as a will. Adams v. Foley, 36 Ohio App. 295, 173 N.E. 197, 198.

**CODICILLUS.** In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans.

**CODIFICATION.** Process of collecting and arranging the laws of a country or state into a code, *i. e.*, into a complete system of positive law, scientifically ordered, and promulgated by legislative authority.

**COEMPTIO.** One of the modes in which marriage was contracted among the Romans. Adams, Rom.Ant. 501.

**CO-EMPTION.** The act of purchasing the whole quantity of any commodity. Wharton.

**CO-EQUAL.** To be or become equal to; to have the same quantity, the same value, the same degree or rank, or the like, with; to be commensurate with. State ex rel. Com'rs of Land Office v. Board of Com'rs of Nowata County, 166 Okl. 78, 25 P.2d 1074, 1077.

**COERCE.** Compelled to compliance; constrained to obedience, or submission in a vigorous or forcible manner. Fluharty v. Fluharty, 8 W.W.Harr. 487, 193 A. 838, 840.

**COERCION.** Compulsion; constraint; compelling by force or arms. Fluharty v. Fluharty, Del. Super., 8 W.W.Harr. 487, 193 A. 838, 840; Santer v. Santer, 115 Pa.Super. 7, 174 A. 651, 652.

It may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. Metro-Goldwyn-Mayer Distributing Corporation v. Cocks, Tex.Civ.App., 56 S.W.2d 489; Fluharty v. Fluharty, 8 W.W.Harr. 487, 193 A. 838, 840. It may be actual or threatened exercise of power possessed, or supposedly possessed. In re New York Title & Mortgage Co., 271 N.Y.S. 433, 150 Misc. 827; Weir v. McGrath, D.C. Ohio, 52 F.2d 201, 203.

As used in testamentary law, any pressure by which testator's action is restrained against his free will in the execution of his testament. Max Ams Mach. Co. v. International Ass'n of Machinists, Bridgeport Lodge, No. 30, 92 Conn. 297, 102 A. 706, 709; Hughes v. Leonard, 66 Colo. 500, 181 P. 200, 203, 5 A.L.R. 817.

Duress and coercion are not synonymous though their meanings often shade into one another. McKenzie-Hague Co. v. Carbide & Carbon Chemicals Corporation, C.C.A. Minn., 73 F.2d 78, 85.

**CO-EXECUTOR.** One who is a joint executor with one or more others. See, also, Joint Executors.

**COFFEE-HOUSE.** A house of entertainment where guests are supplied with coffee and other refreshments, and sometimes with lodging. Century Dict. A coffee-house is not an inn. Thompson v. Lacy, 3 Barn. & Ald. 283; Com. v. Woods, 4 Ky.Law Rep. 262; Potson v. City of Chicago, 304 Ill. 222, 136 N.E. 594, 596.

**COFFERER OF THE QUEEN'S HOUSEHOLD.** In English law. A principal officer of the royal establishment, next under the controller, who, in the countinghouse and elsewhere, had a special charge and oversight of the other officers, whose wages he paid.

**COGITATIONIS PCENAM NEMO PATITUR.** No one is punished for his thoughts. Dig. 48, 19, 18.

**COGNAC.** A distilled brandy, containing more than one-half of 1 per centum of alcohol. *Benson v. U. S., C.C.A.Tex., 10 F.2d 309, 310.*

**COGNATES.** (Lat. *cognati*.) Relations by the mother's side, or by females. *Mackeld.Rom.Law, § 144.* A common term in Scotch law. *Ersk.Inst. 1, 7, 4.*

**COGNATI.** Lat. In the civil law. Cognates; relations by the mother's side. 2 Bl.Comm. 235. Relations in the line of the mother. *Hale, Com. Law, c. xi.* Relations by or through females.

**COGNATIO.** Lat.

In the civil law. Cognation. Relationship, or kindred generally. Dig. 38, 10, 4, 2; *Inst. 3, 6, pr.*

Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit, cognatio a matre.* *Inst. 3, 5, 4.* See *Agnatio*.

In Canon law. Consanguinity, as distinguished from affinity. 4 *Reeve, Eng.Law, 56-58.* Consanguinity, as including affinity. *Id.*

**COGNATION.** In the civil law. Signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

*Civil cognation* is that which proceeds alone from the ties of families, as the kindred between the adopted father and the adopted child.

*Mixed cognation* is that which unites at the same time the ties of blood and family, as that which exists between brothers the issue of the same lawful marriage. *Inst. 3, 6; Dig. 38, 10.*

*Natural cognation* is that which is alone formed by ties of blood; such is the kindred of those who owe their origin to an illicit connection, either in relation to their ascendants or collaterals.

**COGNATUS.** Lat. In the civil law. A relation by the mother's side; a cognate.

A relation, or kinsman, generally.

**COGNITIO.**

In old English law. The acknowledgment of a fine; the certificate of such acknowledgment.

In the Roman law. The judicial examination or hearing of a cause.

**COGNITIONES.** Ensigns and arms, or a military coat painted with arms. *Mat.Par. 1250.*

**COGNITIONIBUS MITTENDIS.** In English law. A writ to a justice of the common pleas, or other, who has power to take a fine, who, having taken the fine, defers to certify it, commanding him to certify it. Now abolished. *Reg.Orig. 68.*

**COGNITIONIS CAUSÆ.** In Scotch practice. A name given to a judgment or decree pronounced by a court, ascertaining the amount of a debt against the estate of a deceased landed proprietor, on cause shown, or after a due investigation. *Bell.*

**COGNITOR.** In the Roman law. An advocate or defender in a private cause; one who defended the cause of a person who was present. *Calvin. Lex.Jurid.*

**COGNIZABLE.** Capable of being tried or examined before a designated tribunal. *State v. Willmot, 51 Idaho 233, 4 P.2d 363, 364;* within jurisdiction of court or power given to court to adjudicate controversy. *Samuel Goldwyn, Inc. v. United Artists Corporation, C.C.A.Del., 113 F.2d 703, 707.*

**COGNIZANCE.** Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it. *Clarion County v. Hospital, 111 Pa. 339, 3 A. 97.*

Judicial notice or knowledge; the judicial hearing of a cause; acknowledgment; confession; recognition.

Claim of cognizance or of conusance. See *Claim of Cognizance or of Conusance.*

Judicial cognizance. See *Judicial.*

The term also applies to a power granted by the king to a city or town to hold pleas within it. *11 East, 543; 1 W. Bla. 454; 3 Bla.Com. 298.* An acknowledgment by defendant or deforciant in fine that the land belongs to, or is the right of, the complainant, *12 Ad. & El. 259.* An answer in replevin, by which defendant acknowledges taking of the goods and want of title, but justifies on ground that the taking was by command of one entitled to the property. *Lawes, Pl. 35; 2 Bla.Com. 350.* *Inhabitants of Sturbridge v. Winslow, 21 Pick., Mass., 87; Noble v. Holmes, 5 Hill, N.Y., 194.*

**COGNIZEE.** The party to whom a fine was levied. 2 Bl.Comm. 351.

**COGNIZOR.** In old conveyancing. The party levying a fine. 2 Bl.Comm. 350, 351.

**COGNOMEN.**

In English law. A surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family.

In Roman law. A man's family name.

The first name (*prænomen*) was the proper name of the individual; the second (*nomen*) indicated the gens or tribe to which he belonged; while the third (*cognomen*) denoted his family or house. The *agnomen* was added on account of some particular event, as a further distinction. *Vicat. See Cas. temp. Hardw. 286; 6 Co. 65.*

**COGNOMEN MAJORUM EST EX SANGUINE TRACTUM, HOC INTRINSECUM EST; AGNOMEN EXTRINSECUM AB EVENTU.** 6 *Coke, 65.* The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.

**COGNOVIT.** Defendant has confessed judgment and justice of claim, *Dyer v. Johnson, Tex.Civ. App., 19 S.W.2d 421, 422.* Written authority of

## COGNOVIT

debtor and his direction for entry of judgment against him. *Blott v. Blott*, 227 Iowa 1108, 290 N.W. 74, 76.

**COGNOVIT ACTIONEM.** (He has confessed the action.) A defendant's written confession of action against him. It is usually upon condition; is supposed to be given in court; and impliedly authorizes plaintiff's attorney to sign judgment and issue execution. *Mallory v. Kirkpatrick*, 54 N.J. Eq. 50, 33 A. 205.

**COHABIT or COHABITATION.** Dwelling together. *Hunt v. Hunt*, 172 Miss. 732, 161 So. 119, 121, *Johnson v. Commonwealth*, 152 Va. 965, 146 S.E. 289, 291. Intercourse together as husband and wife. *State v. Hoffman*, 68 N.D. 610, 282 N.W. 407, 409. Living, or abiding or residing together as man and wife. *Jones v. State*, 182 Tenn. 60, 184 S.W.2d 167, 169; *State v. Barlow*, 107 Utah 292, 153 P.2d 647, 651; *In re Miller's Estate*, 182 Okl. 534, 78 P.2d 819, 827.

It may mean copulation or sexual intercourse. *Bracksmayer v. Bracksmayer*, Sup., 22 N.Y.S.2d 110, 112; as in divorce statutes. *Varnell v. Varnell*, 182 S.W.2d 466, 467, 207 Ark. 711; *De Berry v. De Berry*, 115 W.Va. 604, 177 S.E. 440, 441; or promiscuous and casual relations, as in pandering statute. *Boykin v. U. S.*, 130 F.2d 416, 421, 76 U.S.App.D.C. 147. But in some circumstances occasional acts of sexual intercourse may be insufficient proof. *Cutrer v. State*, 154 Miss. 80, 121 So. 106, 107.

**COHABITING IN STATE OF ADULTERY OR FORNICATION.** Living together as husband and wife. *Martin v. State*, 89 Ind.App. 107, 165 N.E. 763.

Proof must establish at least one act of sexual intercourse, or facts from which such act may reasonably be inferred. *Warner v. State*, 202 Ind. 479, 175 N.E. 661, 663, 74 A.L.R. 1357.

**COHÆREDES UNA PERSONA CENSENTUR, PROPTER UNITATEM JURIS QUOD HABENT.** Co.Litt. 163. Co-heirs are deemed as one person, on account of the unity of right which they possess.

**COHÆRES.** Lat. In civil and old English law. A co-heir, or joint heir.

**COHAN RULE.** Where part of expenditures by taxpayers are of deductible nature as ordinary and necessary business expense are unidentifiable, 50% of expenditures are allowed as deduction. *Poletti v. C. I. R.*, C.A.Mo., 351 F.2d 345, 349.

**CO-HEIR.** One of several to whom an inheritance descends.

**CO-HEIRESS.** A joint heiress. A woman who has an equal share of an inheritance with another woman.

**COHERER.** In wireless telegraphy, the "detector" or "coherer" and "wave responsive device" is a device by which the electromagnetic waves cause the indicator to respond. *National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States*, C.C.A.N.Y., 221 F. 629, 631.

**COHUAGIUM.** A tribute made by those who meet promiscuously in a market or fair. *Du Cange*.

**COIF.** A title given to serjeants at law, who are called "serjeants of the coif," from the coif they wear on their heads. The use of this coif at first was to cover the clerical tonsure, many of the practicing serjeants being clergymen who had abandoned their profession. It was a thin linen cover, gathered together in the form of a skull or helmet; the material being afterwards changed into white silk, and the form eventually into the black patch at the top of the forensic wig, which is now the distinguishing mark of the degree of serjeant at law. (Cowell; Foss, Judg.; 3 Steph. Comm. 272, note.) *Brown*.

**COIN, v.** To fashion pieces of metal into a prescribed shape, weight, and degree of fineness, and stamp them with prescribed devices, by authority of government, in order that they may circulate as money, *Legal Tender Cases*, 12 Wall. 484, 20 L. Ed. 287; *Thayer v. Hedges*, 22 Ind. 301; *Hague v. Powers*, 39 Barb.(N.Y.) 466, or to invent words or phrases.

**COIN, n.** Pieces of gold, silver, or other metal, fashioned into a prescribed shape, weight, and degree of fineness, and stamped, by authority of government, with certain marks and devices, and put into circulation as money at a fixed value, *Com. v. Gallagher*, 16 Gray, Mass., 240; *Latham v. U. S.*, 1 Ct.Cl. 150; *Borie v. Trott*, 5 Phila., Pa., 403, or any metal disc, *State v. Kelleher*, 127 A. 503, 504, 2 W.W.Harr., Del., 559.

Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, etc., which has currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called "coinage." *Wharton*.

**COINAGE.** The process or the function of coining metallic money; also the great mass of metallic money in circulation. *Meyer v. Roosevelt*, 25 How. Prac., N.Y., 105; *U. S. v. Otey*, C.C.Or., 31 F. 70.

**COINSURANCE.** A relative division of risk between the insurer and the insured, dependent upon the relative amount of the policy and the actual value of the property insured, and taking effect only when the actual loss is partial and less than the amount of the policy; the insurer being liable to the extent of the policy for a loss equal to or in excess of that amount. *Buse v. National Ben Franklin Ins. Co. of Pittsburg, Pa.*, 160 N.Y. S. 566, 568, 96 Misc. 229.

**COITUS.** Sexual intercourse; carnal copulation; coition.

**COJUDICES.** Lat. In old English law. Associate judges having equality of power with others.

**COKE.** Partially consumed bituminous coal, from which the volatile constituents have been burned away, or partly graphitized carbon, whose fiber has been affected by escaping and burning gases, so that it is lighter than coal, although its substance is hard and dense. *Mitchell v. Connells-ville Central Coke Co.*, C.C.A.Pa., 231 F. 131, 137; *Otto Coking Co. v. Koppers Co.*, C.C.A.Del., 258 F. 122, 131.

**COKE'S INSTITUTES.** See *Institutes*.

**COLD BLOOD.** Used in common parlance to designate a willful, deliberate, and premeditated homicide. *Skeggs v. State*, 24 Ala.App. 307, 135 So. 431, 432.

**COLD WATER ORDEAL.** The trial which was anciently used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up. *Wharton*.

**COLIBERTUS.** In feudal law. One who, holding in free socage, was obliged to do certain services for the lord. A middle class of tenants between servile and free, who held their freedom of tenure on condition of performing certain services. Said to be the same as the *conditionales*. *Cowell*.

**COLLAPSIBLE CORPORATION.** In income tax law, for purpose of determining whether gain from the sale or exchange of stock is gain from the sale or exchange of a capital asset or gain from the sale or exchange of property which is not a capital asset, a corporation formed or availed of principally for the manufacture, construction, or production of property, or for the holding of stock in a corporation so formed or availed of, with a view to the sale or exchange of stock by its shareholders, or a distribution to its shareholders, prior to the realization by such corporation of a substantial part of the net income to be derived from such property, and the realization by such shareholders of gain attributable to such property. 26 U.S.C.A. § 117.

**COLLATERAL.** By the side; at the side; attached upon the side. Not lineal, but upon a parallel or diverging line. Additional or auxiliary; supplementary; co-operating; accompanying as a secondary fact, or acting as a secondary agent; related to, complementary; accompanying as a co-ordinate, *City Investment & Loan Co. v. Wichita Hardware Co.*, Tex.Civ.App., 57 S.W.2d 222, 223; collateral security, *Pepper v. Beville*, 100 Fla. 97, 129 So. 334, 337.

As to collateral "Consanguinity," "Descent," "Estoppel," "Guaranty," "Issue," "Limitation," "Negligence," "Power," "Proceeding," and "Warranty," see those titles.

**COLLATERAL ACT.** In old practice. The name "collateral act" was given to any act (except the payment of money) for the performance of which a bond, recognizance, etc., was given as security.

**COLLATERAL ANCESTORS.** A phrase sometimes used to designate uncles and aunts, and other collateral antecessors, who are not strictly ancestors. *Banks v. Walker*, 3 Barb.Ch. (N.Y.) 438, 446.

**COLLATERAL ASSURANCE.** That which is made over and above the principal assurance or deed itself.

**COLLATERAL or INDIRECT ATTACK.** On a judicial proceeding, an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it. *May v. Casker*, 188 Okl. 448, 110 P.2d 287, 290. On a judgment, any proceeding in which the integrity of a judgment is challenged, except those made in the action wherein the judgment is rendered or by appeal. *Edward Thompson Co. v. Thomas*, 49 F.2d 500, 60 App.D.C. 118; *In re Peterson's Estate*, 12 Wash.2d 686, 123 P.2d 733, 751.

An attempt to impeach the judgment by matters dehors the record in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect in some incidental proceeding not provided by law for the express purpose of attacking it; any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying such decree, or an objection, incidentally raised in the course of a proceeding, which presents an issue collateral to the issues made by the pleadings. *Trustees of Somerset Academy v. Picher*, C.C.A. Me., 90 F.2d 741, 743.

**COLLATERAL ESTOPPEL.** The collateral determination of a question by a court having general jurisdiction of the subject. *Small v. Haskins*, 26 Vt. 209.

Conclusiveness of judgment in prior action where subsequent action is upon a different cause of action. *Babcock v. Babcock*, 63 Cal.App.2d 94, 146 P.2d 279, 281.

Where complaint in a divorce action alleged that there was no community property, and divorce decree found that all allegations of complaint were true and sustained by evidence, the decree was a conclusive determination that husband's insurance policies were not community property, and under the doctrine of "collateral estoppel" divorced wife was estopped from litigating that issue upon husband's death. *Maxwell v. Maxwell*, 66 Cal.App.2d 549, 152 P.2d 530, 532.

**COLLATERAL FACTS.** Such as are outside the controversy, or are not directly connected with the principal matter or issue in dispute. *Summerour v. Felker*, 102 Ga. 254, 29 S.E. 448; *Garner v. State*, 76 Miss. 515, 25 So. 363; *Jones v. State*, 70 Ga.App. 431, 28 S.E.2d 373, 386.

**COLLATERAL FRAUD.** See *Fraud*.

**COLLATERAL IMPEACHMENT.** See *Collateral Attack*.

**COLLATERAL INHERITANCE TAX.** A tax levied upon the collateral devolution of property by will or under the intestate law. *Perfection Tire & Rubber Co. v. Kellogg-Mackay Equipment Co.*, 194 Iowa 523, 187 N.W. 32, 33.

**COLLATERAL KINSMEN.** Those who descend from one and the same common ancestor, but not from one another.

**COLLATERAL LINE.** See *Descent*.

**COLLATERAL PROMISE.** A promise merely super-added to the promise of another, he remaining primarily liable. *Fairbanks v. Barker*, 115 Me. 11, 97 A. 3, 5; *Miller v. Davis*, 168 Ky. 661, 182 S.W. 839, 840.

**COLLATERAL SECURITY.** A security given in addition to the direct security, and subordinate to it, intended to guaranty its validity or convertibili-

## COLLATERAL

ty or insure its performance; so that, if the direct security fails, the creditor may fall back upon the collateral security. *Butler v. Rockwell*, 23 P. 462, 14 Colo. 125; *McCormick v. Bank*, C.C.Ind., 57 F. 110; *Perfection Tire & Rubber Co. v. Kellogg-Mackay Equipment Co.*, 194 Iowa 523, 187 N.W. 32, 33; *Barbin v. Moore*, 85 N.H. 362, 159 A. 409, 415, 83 A.L.R. 62.

Collateral security, in bank phraseology, means some security additional to the personal obligation of the borrower. *Shoemaker v. Bank*, 2 Abb., U.S., 423, Fed.Cas.No.12,801, or pledge of negotiable paper, shares of corporate stock, and the like. *Turner v. Commercial Savings Bank*, 17 Ga.App. 631, 87 S.E. 918; *A. H. Averill Machinery Co. v. Bain*, 50 Mont. 512, 148 P. 334.

**COLLATERAL UNDERTAKING.** "Collateral" and "original" have become the technical terms whereby to distinguish promises that are within, and such as are not within, the statute of frauds. *Elder v. Warfield*, 7 Har. & J., Md., 391; *Turner v. Commercial Savings Bank*, 17 Ga.App. 631, 87 S. E. 918.

**COLLATERALIS ET SOCI.** The ancient title of masters in chancery.

**COLLATIO BONORUM.** Lat. In the civil law. The obligation on successors to an inheritance to return to the common inheritance gifts received from the ancestor during his lifetime. In re *Farmers' Loan & Trust Co.*, 163 N.Y.S. 961, 967, 99 Misc. 420; In re *Farmers' Loan & Trust Co.*, 168 N.Y.S. 952, 956, 181 App.Div. 642. A joining together or contribution of goods into a common fund.

This occurs where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributory share of his personal estate at his death. See *Collation*.

**COLLATIO SIGNORUM.** In old English law. A comparison of marks or seals. A mode of testing the genuineness of a seal, by comparing it with another known to be genuine. *Adams*. See *Bract*. fol. 389b.

**COLLATION.** It is the bringing into the estate of an intestate an estimate of the value of advancements made by the intestate to his or her children in order that the whole may be divided in accordance with the statute of descents. In re *Howlett's Estate*, 275 Mich. 596, 267 N.W. 743, 744.

It is synonymous with "hotchpot." *Moore v. Freeman*, 50 Ohio St. 592, 35 N.E. 502.

### Civil Law

The collation of goods is the supposed or real return to the mass of the succession which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. Civ.Code La. art. 1227; *Miller v. Miller*, 105 La. 257, 29 So. 802; *Succession of Thompson*, 9 La. Ann. 96.

The fundamental basis of doctrine is legal presumption that ancestor intended absolute equality among his descendants in final distribution of his property, that donation by him during his lifetime to any one of them was merely advancement d'hoirie or advance on donee's hereditary share to establish him in life or for some other use-

ful purpose, and that ancestor intended to reestablish equality among his descendants in final partition of his estate. *Le Blanc v. Volker*, La.App., 198 So. 398, 401.

### Ecclesiastical Law

The act by which the bishop who has the bestowing of a benefice gives it to an incumbent. 2 Bla.Com. 22.

### Practice

The comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

**COLLATION OF SEALS.** When upon the same label one seal was set on the back or reverse of the other. *Wharton*.

**COLLATION TO A BENEFICE.** In ecclesiastical law. This occurs where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution. 2 Bl.Comm. 22.

**COLLATIONE FACTA UNI POST MORTEM ALTERIUS.** A writ directed to justices of the common pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the crown, where there had been a demise of the crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another. Reg. Orig. 31.

**COLLATIONE HEREMITAGII.** In old English law. A writ whereby the king conferred the keeping of an hermitage upon a clerk. Reg.Orig. 303, 308.

**COLLECT.** To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund; to assemble.

To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings. *Isler v. National Park Bank of New York*, 239 N.Y. 462, 147 N.E. 66, 68.

**COLLECT ON DELIVERY.** See C. O. D.

**COLLECTIBLE.** Debts, obligations, demands, liabilities that one may be made to pay by means of legal process. *Shanahan v. State*, 142 Md. 616, 121 A. 636, 640.

**COLLECTION AGENCY.** A concern which collects all kinds of claims for others. *McCarthy v. Hughes*, 36 R.I. 66, 88 A. 984, 985, Ann.Cas.1915D, 26.

**COLLECTION OF ILLEGAL FEES.** Collection by public official of fees in excess of those fixed by law for certain services. *Parker v. Morgan*, 48 Utah 405, 160 P. 764, 765.

**COLLECTIVE BARGAINING.** As contemplated by National Labor Relations Act is a procedure looking toward making of collective agreements



between employer and accredited representatives of employees concerning wages, hours, and other conditions of employment, and requires that parties deal with each other with open and fair minds and sincerely endeavor to overcome obstacles existing between them to the end that employment relations may be stabilized and obstruction to free flow of commerce prevented. National Labor Relations Act § 8(5), 29 U.S.C.A. § 158(5). Rapid Roller Co. v. National Labor Relations Board, C.C.A.7, 126 F.2d 452, 460.

The essence of "collective bargaining" is the freedom of choice of employees in selection of their bargaining representative. National Labor Relations Act § 1 et seq., 29 U.S.C.A. § 151 et seq. National Labor Relations Board v. American Rolling Mill Co., C.C.A.6, 126 F.2d 38, 41.

"Collective bargaining," within provision of National Labor Relations Act providing that a refusal to bargain collectively should be an unfair labor practice, does not require employer to reach an agreement, but does require sincere negotiations with representatives of employees. National Labor Relations Act § 8(5), 29 U.S.C.A. § 158(5). National Labor Relations Board v. Biles Coleman Lumber Co., C.C.A.9, 98 F.2d 18, 22.

**COLLECTIVE BARGAINING AGREEMENT.**

Agreement between an employer and a labor union which regulates terms and conditions of employment. Railway Mail Ass'n v. Murphy, 44 N.Y.S. 2d 601, 605, 608, 180 Misc. 868; McNeil v. Peoples Life Ins. Co., D.C.Mun.App., 43 A.2d 293, 294. See, also, "Collective Labor Agreement" and "Trade Agreement."

**COLLECTIVE LABOR AGREEMENT.**

Also called "trade agreement". Bargaining agreement as to wages and conditions of work entered into by groups of employees, usually organized into a brotherhood or union on one side and groups of employers or corporations on the other side. Brisbin v. E. L. Oliver Lodge No. 335 of Brotherhood of Railway Clerks, 134 Neb. 517, 279 N.W. 277, 283; Rentschler v. Missouri Pac. R. Co., 126 Neb. 493, 253 N.W. 694, 696, 95 A.L.R. 1.

It becomes a binding contract when it is adopted into and made a part of the individual contract of each employee, and a breach of its terms will give rise to a cause of action by either party.

**COLLECTOR.** One appointed to receive taxes or other impositions; as, collector of taxes, collector of militia fines, etc. A person appointed by a private person to collect the credits due him.

**COLLECTOR OF DECEDENT'S ESTATE.** A person temporarily appointed by the probate court to collect rents, assets, interest, bills receivable, etc., of a decedent's estate, and act for the estate in all financial matters requiring immediate settlement. Such collector is usually appointed when there is protracted litigation as to the probate of the will, or as to the person to take out administration, and his duties cease as soon as an executor or administrator is qualified.

**COLLECTOR OF THE CUSTOMS.** An officer of the United States, appointed for the term of four years. Act May 15, 1820, § 1; 3 Story, U.S.Laws, 1790 (19 U.S.C.A. § 5). Rev.Stat.U.S. § 2613 (19 U.S.C.A. § 5). His general duties are defined in § 2621 (19 U.S.C.A. § 33).

**COLLECTION.** Indorsement "for collection." See For Collection.

**COLLEGA.** In the civil law. One invested with joint authority. A colleague; an associate.

**COLLEGATARIUS.** Lat. In the civil law. A colleague. Inst. 2, 20, 8.

**COLLEGATARY.** A co-legatee; a person who has a legacy left to him in common with other persons.

**COLLEGE.** An organized assembly or collection of persons, established by law, and empowered to co-operate for the performance of some special function or for the promotion of some common object, which may be educational, political, ecclesiastical, or scientific in its character.

The assemblage of the cardinals at Rome is called a "college." So, in the United States, the body of presidential electors is called the "electoral college."

In the most common use of the word, it designates an institution of learning (usually incorporated) which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions. Com. v. Banks, 198 Pa. 397, 48 A. 277; Chegaray v. New York, 13 N.Y. 229. Also applied to all kinds of institutions from universities, or departments thereof to "business colleges," "barber colleges," etc. State v. Erickson, 75 Mont. 429, 244 P. 287, 291.

In England, it is a civil corporation, company or society of men, having certain privileges, and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called a "university." Wharton.

**COLLEGIA.** In the civil law. The guild of a trade.

**COLLEGIALITER.** In a corporate capacity. 2 Kent, Comm. 296.

**COLLEGIATE CHURCH.** In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church; such as the churches of Westminster, Windsor, and others. Cowell.

**COLLEGIUM.** Lat. In the civil law. A word having various meanings; *e. g.*, an assembly, society, or company; a body of bishops; an army; a class of men. But the principal idea of the word was that of an association of individuals of the same rank and station, or united for the pursuit of some business or enterprise. Sometimes, a corporation, as in the maxim "tres faciunt collegium" (1 Bl.Comm. 469), though the more usual and proper designation of a corporation was "universitas."

**COLLEGIUM AMMIRALITATIS.** The college or society of the admiralty.

## COLLEGIUM

**COLLEGIUM EST SOCIETAS PLURIUM CORPORUM SIMUL HABITANTIUM.** Jenk.Cent. 229. A college is a society of several persons dwelling together.

**COLLEGIUM ILLICITUM.** One which abused its right, or assembled for any other purpose than that expressed in its charter.

**COLLEGIUM LICITUM.** An assemblage or society of men united for some useful purpose or business, with power to act like a single individual. 2 Kent, Comm. 269.

**COLLIDE.** To strike or dash against; to come into collision; to clash. Collins v. Leahy, Mo. App., 102 S.W.2d 801, 809.

**COLLIERY.** This term is sufficiently wide to include all contiguous and connected veins and seams of coal which are worked as one concern, without regard to the closes or pieces of ground under which they are carried, and apparently also the engines and machinery in such contiguous and connected veins. MacSwin. Mines, 25. Carey v. Bright, 58 Pa. 85.

It includes every operation and work, both under and above ground, used or to be used to mine and prepare coal. Moore v. Stevens Coal Co., 315 Pa. 564, 173 A. 661, 662.

**COLLIGENDUM BONA DEFUNCTI.** See Ad Colligendum, etc.

**COLLISION.** Striking together of two objects, one of which may be stationary. Davilla v. Liberty Life Ins. Co., 114 Cal.App. 308, 299 P. 831, 834. Act or instance of colliding; state of having collided. Guenther v. American Indem. Co., 246 Wis. 478, 17 N.W.2d 570, 571.

### Maritime Law

The act of ships or vessels striking together.

In its strict sense, collision means the impact of two vessels both moving, and is distinguished from *allision*, which designates the striking of a moving vessel against one that is stationary. But collision is used in a broad sense, to include allision, and perhaps other species of encounters between vessels, or a vessel and other floating, though non-navigable, objects. Wright v. Brown, 4 Ind. 97, 58 Am.Dec. 622; London Assur. Co. v. Companhia De Moagens, 68 F. 258, 15 C.C.A. 379; Lehigh & Wilkes-Barre Coal Co. v. Globe & Rutgers Fire Ins. Co., C.C.A.N.Y., 6 F.2d 736, 738, 43 A.L.R. 215.

The term is not inapplicable to cases where a stationary vessel is struck by one under way, strictly termed "allision"; or where one vessel is brought into contact with another by swinging at anchor. And even an injury received by a vessel at her moorings, in consequence of being violently rubbed or pressed against by a second vessel lying alongside of her, in consequence of a collision against such second vessel by a third one under way, may be compensated for, under the general head of "collision," as well as an injury which is the direct result of a "blow," properly so called. The Moxey, Abb.Adm. 73, Fed.Cas.No. 9,894.

### Automobile Insurance Law

The term denotes the act of colliding; striking together; violent contact. Long v. Royal Ins. Co., 180 Wash. 360, 40 P.2d 132, 133, 105 A.L.R. 1423. The term implies an impact or sudden contact of a moving body with an obstruction in its line of motion, whether both bodies are in motion or one stationary and the other, no matter which,

in motion. St. Paul Fire & Marine Ins. Co. v. American Compounding Co., 211 Ala. 593, 100 So. 904, 906, 35 A.L.R. 1018; Rea v. Motors Ins. Corporation, 48 N.M. 9, 144 P.2d 676, 678, 679, 681.

But liability depends on what the automobile collides with and, of course, the cause of the collision and the terms of the policy. Liability has been sustained where collision was with embankment, Pred v. Employers' Indemnity Corporation, 112 Neb. 161, 198 N.W. 864, 866, 35 A.L.R. 1003; and also denied, Fox v. Interstate Exch., 182 Wis. 28, 195 N.W. 842. Liability has also been denied where collision was with earth, after automobile had gone over an embankment, Continental Casualty Co. v. Paul, 209 Ala. 166, 95 So. 814, 815, 30 A.L.R. 802 (*contra* Polstein v. Pacific Fire Ins. Co., 203 N.Y.S. 362, 122 Misc. 194); and with stump after skidding off the road, Ploe v. International Indemnity Co., 128 Wash. 480, 223 P. 327, 328, 35 A.L.R. 999. Liability has been sustained for damages caused by collision with sides of rut, Wood v. Southern Casualty Co., Tex.Civ.App., 270 S.W. 1055, 1057; and both sustained and denied where body or frame of automobile collided with the road through the breaking of an axle or other cause, Young v. New Jersey Ins. Co., D.C.Mont., 284 F. 492, 493; Great American Mut. Indemnity Co. v. Jones, 111 Ohio St. 84, 144 N.E. 596, 35 A.L.R. 1023; Great Eastern Casualty Co. v. Solinsky, 150 Tenn. 206, 263 S.W. 71, 74, 35 A.L.R. 1007. Liability has been sustained where elevator containing automobile fell, Freiburger v. Globe Indemnity Co., 199 N.Y.S. 310, 311, 205 App.Div. 116; National Fire Ins. Co. of Hartford, Conn., v. Elliott, C.C.A. Mo., 7 F.2d 522, 527, 42 A.L.R. 1121; where standing car ran over precipice, St. Paul Fire & Marine Ins. Co. v. American Compounding Co., 211 Ala. 593, 100 So. 904, 906, 35 A.L.R. 1018; where scoop of steamshovel loading autotruck fell on latter, Universal Service Co. v. American Ins. Co., 213 Mich. 523, 181 N.W. 1007, 14 A.L.R. 183; but denied where second floor of garage fell upon automobile, O'Leary v. St. Paul Fire & Marine Ins. Co., Tex.Civ.App., 196 S.W. 575. This subject is fully discussed in Blashfield, Cyc. of Automobile Law and Prac., Perm.Ed., §§ 3691-3698.

**COLLISION CLAUSE.** An additional provision for insurance, on the margin of the policy, covering the contingency of a collision of the insured vessel with another vessel and the liability of the insured for the injury to such other vessel. Fireman's Fund Ins. Co. v. Globe Nav. Co., C.C.A. Wash., 236 F. 618, 631. Also known as "running down" clause.

**COLLISTRIGIUM.** The pillory.

**COLLOBIUM.** A hood or covering for the shoulders, formerly worn by serjeants at law.

**COLLOCATION.** In French law. The arrangement or marshaling of the creditors of an estate in the order in which they are to be paid according to law. Merl. Répert.

**COLLOQUIUM.** One of the usual parts of the declaration in an action for slander. It is a general averment that the words complained of were spoken "of and concerning the plaintiff," or concerning the extrinsic matters alleged in the inducement, and its office is to connect the whole publication with the previous statement. Van Vechten v. Hopkins, 5 Johns., N.Y., 220, 4 Am.Dec. 339; Lukehart v. Byerly, 53 Pa. 421; Express Pub. Co. v. Wilkins, Tex.Civ.App., 218 S.W. 614, 616; Kee v. Armstrong, Byrd & Co., 75 Okl. 84, 182 P. 494, 498, 5 A.L.R. 1349.

An averment that the words in question are spoken of or concerning some usage, report, or fact which gives to words otherwise indifferent the peculiar defamatory meaning assigned to them. Carter v. Andrews, 16 Pick., Mass., 6; Moore v. Leverett, Tex.Civ.App., 33 S.W.2d 838, 842.

**COLLUSION.** Is an agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of lawful means for the accomplishment of an unlawful purpose. *May Hosiery Mills v. United States District Court in and for Dist. of Montana, C.C.A. Mont., 64 F.2d 450, 454.*

A secret combination, conspiracy, or concert of action between two or more persons for fraudulent or deceitful purpose. *W. E. Bowen Improvement Co. v. Van Hafften, 209 Mo.App. 629, 238 S.W. 147, 149; Daly v. Haight, 156 N.Y.S. 538, 541, 170 App.Div. 469.*

A secret arrangement between two or more persons, whose interests are apparently conflicting, to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice would not give them, by deceiving a court or its officers. *Railroad Co. v. Gay, 86 Tex. 571, 26 S.W. 599, 25 L.R.A. 52; Balch v. Beach, 119 Wis. 77, 95 N.W. 132.* A secret agreement between two persons that one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose. *In re Insull Utility Investments, D.C.Ill., 6 F.Supp. 653, 655.*

In divorce proceedings, collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce. But it also means connivance or conspiracy in initiating or prosecuting the suit, as where there is a compact for mutual aid in carrying it through to a decree. *Beard v. Beard, 65 Cal. 354, 4 P. 229; Pohlman v. Pohlman, 60 N.J.Eq. 28, 46 A. 658; McCauley v. McCauley, 88 N.J.Eq. 392, 103 A. 20, 23; Rosenzweig v. Rosenzweig, 246 N.Y.S. 231, 233, 231 App.Div. 13.*

**COLLUSIVE ACTION.** An action not founded upon an actual controversy between the parties to it, but brought for purpose of securing a determination of a point of law for the gratification of curiosity or to settle rights of third persons not parties. It will not be entertained. *City and County of San Francisco v. Boyd, 22 Cal.2d 685, 140 P.2d 666, 669, 670.*

**COLLYBISTA.** In the civil law. A money-changer; a dealer in money.

**COLLYBUM.** In the civil law. Exchange.

**COLNE.** In Saxon and old English law. An account or calculation.

**COLONUS.** In old European law. A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon ceorl. *1 Spence, Ch. 51.*

**COLONY.** A dependent political community, consisting of a number of citizens of the same country who have emigrated therefrom to people another, and remain subject to the mother-country. *U. S. v. The Nancy, 3 Wash.C.C. 287, Fed.Cas.No.15,854.*

A settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with and subordination to the mother-country, whence they emigrated. In other words, it is a place peopled from some more ancient city or country. *Wharton.*

**Colonial Office**

In the English government, this is the department of state through which the sovereign appoints colonial governors, etc., and communicates with them. Until the year 1854, the secretary for the colonies was also secretary for war.

**Colonial Laws**

In America, this term designates the body of law in force in the thirteen original colonies before the Declaration of Independence. In England, the term signifies the laws enacted by Canada and the other present British colonies.

**COLOR.** An appearance, semblance, or *simulacrum*, as distinguished from that which is real. A *prima facie* or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise or pretext. *Railroad Co. v. Allfree, 64 Iowa 500, 20 N.W. 779; Broughton v. Haywood, 61 N.C. 383; Wilt v. Bueter, 186 Ind. 98, 111 N.E. 926, 929.*

In pleading. Ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which is so set out as to be apparently valid, but which is in reality legally insufficient.

A term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *prima facie* right; and the meaning of the rule that pleadings in confession and avoidance should give color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Color was either express, *i. e.*, inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. *Steph.Pl. 233; Merten v. Bank, 5 Okl. 585, 49 P. 913; Wheeler v. Nickels, 168 Or. 604, 126 P.2d 32, 36.*

The word also means the dark color of the skin showing the presence of negro blood; and hence it is equivalent to African descent or parentage. *Johnson v. Board of Education of Wilson County, 166 N.C. 468, 82 S.E. 832, 834, L.R.A.1915A, 828.*

**COLOR OF AUTHORITY.** That semblance or presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office or from a writ or other process in his hands apparently valid and regular. *State v. Oates, 86 Wis. 634, 57 N.W. 296, 39 Am.St.Rep. 912.*

**COLOR OF LAW.** The appearance or semblance, without the substance, of legal right. *State v. Brechler, 185 Wis. 599, 202 N.W. 144, 148.*

**COLOR OF OFFICE.** An act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color. *Plow. 64. Day v. National Bond & Investment Co., Mo.App., 99 S.W.2d 117, 119.*

A claim or assumption of right to do an act by virtue of an office, made by a person who is legally destitute of any such right. *Feller v. Gates, 40 Or. 543, 67 P. 416, 56 L.R.A. 630, 91 Am.St.Rep. 492; Citizens' Bank of Colquitt v. American Surety Co. of New York, 174 Ga. 852, 164 S.E. 817; Pontiac Trust Co. v. Newell, 266 Mich. 490, 254 N.W. 178, 181.*

## COLOR

Such person must be at least officer *de factor*. Burrell v. Acker, 23 Wend., N.Y., 606, 35 Am.Dec. 582; Day v. National Bond & Investment Co., Mo.App., 99 S.W.2d 117, 119. See, also, *Colore Offici*.

**COLOR OF TITLE.** The appearance, semblance, or *simulacrum* of title. Also termed "apparent title." Any fact, extraneous to the act or mere will of the claimant, which has the appearance, on its face, of supporting his claim of a present title to land, but which, for some defect, in reality falls short of establishing it. Howth v. Farrar, C.C.A. Tex., 94 F.2d 654, 658; Saltmarsh v. Crommelin, 24 Ala. 352.

Anything in writing purporting to convey title to the land, which defines the extent of the claim, it being immaterial how defective or imperfect the writing may be, so that it is a sign, semblance, or color of title. Theisen v. Qualley, 42 S.D. 367, 175 N.W. 556, 557. A title that is imperfect, but not so obviously so that it would be apparent to one not skilled in the law. Ipock v. Gaskins, 161 N.C. 673, 77 S.E. 843, 847.

A writing upon its face professing to pass title but which does not, either through want of title in the grantor or a defective mode of conveyance. Philbin v. Carr, 75 Ind.App. 560, 129 N.E. 19, 24; Glass v. Lynchburg Shoe Co., 212 N.C. 70, 192 S.E. 899.

That which the law considers *prima facie* a good title, but which, by reason of some defect, not appearing on its face, does not in fact amount to title. An absolute nullity, as a void deed, judgment, etc., will not constitute color of title. Causey v. White, 143 Ga. 7, 84 S.E. 58; Stearns Coal & Lumber Co. v. Boyatt, 168 Ky. 111, 181 S.W. 962, 964. That which is title in appearance but not in reality. Fischen Bros. Commercial Co. v. Noyes' Estate, 76 Mont. 175, 246 P. 773, 779; Boland v. Heck, 179 Okl. 403, 65 P.2d 1213, 1215.

"Any instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title." Brooks v. Bruyn, 35 Ill. 392.

"Color of title" is not synonymous with "claim of title." To constitute "color of title" there must be a paper title to give color to the adverse possession, whereas, a "claim of title" may be shown wholly by parol. Walton v. Sikes, 165 Ga. 422, 141 S.E. 188, 190.

**COLORABLE.** That which has or gives color. That which is in appearance only, and not in reality, what it purports to be. Counterfeit, feigned, having the appearance of truth. Ellis v. Jones, 73 Colo. 516, 216 P. 257, 258.

**COLORABLE ALTERATION.** One which makes no real or substantial change, but is introduced only as a subterfuge or means of evading the patent or copyright law.

**COLORABLE CAUSE OR INVOCATION OF JURISDICTION.** With reference to actions for malicious prosecution, a "colorable cause or invocation of jurisdiction" means that a person, apparently qualified, has appeared before a justice and made a complaint under oath and in writing, stating some facts which in connection with other facts constitute a criminal offense or bear a similitude thereto. Hotel Supply Co. v. Reid, 16 Ala. App. 563, 80 So. 137, 138.

**COLORABLE CLAIM.** In bankruptcy law, a claim made by one holding the property as an agent or bailee of the bankrupt; a claim in which as a mat-

ter of law, there is no adverseness. In re B'um, C.C.A.Wis., 202 F. 883, 884; In re Western Rope & Mfg. Co., C.C.A.Okla., 298 F. 926, 927.

**COLORABLE IMITATION.** In the law of trademarks, this phrase denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons.

**COLORABLE PLEADING.** The practice of giving color in pleading.

**COLORABLE TRANSACTION.** One presenting an appearance which does not correspond with the reality, and, ordinarily, an appearance intended to conceal or to deceive. Osborn v. Osborn, 102 Kan. 890, 172 P. 23, 24.

**COLORE OFFICII.** Lat. By color of office. Officer's acts unauthorized by officer's position, though done in form that purports that acts are done by reason of official duty and by virtue of office. Richards v. American Surety Co. of New York, 48 Ga.App. 102, 171 S.E. 924. See, also, *Color of Office*.

**COLORED.** By common usage in America, this term, in such phrases as "colored persons," "the colored race," "colored men," and the like, is used to designate negroes or persons of the African race, including all persons of mixed blood descended from negro ancestry. Collins v. Oklahoma State Hospital, 76 Okl. 229, 184 P. 946, 949, 7 A.L.R. 895; Theophanis v. Theophanis, 244 Ky. 689, 51 S.W.2d 957.

But where a state Constitution provided for separate schools for the white and colored races, the term "white race" was held to be limited to the Caucasian race, and the term "colored races" to embrace all other races. Rice v. Gong Lum, 139 Miss. 760, 104 So. 105, 107.

It has also been held that there is no legal technical significance to the phrase "colored person" which the courts are bound judicially to know. Pauska v. Daus, 31 Tex. 74.

**COLPICES.** Young poles, which, being cut down, are made levers or lifters. Blount.

**COLPINDACH.** In old Scotch law. A young beast or cow, of the age of one or two years; in later times called a "cowdash."

**COLT.** An animal of the horse species, whether male or female, not more than four years old. Russ. & R. 416; Mallory v. Berry, 16 Kan. 295; Pullen v. State, 11 Tex.App. 91.

**COM.** An abbreviation for "company," exactly equivalent to "Co." Keith v. Sturges, 51 Ill. 142.

**COMBARONES.** In old English law. Fellow-barons; fellow-citizens;—the citizens or freemen of the Cinque Ports being anciently called "barons;" the term "*combarones*" is used in this sense in a grant of Henry III. to the barons of the port of Fevresham. Cowell.

**COMBAT.** A forcible encounter between two or more persons; a battle; a duel. Trial by battle.

### Mutual Combat

One into which both the parties enter willingly or voluntarily; it implies a common intent to

fight, but not necessarily an exchange of blows. Aldridge v. State, 59 Miss. 250; Tate v. State, 46 Ga. 158; State v. Moss, 24 N.M. 59, 172 P. 199; Findley v. State, 125 Ga. 583, 54 S.E. 106.

**COMBATERRÆ.** A valley or piece of low ground between two hills. Kennett, Gloss.

**COMBE.** A small or narrow valley.

**COMBINATION.** A conspiracy, or confederation of men for unlawful or violent deeds. See Deupree v. Thornton, 97 Neb. 812, 151 N.W. 305, 307, L.R.A.1917C, 65.

In patent law. A union of different elements. A patent may be taken out for a new combination of existing machines. Stevenson Co. v. McFassell, C.C.A.Pa., 90 F. 707, 33 C.C.A. 249; Moore v. Schaw, C.C.Cal., 118 F. 602; Moody v. Fiske, 2 Mas. 112, Fed.Cas.No.9,745.

In patent law. A composition of old or new elements, and it is patentable, if it produces new and useful results, though all its constituents were well known and in common use before it was made, provided the results are a product of the combination, and not a mere aggregate of several results. U. S. Industrial Chemical Co. v. Theroz Co., C.C.A.Md., 25 F.2d 387, 391.

The distinction between a "combination" and an "aggregation" lies in the presence or absence of mutuality of action; a "combination" essentially requiring that there be some joint operation performed by its elements, producing a result due to their joint and cooperating action, while in an "aggregation" there is a mere adding together of separate contributions, each operating independently of the other. Ball v. Coker, C.C.A.S.C., 210 F. 278, 282; Mead Morrision Mfg. Co. v. Exeter Mach. Works, D.C.Pa., 215 F. 731.

**COMBINATION IN RESTRAINT OF TRADE.** A trust, pool, or other association of two or more individuals or corporations having for its object to monopolize the manufacture or traffic in a particular commodity, to regulate or control the output, restrict the sale, establish and maintain the price, stifle or exclude competition, or otherwise to interfere with the normal course of trade under conditions of free competition. Northern Securities Co. v. U. S., 193 U.S. 197, 24 S.Ct. 436, 48 L.Ed. 679; U. S. v. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325.

**COMBINED CARBON.** As used in the metallurgy of iron and steel, carbon in union with some one or more metallic constituents in the iron alloy. Pittsburgh Iron & Steel Foundries Co. v. Seaman-Sleeth Co., C.C.A.Pa., 248 F. 705, 707.

**COMBING WOOL.** A long-stapled wool, usually combed, employed in the manufacture of worsteds. Stone & Downer Co. v. U. S., 12 Ct.Cust.App. 62, 63; U. S. v. Stone & Downer Co., 12 Ct.Cust.App. 557. See Clothing Wool.

**COMBUSTIBLE.** Capable of undergoing combustion; apt to catch fire; inflammable. Hebrlee v. Hawley, 112 Kan. 398, 211 P. 129, 131.

**COMBUSTIO.** Burning. In old English law. The punishment inflicted upon apostates.

**COMBUSTIO DOMORUM.** Houseburning; arson. 4 Bl.Comm. 272.

**COMBUSTIO PECUNIÆ.** Burning of money; the ancient method of testing mixed and corrupt money, paid into the exchequer, by melting it down.

**COME.** To present oneself; to appear in court. In modern practice, though such presence may be constructive only, the word is still used to indicate participation in the proceedings. Horner v. O'Laughlin, 29 Md. 472. Melfi v. Barney, R.I., 121 A. 67, 68.

Thus, a pleading may begin, "Now comes the defendant," etc. In case of a default, the technical language of the record is that the party "comes not, but makes default."

**COMES, v.** A word used in a pleading to indicate the defendant's presence in court. See Come.

**COMES, n.** Lat. A follower, companion, or attendant; a count or earl.

**COMES AND DEFENDS.** This phrase, anciently used in the language of pleading, and still surviving in some jurisdictions, occurs at the commencement of a defendant's plea or demurrer; and of its two verbs the former signifies that he appears in court, the latter that he defends the action.

**COMFORT.** Benefit, consolation, contentment, ease, enjoyment, happiness, pleasure, or satisfaction. National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291.

**COMFORTABLE SPEED.** As applied to railway trains, is a speed which has been developed by experience and observation to mean that speed at which you can run a train around a curve, and the passengers will not feel any uncomfortable or unpleasant lurch in going around the curve. Chesapeake & O. Ry. Co. v. Tanner, 165 Va. 406, 182 S.E. 239.

**COMINUS.** Lat. Immediately; hand-to-hand; in personal contact.

**COMITAS.** Lat. Courtesy; civility; comity. An indulgence or favor granted another nation, as a mere matter of indulgence, without any claim of right made. *Comitas inter communitates*; or *comitas inter gentes*; comity between communities or nations; comity of nations. 2 Kent, Comm. 457.

**COMITATU COMMISSO.** A writ or commission, whereby a sheriff is authorized to enter upon the charges of a county. Reg.Orig. 295.

**COMITATU ET CASTRO COMMISSO.** A writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.

**COMITATUS.** In old English law. A county or shire; the body of a county. The territorial jurisdiction of a *comes*, *i. e.*, count or earl. 1 Bla. Comm. 116. An earldom. 1 Ld.Raym. 13. The county court, a court of great antiquity and of great dignity in early times. 1 Spence, Eq.Jur. 42,

## COMITES

66. Also, the retinue or train of a prince or high governmental official. Spelman. The retinue which accompanied a Roman proconsul to his province. Du Cange. The personal following of professional warriors. Taylor, Jurispr. 216.

**COMITES.** Counts or earls. Attendants or followers. Persons composing the retinue of a high functionary.

Persons who are attached to the suite of a public minister. As to their privileges, see *Respublica v. De Longchamps*, 1 Dall. (Pa.) 117, 1 L.Ed. 59; *U. S. v. Benner*, Baldw. 240, Fed.Cas.No.14,568.

**COMITES PALEYS.** Counts or earls palatine; those who had the government of a county palatine.

**COMITIA.** In Roman law. An assembly, either (1) of the Roman curiæ, in which case it was called the "*comitia curiata vel calata*"; or (2) of the Roman centuries, in which case it was called the "*comitia centuriata*" (called also *comitia majora*); or (3) of the Roman tribes, in which case it was called the "*comitia tributa*." Only patricians were members of the first *comitia*, and only plebians of the last; but the *comitia centuriata* comprised the entire populace, patricians and plebians both, and was the great legislative assembly passing the *leges*, properly so called, as the senate passed the *senatus consulta*, and the *comitia tributa* passed the *plebiscita*. Under the *Lex Hortensia*, 287 B.C., the *plebiscitum* acquired the force of a *lex*. Brown.

**COMITISSA.** In old English law. A countess; an earl's wife.

**COMITIVA.** In old English law. The dignity and office of a *comes* (count or earl); the same with what was afterwards called "*comitatus*."

Also a companion or fellow-traveler; a troop or company of robbers. Jacob.

**COMITY.** Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. *Dow v. Lillie*, 26 N.D. 512, 144 N.W. 1082, 1088, L.R.A. 1915D, 754; *Cox v. Terminal R. Ass'n of St. Louis*, 331 Mo. 910, 55 S.W.2d 685.

### Comity of Nations

(Lat. *comitas gentium*)

The most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. Story, *Conf.Laws*, § 38. That body of rules which states observe towards one another from courtesy or mutual convenience, although they do not form part of international law. *Holtz. Enc. s. v. Hilton v. Guyot*, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95; *People v. Rushworth*, 294 Ill. 455, 128 N.E. 555, 558; *Second Russian Ins. Co. v. Miller*, C.C.A.N.Y., 297 F. 404, 409.

It is derived altogether from the voluntary consent of the latter; and it is inadmissible when it is contrary to its known policy, or prejudicial to its interests. In the silence of any positive rule affirming or denying or restraining the

operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy, or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided.

The recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws. *State ex rel. National Surety Corporation v. Price*, 129 Neb. 433, 261 N.W. 894.

"The use of the word 'comity' as expressing the basis of jurisdiction has been criticized. It is, however, a mere question of definition. The principles lying behind the word are recognized. \* \* \* The truth remains that jurisdiction depends upon the law of the forum, and this law in turn depends upon the public policy disclosed by the acts and declarations of the political departments of the government." *Russian Socialist Federated Soviet Republic v. Cibrario*, 235 N.Y. 255, 139 N.E. 259, 260.

### Judicial Comity

The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. *Franzen v. Zimmer*, 35 N.Y.S. 612, 90 Hun 103; *Stowę v. Bank*, C.C.Me., 92 F. 96; *Strawn Mercantile Co. v. First Nat. Bank, Tex.* Civ.App., 279 S.W. 473, 474; *Bobala v. Bobala*, 68 Ohio App. 63, 33 N.E.2d 845, 849.

There is no statute or common-law rule by which one court is bound to abide by the decisions of another court of equal rank. It does so simply for what may be called comity among judges. There is no common law or statutory rule to oblige a court to bow to its own decisions; it does so on the ground of judicial comity. (1884) 9 P.D. 98, per Brett, M. R.

Of such a use of the word, however, Dicey says: "The term 'comity' \* \* \* is open to the charge of implying that the judge, when he applies foreign law to a particular case, does so as a matter of caprice or favor."

Comity is not a rule of law, but one of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. But its obligation is not imperative. Comity persuades; but it does not command. It declares not how a case shall be decided, but how it may with propriety be decided. *Mast, Foos & Co. v. Mfg. Co.*, 177 U.S. 485, 488, 20 S.Ct. 708, 44 L.Ed. 856; *National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States*, C.C.A.N.Y., 221 F. 629, 632; *Lauer v. Freudenthal*, 96 Wash. 394, 165 P. 98, 99.

### Comity of States

Simply a phrase designating the practice by which the courts of one state follow the decision of another on a like question, though not bound by law of precedents to do so. *Larrick v. Walters*, 39 Ohio App. 363, 177 N.E. 642, 645.

**COMMA.** A point used to mark the smallest structural divisions of a sentence, or a rhetorical punctuation mark indicating the slightest possible separation in ideas or construction. *Travelers' Ins. Co. v. Pomerantz*, 124 Misc. 250, 207 N.Y.S. 81, 86.

**COMMAND.** An order, imperative direction, or behest. *State v. Mann*, 2 N.C. 4; *Barney v. Hayes*.

11 Mont. 571, 29 P. 282, 28 Am.St.Rep. 495. As applied to a fortress, "command" means actual control of the garrison for military purposes. As applied to a ship, it means actual control of the crew for nautical purposes. *Hamilton v. U. S.*, C. C.A.Va., 268 F. 15, 19.

The term "instance," as used with reference to doing an act at one's instance, does not imply the same degree of obligation to obey as does "command." *Feore v. Trammel*, 104 So. 808, 813, 213 Ala. 293.

**COMMANDEMENT.** In French law. A writ served by the *huissier* pursuant to a judgment or to an executory notarial deed. Its object is to give notice to the debtor that if he does not pay the sum to which he has been condemned by the judgment, or which he engaged to pay by the notarial deed, his property will be seized and sold. *Arg.Fr.Merc.Law*, 550.

**COMMANDER IN CHIEF.** By article 2, § 2, of the constitution it is declared that the president shall be commander in chief of the army and navy of the United States. The term implies supreme control of military operations during the progress of a war, not only on the side of strategy and tactics, but also in reference to the political and international aspects of the war. See *Fleming v. Page*, 9 How. 603, 13 L.Ed. 276; *Prize Cases*, 2 Black, 635, 17 L.Ed. 459; *Swaim v. U. S.*, 28 Ct. Cl. 173.

**COMMANDERY.** In old English law. A manor or chief messuage with lands and tenements thereunto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the "commander," who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct. *Wharton*.

**COMMANDITAIRES.** Special partners; partners *en commandité*. See *Commandité*.

**COMMANDITÉ.** In French law. A partnership in which some furnish money, and others furnish their skill and labor in place of capital.

A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called "*commanditaires*," or "*commanditaires*," or "partners *en commandité*;" the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. *Story, Partn.* § 78; 3 Kent, *Comm.* 34. The term includes a partnership containing dormant rather than special partners. *Story, Partn.* § 109.

**COMMANDMENT.**

An authoritative order of a judge or magisterial officer.

In criminal law. The act or offense of one who commands another to transgress the law, or do anything contrary to law, as theft, murder, or the like. Particularly applied to the act of an accessory before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 Inst. 182.

**COMMARCHIO.** A boundary; the confines of land.

**COMMENCE.** To perform the first act of. *Robinson v. Gordon Oil Co.*, 258 Mich. 643, 242 N.W. 795, 796. To institute. *State v. Murphy*, 120 Kan. 350, 243 P. 288, 289. To demand something by the institution of process in a court of justice. *Ledonne v. Commerce Ins. Co. of Glen Falls, N.Y.*, 307 Pa. 1, 160 A. 612.

To commence an action or suit is to demand something by the institution of process in a court of justice. *Cohens v. Virginia*, 6 Wheat. 408, 5 L.Ed. 257.

To "bring" a suit is an equivalent term; an action is "commenced" when it is "brought," and vice versa. *Goldenberg v. Murphy*, 108 U.S. 162, 2 S.Ct. 388, 27 L.Ed. 686; *Hannaman v. Gordon*, *Tex.Com.App.*, 261 S.W. 1006, 1007.

An action is "commenced" within the meaning of the statute of limitations as soon as the summons is signed and sealed in good faith, for the purpose of immediate service, and that purpose is not afterwards abandoned. *Wilson v. Clear*, 85 N.J.L. 474, 89 A. 1031. Compare *Glenn v. Payne*, 153 Tenn. 240, 280 S.W. 1019, 1021. *Owen v. City of Eastland*, 124 Tex. 419, 78 S.W.2d 178, 179.

A suit in a court of record is "commenced", so as to save suit from bar of statute of limitations, when the petition is filed, even though process is not issued until the period of limitation has run, since plaintiff has done all he can toward commencement of the suit. *Mo.St. Ann.* § 724, p. 940. *City of St. Louis v. Miller*, 235 Mo.App. 987, 145 S.W.2d 504, 505.

A suit in equity is not commenced until the issuance of a subpoena followed by a bona fide effort to serve it. *U. S. v. Scheurman*, D.C.Idaho, 218 F. 915, 919.

To commence drilling operations within the meaning of an oil and gas lease has reference to the first movement of the drill in penetrating the ground. *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 235 P. 761, 763. But see *Terry v. Texas Co.*, *Tex.Civ.App.*, 228 S.W. 1019, holding that a lessee, by placing timbers for the erection of a derrick, together with machinery, including a boiler, on the ground where an oil well was to be drilled, complied with a provision requiring him to "commence to drill." But compare *Lauderdale Power Co. v. Perry*, 202 Ala. 394, 80 So. 476, 480.

Criminal prosecution is "commenced" within statute of limitations when complaint is filed with magistrate in good faith and warrant issued. *Hicks v. State*, 54 Okl.Cr. 431, 23 P.2d 219.

Commencement of building or improvement, within the meaning of Lien Law, is the visible commencement of actual operations on the ground for the erection of the building, which every one can readily recognize as commencement of a building, and which is done with intention to continue the work until building is completed. *Security Stove & Mfg. Co. v. Sellards*, 133 Kan. 747, 3 P.2d 481, 482, 76 A.L.R. 1397.



## COMMENCEMENT

**COMMENCEMENT OF A DECLARATION.** That part of the declaration which follows the venue and precedes the circumstantial statement of the cause of action.

It formerly contained a statement of the names of the parties, and the character in which they sue or are sued, if any other than their natural capacity; of the mode in which the defendant had been brought into court, and a brief statement of the form of action. In modern practice, however, in most cases, it contains little else than the names and character of the parties.

**COMMENDA.** In French law. The delivery of a benefice to one who cannot hold the legal title, to keep and manage it for a time limited and render an account of the proceeds. Guyot, Rép.Univ.

In Mercantile Law. An association in which the management of the property was intrusted to individuals. Troub.Lim.Partn. c. 3, § 27.

**COMMENDA EST FACULTAS RECIPIENDI ET RETINENDI BENEFICIUM CONTRA JUS POSITIVUM A SUPREMÁ POTESTATE.** Moore, 905. A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

**COMMENDAM.** In ecclesiastical law. The appointment of a suitable clerk to hold a void or vacant benefice or church living until a regular pastor be appointed. Hob. 144; Latch, 236.

In Commercial Law. A species of limited partnership. The limited partnership (or *Société en commandité*) of the French law has been introduced into the Code of Louisiana under the title of "Partnership in *Commendam*." Civil Code La. art. 2810 (Civ.Code, art. 2839). See Mitchell, in 3 Sel.Essays, Anglo-Amer.L.H. 183; *Commandité*; *Société*.

**COMMENDATIO.** In the civil law. Commendation, praise, or recommendation, as in the maxim "simplex commendatio non obligat," meaning that mere recommendation or praise of an article by the seller of it does not amount to a warranty of its qualities. 2 Kent, Comm. 485.

**COMMENDATION.** In feudal law. The act by which an owner of alodial land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant.

**COMMENDATORS.** Secular persons upon whom ecclesiastical benefices were bestowed, as in Scotland; called so because the benefices were commended and intrusted to their supervision. They are merely trustees.

**COMMENDATORY.** He who holds a church living or preferment in *commendam*.

**COMMENDATORY LETTERS.** In ecclesiastical law. Such as are written by one bishop to another on behalf of any of the clergy, or others of his diocese traveling thither, that they may be received among the faithful, or that the clerk may be promoted, or necessities administered to others, etc. Wharton.

**COMMENDATUS.** In feudal law. One who intrusts himself to the protection of another. Spel-

man. A person who, by voluntary homage, put himself under the protection of a superior lord. Cowell.

**COMMENT.** The expression of the judgment passed upon certain alleged facts by a person who has applied his mind to them, and who while so commenting assumes that such allegations of fact are true. The assertion of a fact is not a "comment." Horn v. State, 106 Tex.Cr.R. 190, 292 S. W. 227, 228.

**COMMENT UPON THE EVIDENCE.** Means that trial judge is prohibited from conveying to jury trial judge's personal opinion as to the truth or falsity of any evidence, but prohibition does not prohibit judges from giving counsel reasons for rulings on questions presented during progress of trial, or prohibit them in all cases from stating, when necessary, the facts upon which they base their conclusions. State v. Brown, 19 Wash. 2d 195, 142 P.2d 257, 259, 260.

**COMMERCE.** The exchange of goods, productions, or property of any kind. Jeu Jo Wan v. Nagle, C.C.A.Cal., 9 F.2d 309, 310.

Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea. Brennan v. Titusville, 14 S.Ct. 829, 153 U.S. 289, 38 L. Ed. 719; Railroad Co. v. Fuller, 17 Wall. 568, 21 L.Ed. 710; Hoke v. United States, 33 S.Ct. 281, 283, 227 U.S. 308, 57 L.Ed. 523, 43 L.R.A.,N.S., 906, Ann.Cas.1913E, 905. Also interchange of ideas, sentiments, etc., as between man and man. U. S. v. Eason Oil Co., D.C.Okl., 8 F.Supp. 365, 368.

Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange, become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation. Lorenzetti v. American Trust Co., D.C.Cal., 45 F.Supp. 128, 132.

"Commerce" is not traffic alone, but is intercourse between nations and parts of nations in all its branches. Blumenstock Bros. Advertising Agency v. Curtis Pub. Co., 252 U.S. 436, 40 S.Ct. 385, 387, 64 L.Ed. 649.

The words "commerce" and "trade" are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community. Hooker v. Vandewater, 4 Denio, N.Y., 353, 47 Am.Dec. 258; Jacob; Wharton.

—**Commerce among the states.** Transportation from one state to another, and also all commercial intercourse between the different states, and all component parts of such intercourse. Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106, 108, 66 L.Ed. 239.

—**Commerce with foreign nations.** Commerce between citizens of the United States and citizens or



subjects of foreign governments; commerce which, either immediately or at some stage of its progress, is extraterritorial. *U. S. v. Holliday*, 3 Wall. 409, 18 L.Ed. 182; *Veazie v. Moor*, 14 How. 573, 14 L.Ed. 545; *Lord v. Steamship Co.*, 102 U.S. 544, 26 L.Ed. 224. The same as "foreign commerce," which see *infra*.

Power of Congress to regulate "commerce with foreign nations" comprehends every species of commercial intercourse. U.S.C.A.Const. art. 1, § 8, cl. 3. Board of Trustees of University of Illinois v. U. S., Cust. & Pat.App., 53 S.Ct. 509, 289 U.S. 48, 77 L.Ed. 1025.

—**Commerce with Indian tribes.** Commerce with individuals belonging to such tribes, in the nature of buying, selling, and exchanging commodities, without reference to the locality where carried on, though it be within the limits of a state. *U. S. v. Holliday*, 3 Wall. 407, 18 L.Ed. 182; *U. S. v. Cisna*, 25 Fed.Cas. 424.

—**Domestic commerce.** Commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce. *Louisville & N. R. Co. v. Tennessee R. R. Com'n*, C.C. Tenn., 19 Fed. 701.

—**Foreign commerce.** Commerce or trade between the United States and foreign countries. *Com. v. Housatonic R. Co.*, 143 Mass. 264, 9 N.E. 547; *Foster v. New Orleans*, 94 U.S. 246, 24 L.Ed. 122. The term is sometimes applied to commerce between ports of two sister states not lying on the same coast, *e. g.*, New York and San Francisco.

—**Internal commerce.** Such as is carried on between individuals within the same state, or between different parts of the same state. *Lehigh Val. R. Co. v. Pennsylvania*, 145 U.S. 192, 12 S.Ct. 806, 36 L.Ed. 672; *Steamboat Co. v. Livingston*, 3 Cow. (N.Y.) 713. Now more commonly called "intrastate" commerce.

—**International commerce.** Commerce between states or nations entirely foreign to each other. *Louisville & N. R. Co. v. Tennessee R. R. Com'n*, C.C.Tenn., 19 F. 701.

—**Interstate commerce.** Such as is carried on between different states of the Union or between points lying in different states. See Interstate Commerce.

—**Intrastate commerce.** Such as is begun, carried on, and completed wholly within the limits of a single state. Contrasted with "interstate commerce" (*q. v.*). *State v. Reed*, 53 Mont. 292, 163 P. 477, 479, Ann.Cas.1917E, 783. And see *Southern Pac. Co. v. State*, 19 Ariz. 20, 165 P. 303, 306.

**COMMERCIA BELLI.** War contracts. Contracts between nations at war, or their subjects.

Agreements entered into by belligerents, either in time of peace to take effect in the event of war, or during the war itself, by which arrangement is made for non-hostile intercourse. They may take the form of armistices, truces, capitula-

tions, cartels, passports, safe-conducts, safeguards. 1 Kent 159; 2 Opp. 274.

Contracts between citizens of one belligerent and those of another, or between citizens of one belligerent and the other belligerent. They may take the form of ransom bills (*q. v.*), bills of exchange drawn by prisoners of war, or receipts for requisitions. 1 Kent 104.

**COMMERCIAL.** Relating to or connected with trade and traffic or commerce in general. "Zante Currents", C.C.Cal., 73 F. 189. Occupied with commerce. *Bowles v. Co-Operative G. L. F. Farm Products*, D.C.N.Y., 53 F.Supp. 413, 415.

**COMMERCIAL AGENCY.** The same as a "mercantile" agency. In re United States Mercantile Reporting, etc., Co., 4 N.Y.S. 916, 52 Hun, 611. See Mercantile.

**COMMERCIAL AGENT.** An officer in the consular service of the United States, of rank inferior to a consul. Also used as equivalent to "commercial broker," see *infra*.

**COMMERCIAL BROKER.** One who negotiates the sale of merchandise without having the possession or control of it, being distinguished in the latter particular from a commission merchant. *Adkins v. Richmond*, 98 Va. 91, 34 S.E. 967, 47 L.R.A. 583, 81 Am.St.Rep. 705.

**COMMERCIAL CORPORATION.** One engaged in commerce in the broadest sense of that term; hence including a railroad company. *Sweatt v. Railroad Co.*, 23 Fed.Cas. 530.

**COMMERCIAL COURT.** A name applied in English practice to the trial of commercial causes in London and Liverpool before judges of the High Court. It is said to be "a mere piece of convenience in the arrangement of business." [1895] 2 Ch. 491.

**COMMERCIAL DOMICILE.** See Domicile.

**COMMERCIAL ESTABLISHMENT.** A place where commodities are exchanged, bought or sold. *State ex rel. Kansas City Power & Light Co. v. Smith*, 342 Mo. 75, 111 S.W.2d 513, 515.

**COMMERCIAL FRUSTRATION.** Excuse of party from performance if contract depends on existence of given person or thing and such person or thing perishes, and if contract is rendered impossible by act of God, the law, or other party. *Wood v. Bartolino*, 48 N.M. 175, 146 P.2d 883, 885, 890.

In theory it amounts to no more than a condition or term of a contract which the law implies to take the place of a covenant that it is assumed would have been inserted by the parties had the contingency which arose occurred to them at the time they made the contract. *Lloyd v. Murphy*, Cal.App., 142 P.2d 939, 942, 943. And doctrine is predicated upon premise of giving relief in a situation where parties could not reasonably protect themselves by terms of a contract against happening of subsequent events. *Berline v. Waldschmidt*, 159 Kan. 585, 156 P.2d 865, 867. Hence doctrine has no application where events were reasonably foreseeable and controllable by the parties.

## COMMERCIAL

**COMMERCIAL INSOLVENCY.** Inability of a businessman to pay his debts as they become due in the regular and ordinary course of business. *Willing v. Eveloff*, C.C.A.Pa., 94 F.2d 344, 346.

**COMMERCIAL INSURANCE.** See Insurance.

**COMMERCIAL LAW.** A phrase used to designate the whole body of substantive jurisprudence applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. It is not a very scientific or accurate term. As foreign commerce is carried on by means of shipping, the term has come to be used occasionally as synonymous with "maritime law;" but, in strictness, the phrase "commercial law" is wider, and includes many transactions or legal questions which have nothing to do with shipping or its incidents. *Watson v. Tarpley*, 18 How. 521, 15 L.Ed. 509; *Williams v. Gold Hill Min. Co.*, C.C.Cal., 96 F. 464.

**COMMERCIAL LETTER OF CREDIT.** See Letter of Credit under the title Credit.

**COMMERCIAL MARK.** In French law. A trademark is specially or purely the mark of the manufacturer or producer of the article, while a "commercial" mark is that of the dealer or merchant who distributes the product to consumers or the trade. *La Republique Francaise v. Schultz*, C.C.N.Y., 57 F. 41.

**COMMERCIAL PAPER.** Bills of exchange, promissory notes, bank-checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments as are, by the law-merchant, recognized as falling under the designation of "commercial paper." In *re Hercules Mut. L. Assur. Soc.*, 6 Ben. 35, 12 Fed.Cas. 12. Negotiable paper given in due course of business, whether the element of negotiability be given it by the law-merchant or by statute. In *re Sykes*, D.C.Ill., 5 Biss. 113, Fed. Cas.No.13,708; *Martin v. McAvoy*, 130 Wash. 641, 228 P. 694; *Postal Telegraph Cable Co. v. Citizens' Nat. Bank*, C.C.A.N.J., 228 F. 601, 604.

**COMMERCIAL PARTNERSHIP.** A "commercial and trading partnership" is one that buys and sells;—distinguished from one of employment and occupation. *Reid v. Linder*, 77 Mont. 406, 251 P. 157, 161.

**COMMERCIAL RAILROADS.** A term used to embrace those railroads intended to carry all freight and passenger traffic between one town or place and another, and usually not constructed upon streets and highways except for short distances;—distinguished from street railways. *Anhalt v. Waterloo, C. F. & N. Ry. Co.*, 166 Iowa, 479, 147 N.W. 928, 931.

**COMMERCIAL TRAVELER.** A drummer; a traveling salesman who simply exhibits samples of goods kept for sale by his principal, and takes orders from purchasers for such goods, which goods are afterwards to be delivered by the principal to the purchasers, and payment for the goods

is to be made by the purchasers to the principal on such delivery. *McKindly v. Dunham*, 55 Wis. 515, 13 N.W. 485, 42 Am.Rep. 740.

An agent who sells by sample and on credit, is not entrusted with the possession of the goods to be sold, has no implied authority to receive payment, and payment to whom will not discharge the purchaser. *Butler v. Dorman*, 68 Mo. 302, 30 Am.Rep. 795; *Seiple v. Irwin*, 30 Pa. 513; *Kornemann v. Monaghan*, 24 Mich. 36.

**COMMERCIUM.** Lat. In the civil law. Commerce; business; trade; dealings in the nature of purchase and sale; a contract.

**COMMERCIUM JURE GENTIUM COMMUNE ESSE DEBET, ET NON IN MONOPOLIUM ET PRIVATUM PAUCORUM QUÆSTUM CONVERTENDUM.** 3 Inst. 181. Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

**COMMUNALTY.** The commonalty or the people.

**COMMUNATORIUM.** In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. *Bract. fol. 398.*

**COMMINGLE.** To put together in one mass. *Pfau v. State*, 148 Ind. 539, 47 N.E. 927, 929.

**COMMUNED FRACTURE.** One in which the bones have been somewhat crushed. *Sang v. City of St. Louis*, 262 Mo. 454, 171 S.W. 347, 349.

**COMMISE.** In old French law. Forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal. *Guyot, Inst.Feod. c. 12.*

**COMMISSAIRE.** In French law. A person who receives from a meeting of shareholders a special authority, viz., that of checking and examining the accounts of a manager or of valuing the *apports en nature*, (q. v.) The name is also applied to a judge who receives from a court a special mission, e. g., to institute an inquiry, or to examine certain books, or to supervise the operations of a bankruptcy. *Arg.Fr.Merc.Law*, 551.

**COMMISSAIRES-PRISEURS.** In French law. Auctioneers, who possess the exclusive right of selling personal property at public sale in the towns in which they are established; and they possess the same right concurrently with notaries, *greffiers*, and *huissiers*, in the rest of the *arrondissement*. *Arg.Fr.Merc.Law*, 551.

**COMMISSARIA LEX.** A principle of the Roman law relative to the forfeiture of contracts. See *Commissoria Lex*.

**COMMISSARIAT.** The whole body of officers who make up the commissaries' department of an army.

**COMMISSARY.**

In ecclesiastical law. One who is sent or delegated to execute some office or duty as the representative of his superior; an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. 1 *Holdsw.Hist.L.* 369.

In military law. An officer whose principal duties are to supply an army with provisions and stores. As to the rank and duties of such officers in the United States army, see 10 U.S.C.A. § 71 et seq.

**COMMISSARY COURT.** A Scotch ecclesiastical court of general jurisdiction, held before four commissioners, members of the Faculty of Advocates, appointed by the crown.

**COMMISSION.** A warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.) *Bledsoe v. Colgan*, 138 Cal. 34, 70 P. 924.

Also, in private affairs, it signifies the authority or instructions under which one person transacts business or negotiates for another.

In a derivative sense, a body of persons to whom a commission is directed. A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation; as a "commission of assise."

**Civil Law**

A species of bailment, being an undertaking, without reward, to do something in respect to an article bailed; equivalent to "mandate."

**Commercial Law**

The recompense or reward of an agent, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. In this sense, however, the word occurs perhaps more frequently in the plural. *Gray v. Stern*, 85 Wash. 645, 149 P. 26, 28. *Jackson v. Stanfield*, 137 Ind. 592, 37 N.E. 14, 23 L.R.A. 588. *Sinclair Coal Co. v. Pittsburg and Ashland Coal and Dock Co.*, 178 Minn. 114, 226 N.W. 206, 208. But the term may mean simply a compensation; *Smith v. Starke*, 196 Mich. 311, 162 N.W. 998, 999; and does not necessarily imply a mere per centum valuation; *Jenkins v. Locke-Paddon Co.*, 30 Cal.App. 52, 157 P. 537.

Also, a compensation to an administrator for the faithful discharge of his duties. *In re Julia's Estate*, 3 N.J.Misc. 976, 130 A. 733, 735.

**Criminal Law**

Doing or perpetration; the performance of an act. *Groves v. State*, 116 Ga. 516, 42 S.E. 755, 59 L.R.A. 598.

**Practice**

An authority or writ issuing from a court, in relation to a cause before it, directing and authorizing a person or persons named to do some act or exercise some special function; usually to take the depositions of witnesses.

**COMMISSION DAY.** In English practice. The opening day of the assises.

**COMMISSION DE LUNATICO INQUIRENDO.** The same as a commission of lunacy, (see *infra.*) *In re Misselwitz*, 177 Pa. 359, 35 A. 722.

**COMMISSION DEL CREDERE.** In commercial law. Where an agent of a seller undertakes to guaranty to his principal the payment of the debt due by the buyer. *Story*, Ag. 28.

The phrase "*del credere*" is borrowed from the Italian language, in which its signification is equivalent to our word "guaranty" or "warranty."

**COMMISSION GOVERNMENT.** A method of municipal government in which the legislative power is in the hands of a few persons. *State v. Ure*, 91 Neb. 31, 135 N.W. 224. *Gardner v. Board of Park Directors*, 35 Cal.App. 597, 170 P. 672, 673 (mayor held not a "commissioner").

**COMMISSION MERCHANT.** A term which is synonymous with "factor." It means one who receives goods, chattels, or merchandise for sale, exchange, or other disposition, and who is to receive a compensation for his services, to be paid by the owner, or derived from the sale, etc., of the goods. *State v. Thompson*, 120 Mo. 12, 25 S.W. 346. One whose business is to receive and sell goods for a commission, being intrusted with the possession of the goods to be sold, and usually selling in his own name. *Hughes v. Young*, 17 Tenn.App. 24, 65 S.W.2d 858, 864.

Factors are frequently called "commission merchants", and it is said that there is no difference in the meaning of these terms, the latter being perhaps more commonly used in America. *Thompson v. Woodruff*, 7 Cold. 410; *Duguid v. Edwards*, 50 Barb., N.Y., 288; *Lyon v. Alvord*, 18 Conn. 80.

A commission merchant or factor differs from a broker in that he may buy and sell in his own name without disclosing his principal and has the goods in his possession; while the broker can only buy or sell in the name of his principal, and has no possession of the goods sold. *Slack v. Tucker*, 23 Wall. 321, 330, 23 L.Ed. 143; *Perkins v. State*, 50 Ala. 154, 156. A commission merchant has a lien upon the goods for his charges, advances, and commissions, while the broker has no control of the property and is responsible only for bad faith. A commission merchant or factor has a special property in the goods. *Sutton v. Kiel Cheese & Butter Co.*, 155 Ky. 465, 159 S.W. 950, 951.

A "factor" or "commission merchant" is one who has the actual or technical possession of goods or wares of another for sale, while a "merchandise broker" is one who negotiates the sale of merchandise without having it in his possession or control, being simply an agent with very limited powers. *Hughes v. Young*, 17 Tenn.App. 24, 65 S.W.2d 858, 864.

See, also, Factor.

**COMMISSION OF ANTICIPATION.** In English law. An authority under the great seal to collect a tax or subsidy before the day.

**COMMISSION OF APPRAISEMENT AND SALE.** Where property has been arrested in an admiralty action *in rem* and ordered by the court to be sold, the order is carried out by a commission of appraisal and sale; in some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisal only is required. *Sweet*.

**COMMISSION OF ARRAY.** In English law. A commission issued to send into every county officers to muster or set in military order the inhabi-

## COMMISSION

tants. The introduction of commissions of lieutenancy, which contained, in substance, the same powers as these commissions, superseded them. 2 Steph.Comm. (7th Ed.) 582.

**COMMISSION OF ASSIZE.** In English practice. A commission which formerly issued from the king, appointing certain persons as commissioners or judges of assize to hold the assizes in association with discreet knights during those years in which the justices in eyre did not come. A commission issued to judges of the high court or court of appeal, authorizing them to sit at the assizes for the trial of civil actions.

**COMMISSION OF BANKRUPT.** A commission or authority formerly granted by the lord chancellor to such persons as he should think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters. But now, under St. 1 & 2 Wm. IV. c. 56, § 12, a fiat issues instead of such commission.

**COMMISSION OF CHARITABLE USES.** This commission issues out of chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same, etc.

**COMMISSION OF DELEGATES.** When any sentence was given in any ecclesiastical cause by the archbishop, this commission, under the great seal, was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king, in the court of chancery. But latterly the judicial committee of the privy council has supplied the place of this commission. Brown.

**COMMISSION OF LUNACY.** A commission issuing from a court of competent jurisdiction, authorizing an inquiry to be made into the mental condition of a person who is alleged to be a lunatic.

A writ issued out of chancery, or such court as may have jurisdiction of the case, directed to a proper officer, to inquire whether a person named therein is a lunatic or not. In re Moore, 68 Cal. 281, 9 P. 164.

**COMMISSION OF PARTITION.** In the former English equity practice, this was a commission or authority issued to certain persons, to effect a division of lands held by tenants in common desiring a partition; when the commissioners reported, the parties were ordered to execute mutual conveyances to confirm the division. Commissioners appointed to make partition are in the nature of arbitrators. Clough v. Cromwell, 250 Mass. 324, 145 N.E. 473, 474.

**COMMISSION OF REBELLION.** In English law. An attaching process, formerly issuable out of chancery, to enforce obedience to a process or decree; abolished in August, 1841.

**COMMISSION OF REVIEW.** In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sen-

tence of the court of delegates. 3 Bl.Comm. 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. 3 Steph. Comm. 432.

**COMMISSION OF THE PEACE.** In English law. A commission from the crown, appointing certain persons therein named, jointly and severally, to keep the *peace*, etc. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 Bl.Comm. 351; 3 Steph. Comm. 39, 40.

**COMMISSION OF TREATY WITH FOREIGN PRINCES.** Leagues and arrangements made between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance. Wharton.

**COMMISSION OF UNLIVERY.** In an action in the English admiralty division, where it is necessary to have the cargo in a ship unladen in order to have it appraised, a commission of unlivery is issued and executed by the marshal. Williams & B. Adm. Jur. 233.

**COMMISSION TO EXAMINE WITNESSES.** In practice. A commission issued out of the court in which an action is pending, to direct the taking of the depositions of witnesses who are beyond the territorial jurisdiction of the court.

**COMMISSION TO TAKE ANSWER IN CHANCERY.** In English law. A commission issued when defendant lives abroad to swear him to such answer. 15 & 16 Vict. c. 86, § 21. Obsolete. See Jud. Acts, 1873, 1875.

**COMMISSION TO TAKE DEPOSITIONS.** A written authority issued by a court of justice, giving power to take the testimony of witnesses who cannot be personally produced in court. Tracy v. Snydam, 30 Barb. (N. Y.) 110.

**COMMISSIONED OFFICERS.** In the United States army and navy and marine corps, those of or above the rank of second lieutenant. Davis, Mil. L. 26. Those who hold their rank and office under commissions issued by the president, as distinguished from non-commissioned officers (in the army, including sergeants, corporals, etc.) and warrant officers (in the navy, including boatswains, gunners, etc.) and from privates or enlisted men. Stephens v. Civil Service Commission of New Jersey, 101 N.J.Law 192, 127 A. 808, 811. See Babbitt v. U. S., 16 Ct.Cl. 202.

**COMMISSIONER.** A person to whom a commission is directed by the government or a court. State v. Banking Co., 14 N.J.L. 437; In re Canter, 81 N.Y.S. 338, 40 Misc. 126.

In the governmental system of the United States, this term denotes an officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the govern-

ment. Such are the commissioners of education, of patents, of pensions, of fisheries, of the general land-office, of Indian affairs, etc.

In the state governmental systems, also, and in England, the term is quite extensively used as a designation of various officers having a similar authority and similar duties.

In the commission form of municipal government, the term is applied to any of the several officers constituting the commission. *Gardner v. Board of Park Directors*, 35 Cal.App. 597, 170 P. 672, 673.

—**Commissioners of bail.** Officers appointed to take recognizances of bail in civil cases.

—**Commissioners of bankrupts.** The name given, under the former English practice in bankruptcy, to the persons appointed under the great seal to execute a commission of bankruptcy (*q. v.*).

—**Commissioners of circuit courts.** Officers appointed by and attached to the former circuit courts of the United States, performing functions partly ministerial and partly judicial. In *re Com'rs of Circuit Court*, C.C.N.C., 65 F. 317. Their office was abolished by the Act of May 28, 1896 (34 Stat. 184) and they have been succeeded by "United States commissioners." See that title.

—**Commissioners of deeds.** Officers empowered by the government of one state to reside in another state, and there take acknowledgments of deeds and other papers which are to be used as evidence or put on record in the former state.

—**Commissioners of highways.** Officers appointed in each county or township, in many of the states, with power to take charge of the altering, opening, repair, and vacating of highways within such county or township.

—**Commissioner of patents.** The title given by law to the head of the patent office. See 35 USCA § 2.

—**Commissioners of sewers.** In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the seacoast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith. St. 3 & 4 Wm. IV. c. 22, § 10; 3 Steph. Comm. 442.

—**Commissioner of woods and forests.** An officer created by act of parliament of 1817, to whom was transferred the jurisdiction of the chief justices of the forest. *Inderwick*, *The King's Peace*.

—**County commissioners.** See County.

**COMMISSIONS.** The compensation or reward paid to a factor, broker, agent, bailee, executor, trustee, receiver, etc., usually calculated as a percentage on the amount of his transactions or the amount received or expended. See Commission.

**COMMISSIVE.** Caused by or consisting in acts of commission, as distinguished from neglect, suffering, or toleration; as in the phrase "commissive waste," which is contrasted with "permissive waste." See Waste.

**COMMISSORIA LEX.** In Roman law. A law according to which a seller might stipulate that he should be freed from his obligation, and might rescind the sale, if the purchase price were not paid at the appointed time. Also a law by which a debtor and his pledgee might agree that, if the debtor did not pay at the day appointed, the pledge should become the absolute property of the creditor. This, however, was abolished by a law of Constantine. Cod. 8, 35, 3. See Dig. 18, 3; Mackeld. Rom.Law, §§ 447, 461; 2 Kent, Comm. 583.

**COMMIT.** To perpetrate, as a crime; to perform, as an act. *Groves v. State*, 116 Ga. 516, 42 S.E. 755, 59 L.R.A. 598.

To send a person to prison by virtue of a lawful authority, for any crime or contempt, or to an asylum, workhouse, reformatory, or the like, by authority of a court or magistrate. *People v. Beach*, 122 Cal. 37, 54 P. 369.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 Tidd, Pr. 285, 287.

**COMMITMENT.** In practice. The warrant or *mittimus* by which a court or magistrate directs an officer to take a person to prison. Authority for holding in prison one convicted of crime. *Ex parte Haynes*, 98 Tex.Cr.R. 609, 267 S.W. 490, 493. A process directed to a ministerial officer by which a person is to be confined in prison, usually issued by a court or magistrate. *People ex rel. Wojek v. Henderson*, 235 N.Y.S. 173, 178, 134 Misc. 228.

A warrant which does not direct an officer to commit a party to prison but only to receive him into custody and safely keep him for further examination, is not a commitment. *Gilbert v. U. S.*, 23 Ct.Cl. 218.

The act of sending a person to prison by means of such a warrant or order. *Allen v. Hagan*, 170 N.Y. 46, 62 N.E. 1086.

A proceeding for the restraining and confining of insane persons for their own and the public's protection. *Vance v. Ellerbe*, 150 La. 388, 90 So. 735, 740.

**COMMITTED IN PRESENCE OF OFFICER.** Under statutes authorizing arrest without warrant, when facts and circumstances occurring within officer's observation, in connection with what, under circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case. *Noce v. Ritchie*, 109 W.Va. 391, 155 S.E. 127, 128.

**COMMITTEE.** A person, or an assembly or board of persons, to whom the consideration, determination, or management of any matter is committed or referred, as by a court. *Lloyd v. Hart*, 2 Pa. 473, 45 Am.Dec. 612; *Farrar v. Eastman*, 5 Me.

## COMMITTEE

345; *Blaisdell v. Inhabitants of Town of York*, 110 Me. 500, 87 A. 361, 370.

An individual or body to whom others have delegated or committed a particular duty, or who have taken on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for. 15 Mees. & W. 529.

The term is especially applied to the person or persons who are invested, by order of the proper court, with the guardianship of the person and estate of one who has been adjudged a lunatic.

In parliamentary law. A portion of a legislative body, comprising one or more members, who are charged with the duty of examining some matter specially referred to them by the house, or of deliberating upon it, and reporting to the house the result of their investigations or recommending a course of action.

A committee may be appointed for one special occasion, or it may be appointed to deal with all matters which may be referred to it during a whole session or during the life of the body. In the latter case, it is called a "standing committee." It is usually composed of a comparatively small number of members, but may include the whole house.

Joint committee. A joint committee of a legislative body comprising two chambers is a committee consisting of representatives of each of the two houses, meeting and acting together as one committee.

Secret committee. A secret committee of the house of commons is a committee specially appointed to investigate a certain matter, and to which secrecy being deemed necessary in furtherance of its objects, its proceedings are conducted with closed doors, to the exclusion of all persons not members of the committee. All other committees are open to members of the house, although they may not be serving upon them. Brown.

**COMMITTING MAGISTRATE.** An inferior judicial officer who is invested with authority to conduct the preliminary hearing of persons charged with crime, and either to discharge them for lack of sufficient prima facie evidence or to commit them to jail to await trial or (in some jurisdictions) to accept bail and release them thereon. The term is said to be synonymous with "examining court." *State v. Rogers*, 31 N.M. 485, 247 P. 828, 833.

**COMMITTITUR.** In practice. An order or minute, setting forth that the person named in it is committed to the custody of the sheriff.

**COMMITTITUR PIECE.** In English law. An instrument in writing on paper or parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him. 2 Chit.Archb.Pr. (12th Ed.) 1208.

**COMMIXTIO, or COMMIXTION.** In the civil law. The mixing together or confusion of things, dry or solid, belonging to different owners, as distinguished from *confusio*, which has relation to liquids. *Lec. Elém. du Dr. Rom.* §§ 370, 371; Story, Bailm. § 40; 1 Bouvier, Inst. n. 506.

**COMMODATE.** Where property is loaned gratuitously by owner for sole benefit, accommodation, and use of borrower, and specific thing loaned is to be returned. *The Pegeen*, D.C.Cal., 14 F.Supp. 748, 751. See, also, *Commodatum*.

**COMMODATI ACTIO.** Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned, (*commodatum*,) and not returned to the lender. Inst. 3, 15, 2; Id. 4, 1, 16.

**COMMODATO.** In Spanish law. A contract by which one person lends gratuitously to another some object not consumable, to be restored to him in kind at a given period; the same contract as *commodatum* (q. v.).

**COMMODATUM.** A contract by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him to be used by him without reward; loan for use. *Slack v. Bryan*, 299 Ky. 132, 184 S.W.2d 873, 876.

A gratuitous loan of goods to be temporarily used by the bailee, and returned in specie. *Hanes v. Shapiro & Smith*, 168 N.C. 24, 84 S.E. 33, 35. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called "*commodans*," the person who receives the thing is called "*commodatarius*," and the contract is called "*commodatum*." It differs from *locatio* and *conductio*, in this: that the use of the thing is gratuitous. Dig. 13, 6; Inst. 3, 2, 14; Story, Bailm. § 221. *Coogs v. Bernard*, 2 Ld.Raym. 909; *Adams v. Mortgage Co.*, 82 Miss. 263, 34 So. 482, 17 L.R.A., N.S., 138, 100 Am.St.Rep. 633; *World's Columbian Exposition Co. v. Republic of France*, C.C.A. Ill., 96 F. 693, 38 C.C.A. 483.

**COMMODITIES.** Those things which are useful or serviceable, particularly articles of merchandise movable in trade. *American League Baseball Club of Chicago v. Chase*, 149 N.Y.S. 6, 15, 86 Misc. 441.

Goods, wares, and merchandise of any kind; movables; articles of trade or commerce. *Queen Ins. Co. v. State*, 86 Tex. 250, 24 S.W. 397, 22 L.R.A. 483. Movable articles of value; things that are bought and sold. *United States v. Sischo*, D.C. Wash., 262 F. 1001, 1005. See, also, *Commodity*.

This word is a broader term than merchandise, and, in referring to commerce may include almost any article of movable or personal property. *Pound v. Lawrence*, Tex. Civ.App., 233 S.W. 359, 361; *Shuttleworth v. State*, 35 Ala. 415; *State v. Henke*, 19 Mo. 225.

Labor has been held not to be a commodity. *Rohlf v. Kasemeier*, 140 Iowa 182, 118 N.W. 276, 23 L.R.A., N.S., 1285. But it has been held that the supplying of telephone service is the supplying of a commodity of commerce; *McKinley Telephone Co. v. Cumberland Telephone Co.*, 152 Wis. 359, 140 N.W. 38, 39; and it has also been thought that the privilege of receiving property by will or intestate succession is a commodity subject to the Massachusetts excise law; *Dana v. Dana*, 226 Mass. 297, 115 N.E. 418, 419.

**COMMODITIES CLAUSE.** A clause in the act of Congress, June 29, 1906 (49 USCA § 1 (8)), providing that it shall be unlawful for any railroad company to transport commodities (excepting timber and its manufactured products) manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as

may be necessary and intended for its use in its business. *U. S. v. R. Co.*, 31 S.Ct. 387, 220 U.S. 257, 55 L.Ed. 458.

**COMMODITY.** In the most comprehensive sense, convenience, accommodation, profit, benefit, advantage, interest, commodiousness.

In the commercial sense, any movable or tangible thing that is produced or used as the subject of barter or sale. *People v. Epstean*, 170 N.Y.S. 68, 79, 102 Misc. 476. See *Commodities*.

**COMMODITY RATE.** With reference to railroads, a rate which applies to a specific commodity alone;—distinguished from a "class rate," meaning a single rate which applies to a number of articles of the same general character. *Norfolk Southern R. Co. v. Freeman Supply Corporation*, 145 Va. 207, 133 S.E. 817, 818.

**COMMODORE.** A grade in the United States navy, superior to a captain. Omitted from the active list. Act of March 3, 1899, c. 413, 30 Stat. 1004. See 34 USCA § 1.

**COMMODOUM EX INJURIA SUA NEMO HABERE DEBET.** No person ought to have advantage from his own wrong. *Jenk.Cent.* 161; *Finch, Law*, b. 1, c. 3, n. 62.

**COMMON, n.** An incorporeal hereditament which consists in a profit which one man has in connection with one or more others in the land of another. *Trustees v. Robinson*, 12 Serg. & R. (Pa.) 31; *Thomas v. Inhabitants of Marshfield*, 10 Pick. (Mass.) 364; 3 Kent 403; *United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del.*, D.C.Del., 56 F.Supp. 120, 132, 134.

In English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 Coke, 37; 1 Crabb, *Real Prop.* p. 258, § 268.

Common, or a right of common, is a right or privilege which several persons have to the produce of the lands or waters of another. *Van Rensselaer v. Radcliff*, 10 Wend., N.Y., 647, 25 Am.Dec. 582.

Also an uninclosed piece of land set apart for public or municipal purposes, in many cities and villages of the United States. *Newell v. Hancock*, 67 N.H. 244, 35 A. 253. *United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del.*, D.C.Del., 56 F.Supp. 120, 122, 134.

—**Common appendant.** A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. 2 Bl.Comm. 33; *Van Rensselaer v. Radcliff*, 10 Wend. (N.Y.) 648.

—**Common appurtenant.** A right of feeding one's beasts on the land of another, (in common with the owner or with others,) which is founded on a grant, or a prescription which supposes a grant. 1 Crabb, *Real Prop.* p. 264, § 277.

This kind of common arises from no connection of tenure, and is against common right; it may commence by

grant within time of memory, or, in other words, may be created at the present day; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 Bl.Comm. 33; *Van Rensselaer v. Radcliff*, 10 Wend., N.Y., 649.

—**Common because of vicinage** is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. 2 Bl.Comm. 33; *Co. Litt.* 122a; 4 *Co. 38a*; 10 Q.B. 581, 589, 604; *Smith v. Floyd*, 18 Barb. (N.Y.) 523.

This is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind.

—**Common in gross, or at large.** A species of common which is neither appendant nor appurtenant to land, but is annexed to a man's person, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 Bl.Comm. 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 Steph.Comm. 6; *Mitchell v. D'Olier*, 68 N.J.L. 375, 53 A. 467, 59 L.R.A. 949.

—**Common of digging.** Common of digging, or common in the soil, is the right to take for one's own use part of the soil or minerals in another's land; the most usual subjects of the right are sand, gravel, stones, and clay. It is of a very similar nature to common of estovers and of turbarry. *Elton, Com.* 109.

—**Common of estovers.** A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, in common with the owner or with others. 2 Bl.Comm. 35. It may be claimed, like common of pasture, either by grant or prescription. 2 Steph.Comm. 10; *Plowd.* 381; *Van Rensselaer v. Radcliff*, 10 Wend. (N.Y.) 648.

—**Common of fishery.** The same as Common of piscary. See *infra*.

—**Common of fowling.** In some parts of the country a right of taking wild animals (such as conies or wildfowl) from the land of another has been found to exist; in the case of wildfowl, it is called a "common of fowling." *Elton, Com.* 118.

—**Common of pasture.** The right or liberty of pasturing one's cattle upon another man's land. It may be either appendant, appurtenant, in gross, or because of vicinage. *Van Rensselaer v. Radcliff*, 10 Wend. (N.Y.) 647.

—**Common of piscary.** The right or liberty of fishing in another man's water, in common with the owner or with other persons. 2 Bl.Comm. 34. A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. 3 Kent, *Comm.* 409. *Hardin v. Jordan*, 11 S.Ct. 808, 140 U.S. 371, 35 L.Ed. 428. It is quite different from a common fishery,



## COMMON

with which, however, it is frequently confounded. See Fishery.

—**Common of shack.** A species of common by vicinage prevailing in the counties of Norfolk, Lincoln, and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field to turn out their cattle after harvest to feed promiscuously in that field. 2 Steph.Comm. 6, 7; 5 Coke, 65; 1 B. & Ald. 710.

—**Common of turbary.** In its modern sense the right of taking peat or turf from the waste land of another, for fuel in the commoner's house. Williams, Common, 187; Van Rensselaer v. Radcliff, 10 Wend. (N.Y.) 647; 4 Co. 37; 3 Atk. 189, Noy, 145; 7 East, 127.

—**Common sans nombre.** Common without number, that is, without *limit* as to the *number* of cattle which may be turned on; otherwise called "common without stint." Bract. fols. 53*b*, 222*b*; 2 Steph.Comm. 6, 7; 2 Bl.Comm. 34. United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del., D.C.Del., 56 F.Supp. 120, 133.

—**Common, tenants in.** See Tenants in Common.

—**Common without stint.** Another name for Common sans nombre. See *supra*.

**COMMON, adj.** Usual, ordinary, accustomed; shared among several; owned by several jointly. Koen v. State, 35 Neb. 676, 53 N.W. 595, 17 L.R.A. 821. Belonging or pertaining to many or to the majority; generally or prevalent, of frequent or ordinary occurrence or appearance; familiar by reason of frequency. Webb v. New Mexico Pub. Co., 47 N.M. 279, 141 P.2d 333, 335. Also, usual, customary, and habitual, professed, or confessed, and used indefinitely in various terms implying illegal or criminal conduct, such as common scold, common thief, etc. Levine v. State, 166 A. 300, 302, 110 N.J.L. 467.

As to common "Bail," "Barretor," "Carrier," "Chase," "Condit," "Council," "Counts," "Day," "Debtor," "Diligence," "Drunkard," "Error," "Fishery," "Highway," "Informer," "Inn," "Intendment," "Intent," "Jury," "Labor," "Nuisance," "Occupant," "Property," "School," "Scold," "Seal," "Sergeant," "Stock," "Traverse," "Vouchee," "Wall," see those titles.

—**Common appearance.** That which could be filed by the plaintiff, who could enter a rule on the defendant to plead, where the defendant, after due service of process on him, had removed from the jurisdiction without having entered an appearance, or could not be found. 12 Geo. II., c. 29; 1 Troub. & Haly, Pr. 159; Bender v. Ryan, 9 Wkly. Notes Cas. (Pa.) 144.

—**Common assurances.** The several modes or instruments of conveyance established or authorized by the law of England. Called "common" because thereby *every man's* estate is assured to him. 2 Bl.Comm. 294. The legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts,

and difficulties are either prevented or removed. Wharton.

—**Common causes or suits.** A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown*. Dallett v. Feltus, 7 Phila. (Pa.) 627.

—**Common conditit.** See Conditit.

—**Common danger.** "Common danger" which gives a right to contribution in general average does not mean equal danger; hence, the fact that a part of the cargo of a stranded steamship is of a kind which is in little danger of injury does not relieve it of the liability to contribute. Willcox, Peck & Hughes v. American Smelting & Refining Co., D.C.N.Y., 210 F. 89, 91.

—**Common design.** In criminal law. Community of intention between two or more persons to do an unlawful act. State v. Hill, 273 Mo. 329, 201 S.W. 58, 60.

—**Common enterprise.** See Joint enterprise.

—**Common fine.** In old English law. A certain sum of money which the residents in a leet paid to the lord of the leet, otherwise called "head silver," "cert money," (*q. v.*) or "*certum letæ*." Termes de la Ley; Cowell; Fleta; Wharton. A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. Bailey, Dict.

—**Common form.** A will is said to be proved in common form when the executor proves it on his own oath; as distinguished from "proof by witnesses," which is necessary when the paper propounded as a will is disputed. Hubbard v. Hubbard, 7 Or. 42; Sutton v. Hancock, 118 Ga. 436, 45 S.E. 504.

—**Common hall.** A court in the city of London, at which all the citizens, or such as are free of the city, have a right to attend.

—**Common learning.** Familiar law or doctrine. Dyer, 27*b*, 33.

—**Common liquor dealer.** In Florida, one who, being charged with unlawfully engaging in and carrying on the business of a dealer in liquors, has been before convicted of a like offense and duly sentenced therefor. Thomas v. State, 74 Fla. 200, 76 So. 780. See, also, Common thief, *infra*.

—**Common peril.** See Common danger, *supra*.

—**Common place.** Common pleas. The English court of common pleas is sometimes so called in the old books.

—**Common prayer.** The liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.

—**Common repute.** The prevailing belief in a given community as to the existence of a certain fact



or aggregation of facts. *Brown v. Foster*, 41 S. C. 118, 19 S.E. 299.

—**Common right.** A term applied to rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, and which have their foundation in the common law. *Co. Inst. 142a*; *Spring Valley Waterworks v. Schotter*, 62 Cal. 106.

—**Common seller.** A common seller of any commodity (particularly under the liquor laws of many states) is one who sells it frequently, usually, customarily, or habitually; in some states, one who is shown to have made a certain number of sales, either three or five. *State v. O'Conner*, 49 Me. 596; *State v. Nutt*, 28 Vt. 598; *Moundsville v. Fountain*, 27 W.Va. 194; *Com. v. Tubbs*, 1 Cush. (Mass.) 2.

—**Common sense.** Sound practical judgment; that degree of intelligence and reason, as exercised upon the relations of persons and things and the ordinary affairs of life, which is possessed by the generality of mankind, and which would suffice to direct the conduct and actions of the individual in a manner to agree with the behavior of ordinary persons.

—**Common service.** That service in which are engaged (with reference to the fellow-servant rule) all those who enter into the service of a common master, except those who become heads of and vested with absolute control of separate departments or branches of a great and diversified business. *Union Pac. R. Co. v. Marone*, C.C.A. Neb., 246 F. 916, 923.

The term, in its broadest and most obvious sense, would include all activities prosecuted in the business of the master which have for their purpose the attainment of one common end; nevertheless, an employee, invested with the duty of overseeing, directing, and controlling workmen, is not a fellow servant with respect to the discharge of those duties, but is a representative of the master. *Funk v. Fulton Iron Works Co.*, 311 Mo. 77, 277 S.W. 566, 569.

—**Common thief.** One who by practice and habit is a thief; or, in some states, one who has been convicted of three distinct larcenies at the same term of court. *Stevens v. Com.*, 4 Metc. (Mass.) 364.

—**Common use.** This phrase, as used in an anti-trust law extending to contracts affecting the prices of articles or commodities in "common use," describes articles used by the people in general; such articles or commodities as are in general use or used to a great extent in the homes of the people; the articles which are produced to be sold to the people, to be consumed and used by the people in general, and to be found for sale in all the marts of trade. *People v. Epstean*, 102 Misc. 476, 170 N.Y.S. 68, 75. It suggests the opposite of casual use. *Geis v. State*, 126 Md. 265, 94 A. 909, 910.

—**Common victualer.** The keeper of a restaurant or public eating house, where the food sold is eaten on the premises. *Commonwealth v. Meckel*, 221 Mass. 70, 108 N.E. 917.

—**Common weal.** The public or common good or welfare.

—**Common woman.** One who is low, inferior, vulgar, or coarse; also, one who is unchaste. But the term does not necessarily impute unchastity. *Daniel v. Moncure*, 58 Mont. 193, 190 P. 983, 985.

**COMMON BAR.** In pleading. (Otherwise called "blank bar.") A plea to compel the plaintiff to assign the particular place where the trespass has been committed. *Steph.Pl.* 256.

**COMMON BENCH.** The ancient name for the English court of common pleas. Its original title appears to have been simply "The Bench," but it was designated "Common Bench" to distinguish it from the "King's Bench," and because in it were tried and determined the causes of *common persons*, *i. e.*, causes between subject and subject, in which the crown had no interest.

**COMMON ENEMY DOCTRINE.** Recognized as to surface waters in but a few states, under which no natural easement or servitude exists in favor of the superior or higher land as to mere surface water, or such as falls or accumulates by rains or the melting of snow; and the proprietor of the inferior or lower tenement or estate may at his option lawfully obstruct or hinder the flow of such water thereon, and in so doing may turn back or off of his own lands, and onto and over the lands of other proprietors, such water, without liability by reason of such obstruction or diversion. *Miller v. Letzerich*, 121 Tex. 243, 49 S.W.2d 404, 411, 85 A.L.R. 451.

**COMMON HUMANITY DOCTRINE.** Where a passenger becomes sick or is injured while en route, carrier owes duty under "common humanity doctrine" to render to passenger such reasonable care and attention as common humanity would dictate. *Alabama Great S. R. Co. v. Taylor*, 190 Miss. 69, 199 So. 310, 312.

**COMMON KNOWLEDGE.** Is what court may declare applicable to action without necessity of proof. It is knowledge that every intelligent person has. *Strain v. Isaacs*, 59 Ohio App. 495, 18 N. E.2d 816, 825. It includes matters of learning, experience, history, and facts of which judicial notice may be taken. *Shelley v. Chilton's Adm'r*, 236 Ky. 221, 32 S.W.2d 974, 977.

**COMMON LAW.** As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which was originated, developed, and formulated and is administered in England, and has obtained among most of the states and peoples of Anglo-Saxon stock. *Lux v. Haggin*, 69 Cal. 255, 10 P. 674.

As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of

## COMMON LAW

the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. 1 Kent, Comm. 492. Western Union Tel. Co. v. Call Pub. Co., 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; Barry v. Port Jervis, 72 N.Y.S. 104, 64 App. Div. 268; U. S. v. Miller, D.C.Wash., 236 F. 798, 800.

As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority. Klever v. Seawall, C.C.A.Ohio, 65 F. 395, 12 C.C.A. 661.

As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States. Industrial Acceptance Corporation v. Webb, Mo.App., 287 S.W. 657, 660.

The "common law" of England, which is the rule of decision in all courts of Montana, in so far as it is not repugnant to the Constitution of the United States or the Constitution or laws of that state, means that body of jurisprudence as applied and modified by the courts of this country up to the time it was adopted in Montana. Herrin v. Sutherland, 74 Mont. 587, 241 P. 328, 330, 42 A.L.R. 937. See, also, Norvell-Wilder Hardware Co. v. McCamey, Tex. Civ.App., 290 S.W. 772, 773; Fletcher v. Los Angeles Trust & Savings Bank, 182 Cal. 177, 187 P. 425, 427.

The common law of England, adopted by Pol. Code Cal. § 4468, does not refer solely to the *lex non scripta*, the common law unmodified by statute, but contemplates the whole body of jurisprudence as it stood, influenced by statute at the time when the Code section was adopted, and also embraces equity. Martin v. Superior Court of California in and for Alameda County, 176 Cal. 289, 168 P. 135, 136, L.R.A.1918B, 313.

In a wider sense than any of the foregoing, the "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

For "Federal Common Law," see that title.

As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal." See examples below.

**COMMON-LAW ACTION.** A civil suit, as distinguished from a criminal prosecution or a proceeding to enforce a penalty or a police regulation; not necessarily an action which would lie at common law. Kirby v. Railroad Co., C.C.Iowa, 106 F. 551; U. S. v. Block, 24 Fed.Cas. 1,174.

**COMMON-LAW ASSIGNMENTS.** Such forms of assignments for the benefit of creditors as were known to the common law, as distinguished from such as are of modern invention or authorized by statute. Ontario Bank v. Hurst, C.C.A.Mich., 103 F. 231, 43 C.C.A. 193.

**COMMON-LAW CHEAT.** The obtaining of money or property by means of a false token, symbol, or device; this being the definition of a cheat or "cheating" at common law. State v. Renick, 33 Or. 584, 56 Pac. 275, 44 L.R.A. 266, 72 Am.St.Rep. 758.

**COMMON-LAW CONTEMPT.** A name sometimes applied to proceedings for contempt which are criminal in their nature, as distinguished from those which are intended as purely civil remedies ordinarily arising out of the alleged violation of some order entered in the course of a chancery proceeding. People v. Samuel, 199 Ill.App. 294, 297; People v. Buconich, 199 Ill.App. 410, 412.

**COMMON-LAW COURTS.** In England, those administering the common law. Equitable L. Assur. Soc. v. Paterson, 41 Ga. 364, 5 Am.Rep. 535.

**COMMON-LAW CRIME.** One punishable by the force of the common law, as distinguished from crimes created by statute. In re Greene, C.C. Ohio, 52 F. 104.

**COMMON-LAW JURISDICTION.** Jurisdiction of a court to try and decide such cases as were cognizable by the courts of law under the English common law; the jurisdiction of those courts which exercise their judicial powers according to the course of the common law. U. S. v. Power, 27 Fed.Cas. 607.

**COMMON-LAW LARCENY.** See Larceny.

**COMMON-LAW LIEN.** One known to or granted by the common law, as distinguished from statutory, equitable, and maritime liens; also one arising by implication of law, as distinguished from one created by the agreement of the parties. The Menominie, D.C.Minn., 36 F. 197; Tobacco Warehouse Co. v. Trustee, 117 Ky. 478, 78 S.W. 413, 64 L.R.A. 219.

It is a right extended to a person to retain that which is in his possession belonging to another, until the demand or charge of the person in possession is paid or satisfied. Whiteside v. Rocky Mountain Fuel Co., C.C.A.Colo., 101 F.2d 765, 769; Goldwater v. Mendelson, 8 N.Y.S. 627, 629, 170 Misc. 422.

**COMMON-LAW MARRIAGE.** One not solemnized in the ordinary way, but created by an agreement to marry, followed by cohabitation; a consummated agreement to marry, between persons legally capable of making marriage contract, *per verba de præsenti*, followed by cohabitation. Collins v. Hoag and Rollins, 121 Neb. 716, 238 N.W. 351.

There must be a public and continued recognition of such relation by the parties as distinguished from occasional or incidental recognition. Whitaker v. Shenault, Tex.Civ. App., 172 S.W. 202, 203.

**COMMON-LAW MORTGAGE.** One possessing the characteristics or fulfilling the requirements of a mortgage at common law; not known in Louisiana, where the civil law prevails; but such a mortgage made in another state and affecting lands in Louisiana, will be given effect there as a "conventional" mortgage, affecting third persons after due inscription. *Gates v. Gaither*, 46 La. Ann. 286, 15 So. 50.

**COMMON-LAW PROCEDURE ACTS.** Three acts of parliament, passed in the years 1852, 1854, and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure act of 1852 is St. 15 & 16 Vict. c. 76; that of 1854, St. 17 & 18 Vict. c. 125; and that of 1860, St. 23 & 24 Vict. c. 126. *Mozley & Whitely*.

**COMMON-LAW REMEDY.** This phrase, within the meaning of U. S. Judicial Code 1911, § 256 (Act March 3, 1911, c. 231, 36 Stat. 1100, see Historical and Revision Notes under 28 U.S.C.A. § 1333), was not limited to remedies in the common-law courts, but embraced all methods of enforcing rights and redressing injuries known to the common or statutory law. *Kennerson v. Thames Towboat Co.*, 89 Conn. 367, 94 A. 372, 375, L.R.A. 1916A, 436. See, also, *Northern Pacific S. S. Co. v. Industrial Acc. Commission of California*, 174 Cal. 346, 163 P. 199, 202. See Notes of Decisions under 28 U.S.C.A. § 1333.

The "right of a common-law remedy," saved to suitors in actions maritime in their nature arising under charter parties by U. S. Judicial Code 1911, § 24, par. 3 (see Historical and Revision Notes under 28 U.S.C.A. § 1333) did not include attempted changes by the states in the substantive admiralty law, but did include all means, other than proceedings in admiralty, which may be employed to enforce the right or to redress the injury involved, and included remedies in pais, as well as proceedings in court; judicial remedies conferred by statute, as well as those existing in the common law; remedies in equity, as well as those enforceable in a court of law. *Red Cross Line v. Atlantic Fruit Co.*, 44 S.Ct. 274, 277, 264 U.S. 109, 68 L.Ed. 582.

**COMMON-LAW TRADE-MARK.** One appropriated under common-law rules, regardless of statutes. *Stratton & Terstegge Co. v. Stiglitz Furnace Co.*, 258 Ky. 678, 81 S.W.2d 1, 3.

**COMMON-LAW WIFE.** A woman who was party to a "common-law marriage," as above defined; or one who, having lived with a man in a relation of concubinage during his life, asserts a claim, after his death, to have been his wife according to the requirements of the common law. In *re Brush*, 49 N.Y.S. 803, 25 App.Div. 610.

**COMMON LAWYER.** A lawyer learned in the common law.

**COMMON NIGHTWALKER.** See Night Walkers.

**COMMON NUISANCE.** A danger or damage threatening the public. *Canfield v. Quayle*, 10 N.Y.S.2d 781, 784, 170 Misc. 621.

**COMMON OPINION IS GOOD AUTHORITY IN LAW.** *Co.Litt. 186a*; *Bank of Utica v. Mersereau*, 3 Barb.Ch. (N.Y.) 528, 577, 49 Am.Dec. 189.

**COMMON PLEAS.** The name of a court of record having general original jurisdiction in civil suits.

**COMMON PLEAS, THE COURT OF.** See Court of Common Pleas.

**COMMON RECOVERY.** In conveyancing. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer. 2 Bl.Comm. 357. *Christy v. Burch*, 25 Fla. 942, 2 So. 258. Common recoveries were abolished by the statutes 3 & 4 Wm. IV. c. 74.

They were resorted to when the object was to create an absolute bar of estates tail, and of the remainders and reversions expectant on the determination of such estates. 2 Bl.Comm. 357. Though it has been used in some of the states, this form of conveyance is practically obsolete, easier and less expensive modes of making conveyances having been substituted. *Frost v. Cloutman*, 7 N.H. 9, 26 Am.Dec. 723.

**COMMONABLE.** Entitled to common. Commonable beasts are either beasts of the plow, as horses and oxen, or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. *Co.Litt. 122a*; 2 Bl.Comm. 33.

**COMMONALTY.** The great body of citizens; the mass of the people, excluding the nobility.

The body of people composing a municipal corporation, excluding the corporate officers.

The body of a society or corporation, as distinguished from the officers. 1 Perr. & D. 243.

Charters of incorporation of the various tradesmen's societies, etc., in England are usually granted to the master, wardens, and commonalty of such corporation.

**COMMONANCE.** The commoners, or tenants and inhabitants, who have the right of common or commoning in open field. *Cowell*.

**COMMONERS.** In English law. Persons having a right of *common*. So called because they have a right to pasture on the waste, in common with the lord. 2 H.Bl. 389.

**COMMONS.** The class of subjects in Great Britain exclusive of the royal family and the nobility. They are represented in parliament by the house of commons.

Part of the demesne land of a manor, (or land the property of which was in the lord,) which, being uncultivated, was termed the "lord's waste," and served for public roads and for common of pasture to the lord and his tenants. 2 Bl.Comm. 90.

Squares; pleasure grounds and spaces or open places for public use or public recreation owned by towns;—in modern usage usually called "parks." *Jones v. City of Jackson*, 104 Miss. 449, 61 So. 456, 457.

**COMMONS, HOUSE OF.** See House of Commons.

## COMMONTY

**COMMONTY.** In Scotch law. Land possessed in common by different proprietors, or by those having acquired rights of servitude. Bell.

**COMMONWEALTH.** The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,—one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government.

Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government, (or nation.) *State v. Lambert*, 28 S.E. 930, 44 W.Va. 308.

In this latter sense, it is the official title of several of the United States (as Pennsylvania, Massachusetts, Virginia, and Kentucky), and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell.

See Government; Nation; State.

**COMMORANCY.** The dwelling in any place as an inhabitant; which consists in usually lying there. 4 Bl.Comm. 273. In American law it is used to denote a mere temporary residence. *Pullen v. Monk*, 82 Me. 412, 19 A. 909; *Gilman v. Inman*, 85 Me. 105, 26 A. 1049.

**COMMORANT.** Staying or abiding; dwelling temporarily in a place. One residing in a particular town, city, or district. Barnes, 162.

**COMMORIENTES.** Several persons who perish at the same time in consequence of the same calamity.

**COMMORTH, or COMORTH.** A contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6. Cowell.

**COMMOTE.** Half a cantred or hundred in Wales, containing fifty villages. Also a great seignory or lordship, and may include one or divers manors. Co. Litt. 5.

**COMMOTION.** A "civil commotion" is an insurrection of the people for general purposes, though it may not amount to rebellion where there is a usurped power. 2 Marsh.Ins. 793; *Boon v. Insurance Co.*, 40 Conn. 584; *Grame v. Assur. Soc.*, 5 S.Ct. 150, 112 U.S. 273, 28 L.Ed. 716; *Spruill v. Insurance Co.*, 46 N.C. 127.

A civil commotion is an uprising among a mass of people which occasions a serious and prolonged disturbance and infraction of civil order not attaining the status of war or an armed insurrection; it is a wild and irregular action of many persons assembled together. *Hartford Fire Ins. Co., Hartford, Conn. v. War Eagle Coal Co.*, C.C. A.W.Va., 295 F. 663, 665. The term refers to poli-

tical disorders, not to an economic disturbance. *The Poznan*, D.C.N.Y., 276 F. 418, 427.

**COMMUNE, adj.** Lat. See Communis.

**COMMUNE, n.** A self-governing town or village. The name given to the committee of the people in the French revolution of 1793; and again, in the revolutionary uprising of 1871, it signified the attempt to establish absolute self-government in Paris, or the mass of those concerned in the attempt. In old French law, it signified any municipal corporation. And in old English law, the commonalty or common people. 2 Co.Inst. 540.

**COMMUNE CONCILIUM.** The King's Council. See Privy Council.

**COMMUNE CONCILIUM REGNI.** The common council of the realm. One of the names of the English parliament. See *Communitas Regni Angliæ*.

**COMMUNE FORUM.** The common place of justice. The seat of the principal courts, especially those that are fixed.

**COMMUNE PLACITUM.** In old English law. A common plea or civil action, such as an action of debt.

**COMMUNE VINCULUM.** A common or mutual bond. Applied to the common stock of consanguinity, and to the feudal bond of fealty, as the common bond of union between lord and tenant. 2 Bl.Comm. 250; 3 Bl.Comm. 230.

**COMMUNI CUSTODIA.** In English law. An obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. Reg. Orig. 161.

**COMMUNI DIVIDUNDO.** In the civil law. An action which lies for those who have property in common, to procure a division. It lies where parties hold land in common but not in partnership. Calvin.

**COMMUNIA.** In old English law. Common things, *res communes*. Such as running water, the air, the sea, and sea shores. Bract. fol. 7b.

**COMMUNIA PLACITA.** In old English law. Common pleas or actions; those between one subject and another, as distinguished from pleas of the crown.

**COMMUNIA PLACITA NON TENENDA IN SCACCARIO.** An ancient writ directed to the treasurer and barons of the exchequer, forbidding them to hold pleas between common persons (*i. e.*, not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same. Reg. Orig. 187.

**COMMUNLÆ.** In feudal law on the continent of Europe, this name was given to towns enfran-

chised by the crown, about the twelfth century, and formed into free corporations by grants called "charters of community."

**COMMUNIBUS ANNIS.** In ordinary years; on the annual average.

**COMMUNICATE.** To bestow, convey, make known, recount, impart; to give by way of information. *Whitford v. North State Life Ins. Co.*, 163 N.C. 223, 79 S.E. 501, 502, Ann.Cas.1915B, 270; *Prevost v. Morgenthau*, 106 F.2d 330, 334, 70 App. D.C. 306.

**COMMUNICATION.** Information given, the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. Intercourse; connection. Also, the Masonic equivalent for the word "meeting." *State v. Goodwyn*, 83 W.Va. 255, 98 S.E. 577.

Something said by one person to another;—so used in a statute providing that neither a party nor his or her spouse shall be examined as a witness as to personal transactions or communications between witness and persons since deceased. *Secor v. Siver*, 188 Iowa, 1126, 161 N.W. 769, 772, 176 N.W. 981.

"Transactions and communications," within statute declaring inadmissible testimony of interested witness concerning transactions and communications between himself and deceased person, embrace every variety of affairs which conform to the subject of negotiation, interviews, or actions between two persons, and include every method by which one person can derive impressions or information from the conduct, condition or language of another. *Bright v. Virginia & Gold Hill Water Co.*, C.C.A.Nev., 270 F. 410, 413.

The act of communicating;—so used in a statute declaring that no husband or wife shall be compelled to disclose any confidential communication made by one to the other during marriage. *Whitford v. North State Life Ins. Co.*, 163 N.C. 223, 79 S.E. 501, 502, Ann.Cas.1915B, 270. In a broader sense, the word embraces all knowledge upon the part of either obtained by reason of the marriage relations, and which but for the confidence growing out of such relation would not have been known. *Prudential Ins. Co. of America v. Pierce's Adm'r*, 270 Ky. 216, 109 S.W.2d 616, 617.

As used in a statute providing that an attorney cannot, without the consent of his client, be examined as to any communication made by the client, "communication" is not restricted to mere words but includes acts as well. *Ex parte McDonough*, 170 Cal. 230, 149 P. 566, 567, L.R.A. 1916C, 593, Ann.Cas.1916E, 327.

### French Law

The production of a merchant's books, by delivering them either to a person designated by the court, or to his adversary, to be examined in all their parts, and as shall be deemed necessary to the suit. *Arg. Fr. Merc. Law*, 552.

**—Confidential communications.** These are certain classes of communications, passing between persons who stand in a confidential or fiduciary relation to each other, (or who, on account of their relative situation, are under a special duty of secrecy and fidelity,) which the law will not permit to be divulged, or allow them to be inquired into in a court of justice, for the sake of public policy and the good order of society. Examples of such privileged relations are those of husband and wife and attorney and client. *Hatton v. Robinson*, 14 Pick.Mass. 416, 25 Am.Dec. 415; *Parker v. Carter*, 4 Munf.Va. 287, 6 Am.Dec. 513; *Parkhurst v. Berdell*, 110 N.Y. 386, 18 N.E. 123, 6 Am.St.Rep. 384.

**—Privileged communication.** In the law of evidence. A communication made to a counsel, solicitor, or attorney, in professional confidence, and which he is not permitted to divulge; otherwise called a "confidential communication." 1 Starkie, Ev. 185.

**In the law of libel and slander.** A defamatory statement made to another in pursuance of a duty, political, judicial, social, or personal, so that an action for libel or slander will not lie, though the statement be false, unless in the last two cases actual malice be proved in addition. *Bacon v. Railroad Co.*, 66 Mich. 166, 33 N.W. 181; 5 E. & B. 347.

When a communication is fairly made by one in the discharge of a public or private duty, legal, moral, or social, of perfect or imperfect obligation, or in the conduct of his own affairs, to one who has a corresponding interest to receive such communication, it is "privileged." *International & G. N. Ry. Co. v. Edmundson*, Tex.Com.App. 222 S.W. 181, 183, if made in good faith and without actual malice, *Baker v. Clark*, 186 Ky. 816, 218 S.W. 280, 285. A "privileged communication" is one made in good faith, upon any subject-matter in which the party communicating has an interest, or in reference to which he has, or honestly believes he has, a duty, and which contains matter which, without the occasion upon which it is made, would be defamatory and actionable. *Peak v. Taubman*, 251 Mo. 390, 158 S.W. 656, 663. In a "privileged communication" the words used, if defamatory and libelous, are excused, while in "fair comment" the words are not a defamation of plaintiff and not libelous. *Van Lonkhuyzen v. Daily News Co.*, 203 Mich. 570, 170 N.W. 93, 99.

Privileged communications are either (1) absolutely privileged, or (2) conditionally or qualifiedly privileged. *Grantham v. Wilkes*, 135 Miss. 777, 100 So. 673. An "absolutely privileged communication" is one made in the interest of the public service or the due administration of justice, and is practically limited to legislative and judicial proceedings and other actions of state. *Grantham v. Wilkes*, 135 Miss. 777, 100 So. 673. By an "absolutely privileged" publication is not to be understood a publication for which the publisher is in no wise responsible, but it means a publication in respect of which, by reason of the occasion upon which it is made, no remedy can be had in a civil action for slander or libel, *Peterson v. Cleaver*, 105 Neb. 438, 181 N.W. 187, 189, 15 A.L.R. 447, even though the words are published maliciously and with knowledge of their falsity, *Spencer v. Looney*, 116 Va. 767, 82 S.E. 745, 747. A "qualifiedly privileged communication" is a slanderous statement uttered in good faith upon a proper occasion and from a proper motive based upon an honest belief that it is true, but, unlike communications wholly privileged, the defendant has the burden of proving want of malice or ill will. *Peak v. Taubman*, 251 Mo. 390, 158 S.W. 656, 665. A communication "qualifiedly privileged" is one which is prima facie privileged only, and in which the privilege may be lost by proof of malice in the publication. *Spencer v. Looney*, 116 Va. 767, 82 S.E. 745, 747. A communication made in good faith upon any subject-matter in which the party communicating has an interest or in reference to which he has a duty, either legal, moral, or social, if made to a person having a corresponding interest or duty, is "qualifiedly privileged." *Peterson v. Cleaver*, 105 Neb. 438, 181 N.W. 187, 189, 15 A.L.R. 447; *Massee v. Williams*, C.C.A.Tenn., 207 F. 222, 230; *German-American Ins. Co. v. Huntley*, 62 Okl. 39, 161 P. 815, 818.

**COMMUNINGS.** In Scotch law. The negotiations preliminary to entering into a contract.

**COMMUNIO BONORUM.** In the civil law. A community of goods.

**COMMUNION OF GOODS.** In Scotch law. The right enjoyed by married persons in the movable goods belonging to them. *Bell*.

**COMMUNIS, COMMUNE,** *adj.* Lat. Common.

## COMMUNIS

**COMMUNIS ERROR FACIT JUS.** Common error makes law. 4 Inst. 240; Noy, Max. p. 37, max. 27. Common error goeth for a law. Finch, Law, b. 1, c. 3, no. 54. Common error sometimes passes current as law. Broom, Max. 139, 140.

What was at first illegal is presumed, when repeated many times, to have acquired the force of usage; and then it would be wrong to depart from it. 1 Ld. Raym. 42; 6 Cl. & F. 172; 3 M. & S. 396; Goodman v. Eastman, 4 N.H. 458; Kent v. Kent, 2 Mass. 357; Davey v. Turner, 1 Dall. 13, 1 L.Ed. 15. The converse of this maxim is *communis error non facit jus*. A common error does not make law. 4 Inst. 242; 3 Term 725; 6 Term 564.

**COMMUNIS OPINIO.** Common opinion; general professional opinion. According to Lord Coke (who places it on the footing of observance or usage), common opinion is good authority in law. Co. Litt. 186a.

**COMMUNIS PARIES.** In the civil law. A common or party wall. Dig. 8, 2, 8, 13.

**COMMUNIS RIXATRIX.** In old English law. A common scold, (*q. v.*) 4 Bl. Comm. 168.

**COMMUNIS SCRIPTURA.** In old English law. A common writing; a writing common to both parties; a chirograph. Glan. lib. 8, c. 1.

**COMMUNIS STIPES.** A common stock of descent; a common ancestor.

**COMMUNISM.** A system of social organization in which goods are held in common, the opposite of the system of private property; communalism, any theory or system of social organization involving common ownership of agents of production of industry, the latter of which theories is referred to in the popular use of the word "communism" while the scientific usage sometimes conforms to the first alone and sometimes alternates between the first and second; also the principles and theories of the Communist Party, especially in Soviet Russia. Feinglass v. Reinecke, D.C. Ill., 48 F. Supp. 438, 440.

Any theory or system of social organization involving common ownership of the agents of production, and some approach to equality in the distribution of the products of industry. Webster, Dict. A system by which the state controls the means of production and the distribution and consumption of industrial products. Cent. Dict.

An equality of distribution of the physical means of life and enjoyment as a transition to a still higher standard of justice that all should work according to their capacity and receive according to their wants. 1 Mill, Pol. Ec. 248.

**COMMUNIST.** A supporter of the Paris Commune; in 1871 Communard; a member of the Communist Party in any country, especially Soviet Russia; one who believes in communism. Feinglass v. Reinecke, D.C. Ill., 48 F. Supp. 438, 440, 441.

Communist International. See Third International.

**COMMUNIST PARTY.** A semipolitical party of recent years representing the Socialist radical wing and holding of the tenets and beliefs of Communism. It has quite generally succeeded from the Socialists, organizing in many countries but chiefly in Russia. Garriga v. Richfield, 20 N.Y.S. 2d 544, 547, 174 Misc. 315.

**COMMUNITAS REGNI ANGLIÆ.** The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 Bl. Comm. 148. See, also, Commune Concilium Regni.

**COMMUNITY.** Neighborhood; vicinity, synonymous with locality. Conley v. Valley Motor Transit Co., C.C.A. Ohio, 139 F.2d 692, 693. People who reside in a locality in more or less proximity. State ex inf. Thompson ex rel. Kennepe v. Scott, 304 Mo. 664, 264 S.W. 369, 370. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interests. In re Huss, 126 N.Y. 537, 27 N.E. 784, 12 L.R.A. 620; Sacred Heart Academy of Galveston v. Karsch, 122 S.W.2d 416, 417, 173 Tenn. 618.

It connotes a congeries of common interests arising from associations—social, business, religious, governmental, scholastic, recreational. Lukens Steel Co. v. Perkins, 107 F.2d 627, 631, 70 App.D.C. 354.

The term "community," as used in a statute providing that communities may be incorporated for the purpose of supplying inhabitants with water, should be construed to include all the inhabitants of a district having a community of interest in obtaining for themselves in common a water supply for domestic use. Hamilton v. Rudeen, 112 Or. 268, 224 P. 92, 93.

In connection with the rule requiring, for purposes of impeachment, a knowledge of the character of the witness in the community or neighborhood in which he resides, the term "community" means, generally, where the person is well known and has established a reputation. Craven v. State, 22 Ala. App. 39, 111 So. 767, 769.

### Civil Law

A corporation or body politic. Dig. 3, 4.

### French Law

A species of partnership which a man and a woman contract when they are lawfully married to each other. See, also, Community Property, *infra*.

*Conventional community* is that which is formed by express agreement in the contract of marriage.

By this contract the legal community which would otherwise subsist may be modified as to the proportions which each shall take, and as to the things which shall compose it.

*Legal community* is that which takes place by virtue of the contract of marriage itself.

The French system of community property was known as the dotal system, and the Spanish as the ganancial system. The conquest of Mexico by the Spaniards and their acquisition of the Florida territory resulted in the introduction on American soil of the Spanish system, which now prevails, usually in a somewhat modified form, in Texas, California, Nevada, Arizona, Washington, Idaho, New Mexico, Porto Rico, and the Philippines. Ballinger, Com. Property, § 6; Chavez v. McKnight, 1 N.M. 147. The Louisiana Code has, with slight modifications, adopted the dotal system of the Code Napoléon as regards the separate rights of husband and wife, but as to their common property, it retained the essential features of the Spanish ganancial system.

**COMMUNITY ACCOUNT.** A bank account consisting of separate and community funds commingled in such manner that neither can be distinguished from the other. Smith v. Buss, 135 Tex. 566, 144 S.W.2d 529, 532.

**COMMUNITY DEBT.** One chargeable to the community (of husband and wife) rather than to either of the parties individually. *Calhoun v. Leary*, 6 Wash. 17, 32 P. 1070.

**COMMUNITY HOUSE.** A house occupied by two or more families. *Fox v. Sumerson*, 338 Pa. 545, 13 A.2d 1, 2.

**COMMUNITY OF INTEREST.** Term as applied to relation of joint adventure means interest common to both or all parties, that is, mixture or identity of interest in venture wherein each and all are reciprocally concerned and from which each and all derive material benefit and sustain a mutual responsibility. *Carboneau v. Peterson*, 1 Wash.2d 347, 95 P.2d 1043, 1055.

**COMMUNITY OF PROFITS.** This term, as used in the definition of a partnership, (to which a community of profits is essential,) means a proprietorship in them as distinguished from a personal claim upon the other associate, a property right in them from the start in one associate as much as in the other. *Moore v. Williams*, 26 Tex.Civ. App. 142, 62 S.W. 977.

**COMMUNITY PROPERTY.** Property owned in common by a husband and wife as a kind of marital partnership. *Coleman v. Coleman*, Tex.Civ. App., 293 S.W. 695, 699. Property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either. In *re Lux's Estate*, 114 Cal. 73, 45 P. 1023; *Mitchell v. Mitchell*, 80 Tex. 101, 15 S.W. 705; *Ames v. Hubby*, 49 Tex. 705; *Holyoke v. Jackson*, 3 Wash.T. 235, 3 P. 841; Civ. Code Cal. § 687.

This partnership or community consists of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. *Rev.Civ.Code La. arts. 2402, 2404*; *Brown v. Cobb*, 10 La. 172; *Barnes v. Thompson*, 154 La. 1036, 98 So. 657, 658.

**COMMUTATION.** Alteration; change; substitution; the act of substituting one thing for another. *Steinacher v. Swanson*, 131 Neb. 439, 268 N.W. 317, 321.

**Criminal Law**

The change of a punishment from a greater to a less; as from hanging to imprisonment. *People v. Jenkins*, 325 Ill. 372, 156 N.E. 290, 292. *Fehl v. Martin*, 155 Or. 455, 64 P.2d 631, 632.

Although both a pardon and a commutation are granted by the sovereign power; *Goben v. State*, 32 Okl.Cr. 237, 240 P. 1085, 1087; a "commutation" means merely a change of punishment, while a "pardon" avoids or terminates punishment for crime; *Lupo v. Zerbest*, C.C.A.Ga., 92 F.2d 362, 364. A pardon bears no relation to the term of punishment, and must be accepted or it is nugatory; commutation removes no stain, restores no civil privilege, and may be effected without the consent and against the will of the prisoner. In *re Charles*, 115 Kan. 323, 222 P. 606, 608; *Chapman v. Scott*, D.C.Conn., 10 F.2d 156, 159.

"Commutation" is also distinguishable from a "reprieve" or "respite," meaning simply the withholding of a sentence for an interval of time, a postponement of execution, or a temporary suspension of execution. *State v. District Court of Eighteenth Judicial Dist. in and for Blaine County*, 73 Mont. 541, 237 P. 525, 527.

**Civil Law**

The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment; a substitution of one sort of payment for another, or of money payment in lieu of a performance of a compulsory duty or labor. Commutation may be effected by private agreement, but it is usually done under a statute. *Steinacher v. Swanson*, 131 Neb. 439, 268 N.W. 317, 321.

**COMMUTATION OF TAXES.** Payment of a designated lump sum (permanent or annual) for the privilege of exemption from taxes, or the settlement in advance of a specific sum in lieu of an ad valorem tax. *Cotton Mfg. Co. v. New Orleans*, 31 La.Am. 440.

**COMMUTATION OF TITHES.** Signifies the conversion of tithes into a fixed payment in money.

**COMMUTATION TICKET.** A railroad ticket giving the holder the right to travel at a certain rate for a limited number of trips (or for an unlimited number within a certain period of time) for a less amount than would be paid in the aggregate for so many separate trips. *Interstate Commerce Com'n v. Baltimore & O. R. Co.*, C.C.Ohio, 43 F. 56.

**COMMUTATIVE CONTRACT.** In civil law. One in which each of the contracting parties gives and receives an equivalent; *e. g.*, the contract of sale. *Pothier, Obl. n. 13*; *State ex rel. Waterman v. J. S. Waterman and Co.*, 178 La. 340, 151 So. 422, 426. See *Contract*.

**COMMUTATIVE JUSTICE.** See *Justice*.

**COMPACT, n.** An agreement; a contract. *Green v. Biddle*, 8 Wheat. 1, 92, 5 L.Ed. 547. Usually applied to conventions between nations or sovereign states.

A contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. *Story, Const. b. 3, c. 3*; *Rutherf.Inst. b. 2, c. 6, § 1*.

A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. *Chesapeake & O. Canal Co. v. Baltimore & O. R. Co.*, 4 Gill & J., Md., 1.

**COMPACT, adj.** Closely or firmly united or packed, as the particles of solid bodies; firm; solid; dense; as a compact texture in rocks; also, lying in a narrow compass or arranged so as to economize space; having a small surface or border in proportion to contents or bulk; close; as, a compact estate; a compact order or formation of troops. *Wails v. Board of Commissioners of Okmulgee County*, 156 Okl. 165, 9 P.2d 946, 948. Concentrated, or near to. *Webster v. Toulon Tp. High School Dist. No. 4*, 313 Ill. 541, 145 N.E. 118, 121; *State v. Tindell*, 210 P. 619, 621, 112 Kan. 256.



## COMPACT

**COMPACT SCHOOL DISTRICT.** One so closely united and so nearly adjacent to the school building that all the students residing in the district may conveniently travel from their homes to the school building and return the same day in a reasonable length of time and with a reasonable degree of comfort. *People ex rel. Tudor v. Vance*, 29 N.E.2d 673, 675, 374 Ill. 415; *People ex rel. Frailey v. McNeely*, 32 N.E.2d 608, 610, 376 Ill. 64.

**COMPANAGE.** All kinds of food, except bread and drink. *Spelman*.

**COMPANIES CLAUSES CONSOLIDATION ACT.** An English statute, (8 Vict. c. 16,) passed in 1845, which consolidated the clauses of previous laws still remaining in force on the subject of public companies. It is considered as incorporated into all subsequent acts authorizing the execution of undertakings of a public nature by companies, unless expressly excepted by such later acts. Its purpose is declared by the preamble to be to avoid repeating provisions as to the constitution and management of the companies, and to secure greater uniformity in such provisions. *Wharton*.

**COMPANION OF THE GARTER.** One of the knights of the Order of the Garter.

**COMPANIONS.** In French law. A general term, comprehending all persons who compose the crew of a ship or vessel. *Poth. Mar. Cont. no. 163*.

**COMPANULATE.** This term, used to describe the shape of the cover of a lunch-box containing a thermos bottle, means bell-shaped. *American Can Co. v. Goldee Mfg. Co., D.C.N.Y., 290 F. 523, 527*.

**COMPANY.** A society or association of persons, in considerable number, interested in a common object, and uniting themselves for the prosecution usually of some commercial or industrial undertaking, or other legitimate business. *Mills v. State*, 23 Tex. 303; *Smith v. Janesville*, 52 Wis. 680, 9 N.W. 789.

The proper signification of the word "company," when applied to persons engaged in trade, denotes those united for the same purpose or in a joint concern. It is so commonly used in this sense, or as indicating a partnership, that few persons accustomed to purchase goods at shops, where they are sold by retail, would misapprehend that such was its meaning. *Palmer v. Pinkham*, 33 Me. 32.

The term is not identical with "partnership," although every unincorporated society is, in its legal relations, a partnership. In common use a distinction is made, the name "partnership" being reserved for business associations of a limited number of persons (usually not more than four or five) trading under a name composed of their individual names set out in succession; while "company" is appropriated as the designation of a society comprising a larger number of persons, with greater capital, and engaged in more extensive enterprises, and trading under a title not disclosing the names of the individuals. *Attorney General v. Mercantile Marine Ins. Co.*, 121 Mass. 525.

Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm. See 12 *Toullier*, 97.

A number of persons united for performing or carrying on anything jointly. In re *Tidewater Coal Exchange*, C.C.A.N.Y., 280 F. 638, 643.

Thus, the term is not necessarily limited to a trading or commercial body, but may include an unincorporated

organization to promote fraternity among its members and provide mutual aid and protection through the payment of death benefits. In re *Order of Sparta*, D.C.Pa., 238 F. 437.

"Company" is a generic and comprehensive word, which may include individuals, partnerships, and corporations. *Asbury v. Town of Albemarle*, 162 N.C. 247, 78 S.E. 146, 148. 44 L.R.A., N.S., 1189; *Ellerson v. Grove*, C.C.A.N.C., 44 F.2d 493, 497. But not a municipality. *City of Los Angeles, Cal., v. Eighth Judicial District Court*, 58 Nev. 1, 67 P.2d 1019, 1023.

The word is sometimes applicable to a single individual. *Harger v. Harger*, 144 Ark. 375, 222 S.W. 736, 739. But compare *Wood v. Wood*, 78 Or. 181, 151 P. 969, 970, L.R.A. 1916C, 251, Ann.Cas.1918A, 226.

### Joint Stock Company

An association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares of which each member possesses one or more, and which are transferable by the owner. *Shelf. Jt. St. Co. 1*. One having a joint stock or capital, which is divided into numerous transferable shares, or consists of transferable stock. *Lindl. Partn. 6*. A partnership whereof the capital is divided, or agreed to be divided, into shares so as to be transferable without the express consent of the co-partners. *Pars. Part. § 435*. A quasi partnership, invested by statutes in England and many of the states with some of the privileges of a corporation. See *Pennsylvania v. Mining Co.*, 10 Wall. 556, 19 L. Ed. 998; L.R. 4 Eq. 695. It lies midway between a corporation and a copartnership. *Rocky Mountain Stud Farm Co. v. Lunt*, 46 Utah, 299, 151 P. 521, 527.

A "joint-stock company" is an entirely different organization from a "corporation," although it has many of the same characteristics and is often not improperly called a quasi corporation, especially under particular statutes, but in Kentucky it is still what it was at common law, namely, a hybrid midway between a corporation and a partnership, that is, it had directors and officers, articles of association, a common capital divided into shares which represented the interests of the members and are transferable without the consent of the other members so that the death of a member does not dissolve the company—but, on the other hand, each member was liable for the debts of the concern, so that such company had characteristics of both a corporation and a partnership. *Roller v. Madison*, 172 Ky. 693, 189 S.W. 914, 915.

### Limited Company

A company in which the liability of each shareholder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount of his shares. In England, the memorandum of association of such company may provide that the liability of the directors, manager, or managing director thereof shall be unlimited. 30 & 31 *Vict. c. 131*; 1 *Lindl. Partn. 383*; *Mozley & Whitley*.

### Public Company

In English law. A business corporation; a society of persons joined together for carrying on some commercial or industrial undertaking.

**COMPARABLE ACCOMMODATION.** Within the rule that it is the rent generally prevailing on the freeze date for comparable accommodations in a



defense-rental area that determines rent that may be charged, two accommodations are "comparable" if they are sufficiently similar to be regarded by an expert as of substantially equal rental value or if they are sufficiently similar so that an expert taking as a standard the rent prevailing for one and making allowances for such differences as would be reflected in rental value would be able to determine the appropriate corresponding rent for the other. *Sirianni v. Bowles*, Em.App., 148 F.2d 343, 344.

**COMPARATIO LITERARUM.** In the civil law. Comparison of writings, or handwritings. A mode of proof allowed in certain cases.

**COMPARATIVE.** Proceeding by the method of comparison; founded on comparison; estimated by comparison.

**COMPARATIVE INTERPRETATION.** That method of interpretation which seeks to arrive at the meaning of a statute or other writing by comparing its several parts and also by comparing it as a whole with other like documents proceeding from the same source and referring to the same general subject. *Glenn v. York County*, 6 Rich. (S.C.) 412.

**COMPARATIVE JURISPRUDENCE.** The study of the principles of legal science by the comparison of various systems of law.

**COMPARATIVE NEGLIGENCE.** That doctrine in the law of negligence by which the negligence of the parties is compared, in the degrees of "slight," "ordinary," and "gross" negligence, and a recovery permitted, notwithstanding the contributory negligence of the plaintiff, when the negligence of the plaintiff is slight and the negligence of the defendant gross, but refused when the plaintiff has been guilty of a want of ordinary care, thereby contributing to his injury, or when the negligence of the defendant is not gross, but only ordinary or slight, when compared, under the circumstances of the case, with the contributory negligence of the plaintiff. 3 Amer. & Eng. Enc. Law, 367. *St. Louis & S. F. R. Co. v. Elsing*, 37 Okl. 333, 132 P. 483, 486.

Where negligence by both parties is concurrent and contributes to injury, recovery is not barred under such doctrine, but plaintiff's damages are diminished proportionately, provided his fault is less than defendant's, and that, by exercise of ordinary care, he could not have avoided consequences of defendant's negligence after it was or should have been apparent. *Rogers v. McKinley*, 48 Ga.App. 262, 172 S.E. 662, 664.

**COMPARISON OF HANDWRITING.** A comparison by the juxtaposition of two writings, in order, by such comparison, to ascertain whether both were written by the same person.

A method of proof resorted to where the genuineness of a written document is disputed; it consists in comparing the handwriting of the disputed paper with that of another instrument which is proved or admitted to be in the writing of the party sought to be charged, in order to infer, from their identity or similarity in this respect, that they are the work of the same hand. *Johnson v. Insurance Co.*, 105 Iowa, 273, 75 N.W. 101.

**COMPARATIVE RECTITUDE.** Doctrine wherein relief by divorce is granted to the party least in fault when both have shown grounds for divorce. *Blankenship v. Blankenship*, 51 Nev. 356, 276 P. 9, 10, 63 A.L.R. 1127.

Doctrine does not apply in Nevada.

**COMPASCUUM.** Belonging to commonage *Jus compascuum*, the right of common of pasture.

**COMPASS, THE MARINER'S.** An instrument used by mariners to point out the course of a ship at sea. It consists of a magnetized steel bar called the "needle," attached to the under side of a card, upon which are drawn the points of the compass, and supported by a fine pin, upon which it turns freely in a horizontal plane.

**COMPASSING.** Imagining or contriving, or plotting. In English law, "compassing the king's death" is treason. 4 Bl.Comm. 76.

**COMPATERNITAS.** In the canon law. A kind of spiritual relationship contracted by baptism.

**COMPATERNITY.** Spiritual affinity, contracted by sponsorship in baptism.

**COMPATIBILITY.** As applied to offices, such relation and consistency between the duties of two offices that they may be held and filled by one person.

**COMPEAR.** In Scotch law. To appear.

**COMPEARANCE.** In Scotch practice. Appearance; an appearance made for a defendant; an appearance by counsel. Bell.

**COMPEL.** To force. *Temple Lumber Co. v. Living*, Tex.Civ.App., 289 S.W. 746, 749. To oblige. *Texas Electric Ry. v. Jones*, Tex.Civ.App., 231 S. W. 823, 824.

In an allegation that plaintiff was compelled to pay license taxes, the word "compel" does not necessarily import elements of compulsory payment. *Singer Sewing Mach. Co. v. Teasley*, 198 Ala. 673, 73 So. 969, 971; *Sinnott v. District Court in and for Clarke County*, 201 Iowa, 292, 207 N.W. 129, 131.

As to compelling a person to testify against himself, see *State v. Backstrom*, 117 Kan. 111, 230 P. 306, 308; *U. S. v. Cooper*, D.C.Iowa, 288 F. 604, 609; *U. S. v. Kallas*, D.C. Wash., 272 F. 742, 751; *U. S. v. Monia*, Ill., 317 U.S. 424, 63 S.Ct. 409, 411, 87 L.Ed. 376.

**COMPELLATIVUS.** An adversary or accuser.

**Compendia sunt dispensia.** Co. Litt. 305. Abbreviations (or abridgments) are detriments.

**COMPENDIUM.** An abridgment, synopsis, or digest.

**COMPENSABLE DEATH.** Within Workmen's Compensation Acts is one which results to employee from injury by accident arising out of and in course of employment. *Slade v. Willis Hosiery Mills*, 209 N.C. 823, 184 S.E. 844, 845.

**COMPENSABLE INJURY.** Within Workmen's Compensation Acts is an injury for which compensation is payable, and date of such an injury is not time of the accident or occurrence causing

## COMPENSACION

injury, but the time when the right to compensation accrues. *S. G. Taylor Chain Co. v. Marianowski*, 182 N.E. 584, 585, 95 Ind.App. 120. *Muehlhausen Spring Co. v. Szewczyk*, 104 Ind.App. 161, 8 N.E.2d 104, 106.

**COMPENSACION.** In Spanish law. Compensation; set-off. The extinction of a debt by another debt of equal dignity between persons who have mutual claims on each other.

**COMPENSATIO.** Lat. In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim on the part of the defendant to have an amount due to him from the plaintiff deducted from his demand. Dig. 16, 2; Inst. 4, 6, 30, 39; 3 Bl.Comm. 305.

**COMPENSATIO CRIMINIS.** (Set-off of crime or guilt.) In practice. The compensation or set-off of one crime against another; the plea of re-primination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offense with which the respondent is charged. See 1 Hagg.Cons. 144; 1 Hagg.Eccl. 714; *Wood v. Wood*, 2 Paige, Ch. (N.Y.) 108, 2 D. & B. 64; *Bishop, Marr. & D.* §§ 393, 394.

**COMPENSATION.** Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value; that which is necessary to restore an injured party to his former position; consideration or price of a privilege purchased; equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description; that return which is given for something else. An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. *Railroad Co. v. Denman*, 10 Minn. 280 (Gil. 208); *Hughson Condensed Milk Co. v. State Board of Equalization*, 23 Cal.App.2d 281, 73 P.2d 290, 292. For "Extra Compensation" and "Fair and Reasonable Compensation", see these titles.

"Compensation" is a misleading term, and is used merely for lack of a word more nearly expressing the thought of the law which permits recovery for an imponderable and intangible thing for which there is no money equivalent. *Stutsman v. Des Moines City Ry. Co.*, 180 Iowa, 524, 163 N.W. 580, 585.

The word "compensation," as used in Workmen's Compensation Acts, means the money relief afforded an injured employee or his dependents according to the scale established and for the persons designated in the act, and not the compensatory damages recoverable in an action at law for a wrong done or a contract broken. *Christensen v. Morse Dry Dock & Repair Co.*, 214 N.Y.S. 732, 740, 216 App.Div. 274.

As used in Workmen's Compensation Acts, "compensation" is distinguishable from "benefits"; the former applying to an allowance where the employee is only injured, and the latter applying in case of death. *Terry v. General Electric Co.*, 232 N.Y. 120, 133 N.E. 373, 374. The term "compensation" may include funeral benefits. *Donoho v. Atlantic Basin Iron Works*, 206 N.Y.S. 494, 495, 210 App. Div. 535. But see *Barber v. Estey Organ Co.*, 100 Vt. 72, 135 A. 1, 2; *Industrial Commission v. Hammond*, 77 Colo. 414, 236 P. 1006, 1008.

Also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected by the exercise of the power of eminent domain. *Louisiana and F. Plank Road Co. v. Pickett*, 25 Mo. 535, 539; *Oregon Short Line R. Co. v. Fox*, 28 Utah 311, 78 P. 800, 801.

In the constitutional provision for "just compensation" for property taken under the power of eminent domain, this term means a payment in money. Any benefit to the remaining property of the owner, arising from public works for which a part has been taken, cannot be considered as compensation. *Railroad Co. v. Burkett*, 42 Ala. 83.

As compared with consideration and damages, compensation, in its most careful use, seems to be between them. Consideration is amends for something given by consent, or by the owner's choice. Damages is amends exacted from a wrong-doer for a tort. Compensation is amends for something which was taken without the owner's choice, yet without commission of a tort. Thus, one should say, consideration for land sold; compensation for land taken for a railway; damages for a trespass. But such distinctions are not uniform. Land damages is a common expression for compensation for lands taken for public use. *Abbott*.

"Compensation" is distinguishable from "damages," inasmuch as the former may mean the sum which will remunerate an owner for land actually taken, while the latter signifies an allowance made for injury to the residue; but such distinction is not ordinarily observed. *Faulkner v. City of Nashville*, 154 Tenn. 145, 285 S.W. 39, 43.

The remuneration or wages given to an employee or, especially, to an officer. Salary, pay, or emolument. *Christopherson v. Reeves*, 44 S.D. 634, 184 N.W. 1015, 1019; *Higgins v. Glenn*, 65 Utah, 406, 237 P. 513, 515.

The ordinary meaning of the term "compensation," as applied to officers, is remuneration, in whatever form it may be given, whether it be salaries and fees, or both combined. *State v. Bland*, 91 Kan. 160, 136 P. 947, 949. It is broad enough to include other remuneration for official services; *State ex rel. Emmons v. Farmer*, 271 Mo. 306, 196 S.W. 1106, 1108; such as mileage or traveling expenses; *Leckenby v. Post Printing & Publishing Co.*, 65 Colo. 443, 176 P. 490, 492; and also the repayment of amounts expended. Compare, however, *People v. Chapman*, 225 N.Y. 700, 122 N.E. 240; *McCoy v. Handlin*, 35 S.D. 487, 153 N.W. 361, 371, L.R.A.1915E, 858, Ann.Cas.1917A, 1046.

But the term is not necessarily synonymous with "salary." See *People v. Wemple*, 115 N.Y. 302, 22 N.E. 272; *Com. v. Carter*, 21 Ky.L.Rep. 1509, 55 S.W. 701; *Crawford County v. Lindsay*, 11 Ill.App. 261; *Kilgore v. People*, 76 Ill. 548.

A "reasonable compensation" is that which will fairly compensate the laborer when the character of the work and the effectiveness and ability entering into the service are considered. *Chapman v. A. H. Averill Machinery Co.*, 28 Idaho, 121, 152 P. 573, 575.

Compensation is not synonymous with "pension," which is ordinarily a gratuity from the government or some of its subordinate agencies in recognition of, but not in payment for, past services. *Dickey v. Jackson*, 181 Iowa 1155, 165 N.W. 387, 389.

### The Civil, Scotch, and French Law

Recoupment; set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other; that is to say, where one person is both debtor and creditor to

another, and therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. *Bell*; 1 *Karnes*, Eq. 395, 396.

In order for "compensation" to take place, the two debts must exist simultaneously and have as their object the payment of a sum of money or a certain quantity of consumable things of one and the same kind, and the debts must be equally liquidated and demandable. *Blanchard v. Bank of Morgan City & Trust Co.*, La.App., 185 So. 120, 122.

Compensation is of three kinds.—legal, or by operation of law; compensation by way of exception; and by reconvention. *Stewart v. Harper*, 16 La. Ann. 181; *Blanchard v. Cole*, 8 La. 158; 8 Dig. 16, 2; Code, 4, 31; Inst. 4, 6, 30; *Burge, Suret. b. 2, c. 6, p. 181*; La.Civ. Code, arts. 2203-2208 (Civ.Code, arts. 2207-2211).

**Criminal Law**

Recrimination. See *Compensatio Criminis*; *Re- crimination*.

"Commutation" and "compensation" in statutes providing for reduction of sentence for good behavior are used interchangeably. *Ryan v. Lawes*, 278 N.Y.S. 608, 154 Misc. 572.

**COMPENSATION PERIOD.** The period fixed by the Workmen's Compensation Act during which the injured party is to receive compensation, unless the board reduces the period by correspondingly increasing the amount of weekly compensation. *Southern Casualty Co. v. Boykin*, Tex.Civ. App., 298 S.W. 639, 640.

**COMPENSATORY DAMAGES.** See *Damages*.

**COMPERENDINATIO.** In the Roman law. The adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause. *Calvin*.

**COMPERTORIUM.** In the civil law. A judicial inquest made by delegates or commissioners to find out and relate the truth of a cause. *Wharton*.

**COMPERUIT AD DIEM.** A plea in bar of an action of debt on a bail bond that the defendant appeared at the day required. For forms, see 5 *Wentworth* 470; *Lilly*, Entr. 114; 2 *Chit. Pl.* 527. See, generally, *Comyns*, Dig. *Pleader* (2 W. 31); 7 *B. & C.* 478.

**COMPETE.** To contend emulously, to strive for the position for which another is striving, to contend in rivalry. *People v. Chew*, 67 *Colo.* 394, 179 P. 812, 813; *Commonwealth v. Shenandoah River Light & Power Corporation*, 135 *Va.* 47, 115 S.E. 695, 698. See *Competition*.

**COMPETENCY.** In the law of evidence. The presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice;—applied, in the same sense, to documents or other written evidence.

Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be given to his story. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible. Competency is for the court; credibility for the jury. Yet in some cases the term "credible" is used as an equivalent for "competent."

Thus, in a statute relating to the execution of wills, the term "credible witness" is held to mean one who is entitled to be examined and to give evidence in a court of justice; not necessarily one who is personally worthy of belief, but one who is not disqualified by imbecility, interest, crime, or other cause. 1 *Jarm. Wills*, 124; *Smith v. Jones*, 68 *Vt.* 132, 34 *A.* 424; *Com. v. Holmes*, 127 *Mass.* 424, 34 *Am. Rep.* 391.

In French law. The right in a court to exercise jurisdiction in a particular case.

**COMPETENT.** Duly qualified; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit. *Levee Dist. v. Jamison*, 176 *Mo.* 557, 75 *S.W.* 679; *In re Fichter's Estate*, 279 *N.Y.* S. 597, 600, 155 *Misc.* 399. See, also, *Incompetency*.

A testator may be said to be "competent," if he has mental capacity to understand the nature of his act, to understand and recollect the nature and situation of his property and his relations to persons having claims on his bounty and whose interests are affected by his will. *In re Smith's Estate*, 200 *Cal.* 152, 252 P. 325, 328.

When generally applied to arbitrators, the term does not mean "expert." *Home Ins. Co. v. Walter*, *Tex. Civ. App.*, 230 *S.W.* 723, 724.

**COMPETENT AND OMITTED.** In Scotch practice. A term applied to a plea which might have been urged by a party during the dependence of a cause, but which had been omitted. *Bell*.

**COMPETENT AUTHORITY.** As applied to courts and public officers, this term imports jurisdiction and due legal authority to deal with the particular matter in question. *Mitchel v. U. S.*, 9 *Pet.* 735, 9 *L. Ed.* 283; *Charles v. Charles*, 41 *Minn.* 201, 42 *N.W.* 935.

**COMPETENT EVIDENCE.** That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. 1 *Greenl. Ev.* § 2; *Hill v. Hill*, 216 *Ala.* 435, 113 *So.* 306, 308; *Goltra v. Penland*, 45 *Or.* 254, 77 *P.* 129, 133. Also, generally, admissible or relevant, as the opposite of "incompetent." *Ryan v. Town of Bristol*, 63 *Conn.* 261, 27 *A.* 309, 312.

**COMPETENT COURT.** A court, either civil or criminal, having lawful jurisdiction. *People ex rel. Fisher v. Morhous*, 49 *N.Y.S.2d* 110, 116, 183 *Misc.* 51.

**COMPETENT WITNESS.** One who is legally qualified to be heard to testify in a cause. *People v. Compton*, 123 *Cal.* 403, 56 *P.* 44; *Bank of Uvalde*, *Tex. Civ. App.*, 60 *S.W.2d* 888, 889. See *Competency*.

As used in the statute relating to the execution of wills, the term means a person who, at the time of making the attestation, could legally testify in court to the facts which he attests by subscribing his name to the will. *In re Wiese's Estate*, 98 *Neb.* 463, 153 *N.W.* 556, *L.R.A.* 1915E, 832.

**COMPETITION.** Rivalry. *People ex rel. Broderick v. Goldfogle*, 123 *Misc.* 399, 205 *N.Y.S.* 870, 877. The play of contending forces ordinarily engendered by an honest desire for gain. *U. S. v. American Linseed Oil Co.*, 43 *S.Ct.* 607, 611, 262 *U.S.* 371, 67 *L. Ed.* 1035. The effort of two or more parties,

## COMPETITION

acting independently, to secure the custom of a third party by the offer of the most favorable terms. It is the struggle between rivals for the same trade at the same time; the act of seeking or endeavoring to gain what another is endeavoring to gain at the same time. *Lipson v. Socony Vacuum Corporation*, C.C.A.Mass., 87 F.2d 265, 270.

As used in a statute taxing moneyed capital competing with national banks, "competition" means a condition of business rivalry which arises when moneyed capital is devoted with reasonable continuity and regularity to operations having for their primary and characteristic purpose, as distinguished from some incidental operations or details, the transaction of some branch of business which may be carried on by national banks, and it is not necessary that this employment shall bring capital into competition with all of such branches. *People ex rel. Pratt v. Goldfogle*, 242 N.Y. 277, 151 N.E. 452, 461. The term involves the idea of struggling to obtain the same thing. *First Nat. Bank v. City of Hartford*, 187 Wis. 290, 203 N.W. 721, 729. See, also, *First Nat. Bank v. City of Hartford*, 47 S.Ct. 462, 466, 273 U.S. 548, 71 L.Ed. 767, 59 A.L.R. 1.

Unity of object with diversity of method is the essence of competition. *Continental Securities Co. v. Interborough Rapid Transit Co.*, D.C.N.Y., 207 F. 467, 470.

### Scotch Practice

The contest among creditors claiming on their respective diligences, or creditors claiming on their securities. *Bell*.

### Unfair Competition in Trade

See *Unfair*.

**COMPETITIVE CIVIL SERVICE EXAMINATION.** Examination which conforms to measures or standards which are sufficiently objective to be capable of being challenged and reviewed by other examiners of equal ability and experience. *Fink v. Finegan*, 270 N.Y. 356, 1 N.E.2d 462, 464.

**COMPETITIVE BIDDING.** Requires that all bidders be placed on a plane of equality, and that they bid upon the same terms and conditions. *State Highway Commission of Kentucky v. King*, 259 Ky. 414, 82 S.W.2d 443.

**COMPETITIVE TRAFFIC.** Traffic which, as to any one carrier, originates at a point served also by another carrier, which other carrier handles the traffic at equal line-haul rates from origin to destination. *Northern Pac. Ry. Co. v. United States*, D.C.Minn., 41 F.Supp. 439, 441.

**COMPETITORS.** Persons endeavoring to do the same thing and each offering to perform the act, furnish the merchandise, or render the service better or cheaper than his rival. *Continental Securities Co. v. Interborough Rapid Transit Co.*, D.C.N.Y., 207 F. 467, 470.

**COMPILATION.** A literary production composed of the works of others and arranged in a methodical manner.

A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author. *Story v. Holcombe*, 4 McLean 306, 314, Fed. Cas.No.13,497.

**COMPILE.** To copy from various authors into one work. *Story v. Holcombe*, 23 Fed.Cas. 171, 174. See *Compilation*.

Such a collection of statutes differs from a code in this, that none of the laws so compiled derives any new force or undergoes any modification in its relation to other statutes *in pari materia* from the fact of the compilation, while a code is a re-enactment of the whole body of the positive law and is to be read and interpreted as one entire and homogeneous whole.

**COMPILED STATUTES.** A collection of the statutes existing and in force in a given state, all laws and parts of laws relating to each subject-matter being brought together under one head, and the whole arranged systematically in one book, either under an alphabetical arrangement or some other plan of classification. *Railway Co. v. State*, 31 S.E. 531, 104 Ga. 831; *Black, Interp. Laws*, p. 363; *Fidelity and Columbia Trust Co. v. Meek*, 294 Ky. 122, 171 S.W.2d 41, 44.

**COMPLAINANT.** In practice. One who applies to the courts for legal redress; one who exhibits a bill of complaint. This is the proper designation of one suing in equity, though "plaintiff" is often used in equity proceedings as well as at law. *Benefit Ass'n v. Robinson*, 147 Ill. 138, 35 N.E. 168.

One who instigates prosecution or who prefers accusation against suspected person. *State v. Snyder*, 93 N.J.L. 18, 107 A. 167, 168.

**COMPLAINT.** In civil practice. In those states having a Code of Civil Procedure, the complaint is the first or initiatory pleading on the part of the plaintiff in a civil action. It corresponds to the declaration in the common-law practice. Code N.Y. § 141; *McMath v. Parsons*, 26 Minn. 246, 2 N.W. 703. Its purpose is to give defendant information of all material facts on which plaintiff relies to support his demand. *Fox v. Cosgriff*, 64 Idaho 448, 133 P.2d 930, 932.

The complaint shall contain: (1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant. (2) A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation shall be distinctly numbered. (3) A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof must be stated. Code N.C.1883, § 233 (C.S. § 506).

*Cross-complaint.* In code practice. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint. *Standley v. Insurance Co.*, 95 Ind. 254; *Harrison v. McCormick*, 69 Cal. 616, 11 P. 456; *Bank v. Ridpath*, 29 Wash. 687, 70 P. 139. This is allowed when a defendant has a cause of action against a co-defendant, or a person not a party to the action, and affecting the subject-matter of the action. The only real difference between a complaint and a cross-complaint is that the first is filed by the plaintiff and the second by the defendant. Both contain a statement of the facts, and each demands affirmative relief upon the facts stated. The difference between a counter-claim and a cross-complaint is that in the former the defendant's cause of action is against the plaintiff; and the latter, against a co-defendant, or one not a party to the action; *White v. Reagan*, 32 Ark. 290.

In criminal law. A charge, preferred before a magistrate having jurisdiction, that a person

named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. It is a technical term, descriptive of proceedings before a magistrate. *Hobbs v. Hill*, 157 Mass. 556, 32 N.E. 862; In some instances "complaint" is interchangeable with "information." *State v. Stafford*, 26 Idaho, 381, 143 P. 528, 530; *State v. Ritzler*, 17 Ohio App. 394, 395. And is often used interchangeably with "affidavit." *Hebebrand v. State*, 129 Ohio St. 574, 196 N.E. 412, 415.

**COMPLETE, v.** To finish; accomplish that which one starts out to do. *Ries v. Williams*, 190 Ky. 596, 228 S.W. 40, 41.

**COMPLETE, adj.** Full; entire; including every item or element of the thing spoken of, without omissions or deficiencies; as, a "complete" copy, record, schedule, or transcript. *Bailey v. Martin*, 119 Ind. 103, 21 N.E. 346.

Perfect; consummate; not lacking in any element or particular; as in the case of a "complete legal title" to land, which includes the possession, the right of possession, and the right of property. *Dingey v. Paxton*, 60 Miss. 1054; *Ehle v. Quackenboss*, 6 Hill N. Y. 537; *Versailles Tp. v. Ulm*, 152 Pa.Super. 384, 33 A.2d 265, 267.

**COMPLETE AND PERMANENT LOSS OF USE OF RIGHT ARM.** Inability to use in any gainful activity. *Bell & Zoller Mining Co. v. Industrial Commission*, 322 Ill. 395, 153 N.E. 580, 582.

**COMPLETE DETERMINATION OF CAUSE.** Determination of every issue so as to render decree or judgment *res judicata*. *Consolidated Gas Co. of New York v. Newton*, D.C.N.Y., 256 F. 238, 244.

**COMPLETE FRACTURE OF ARM.** Breaking of only one bone in forearm, insufficient. *Columbia Mut. Life Assur. Co. v. Penn*, 97 So. 673, 133 Miss. 266.

**COMPLETE IN ITSELF.** Of a legislative act, covering entire subject; not amendatory. *Minier v. Burt County*, 95 Neb. 473, 145 N.W. 977, 979.

**COMPLETE LOSS OF SIGHT.** A destruction of ability to perceive, distinguish, and recognize objects to such extent that what remains will not confer any of benefits of sight or vision to practical and useful extent. *Mulcahey v. Brotherhood of Ry. Trainmen*, 229 Mo.App. 610, 79 S.W.2d 759, 765.

**COMPLETE PAYMENT.** On a contract, the final payment. *Robinson v. U. S.*, C.C.A.N.Y., 251 F. 461, 466.

**COMPLETED.** Finished; nothing substantial remaining to be done; state of a thing that has been created, erected, constructed or done substantially according to contract. *Fox & Co. v. Roman Catholic Bishop of the Diocese of Baker City*, 107 Or. 557, 215 P. 178, 179; *Taylor Bros. v. Gill*, 259 P. 236, 238, 126 Okl. 293, 54 A.L.R. 979; *Bayou Meto Drainage Dist. of Lonoke County v. Ingram*, 165 Ark. 318, 264 S.W. 947, 949.

**COMPLETED OIL WELL.** A well finished or sunk to the depth necessary to find oil, or to such a depth as, in the absence of oil, precludes a probability of finding it at a further depth. *Howard v. Hughes*, 294 Mich. 533, 293 N.W. 740, 743.

**COMPLETION.** The finishing or accomplishing in full of something theretofore begun; substantial performance of what one has agreed to do; state in which no essential element is lacking. *Flad v. Murphysboro & S. I. R. Co.*, C.C.A.Ill., 283 F. 386, 390.

**COMPLICATED.** Consisting of many parts or particulars not easily severable in thought; hard to understand or explain; involved, intricate, confused. *Niemes v. Niemes*, 97 Ohio St. 145, 119 N.E. 503, 505.

**COMPLICATED FRACTURE.** One where flesh and ligaments get between parts of broken bones, causing suppuration and preventing union of such parts. *Sang v. City of St. Louis*, 262 Mo. 454, 171 S.W. 347, 349.

**COMPLICE.** One who is united with others in an ill design; an associate; a confederate; an accomplice.

**COMPLY.** To yield, to accommodate, or to adapt oneself to, to act in accordance with. *Dragwa v. Federal Labor Union No. 23070*, 41 A.2d 32, 36, 136 N.J.Eq. 172.

**COMPOS MENTIS.** Sound of mind. Having use and control of one's mental faculties.

**COMPOS SUI.** Having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum*, if he had so far the use of his limbs as to be able to travel from place to place. *Bract. fol. 14b*.

**COMPOSED OF.** Formed of; consisting of. *Hoskins Mfg. Co. v. General Electric Co.*, D.C.Ill., 212 F. 422, 428.

**COMPOSITE WORK.** Within Copyright Act means work to which a number of authors have contributed distinguishable parts. Copyright Act of 1909, § 24, 17 U.S.C.A. § 24. *Shapiro, Bernstein & Co. v. Bryan*, C.C.A.N.Y., 123 F.2d 697, 699.

**COMPOSITIO MENSURARUM.** The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 Hen. VIII, c. 4; establishing a standard of measures. 1 Bl. Comm. 275.

**COMPOSITIO ULNARUM ET PERTICARUM.** The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 Bl. Comm. 275.

**COMPOSITION.** An agreement, made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter, for the sake of immediate or sooner payment, agree to accept a dividend less than the whole amount of their claims, to be distributed

## COMPOSITION

*pro rata*, in discharge and satisfaction of the whole. *Bank v. McGeoch*, 92 Wis. 286, 66 N.W. 606; *Pioneer Minerals Corporation v. Larabic Bros. Bankers*, 99 Mont. 358, 43 P.2d 884, 886.

"Composition" should be distinguished from "accord." The latter properly denotes an arrangement between a debtor and a single creditor for a discharge of the obligation by a part payment or on different terms. The former designates an arrangement between a debtor and the whole body of his creditors (or at least a considerable proportion of them) for the liquidation of their claims by the dividend offered.

### Ancient Law

Among the Franks, Goths, Burgundians, and other barbarous peoples, this was the name given to a sum of money paid, as satisfaction for a wrong or personal injury, to the person harmed, or to his family if he died, by the aggressor. It was originally made by mutual agreement of the parties, but afterwards established by law, and took the place of private physical vengeance.

**COMPOSITION CHIPS.** In the metal trade, "composition chips" or "turnings" are chips without aluminum. *Ehrlich v. United Smelting & Aluminum Co.*, 252 Mass. 12, 147 N.E. 20.

**COMPOSITION DEED.** An agreement embodying the terms of a composition between a debtor and his creditors.

**COMPOSITION IN BANKRUPTCY.** An arrangement between a bankrupt and his creditors, whereby the amount he can be expected to pay is liquidated, and he is allowed to retain his assets, upon condition of his making the payments agreed upon. *Fisher Supply Co. v. Northwestern Gravel Co.*, 216 Iowa 909, 249 N.W. 664, 666, 667.

The difference between a common-law "composition with creditors" and a "composition in bankruptcy" is that in a composition with creditors the creditors voluntarily release the principal debtor and therefore release co-debtors, while in the case of a bankruptcy composition the discharge is by operation of law and not by act of the creditors who assent to the composition. *Barker v. Ackers*, 29 Cal.App.2d 162, 84 P.2d 264, 271.

**COMPOSITION OF MATTER.** In patent law, a substance composed of two or more different substances, without regard to form. A mixture or chemical combination of materials. *Jacobs v. Baker*, 7 Wall. 295, 19 L.Ed. 200.

**COMPOSITION OF TITHES, OR REAL COMPOSITION.** This arises in English ecclesiastical law, when an agreement is made between the owner of lands and the incumbent of a benefice, with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. 2 Bl.Comm. 28; 3 Steph.Comm. 129.

**COMPOTARIUS.** In old English law. A party accounting. *Fleta*, lib. 2, c. 71, § 17.

**COMPOUND, v.** To compromise; to effect a composition with a creditor; to obtain discharge from a debt by the payment of a smaller sum. *Bank v. Malheur County*, 45 P. 781, 30 Or. 420, 35 L.R.A. 141. To put together as elements, ingredients, or parts, to form a whole, to combine, to unite; to form or make up as a composite product by combining different elements, ingredients, or parts, as to combine a medicine. *Department of Treasury of Indiana v. Ridgely*, 211 Ind. 9, 4 N.E.2d 557, 561, 108 A.L.R. 1067.

**COMPOUND, n.** A combination of two or more elements or things by means of human agency; an artificial or synthetic product. *Monticelli Bros. v. U. S.*, 8 Ct.Cust.App. 21, 24.

**COMPOUND INTEREST.** Interest upon interest, *i. e.*, when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal. *Camp v. Bates*, 11 Conn. 487; *Woods v. Rankin*, 2 Heisk. (Tenn.) 46; *U. S. Mortg. Co. v. Sperry*, C. C.Ill., 26 F. 730; *American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co.*, D.C.N.Y., 26 F.Supp. 954, 955.

**COMPOUND LARCENY.** See Larceny.

**COMPOUNDER.** In Louisiana. The maker of a composition, generally called the "amicable compounder."

**COMPOUNDING A FELONY.** The offense committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute.

The offense of taking a reward for forbearing to prosecute a felony; as where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute. *Rieman v. Morrison*, 106 N.E. 215, 217, 264 Ill. 279.

**COMPRA Y VENTA.** In Spanish law. Purchase and sale.

**COMPREMESSO.** In Italian. The instrument whereby parties agree to submit to arbitration a dispute between them. The equivalent of "compromissum" under the Roman Law, the principles of which have been carried into the common law and are to be found in agreements of accord and satisfaction and compromise and settlement. *Castelli v. Tolibia*, 83 N.Y.S.2d 554, 562.

**COMPRINT.** A surreptitious printing of another book-seller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. *Wharton*.

**COMPRISE.** To comprehend; include; contain; embrace; cover. *Hoskins Mfg. Co. v. General Electric Co.*, D.C.Ill., 212 F. 422, 428.

**COMPRIVIGNI.** In the civil law. Children by a former marriage, (individually called "*privigni*," or "*privignæ*") considered relatively to each other.

Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. Inst. 1, 10, 8.

**COMPROMISE.** An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together. Colburn v. Groton, 66 N.H. 151, 28 A. 95, 22 L.R.A. 763; Isaacs v. Wishnick, 136 Minn. 317, 162 N.W. 297; Joyner v. City of Seattle, 144 Wash. 641, 258 P. 479, 481. A settlement of differences by mutual concessions or an adjustment of matters in dispute by mutual concessions. Forker v. Berkes, 111 Ind.App. 92, 38 N. E.2d 296, 299; In re Cusimano's Will, 22 N.Y.S.2d 677, 680, 681, 174 Misc. 1068.

It is essential to a compromise that there be mutual concessions or yielding of opposing claims. Scott v. Scott, 131 Okl. 144, 268 P. 245, 248; Hutson v. McConnell, 139 Okl. 240, 281 P. 760, 763.

In the civil law. An agreement whereby two or more persons mutually bind themselves to refer their legal dispute to the decision of a designated third person, who is termed "umpire" or "arbitrator." Dig. 4, 8; Mackeld. Rom. Law, § 471.

**OFFER OF COMPROMISE.** See Offer, *n.*

**COMPROMISE VERDICT.** One which is reached only by the surrender of conscientious convictions on one material issue by some jurors in return for a relinquishment of matters in their like settled opinion on another issue, and the result is one which does not hold the approval of the entire panel. North British & Mercantile Ins. Co. v. Parnell, 53 Ga.App. 178, 185 S.E. 122, 126.

**COMPROMISSARIJ SUNT JUDICES.** Jenk. Cent. 128. Arbitrators are judges.

**COMPROMISSARIUS.** In the civil law. An arbitrator.

**COMPROMISSUM.** A submission to arbitration.

**COMPROMISSUM AD SIMILITUDINEM JUDICIORUM REDIGITUR.** A compromise is brought into affinity with judgments. Strong v. Strong, 9 Cush. (Mass.) 571.

**COMPTE ARRÊTÉ.** Fr. An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated. Paschal v. Union Bank of Louisiana, 9 La. Ann. 484.

**COMPTER.** In Scotch law. An accounting party.

**COMPTROLLER.** A public officer of a state or municipal corporation, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts of collectors of the public money, to keep records, and report the financial situation from time to time. There are also officers bearing this name in the treasury department of the United States. Beneficial Loan Soc. of New Orleans v. Straus, La. App., 148 So. 85, 87.

**Comptroller in bankruptcy.** An officer in England, whose duty it is to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy, and also to call the trustee to account for any misfeasance, neglect, or omission in the discharge of his duties. Robs. Bankr. 13; Bankr. Act 1869, § 55.

**Comptrollers of the Hanaper.** In English law. Officers of the court of chancery; their offices were abolished by 5 & 6 Vict. c. 103.

**State comptroller.** A supervising officer of revenue in a state government, whose principal duty is the final auditing and settling of all claims against the state. State v. Doron, 5 Nev. 413.

**COMPULSA.** A judicially attested copy of a testimonio. State v. Balli, Tex. Civ. App., 173 S.W.2d 522, 527.

**COMPULSION.** Constraint; objective necessity; duress. Forcible inducement to the commission of an act. Navigation Co. v. Brown, 100 Pa. 346. The act of compelling or the state of being compelled; the act of driving or urging by force or by physical or moral constraint; subjection to force. Fluharty v. Fluharty, Del. Super., 193 A. 838, 840.

The "compulsion" which will excuse a criminal act must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm. Browning v. State, 31 Ala. App. 137, 13 So.2d 54, 56.

To constitute "compulsion" or "coercion" rendering payment involuntary, there must be some actual or threatened exercise of power possessed, or supposedly possessed, by payee over payer's person or property, from which payer has no means of immediate relief except by advancing money. Wake Development Co. v. O'Leary, 118 Cal. App. 131, 4 P.2d 802, 803.

**COMPULSORY, n.** In ecclesiastical procedure, a compulsory is a kind of writ to compel the attendance of a witness, to undergo examination. Philim. Ecc. Law, 1258.

**COMPULSORY, adj.** Involuntary; forced; coerced by legal process or by force of statute.

**COMPULSORY ARBITRATION.** That which takes place where the consent of one of the parties is enforced by statutory provisions. Wood v. Seattle, 62 P. 135, 23 Wash. 1, 52 L.R.A. 369.

**COMPULSORY NONSUIT.** An involuntary nonsuit. See Nonsuit.

**COMPULSORY PAYMENT.** One not made voluntarily, but exacted by duress, threats, the enforcement of legal process, or unconscionably taking advantage of another. Singer Sewing Mach. Co. v. Teasley, 73 So. 969, 971, 198 Ala. 673.

**COMPULSORY PROCESS.** Process to compel the attendance in court of a person wanted there as a witness or otherwise; including not only the ordinary subpoena, but also a warrant of arrest or attachment if needed. State v. Nathaniel, 52 La. Ann. 558, 26 So. 1008.



## COMPULSORY

It means such coercive means as the courts, by virtue of their inherent powers or sanction of the law, are permitted to employ, *Greene v. Ballard*, 174 Ky. 808, 192 S.W. 841, 845; and includes right to have subpoena served, as well as issued (*Const.* § 11). *Fugate v. Commonwealth*, 202 Ky. 509, 260 S.W. 338, 340.

**COMPULSORY SALE OR PURCHASE.** A term sometimes used to characterize the transfer of title to property under the exercise of the power of eminent domain. In *re Barre Water Co.*, 62 Vt. 27, 20 A. 109, 9 L.R.A. 195; *United States v. Certain Parcels of Land in City of San Diego, San Diego County, D.C.Cal.*, 44 F.Supp. 936, 937.

**COMPURGATOR.** One of several neighbors of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him on his oath. 3 Bl.Comm. 341.

**COMPUTING SCALE.** A balance having an indicator apparatus so arranged that, within the limits of weights and prices for which it is contrived, one glance at a printed card, which is a part thereof, shows not only the weight of the article, but its price at a given rate per pound. *Standard Computing Scale Co. v. Farrell, D.C.N.Y.*, 242 F. 87.

**COMPUTO.** Lat. To compute, reckon, or account. Used in the phrases *insimul computasent*, "they reckoned together," (see *Insimul*;) *plene computavit*, "he has fully accounted," (see *Plene*;) *quod computet*, "that he account," (see *Quod Computet*.)

**COMPUTATION.** The act of computing, numbering, reckoning, or estimating. The account or estimation of time by rule of law, as distinguished from any arbitrary construction of the parties. *Cowell*.

**COMPUTUS.** A writ to compel a guardian, bailiff, receiver, or accountant to yield up his accounts. It is founded on the statute *Westm. 2, c. 12*; *Reg. Orig.* 135.

**COMTE.** Fr. A count or earl. In the ancient French law, the *comte* was an officer having jurisdiction over a particular district or territory, with functions partly military and partly judicial.

**CON.** *Adj.* A slang or cant abbreviation for confidence, as a *con* man or a *con* game. *Webster*.

**CON.** *Prep.* With. *Calef v. Calef*, 54 Me. 365, 92 Am.Dec. 549.

**CON-** A prefix meaning with, together. *Webster*.

**CON BUENA FE.** In Spanish law. With (or in) good faith.

**CONACRE.** In Irish practice. The payment of wages in land, the rent being worked out in labor at a money valuation. *Wharton*.

**CONATUS QUID SIT, NON DEFINITUR IN JURE.** 2 *Bulst.* 277. What an attempt is, is not defined in law.

**CONCEAL.** To hide; secrete; withhold from the knowledge of others; to withdraw from observation; to withhold from utterance or declaration; to cover or keep from sight. *Hopper v. Hopkins*, 162 Md. 448, 160 A. 166, 167.

The synonyms of conceal are "to hide; disguise, dissemble; secrete." To hide is generic; "conceal" is simply not to make known what we wish to secrete; disguise or dissemble is to conceal by assuming some false appearance; to secrete is to hide in some place of secrecy. A man may conceal facts, disguise his sentiments, dissemble his feelings, or secrete stolen goods. *Darneal v. State*, 14 Okl.Cr. 540, 174 P. 290, 292, 1 A.L.R. 638.

The word "conceal," according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation. *Gerry v. Dunham*, 57 Me. 339.

**CONCEALED.** Not synonymous with "lying in wait." If a person conceals himself for the purpose of shooting another unawares, he is lying in wait; but a person may, while concealed, shoot another without committing the crime of murder. *People v. Miles*, 55 Cal. 207.

The term "concealed weapons" means weapons willfully or knowingly covered or kept from sight. *Owen v. State*, 31 Ala. 387.

**CONCEALERS.** In old English law. Such as find out concealed lands; that is, lands privily kept from the king by common persons having nothing to show for them. They are called "a troublesome, disturbant sort of men; turbulent persons." *Cowell*.

**CONCEALMENT.** A withholding of something which one knows and which one, in duty, is bound to reveal. *Dolcater v. Manufacturers & Traders Trust Co.*, D.C.N.Y., 25 F.Supp. 637, 641; *Strauss v. Dubuque Fire & Marine Ins. Co. of Dubuque, Iowa*, 132 Cal.App. 283, 22 P.2d 582.

The terms "misrepresentation" and "concealment" have a known and definite meaning in the law of insurance. Misrepresentation is the statement of something as fact which is untrue in fact, and which the assured states, knowing it to be not true, with an intent to deceive the underwriter, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk. Concealment is the designed and intentional withholding of any fact material to the risk, which the assured, in honesty and good faith, ought to communicate to the underwriter; mere silence on the part of the assured, especially as to some matter of fact which he does not consider it important for the underwriter to know, is not to be considered as such concealment. If the fact so untruthfully stated or purposely suppressed is not material, that is, if the knowledge or ignorance of it would not naturally influence the judgment of the underwriter in making the contract, or in estimating the degree and character of the risk, or in fixing the rate of the premium, it is not a "misrepresentation" or "concealment," within the clause of the conditions annexed to policies. *Daniels v. Insurance Co.*, 12 Cush. (Mass.) 416, 59 Am.Dec. 192; *Sun Ins. Office, Limited, of London v. Mallick*, 160 Md. 71, 153 A. 35, 43.

**CONCEALMENT MAY BE BASIS OF ESTOPPEL.** *Lo Bue v. Porazzo*, 48 Cal.App.2d 82, 119 P.2d 346, 348. Elements of such estoppel are concealment of material facts with knowledge



thereof, ignorance thereof on part of person to whom representations are made, or from whom facts are concealed, intention that such person shall act thereon, and action induced thereby on his part. *Rhoads v. Rhoads, Mo.*, 119 S.W.2d 247, 252; *Rosser v. Texas Co.*, 173 Okl. 309, 48 P. 2d 327, 330.

The doctrine of "estoppel by concealment and suppression" applies only where there has been reduction to practice of invention. *Bogoslowsky v. Huse*, 142 F.2d 75, 76, 31 C.C.P.A. (Patents) 1034.

**CONCEALMENT OF CAUSE OF ACTION.** To constitute it so as to prevent running of limitations, some trick or artifice must be employed to prevent inquiry or elude investigation, or to mislead and hinder party who has a cause of action from obtaining information, and acts relied on must be of an affirmative character and fraudulent. *Middleton v. Pruden*, 57 Ga.App. 555, 196 S.E. 259, 262.

**CONCEDER.** Fr. In French law. To grant. See Concession.

**CONCEDO.** Lat. I grant. A word used in old Anglo-Saxon grants, and in statutes merchant.

**CONCEPTION.** The beginning of pregnancy, (*q. v.*).

**CONCEPTUM.** In the civil law. A theft (*furtum*) was called "*conceptum*," when the thing stolen was searched for, and found upon some person in the presence of witnesses. Inst. 4, 1, 4.

**CONCERN.** To pertain, relate, or belong to; be of interest or importance to; have connection with; to have reference to; to involve; to affect the interest of. *People v. Photocolor Corporation*, 281 N.Y.S. 130, 156 Misc. 47.

**CONCERNING, CONCERNED.** Relating to; pertaining to; affecting; involving; being substantially engaged in or taking part in. U. S. v. *Fulkerson*, D.C.Cal., 74 F. 631; *May v. Brown*, 3 Barn. & C. 137; *People v. Marty*, 59 Cal.App. 503, 210 P. 964, 965.

**CONCERT OF EUROPE.** The union between the chief powers of Europe for purposes of concerted action in matters affecting their mutual interests. It is sometimes called the *Primacy of the Great Powers*. It has existed under various forms from the time of the Congress of Vienna, in 1815.

**CONCERT-ROOM.** A place in which musical, as distinguished from dramatic, performances are usually given. *People ex rel. McShane v. Keller*, 161 N.Y.S. 132, 138, 96 Misc. 92.

**CONCERTED ACTION (or PLAN).** Action that has been planned, arranged, adjusted, agreed on and settled between parties acting together pursuant to some design or scheme. *State v. Jessup & Moore Paper Co.*, 4 Boyce (Del.) 248, 88 A. 449, 451; *Rock Creek Oil Corporation v. Moore, Tex. Civ.App.*, 41 S.W.2d 501, 504.

**CONCESSI.** Lat. I have granted. At common law, in a feoffment or estate of inheritance, this

word does not imply a warranty; it only creates a covenant in a lease for years. Co.Litt. 384a. *Koch v. Hustis*, 113 Wis. 599, 87 N.W. 834; *Vaughan's Argument in Vaughan 126*; *Butler's note, Co. Litt. 384*. But see 1 Freem. 339, 414.

**CONCESSIMUS.** Lat. We have granted. A term used in conveyances, the effect of which was to create a joint covenant on the part of the grantors. 5 Co. 16; *Bacon, Abr. Covenant*.

**CONCESSIO.** In old English law. A grant. One of the old common assurances, or forms of conveyance.

**CONCESSIO PER REGEM FIERI DEBET DE CERTITUDINE.** 9 Coke, 46. A grant by the king ought to be made from certainty.

**CONCESSIO VERSUS CONCEDENTEM LATAM INTERPRETATIONEM HABERE DEBET.** A grant ought to have a broad interpretation (to be liberally interpreted) against the grantor. *Jenk. Cent.* 279.

**CONCESSION.** A grant; ordinarily applied to the grant of specific privileges by a government; French and Spanish grants in Louisiana. *Western M. & M. Co. v. Peytona Coal Co.*, 8 W.Va. 446. A voluntary grant, or a yielding to a claim or demand; rebate; abatement. U. S. v. *P. Koenig Coal Co.*, D.C.Mich., 1 F.2d 738, 740; *Williams v. Belvedere Hotel Co.*, 137 Md. 665, 113 A. 335, 337, 14 A.L.R. 622.

**CONCESSIT SOLVERE.** He granted and agreed to pay. In English law. An action of debt upon a simple contract. It lies by custom in the mayor's court, London, and Bristol city court.

**CONCESSOR.** In old English law. A grantor.

**CONCESSUM.** Accorded; conceded. This term, frequently used in the old reports, signifies that the court admitted or assented to a point or proposition made on the argument.

**CONCESSUS.** A grantee.

**CONCILIABULUM.** A council house.

**CONCILIATION.** In French law. The formality to which intending litigants are subjected in cases brought before the *juge de paix*. The judge convenes the parties and endeavors to reconcile them. Should he not succeed, the case proceeds. In criminal and commercial cases, the preliminary of conciliation does not take place. *Arg. Fr. Merc. Law*, 552.

**CONCILIUM.** Lat. A council.

**Roman Law**

A meeting of a section of the people to consider and decide matters especially affecting itself. *Launspach, State and Family in Early Rome* 70. Also argument in a cause, or the sitting of the court to hear argument; a motion for a day for the argument of a cause; a day allowed to a de-

## CONCILIUM

defendant to present his argument; an imparlance. State ex rel. Stueve v. Reynolds, 266 Mo. 12, 178 S.W. 468, 470.

**CONCILIUM ORDINARIUM.** In Anglo-Norman times. An executive and residuary judicial committee of the *Aula Regis*, (*q. v.*).

**CONCILIUM REGIS.** An ancient English tribunal existing during the reigns of Edward I. and Edward II., to which was referred cases of extraordinary difficulty. Co.Litt. 304.

**CONCIONATOR.** In old records. A common council man; a freeman called to a legislative hall or assembly. Cowell.

**CONCLUDE.** To finish; determine; to estop; to prevent.

**CONCLUDED.** Ended; determined; estopped; prevented from.

**CONCLUSION.** The end; the termination; the act of finishing or bringing to a close. The conclusion of a declaration or complaint is all that part which follows the statement of the plaintiff's cause of action. The conclusion of a plea is its final clause, in which the defendant either "puts himself upon the country" (where a material averment of the declaration is traversed and issue tendered) or offers a verification, which is proper where new matter is introduced. State v. Waters, 1 Mo.App. 7.

### Trial Practice

It signifies making the final or concluding address to the jury or the court. The act of a man by which he has confessed a matter or thing which he can no longer deny.

This is, in general, the privilege of the party who has to sustain the burden of proof.

**CONCLUSION AGAINST THE FORM OF THE STATUTE.** The proper form for the conclusion of an indictment for an offense created by statute is the technical phrase "against the form of the statute in such case made and provided;" or, in Latin, *contra formam statuti*.

**CONCLUSION OF FACT.** An inference drawn from the subordinate or evidentiary facts. Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 158. Reed v. Woodmen of the World, 94 Mont. 374, 22 P.2d 819, 822.

**CONCLUSION OF LAW.** Within the rule that pleadings should contain only facts, and not conclusions of law, this means a proposition not arrived at by any process of natural reasoning from a fact or combination of facts stated, but by the application of the artificial rules of law to the facts pleaded. Levins v. Rovegno, 71 Cal. 273, 12 P. 161.

**CONCLUSION TO THE COUNTRY.** In pleading. The tender of an issue to be tried by jury. Co. Litt. 126 a; 1 Saund. 103; 1 Chit. Pl. 592; Com. Dig. Pleader, E, 32.

**CONCLUSIVE.** Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; irrefutable; decisive. Edwards v. Shreveport Creosoting Co., 207 La. 699, 21 So.2d 878. Beyond question or beyond dispute; manifest; plain; clear; obvious; visible; apparent; indubitable; palpable; and "notorious." Covington County v. Fite, 120 Miss. 421, 82 So. 308, 309.

As to conclusive "Presumption," and "Proof," see those titles.

**CONCLUSIVE EVIDENCE.** That which is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing as to overbear all proof to the contrary and establish the proposition in question beyond any reasonable doubt. Thompson Lumber Co. v. Interstate Commerce Commission (Com.Ct.) 193 F. 648, 682.

**CONCORD.** In the old process of levying a fine of lands, the concord was an agreement between the parties (real or feigned) in which the deforciant (or he who keeps the other out of possession) acknowledges that the lands in question are the right of complainant; and, from the acknowledgment or admission of right thus made, the party who levies the fine is called the "cognizor," and the person to whom it is levied the "cognizee." 2 Bl.Comm. 350.

The term also denotes an agreement between two persons, one of whom has a right of action against the other, settling what amends shall be made for the breach or wrong; a compromise or an accord.

### Old Practice

An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. Plowd. 5, 6, 8.

**CONCORDARE LEGES LEGIBUS EST OPTIMUS INTERPRETANDI MODUS.** To make laws agree with laws is the best mode of interpreting them. Halk. Max. 70.

**CONCORDAT.** In public law. A compact or convention between two or more independent governments.

An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters.

In French law. A compromise effected by a bankrupt with his creditors, by virtue of which he engages to pay within a certain time a certain proportion of his debts, and by which the creditors agree to discharge the whole of their claims in consideration of the same. Arg. Fr. Merc. Law, 553.

**CONCORDIA.** Lat. In old English law. An agreement, or concord. Fleta, lib. 5, c. 3, § 5. The agreement or unanimity of a jury. *Compellere ad concordiam*. Fleta, lib. 4, c. 9, § 2.

**CONCORDIA DISCORDANTIUM CANONUM.** The harmony of the discordant canons. A collection of ecclesiastical constitutions made by

Gratian, an Italian monk, A.D. 1151; more commonly known by the name of "*Decretum Gratiani*."

**CONCORDIA PARVÆ RES CRESCUNT ET OPULENTIA LITES.** 4 Inst. 74. Small means increase by concord and litigations by opulence.

**CONCUBARIA.** A fold, pen, or place where cattle lie. Cowell.

**CONCUBEANT.** Lying together, as cattle.

**CONCUBINAGE.** A species of loose or informal marriage which took place among the ancients, and is yet in use in some countries. See *Concubinatus*.

The act or practice of cohabiting, in sexual commerce, without the authority of law or a legal marriage. Succession of Lannes, 187 La. 17, 174 So. 94, 98.

The words *concubinage* and *prostitution* have no common law meaning, but in their popular sense cover all cases of lewd intercourse; *People v. Cummons*, 56 Mich. 544, 23 N.W. 215.

An exception against a woman suing for dower, on the ground that she was the concubine, and not the wife, of the man of whose land she seeks to be endowed. *Britt. c. 107*.

**CONCUBINATUS.** In Roman law. An informal, unsanctioned, or "natural" marriage, as contradistinguished from the *justæ nuptiæ*, or *justum matrimonium*, the civil marriage.

**CONCUBINE.** (1) A woman who cohabits with a man to whom she is not married. *State v. Dussin*, 125 Kan. 400, 264 P. 1043, 1044. (2) A sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality.

**CONCUR.** To agree; accord; act together; consent. In the practice of appellate courts, a "concurring opinion" is one filed by one of the judges or justices, in which he agrees with the conclusions or the result of another opinion filed in the case (which may be either the opinion of the court or a dissenting opinion) though he states separately his views of the case or his reasons for so concurring. *State v. Pierce*, 175 Wash. 461, 27 P.2d 1083.

In Louisiana law. To join with other claimants in presenting a demand against an insolvent estate.

**CONCURATOR.** In the civil law. A joint or co-curator, or guardian.

**CONCURRENCE.** In French law. The possession, by two or more persons, of equal rights or privileges over the same subject-matter.

**CONCURRENCE DELOYALE.** A term of the French law nearly equivalent to "unfair trade competition;" and used in relation to the infringement of rights secured by trade-marks, etc. It signifies a dishonest, perfidious, or treacherous rivalry in trade, or any manœuvre calculated to prejudice the good will of a business or the value of the name of a property or its credit or renown

with the public, to the injury of a business competitor. *Simmons Medicine Co. v. Mansfield Drug Co.*, 93 Tenn. 84, 23 S.W. 165.

**CONCURRENT.** Running together; having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of same course; contributing to the same event; contemporaneous. *Brinkman v. Morgan*, C.C.A.Kan., 253 F. 553, 554. Co-operating, accompanying, conjoined, associated, concomitant, joint and equal, existing together, and operating on the same subject. *Rose v. Sprague*, 248 Ky. 635, 59 S.W.2d 554, 556. United in agreement. *State ex rel. School Dist. No. 8, v. Lensman*, 108 Mont. 118, 88 P.2d 63, 68.

As to concurrent "Cause," "Covenants," "Insurance," "Lease," "Negligence," "Resolution," and "Writs," see those titles.

**CONCURRENT JURISDICTION.** The jurisdiction of several different tribunals, each authorized to deal with the same subject-matter at the choice of the suitor. *Cashman v. Vickers*, 69 Mont. 516, 223 P. 897, 898.

**CONCURRENT LIENS.** Maritime liens are concurrent when they are of the same rank, and for supplies or materials or services in preparation for the same voyage, or if they arise on different bottomry bonds to different holders for advances at the same time for the same repairs. *The J. W. Tucker*, D.C.N.Y., 20 F. 132.

**CONCURRENT POWER.** Political powers exercised independently in the same field of legislation by both federal and state governments. *State ex rel. School Dist. No. 8, v. Lensman*, 108 Mont. 118, 88 P.2d 63, 68.

**CONCURSO.** In the law of Louisiana, the name of a suit or remedy to enable creditors to enforce their claims against an insolvent or failing debtor. *Schroeder v. Nicholson*, 2 La. 355. Litigation or opportunity of litigation between various creditors, each claiming adversely to one another to share in a fund or an estate, object being to assemble in one accounting all claimants on the fund. *Seal v. Gano*, 160 La. 636, 107 So. 473, 474.

**CONCURSUS.** In the civil law. (1) A running together; a collision, as *concursum creditorum*, a conflict among creditors. *Graphic Arts Bldg. Co. v. Union Indemnity Co.*, 163 La. 1, 111 So. 470, 471; *Miller v. Bonner*, 163 La. 332, 111 So. 776, 778; (2) A concurrence, or meeting, as *concursum actionum*, concurrence of actions.

A proceeding in Louisiana similar to interpleader. See *Louisiana Molasses Co. v. Le Sasser*, 52 La. Ann. 2070, 28 So. 217.

**CONCUSS.** In Scotch law. To coerce.

**CONCUSSION.** In the civil law. The offense of extortion by threats of violence. Dig. 47, 13.

**CONCUSSION.** In the civil law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery, in

## CONCUSSION

this: That in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Heinec. Elem. § 1071.

In medical jurisprudence. Concussion of the brain is a jarring of the brain substance, by a fall, blow, or other external injury, without laceration of its tissue, or with only microscopical laceration. Mathews v. Hayne, La.App., 188 So. 462, 468.

**CONDEDIT.** In ecclesiastical law. The name of a plea entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Ecc. R. 438; 6 Eng. Ecc. R. 431.

**CONDEMN.** To find or adjudge guilty. 3 Leon. 68. To adjudge or sentence. 3 Bl.Comm. 291. To adjudge (as an admiralty court) that a vessel is a prize, or that she is unfit for service. 1 Kent, Comm. 102; 5 Esp. 65. To set apart or expropriate property for public use, in the exercise of the power of eminent domain. State v. Sayer, 43 S.D. 45, 177 N.W. 807, 809.

**CONDEMNATION.** In admiralty law. The judgment or sentence of a court having jurisdiction and acting *in rem*, by which (1) it is declared that a vessel which has been captured at sea as a prize was lawfully so seized and is liable to be treated as prize; or (2) that property which has been seized for an alleged violation of the revenue laws, neutrality laws, navigation laws, etc., was lawfully so seized, and is, for such cause, forfeited to the government; or (3) that the vessel which is the subject of inquiry is unfit and unsafe for navigation. Gallagher v. Murray, 9 Fed.Cas. 1087.

In the civil law. A sentence or judgment which condemns some one to do, to give, or to pay something, or which declares that his claim or pretensions are unfounded. Lockwood v. Saf-fold, 1 Ga. 72; State v. Harr, 24 Tenn.App. 298, 143 S.W.2d 893, 895.

In real property law. The process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation, being in the nature of a forced sale and condemner stands toward owner as buyer toward seller. Atlanta, K. & N. R. Co. v. Southern Ry. Co., C.C.A.Tenn., 131 F. 666, 66 C.C.A. 601; Jones v. Oklahoma City, 192 Okl. 470, 137 P.2d 233, 237, 155 A.L.R. 375.

A "condemnation proceeding" is a special proceeding at law to determine in a single action the damages done by the taking, but it is not a civil action, or a civil process within the meaning of the statutes relating to civil process. In re New Haven Water Co., 86 Conn. 361, 85 A. 636, 638. The law authorizing it must be strictly construed, and every condition and requirement must be shown to have been complied with. Richter v. Rodgers, 327 Mo. 543, 37 S.W.2d 523, 528.

**CONDEMNATION MONEY.** In practice. The damages which the party failing in an action is adjudged or *condemned* to pay; sometimes simply called the "condemnation."

As used in an appeal bond, this phrase means the damages which should be awarded against the appellant by the judgment of the court. It does not embrace damages not included in the judgment. Thomas v. Gethman, 91 Okl. 42, 215 P. 731, 732.

**CONDESCENDENCE.** In the Scotch law. A part of the proceedings in a cause, setting forth the facts of the case on the part of the pursuer or plaintiff.

**CONDICTIO.** In Roman law. A general term for actions of a personal nature, founded upon an obligation to give or do a certain and defined thing or service. It is distinguished from *vindictio rei*, which is an action to vindicate one's right of property in a thing by regaining (or retaining) possession of it against the adverse claim of the other party.

**CONDICTIO CERTI.** An action which lies upon a promise to do a thing, where such promise or stipulation is certain, (*si certa sit stipulatio.*) Inst. 3, 16, pr.; Id. 3, 15, pr.; Dig. 12, 1; Bract. fol. 103b.

**CONDICTIO EX LEGE.** An action arising where the law gave a remedy, but provided no appropriate form of action. Calvin.

**CONDICTIO INDEBITATI.** An action which lay to recover anything which the plaintiff had given or paid to the defendant, by mistake, and which he was not bound to give or pay, either in fact or in law.

**CONDICTIO REI FURTIVÆ.** An action which lay to recover a thing stolen, against the thief himself, or his heir. Inst. 4, 1, 19.

**CONDICTIO SINE CAUSA.** An action which lay in favor of a person who had given or promised a thing without consideration, (*causa.*) Dig. 12, 7; Cod. 4, 9.

**CONDITIO.** Lat. A condition.

**CONDITIO BENEFICIALIS, QUÆ STATUM CONSTRUIT, BENIGNE SECUNDUM VERBORUM INTENTIONEM EST INTERPRETANDA; ODIOSA AUTEM, QUÆ STATUM DESTRUIT, STRICTE SECUNDUM VERBORUM PROPRIETATEM ACCIPIENDA.** 8 Coke, 90. A beneficial condition, which creates an estate, ought to be construed favorably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.

**CONDITIO DICITUR, CUM QUID IN CASUM INCERTUM QUI POTEST TENDERE AD ESSE AUT NON ESSE, CONFERTUR.** Co. Litt. 201. It is called a "condition," when something is given on an uncertain event, which may or may not come into existence.

**CONDITIO ILLICITA HABETUR PRO NON ADJECTA.** An unlawful condition is deemed as not annexed.

**CONDITIO PRÆCEDENS ADIMPLERI DEBET PRIUS QUAM SEQUATUR EFFECTUS.** Co. Litt. 201. A condition precedent must be fulfilled before the effect can follow.

**CONDITION.** A future and uncertain event upon the happening of which is made to depend the existence of an obligation, or that which subordinates the existence of liability under a contract to a certain future event. *Standard Surety & Casualty Co. v. Wynn*, Tex.Civ.App., 172 S.W.2d 789, 792; *Barber Asphalt Paving Co. v. St. Louis Cypress Co.*, 121 La. 152, 46 So. 193, 197.

**Civil Law**

The rank, situation, or degree of a particular person in some one of the different orders of society.

An agreement or stipulation in regard to some uncertain future event, not of the essential nature of the transaction, but annexed to it by the parties, providing for a change or modification of their legal relations upon its occurrence. *Mackeld. Rom. Law*, § 184.

**Classification.** Conditions are of the following several kinds:

The *casual* condition is that which depends on chance, and is in no way in the power either of the creditor or of the debtor. *Civ.Code La. art. 2023*.

A *mixed* condition is one that depends at the same time on the will of one of the parties and on the will of a third person, or on the will of one of the parties and also on a casual event. *Civ.Code La. art. 2025*.

The *potestative* condition is that which makes the execution of the agreement depend on an event which it is in the power of the one or the other of the contracting parties to bring about or to hinder. *Civ.Code La. art. 2024*.

A *resolutive* or *dissolving* condition is that which, when accomplished, operates the revocation of the obligation, placing matters in the same state as though the obligation had not existed. It does not suspend the execution of the obligation. It only obliges the creditor to restore what he has received in case the event provided for in the condition takes place. *Civ.Code La. art. 2045*; *Moss v. Smoker*, 2 La. Ann. 991.

A *suspensive* condition is that which depends, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties. In the former case, the obligation cannot be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it cannot be enforced until the event be known. *Civ.Code La. art. 2043*; *New Orleans v. Railroad Co.*, 18 S.Ct. 875, 171 U.S. 312, 43 L.Ed. 178; *Moss v. Smoker*, 2 La. Ann. 991. A condition which prevents a contract from going into operation until it has been fulfilled.

**Common Law**

The rank, situation, or degree of a particular person in some one of the different orders of society; or his *status* or situation, considered as a juridical person, arising from positive law or the institutions of society. *Thill v. Pohlman*, 76 Iowa, 638, 41 N.W. 385.

A clause in a contract or agreement which has for its object to suspend, rescind, or modify the principal obligation, or, in case of a will, to suspend, revoke, or modify the devise or bequest; a qualification, restriction, or limitation modifying or destroying the original act with which it is connected; an event, fact, or the like that is necessary to the occurrence of some other, though not its cause; a prerequisite. *Towle v. Remsen*, 70 N.Y. 303.

A *modus* or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate, etc., may either be defeated, enlarged, or created upon an uncertain event. *Co.Litt. 201a*.

A qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. *Anderson v. Palladine*, 39 Cal.App. 256, 178 P. 553, 554.

An "estate on condition" arises where an estate is granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition. *Hall v. Quinn*, 190 N.C. 326, 130 S.E. 18, 20. *Moe v. Gier*, 116 Cal.App. 403, 2 P.2d 852, 855.

In insurance parlance, the printed conditions on the inside of the policy which serve generally as a limitation of risk or of liability or impose various conditions requiring compliance by the insured. *Federal Intermediate Credit Bank of Baltimore v. Globe & Rutgers Fire Ins. Co.*, D.C. Md., 7 F.Supp. 56, 68.

Mode or state of being; state or situation; essential quality; property; attribute. *Consolidated Arizona Smelting Co. v. Egich*, 22 Ariz. 543, 199 P. 132, 134.

**Classification.** The different kinds of conditions known to the common law may be arranged and described as follows:

Express and implied conditions are also called by the older writers, respectively, *conditions in deed* (or in fact, the Law French term being *conditions en fait*) and *conditions in law*. *Co. Litt. 201a*.

They are either *express* or *implied*, the former when incorporated in express terms in the deed, contract, lease, or grant; the latter, when inferred or presumed by law, from the nature of the transaction or the conduct of the parties, to have been tacitly understood between them as a part of the agreement, though not expressly mentioned. 2 *Crabb, Real Prop.* p. 792; *Bract. fol. 47*; *Civ.Code La. art. 2026*; *Raley v. Umatilla County*, 15 Or. 172, 13 P. 890, 3 Am.St.Rep. 142.

They are *possible* or *impossible*; the former when they admit of performance in the ordinary course of events; the latter when it is contrary

## CONDITION

to the course of nature or human limitations that they should ever be performed.

They are *lawful* or *unlawful*; the former when their character is not in violation of any rule, principle, or policy of law; the latter when they are such as the law will not allow to be made.

They are *consistent* or *repugnant*; the former when they are in harmony and concord with the other parts of the transaction; the latter when they contradict, annul, or neutralize the main purpose of the contract. Repugnant conditions are also called "insensible."

They are *affirmative* or *negative*; the former being a condition which consists in doing a thing; as provided that the lessee shall pay rent, etc., and the latter being a condition which consists in not doing a thing; as provided that the lessee shall not alien, etc. Shep. Touch. 118.

They are *precedent* or *subsequent*. A condition precedent is one which must happen or be performed before the estate to which it is annexed can vest or be enlarged; or it is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. Federal Land Bank of Louisville v. Luckenbill, 213 Ind. 616, 13 N.E.2d 531, 533. A "condition precedent" is one that is to be performed before the agreement becomes effective, and which calls for the happening of some event or the performance of some act after the terms of the contract have been agreed on, before the contract shall be binding on the parties. Rogers v. Maloney, 85 Or. 61, 165 P. 357, 358; Mercer-Lincoln Pine Knob Oil Co. v. Pruitt, 191 Ky. 207, 229 S.W. 374. A condition subsequent is one annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated; or it is a condition referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. Co. Litt. 201; Carroll v. Carroll's Ex'r, 248 Ky. 386, 58 S.W.2d 670, 672.

Conditions may also be *positive* (requiring that a specified event shall happen or an act be done) and *restrictive* or *negative*, the latter being such as impose an obligation not to do a particular thing, as, that a lessee shall not alien or sub-let or commit waste, or the like. Shep. Touch. 118.

They may be *single*, *copulative*, or *disjunctive*. Those of the first kind require the performance of one specified thing only; those of the second kind require the performance of divers acts or things; those of the third kind require the performance of one of several things. Shep. Touch. 118.

Conditions may also be *independent*, *dependent*, or *mutual*. They belong to the first class when each of the two conditions must be performed without any reference to the other; to the second class when the performance of one condition is not obligatory until the actual performance of the other; and to the third class when neither party need perform his condition unless the other is ready and willing to perform his, or, in oth-

er words, when the mutual covenants go to the whole consideration on both sides and each is precedent to the other. Huggins v. Daley, W.Va., 99 F. 609, 40 C.C.A. 12, 48 L.R.A. 320.

The following varieties may also be noted: A condition *collateral* is one requiring the performance of a collateral act having no necessary relation to the main subject of the agreement. A *compulsory* condition is one which expressly requires a thing to be done, as, that a lessee shall pay a specified sum of money on a certain day or his lease shall be void. Shep. Touch. 118. *Concurrent* conditions are those which are mutually dependent and are to be performed at the same time. Milwaukee Land Co. v. Ruesink, 50 Mont. 489, 148 P. 396, 401. A condition *inherent* is one annexed to the rent reserved out of the land whereof the estate is made, or rather, to the estate in the land, in respect of rent. Shep. Touch. 118.

### French Law

The following peculiar distinctions are made: (1) A condition is *casuelle* when it depends on a chance or hazard; (2) a condition is *potestative* when it depends on the accomplishment of something which is in the power of the party to accomplish; (3) a condition is *mixte* when it depends partly on the will of the party and partly on the will of others; (4) a condition is *suspensive* when it is a future and uncertain event, or present but unknown event, upon which an obligation takes or fails to take effect; (5) a condition is *resolutoire* when it is the event which undoes an obligation which has already had effect as such. Brown.

### Synonyms Distinguished

A "condition" is to be distinguished from a *limitation*, in that the latter may be to or for the benefit of a stranger, who may then take advantage of its determination, while only the grantor, or those who stand in his place, can take advantage of a condition. Hoselton v. Hoselton, 166 Mo. 182, 65 S.W. 1005; and in that a limitation ends the estate without entry or claim, which is not true of a condition. It also differs from a *conditional limitation*. In determining whether, in the case of estates greater than estates for years, the language constitutes a "condition" or a "conditional limitation," the rule applied is that, where an estate is so expressly limited by the words of its creation that it cannot endure for any longer time than until the condition happens on which the estate is to fail, this is limitation, but when the estate is expressly granted on condition in deed, the law permits it to endure beyond the time of the contingency happening, unless the grantor takes advantage of the breach of condition, by making entry. Lonas v. Silver, 195 N.Y. S. 214, 215, 201 App.Div. 383; Yarbrough v. Yarbrough, 151 Tenn. 221, 269 S.W. 36, 38. It differs also from a *covenant*, which can be made by either grantor or grantee, while only the grantor can make a condition (Co. Litt. 70); De Grasse v. Verona Mining Co., 185 Mich. 514, 152 N.W. 242, 246; The chief distinction between a condition subse-

quent in a deed and a covenant pertains to the remedy in event of breach, which, in the former case, subjects the estate to a forfeiture, and in the latter is merely a ground for recovery of damages. *Bartell v. Senger*, 160 Md. 685, 155 A. 174, 176. A *charge* is a devise of land with a bequest out of the subject-matter, and a charge upon the devisee personally, in respect of the estate devised, gives him an estate on condition. A condition also differs from a *remainder*; for, while the former may operate to defeat the estate before its natural termination, the latter cannot take effect until the completion of the preceding estate.

**CONDITIONAL.** That which is dependent upon or granted subject to a condition.

As to conditional "Acceptance," "Appearance," "Bequest," "Contract," "Delivery," "Devise," "Fee," "Guaranty," "Judgment," "Legacy," "Limitation," "Obligation," "Pardon," "Privilege," and "Sale," see those titles.

**CONDITIONAL CREDITOR.** In the civil law. A creditor having a future right of action, or having a right of action in expectancy. Dig. 50, 16, 54.

**CONDITIONAL INDORSEMENT.** See Indorsement.

**CONDITIONAL STIPULATION.** In the civil law. A stipulation to do a thing upon condition, as the happening of any event.

**CONDITIONALLY PRIVILEGED COMMUNICATION.** One made in good faith on any subject matter in which the person publishing has an interest, or in reference to which he has a duty, if made to a person having a corresponding interest or duty, even though it contains matter which otherwise would be actionable. *Cook v. East Shore Newspapers*, 327 Ill.App. 559, 64 N.E.2d 751, 760.

The essential elements of a "conditionally privileged communication" are good faith, an interest to be upheld, a statement limited in its scope to such purpose, a proper occasion, and publication in a proper manner to proper persons. *Cook v. East Shore Newspaper*, 327 Ill.App. 559, 64 N.E. 2d 751.

**CONDITIONES QUÆLIBET ODIOSÆ; MAXIME AUTEM CONTRA MATRIMONIUM ET COMMERCIIUM.** Any conditions are odious, but especially those which are against [in restraint of] marriage and commerce. Lofft, Appendix, 644.

**CONDITIONS OF SALE.** The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale.

**CONDOMINIA.** In the civil law. Co-ownerships or limited ownerships, such as *emphyteusis*, *superficies*, *pignus*, *hypotheca*, *ususfructus*, *usus*, and *habitatio*. These were more than mere *jura in re aliend*, being portion of the *dominium* itself, although they are commonly distinguished from the *dominium* strictly so called. Brown.

**CONDOMINIUM.** System of separate ownership of individual units in multiple-unit building. *Susskind v. 1136 Tenants Corp.*, 251 N.Y.S.2d 321, 327, 43 Misc.2d 588.

**CONDONACION.** In Spanish law. The remission of a debt, either expressly or tacitly.

**CONDONATION.** The conditional remission or forgiveness, by means of continuance or resumption of marital cohabitation, by one of the married parties, of a known matrimonial offense committed by the other, that would constitute a cause of divorce; the condition being that the offense shall not be repeated. *Pain v. Pain*, 37 Mo.App. 115; *Betz v. Betz*, 25 N.Y.Super.Ct. 696; *State v. Manos*, 204 N.C. 52, 167 S.E. 493; *Thum v. Thum*, 105 Colo. 352, 98 P.2d 279, 280.

"Condonation," to constitute valid defense in divorce action, must be free, voluntary, and not induced by duress or fraud; "condonation" means pardon of offense, voluntary overlooking or implied forgiveness by treating offender as if offense had not been committed. *Panther v. Panther*, 147 Okl. 131, 295 P. 219, 221. The term is also sometimes applied to forgiveness of a past wrong, fault, injury, or breach of duty in other relations, as, for example, in that of master and servant. *Leatherberry v. Odell*, C.C. N.C., 7 F. 648. Also, antenuptial unchastity is capable of "condonation." *Wesley v. Wesley*, 181 Ky. 135, 204 S.W. 165, 166.

**CONDONE.** To make condonation of.

**CONDUCE.** To contribute to as a result. *Board of Com'rs of Mercer County v. Deitsch*, 94 Ohio St. 1, 113 N.E. 745, 747.

**CONDUCT, v.** To manage; direct; lead; have direction; carry on; regulate; do business. *Wichita Film & Supply Co. v. Yale*, 194 Mo.App. 60, 184 S.W. 119, 121; *State v. Mahfouz*, 181 La. 23, 158 So. 609; *Scholz v. Leuer*, 7 Wash.2d 76, 109 P.2d 294, 301.

**CONDUCT, n.** Personal behavior; deportment; mode of action; any positive or negative act. *Kelly v. State*, 151 Md. 87, 133 A. 899, 904; *Lamborn v. New York Cotton Exch.*, 197 N.Y.S. 57, 60, 203 App.Div. 565.

**CONDUCT, ESTOPPEL BY.** An estoppel exists where a man by his own acts or acceptance is concluded from saying the truth. *Menzenberger v. American State Bank*, 101 Ind.App. 600, 198 N. E. 819. See, also, *Equitable Estoppel*.

The doctrine does not apply to an agreement which is illegal. *Miller v. California Roofing Co.*, 55 Cal.App.2d 136, 130 P.2d 740, 745.

Elements or essentials of estoppel are acts done which cannot be contravened without fraud or gross misconduct. *Tradesmens Nat. Bank of New Haven v. Minor*, 190 A. 270, 272, 122 Conn. 419; change of position to injury of party claiming benefit of estoppel, *Mundt v. Mallon*, 106 Mont. 244, 76 P.2d 326, 329; *Thompson v. Hudgens*, 159 S.E. 807, 811, 161 S.C. 450; false representation or concealment, *Marshall v. Wilson*, 175 Or. 506, 154 P.2d 547, 553; *Hamilton v. Northeast Mut. Ins. Ass'n*, Mo.App., 116 S.W.2d 159, 163; ignorance of facts of one claiming right of estoppel, *McCarthy v. Union Pac. Ry. Co.*, 58 Wyo. 308, 131 P.2d 326, 330, 332; inducement to do or forbear doing, something one would not, or would, otherwise have done, *O'Brien v. U. S.*, C.C.A.Ind., 51 F.2d 674, 678; intent to have other party act or conduct calculated to mislead, *Woodmen of the World Life Ins. Soc. v. Greathouse*, 242 Ala. 532, 7 So.2d 89, 91; *Marshall v. Wilson*, 175 Or. 506,



## CONDUCT

154 P.2d 547, 553; knowledge of party sought to be estopped, *McLearn v. Hill*, 276 Mass. 519, 177 N.E. 617, 619, 77 A.L.R. 1039; misleading of person claiming estoppel, *Dodd v. Rotterman*, 161 N.E. 756, 761, 330 Ill. 362; State v. *Abernathy*, 159 Tenn. 175, 17 S.W.2d 17, 19; prejudice to party claiming estoppel, *Combs v. Salyer*, 165 S.W.2d 40, 43, 291 Ky. 592; *Burlington Sav. Bank of Burlington, Vt., v. Rockwell, C.C.A.Idaho*, 31 F.2d 27, 29; reliance upon conduct of one sought to be estopped, *Wiedersum v. Atlantic Cement Products*, 25 N.Y.S.2d 496, 501, 261 App.Div. 305; *State v. Smith*, 135 Neb. 423, 281 N.W. 851, 856; representation or concealment of material facts, *City Dairy Co. v. Uservo, Inc.*, 101 Ind.App. 375, 199 N.E. 457.

**CONDUCT MONEY.** In English practice. Money paid to a witness who has been subpoenaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. *Lush, Pr.* 460; *Archb. New Pr.* 639.

**CONDUCTI ACTIO.** In the civil law. An action which the hirer (*conductor*) of a thing might have against the letter, (*locator*.) *Inst.* 3, 25, pr. 2.

**CONDUCTIO.** In the civil law. A hiring. Used generally in connection with the term *locatio*, a letting. *Locatio et conductio*, (sometimes united as a compound word, "*locatio-conductio*," ) a letting and hiring. *Inst.* 3, 25; *Bract. fol.* 62, c. 28; *Story, Bailm.* §§ 8, 368.

**CONDUCTOR.** In the civil law. A hirer.

**CONDUCTOR OPERARUM.** In the civil law. A person who engages to perform a piece of work for another, at a stated price.

**CONDUCTUS.** A thing hired.

**CONE.** In geology. Area built up by a stream, near the mouth of a canyon of boulders, small stones, gravel, sand and other detritus. *Haack v. San Fernando Mission Land Co.*, 177 Cal. 140, 169 P. 1021, 1022.

**CONE AND KEY.** In old English law. A woman at fourteen or fifteen years of age may take charge of her house and receive *cone* and *key*; that is, keep the accounts and keys. *Cowell*. Said by Lord Coke to be *cover* and *keye*, meaning that at that age a woman knew what in her house should be kept under lock and key. 2 *Inst.* 203.

**CONFARREATIO.** In Roman law. A sacrificial rite resorted to by marrying persons of high patrician or priestly degree, for the purpose of clothing the husband with the *manus* over his wife; the civil modes of effecting the same thing being *coemptio*, (formal,) and *usus mulieris*, (informal.) *Brown*.

**CONFECTIO.** The making and completion of a written instrument. 5 *Coke*, 1.

### CONFEDERACY.

#### Criminal Law

The association or banding together of two or more persons for the purpose of committing an act or furthering an enterprise which is forbidden by law, or which, though lawful in itself, becomes unlawful when made the object of the confederacy. *State v. Crowley*, 41 Wis. 284, 22 Am.Rep. 719; *Watson v. Navigation Co.*, 52 How.Prac. (N.Y.)

353. *Conspiracy* is a more technical term for this offense. The act of two or more who combine together to do any damage or injury to another, or to do any unlawful act. *Jacob. State v. Crowley*, 41 Wis. 284, 22 Am.Rep. 719.

### Equity Pleading

An improper combination alleged to have been entered into between the defendants to a bill in equity.

### International Law

A league or agreement between two or more independent states whereby they unite for their mutual welfare and the furtherance of their common aims. The term may apply to a union so formed for a temporary or limited purpose, as in the case of an offensive and defensive alliance; but it is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty, (mostly external,) and acting upon the several component states as its units, which, however, retain their sovereign powers for domestic purposes and some others. See *Federal Government*.

**CONFEDERATION.** A league or compact for mutual support, particularly of princes, nations, or states. Such was the colonial government during the Revolution.

**CONFERENCE.** A meeting of several persons for deliberation, for the interchange of opinion, or for the removal of differences or disputes. Thus, a meeting between a counsel and solicitor to advise on the cause of their client.

In the practice of legislative bodies, when the two houses cannot agree upon a pending measure, each appoints a committee of "conference," and the committees meet and consult together for the purpose of removing differences, harmonizing conflicting views, and arranging a compromise which will be accepted by both houses.

### French Law

A concordance or identity between two laws or two systems of laws.

### International Law

A personal meeting between the diplomatic agents of two or more powers, for the purpose of making statements and explanations that will obviate the delay and difficulty attending the more formal conduct of negotiations.

**CONFESS.** To admit as true; to assent to; to concede. *Guydon v. Taylor*, 115 Ind.App. 685, 60 N.E.2d 750, 751. To admit the truth of a charge or accusation. Usually spoken of charges of tortious or criminal conduct.

**CONFESSING ERROR.** A plea to an assignment of error, admitting the same.

**CONFESSIO.** Lat. A confession. *Confessio in judicio*, a confession made in or before a court.



**CONFESSIO FACTA IN JUDICIO OMNI PROBATIONE MAJOR EST.** A confession made in court is of greater effect than any proof. Jenk. Cent. 102.

**CONFESSION.** In criminal law. A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it. *Spicer v. Com.*, 21 Ky.L.Rep. 528, 51 S.W. 802. *State v. Gibson*, 69 N.D. 70, 284 N.W. 209, 214, 215, 219; *Sango v. State*, 52 Okl.Cr. 359, 5 P.2d 400, 401; *Edwards v. State*, Okl.Cr.App., 288 P. 359, 361. Also the act of a prisoner, when arraigned for a crime or misdemeanor, in acknowledging and avowing that he is guilty of the offense charged.

"Confession" comprises whole criminal charge; whereas, "admission" relates only to particular fact or circumstance covered thereby. *State v. Davis*, 212 Iowa 131, 235 N.W. 759, 761.

#### Classification

Confessions are divided into judicial and extrajudicial. The former are such as are made before a magistrate or court in the due course of legal proceedings; they include confessions made in preliminary examinations before magistrates. *Mularkey v. State*, 199 Wis. 269, 225 N.W. 933, 934. The latter are such as are made by a party elsewhere than in court or before a magistrate, 1 Greenl. Ev. § 216, *State v. Corey*, 182 Minn. 48, 233 N.W. 590, 591; *Foster v. State*, 79 Okl.Cr. 183, 152 P.2d 929, 932; *Louette v. State*, 152 Fla. 495, 12 So.2d 168, 172; whether to an official or non-official person, *Prather v. State*, 76 Okl.Cr. 385, 137 P.2d 249, 252. One made by the party out of court, or to any person, official or otherwise, when made not in the course of a judicial examination or investigation. *State v. Stevenson*, 98 Or. 285, 193 P. 1030, 1032.

An *implied* confession is where the defendant, in a case not capital, does not plead guilty but indirectly admits his guilt by placing himself at the mercy of the court and asking for a light sentence. 2 Hawk. P. C. p. 469; *State v. Conway*, 20 R.I. 270, 38 A. 656. An *indirect* confession is one inferred from the conduct of the defendant. An *involuntary* confession is one induced by hope, promise, fear, violence, torture, or threat. *Lyons v. State*, 77 Okl.Cr. 197, 138 P.2d 142, 148; *Lyons v. State*, 140 P.2d 248. *People v. Tielke*, 259 Ill. 88, 102 N.E. 229, 231. A *naked* confession is an admission of the guilt of the party, but which is not supported by any evidence of the commission of the crime. A *relative* confession, in the older criminal law of England, "is where the accused confesseth and appealeth others thereof, to become an approver;" (2 Hale, P. C. c. 29,) or in other words to "turn king's evidence." This is now obsolete, but something like it is practiced in modern law, where one of the persons accused or supposed to be involved in a crime is put on the witness stand under an implied promise of pardon. *State v. Willis*, 71 Conn. 293, 41 A. 820. A *simple* confession is merely a plea of guilty.

*State v. Willis*, 71 Conn. 293, 41 A. 820. A *voluntary* confession is one made spontaneously by a person accused of crime, free from the influence of any extraneous disturbing cause, and in particular, not influenced, or extorted by violence, threats, or promises. *State v. Clifford*, 86 Iowa, 550, 53 N.W. 299, 41 Am.St.Rep. 518.

No confession induced by official threat of prosecution is voluntary. *Cannan v. U. S.*, C.C.A.Tex., 19 F.2d 823, 824; *State v. Dolan*, 86 N.J.L. 192, 90 A. 1034, 1035.

It need not be spontaneous nor proceed wholly at maker's suggestion, but may be set in motion by external causes, so long as such influences are not what the law deems improper. *People v. Vinci*, 295 Ill. 419, 129 N.E. 193, 195.

For *extrajudicial* confession, see, also, the title *Extrajudicial*.

**CONFESSION AND AVOIDANCE.** A plea in confession and avoidance is one which avows and confesses the truth of the averments of fact in the declaration, either expressly or by implication, but then proceeds to allege new matter which tends to deprive the facts admitted of their ordinary legal effect, or to obviate, neutralize, or *avoid* them. *Bavarian Brewing Co. v. Retkowski*, 113 A. 903, 907, 1 W.W.Harr. (Del.) 225; *Brown v. Jones*, 137 Or. 520, 3 P.2d 768, 769.

**CONFESSION OF DEFENSE.** In English practice. Where defendant alleges a ground of defense arising since the commencement of the action, the plaintiff may deliver confession of such defense and sign judgment for his costs up to the time of such pleading, unless it be otherwise ordered. Jud. Act 1875, Ord. XX, r. 3.

**CONFESSION OF JUDGMENT.** See *Judgment*.

**CONFESSO, BILL TAKEN PRO.** In equity practice. An order which the court of chancery makes when the defendant does not file an answer, that the plaintiff may take such a decree as the case made by his bill warrants.

**CONFESSOR.** An ecclesiastic who receives auricular confessions of sins from persons under his spiritual charge, and pronounces absolution upon them. The secrets of the confessional are not privileged communications at common law, but this has been changed by statute in some states. See 1 Greenl. Ev. §§ 247, 248.

**CONFESSORIA ACTIO.** Lat. In the civil law. An action for enforcing a servitude. Mackeld. Rom. Law, § 324.

**CONFESSUS IN JUDICIO PRO JUDICATO HABETUR, ET QUODAMMODO SUA SENTENTIA DAMNATUR.** 11 Coke, 30. A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.

**CONFIDE.** A synonym of the word "trust," and means to put into one's trust or keeping. *Burch v. McMillin*, Tex., 15 S.W.2d 86, 90.

**CONFIDENCE.** Trust; reliance; ground of trust. In the construction of wills, this word is considered peculiarly appropriate to create a trust.

## CONFIDENCE

"It is as applicable to the subject of a trust, as nearly a synonym, as the English language is capable of. Trust is a confidence which one man reposes in another, and confidence is a trust." Appeal of Coates, 2 Pa. 133.

**CONFIDENCE GAME.** Obtaining of money or property by means of some trick, device, or swindling operation in which advantage is taken of the confidence which the victim reposes in the swindler. *People v. Mutchler*, 309 Ill. 207, 140 N.E. 820, 822, 35 A.L.R. 339; *Roll v. People*, 243 P. 641, 643, 78 Colo. 589; *People v. Epstein*, 338 Ill. 631, 170 N.E. 678, 679. For distinction between false pretenses and confidence game, see *False Pretenses*.

One obtaining property by unlawful means, other than by fraudulently obtaining and then abusing victim's confidence, is not guilty of obtaining property by means of "confidence game." *Bomareto v. People*, 111 Colo. 99, 137 P.2d 402, 404.

**CONFIDENTIAL.** Intrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret.

**CONFIDENTIAL COMMUNICATIONS.** See Communication.

**CONFIDENTIAL CREDITOR.** This term has been applied to the creditors of a failing debtor who furnished him with the means of obtaining credit to which he was not entitled, involving in loss the unsuspecting and fair-dealing creditors. *Gay v. Strickland*, 112 Ala. 567, 20 So. 921.

**CONFIDENTIAL RELATION.** A fiduciary relation. These phrases are used as convertible terms. It is a peculiar relation which exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and *cestui que trust*, executors or administrators and creditors, legatees, or distributees, appointer and appointee under powers, and partners and part owners. In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between the parties. *Shell Petroleum Corporation v. Pratt*, D.C.Kan., 22 F.Supp. 304, 305, 306. It is not confined to any specific association of parties. It appears when the circumstances make it certain that the parties do not deal on equal terms, but on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed. The mere existence of kinship does not, of itself, give rise to such relation. In *re Null's Estate*, 302 Pa. 64, 153 A. 137. It covers every form of relation between parties wherein confidence is reposed by one in another, and former relies and acts upon representations of the other and is guilty of no derelictions on his own part. *Peckham v. Johnson*, Tex.Civ.App., 98 S.W.2d 408, 416.

The term "confidential relations," within the exception to the rule that misrepresentations of law will not work an estoppel, is not confined to the strict fiduciary relationship existing between those having definite, well-recognized legal relations of trust and confidence, but extends to every

possible case in which a fiduciary relation exists as a fact, though it may be a moral, social, domestic, or merely personal relation, and need not be a legal one. *Robbins v. Law*, 48 Cal.App. 555, 192 P. 118, 120; *Hitchcock v. Tackett*, 208 Ky. 803, 272 S.W. 52, 54.

**CONFINEMENT.** Confinement may be by either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person. *Ex parte Snodgrass*, 43 Tex. Cr.R. 359, 65 S.W. 1061.

Restraint by sickness in childbirth; lying-in for delivery of child, or possibly because of advanced pregnancy. *Rose v. Commonwealth Beneficial Ass'n*, 86 A. 673, 674, 4 Boyce (Del.) 144.

### Solitary Confinement

See Solitary Confinement.

**CONFIRM.** To complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently. *Railway Co. v. Ransom*, 15 Tex.Civ.App. 689, 41 S.W. 826. *Vermont Shade Roller Co. v. Burlington Traction Co.*, 102 Vt. 489, 150 A. 138, 142. To make firm or certain; to give new assurance of truth or certainty; to put past doubt. *State ex rel. Sherrill v. Milam*, 113 Fla. 491, 153 So. 100.

**CONFIRMARE EST ID FIRMUM FACERE QUOD PRIUS INFIRMUM FUIT.** Co. Litt. 295. To confirm is to make firm that which was before infirm.

**CONFIRMARE NEMO POTEST PRIUS QUAM JUS EI ACCIDERIT.** No one can confirm before the right accrues to him. 10 Coke, 48.

**CONFIRMAT USUM QUI TOLLIT ABUSUM.** He confirms the use [of a thing] who removes the abuse [of it]. *Moore*, 764.

**CONFIRMATIO.** The conveyance of an estate, or the communication of a right that one hath in or unto lands or tenements, to another that hath the possession thereof, or some other estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased or enlarged. *Shep. Touch.* 311; 2 Bl. Comm. 325.

**CONFIRMATIO CHARTARUM.** Lat. Confirmation of the charters. A statute passed in the 25 Edw. I., whereby the Great Charter is declared to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word or deed or counsel, act contrary thereto or in any degree infringe it. 1 Bl.Comm. 128.

**CONFIRMATIO CRESCENS.** An enlarging confirmation; one which enlarges a rightful estate. *Shep. Touch.* 311.

**CONFIRMATIO DIMINUENS.** A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services where-

by a tenant doth hold, operating as a release of part of the services. Shep. Touch. 311.

**CONFIRMATIO PERFICIENS.** A confirmation which makes valid a wrongful and defeasible title, or makes a conditional estate absolute. Shep. Touch. 311.

**CONFIRMATIO EST NULLA UBI DONUM PRÆCEDENS EST INVALIDUM.** Moore, 764; Co. Litt. 295. Confirmation is void where the preceding gift is invalid.

**CONFIRMATIO OMNES SUPPLET DEFECTUS, LICET ID QUOD ACTUM EST AB INITIO NON VALUIT.** Co. Litt. 295b. Confirmation supplies all defects, though that which had been done was not valid at the beginning.

**CONFIRMATION.** A contract or written memorandum thereof, by which that which was infirm, difficult of proof, void, imperfect, or subject to be avoided is ratified, rendered valid and binding, made firm and unavoidable. Schifferdecker v. Busch, 225 N.Y.S. 106, 111, 130 Misc. 625.

It implies a deliberate act, intended to renew and ratify a transaction known to be voidable. Bauer v. Dotterer, 202 Ark. 1055, 155 S.W.2d 54, 57.

A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased. Co. Litt. 295b. Beetem v. Garrison, 129 Md. 664, 99 A. 897, 900.

**English Ecclesiastical Law**

The ratification by the archbishop of the election of a bishop by dean and chapter under the king's letter missive prior to the investment and consecration of the bishop by the archbishop. 25 Hen. VIII. c. 20.

**CONFIRMATION OF SALE.** The confirmation of a judicial sale by the court which ordered it is a signification in some way (usually by the entry of an order) of the court's approval of the terms, price, and conditions of the sale. Johnson v. Cooper, 56 Miss. 618; Hyman v. Smith, 13 W.Va. 765.

**CONFIRMAVI.** Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation. Fleta, lib. 3, c. 14, § 5.

**CONFIRMEE.** The grantee in a deed of confirmation.

**CONFIRMOR.** The grantor in a deed of confirmation.

**CONFISCABLE.** Capable of being confiscated or suitable for confiscation; liable to forfeiture. Camp v. Lockwood, 1 Dall. (Pa.) 393, 1 L.Ed. 194.

**CONFISCARE.** In civil and old English law. To confiscate; to claim for or bring into the fisc, or treasury. Bract. fol. 150.

**CONFISCATE.** To appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and con-

demn private forfeited property to public use. City of Portsmouth v. Public Utilities Commission, 108 Ohio St. 272, 140 N.E. 604, 606; Moscow Fire Ins. Co. of Moscow, Russia, v. Bank of New York & Trust Co., 294 N.Y.S. 648, 663, 161 Misc. 903.

Formerly, it appears, this term was used as synonymous with "forfeit," but at present the distinction between the two terms is well marked. Confiscation supervenes upon forfeiture. The person, by his act, forfeits his property; the state thereupon appropriates it, that is, confiscates it. Hence, to confiscate property implies that it has first been forfeited; but to forfeit property does not necessarily imply that it will be confiscated.

**CONFISCATEE.** One whose property has been seized and sold under a confiscation act, *e. g.*, for unpaid taxes. See Brent v. New Orleans, 41 La. Ann. 1098, 6 So. 793.

**CONFISCATION.** The act of confiscating; or of condemning and adjudging to the public treasury.

"Confiscation" is to be distinguished from "condemnation" as prize. The former is the act of the sovereign against a rebellious subject; the latter is the act of a belligerent against another belligerent. Confiscation may be effected by such means, summary or arbitrary, as the sovereign, expressing its will through lawful channels, may please to adopt. Condemnation as prize can only be made in accordance with principles of law recognized in the common jurisprudence of the world. Both are proceedings *in rem*, but confiscation recognizes the title of the original owner to the property, while in prize the tenure of the property is qualified, provisional, and destitute of absolute ownership. Winchester v. U. S., 14 Ct.Cl. 48.

**CONFISCATORY RATES.** For utility are rates which do not afford net return sufficient to preserve utility's property and to attract capital necessary to enable utility to discharge its public duties. Wichita Gas Co. v. Public Service Commission of Kansas, D.C.Kan., 2 F.Supp. 792, 799. Rates which do not afford a reasonable return on value of property at time it is used in public service. State v. Tri-State Telephone and Telegraph Co., 204 Minn. 516, 284 N.W. 294, 305.

**CONFISCATION ACTS.** Certain acts of congress, enacted during the progress of the civil war (1861 and 1862) in the exercise of the war powers of the government and meant to strengthen its hands and aid in suppressing the rebellion, which authorized the seizure, condemnation, and forfeiture of "property used for insurrectionary purposes." Semmes v. U. S., 91 U.S. 27, 23 L.Ed. 193.

**CONFISCATION CASES.** The name given to a group of fifteen cases decided by the United States supreme court in 1868, on the validity and construction of the confiscation acts of congress. Reported in 7 Wall. 454, 19 L.Ed. 196.

**CONFISK.** An old form of *confiscate*.

**CONFITENS REUS.** An accused person who admits his guilt.

**CONFLICT OF LAWS.** Inconsistency or difference between the municipal laws of different states or countries, arising in the case of persons who have acquired rights or a *status*, or made contracts, or incurred obligations, within the territory of two or more jurisdictions. Hence, that branch of jurisprudence, arising from the diver-

## CONFLICT

sity of the laws of different nations, states or jurisdictions, in their application to rights and remedies, which reconciles the inconsistency, or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the law of another jurisdiction, (the acts or rights in question having arisen under it,) either where it varies from the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point. In this sense it is often called "private international law," a term adopted by Westlake, by Woolsey, Internat'l. Law (5th Ed.) § 73, and others, and characterized as "handy and manageable," but at bottom inaccurate, by Dicey, Conflict of Laws, Moore's Ed. 12, who points out that the defect of the name "Conflict of Laws" is that the supposed conflict is fictitious and never really takes place, and that the expression has the further radical defect of concealing from view the circumstance that the question by the law of what country a given transaction shall be governed is often too plain to admit of doubt. If, he says, the term applies to the conflict in the mind of a judge as to which of two systems of law should govern a given case, this amounts simply to saying that the term "conflict of laws" may be used as an inaccurate equivalent for the less objectionable phrase "choice of laws." Taylor, Jurisprudence, 611, after considering the opinion of many writers, concludes that the term "private international law" is subject to many objections. Holland, Jurisprudence, 410, considers it "wholly indefensible," as does Gray, Nature, etc., of the Law, 124. Pollock, First Book of Jurispr. 99, prefers the German term—Internationales Privatrecht.

**CONFLICT OF PRESUMPTIONS.** In this conflict certain rules are applicable, viz.: (1) Special take precedence of general presumptions; (2) constant of casual ones; (3) presume in favor of innocence; (4) of legality; (5) of validity; and, when these rules fail, the matter is said to be at large. Brown.

**CONFLICTING EVIDENCE.** It has been said that there is not, in a legal sense, a conflict of evidence unless there is a possibility that men of ordinary reason and fairness would feel justified in drawing different conclusions from the evidence before them. Seeley v. Osborne, 220 N.Y. 416, 116 N.E. 97.

**CONFORMITY.** Correspondence in form, manner, or use; agreement; harmony; congruity. Reasonover v. Reasonover, 122 Tex. 512, 58 S.W. 2d 817, 819.

### English Ecclesiastical Law

Adherence to the doctrines and usages of the Church of England.

**CONFORMITY ACT, or STATUTE.** A term used to designate Act June 1, 1872, c. 255, § 5, 17 Stat. 197, whence was derived Rev. St. U. S. § 914 providing that the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the federal dis-

trict courts shall conform, as near as may be, to those existing in like causes in the courts of the state within which such district courts are held. Since the adoption of the Federal Rules of Civil Procedure, 28 U.S.C.A., the Conformity Act is no longer effective. De Rosmo v. Feeny, 1941, 38 F. Supp. 834; Hydraulic Press Mfg. Co. v. Williams, White & Co., C.C.A.III.1947, 165 F.2d 489.

**CONFORMITY, BILL OF.** See Bill of Conformity.

**CONFRAIRIE.** Fr. In old English law. A fraternity, brotherhood, or society. Cowell.

**CONFREBRES.** Brethren in a religious house; fellows of one and the same society. Cowell.

**CONFRONTATION.** In criminal law, the act of setting a witness face to face with the prisoner, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused. State v. Behrman, 114 N.C. 797, 19 S.E. 220, 25 L.R.A. 449.

The constitutional right of confrontation does not mean merely that witnesses are to be made visible to the accused, but imports the constitutional privilege to cross-examine them. State v. Crooker, 123 Me. 310, 122 A. 865, 866, 33 A.L.R. 821.

**CONFUSIO.** In the civil law. The inseparable intermixture of property belonging to different owners; it is properly confined to the pouring together of fluids, but is sometimes also used of a melting together of metals or any compound formed by the irrecoverable commixture of different substances.

It is distinguished from *commixtion* by the fact that in the latter case a separation may be made, while in a case of *confusio* there cannot be. 2 Bl.Comm. 405.

**CONFUSION.** This term, as used in the civil law and in compound terms derived from that source, means a blending or intermingling, and is equivalent to the term "merger" as used at common law. Palmer v. Burnside, 1 Woods, 182 Fed. Cas. No. 10,685.

**CONFUSION OF BOUNDARIES.** The title of that branch of equity jurisdiction which relates to the discovery and settlement of conflicting, disputed, or uncertain boundaries.

**CONFUSION OF DEBTS.** A mode of extinguishing a debt, by the concurrence in the same person of two qualities or adverse rights to the same thing which mutually destroy each other. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer. Woods v. Ridley, 11 Humph. (Tenn.) 198.

**CONFUSION OF GOODS.** The inseparable intermixture of property belonging to different owners; properly confined to the pouring together of fluids, but used in a wider sense to designate any indistinguishable compound of elements belonging to different owners. The term "confusion" is applicable to a mixing of chattels of one and the same general description, differing thus from "accession," which takes place where various ma-

**Ecclesiastical Law**

Certain bureaux at Rome, where ecclesiastical matters are attended to.

**CONGREGATIONAL SYSTEM OF CHURCH ORGANIZATION.** Where the local organization is the governing body and is sufficient unto itself. *Doughty v. Herr*, 97 Ind.App. 427, 185 N.E. 657, 658.

**CONGRESS.** In International Law. An assembly of envoys, commissioners, deputies, etc., from different sovereignties who meet to concert measures for their common good, or to adjust their mutual concerns.

In American Law. The legislative assembly of the United States, composed of the senate and house of representatives (*q. v.*). U. S. Const. art. 1, § 1.

**CONGRESSMAN.** Strictly, a member of the Congress of the United States. But there is a strong tendency in popular usage to apply this term only to a member of the House of Representatives, as distinguished from a senator. *State v. Kopriva*, 49 N.D. 1040, 194 N.W. 704, 705.

**CONGRESSUS.** The extreme practical test of the truth of a charge of impotence brought against a husband by a wife. It is now disused. Causes *Célèbres*, 6, 183.

**CONJECTIO.** In the civil law of evidence. A throwing together. Presumption; the putting of things together, with the inference drawn therefrom.

**CONJECTIO CAUSÆ.** In the civil law. A statement of the case. A brief synopsis of the case given by the advocate to the judge in opening the trial. Calvin.

**CONJECTURAL CHOICE, RULE OF.** Where all theories of causation rest only on conjecture, no jury question is presented. *Cummings v. Grand Trunk Western R. Co.*, 127 N.W.2d 842, 844, 372 Mich. 695.

**CONJECTURE.** A slight degree of credence, arising from evidence too weak or too remote to cause belief. *Weed v. Scofield*, 73 Conn. 670, 49 A. 22; 1 Mascardus, *De Prob.* quæst. 14, n. 14. Supposition or surmise. The idea of a fact, suggested by another fact; as a possible cause, concomitant, or result. *Burrill, Circ. Ev.* 27. An idea or notion founded on a probability without any demonstration of its truth; an idea or surmise inducing a slight degree of belief founded upon some possible, or perhaps probable fact of which there is no positive evidence. *Oklahoma City v. Wilcoxson*, 173 Okl. 433, 48 P.2d 1039, 1043. An explanation consistent with but not deducible as a reasonable inference from known facts or conditions. *Southern Ry. Co. v. Dickson*, 211 Ala. 481, 100 So. 665, 669. In popular use, synonymous with "guess." *Fedorawicz v. Citizens' Electric Illuminating Co.*, 246 Pa. 141, 92 A. 124, 125.

Also, the bringing together of the circumstances, as well as the result obtained. *Reynolds v. Maryland Casualty Co.*, 274 Mo. 83, 201 S.W. 1128, 1133.

terials are united in one product. Confusion of goods arises wherever the goods of two or more persons are so blended as to have become undistinguishable. 1 Schouler, *Pers. Prop.* 41. *Barker v. Stearns Coal & Lumber Co.*, 291 Ky. 184, 163 S.W.2d 466, 471.

**CONFUSION OF RIGHTS.** A union of the qualities of debtor and creditor in the same person. The effect of such a union is, generally, to extinguish the debt. 1 Salk. 306; *Cro. Car.* 551; 1 Ld. Raym. 515. 5 Term 381; Comyns, *Dig. Baron et Feme* (D); *Baylor University v. Bradshaw*, Tex. Civ.App., 52 S.W.2d 1094, 1101.

**CONFUSION OF TITLES.** A civil-law expression, synonymous with "merger," as used in the common law, applying where two titles to the same property unite in the same person. *Palmer v. Burnside*, 1 Woods, 179, Fed. Cas. No. 10,685.

**CONFUTE.** To prove to be false, defective, or invalid. *Wiley v. Baker*, 219 Mich. 629, 190 N.W. 273, 278.

**CONGÉ.** Fr. In French law. Permission, leave, license; a passport or clearance to a vessel; a permission to arm, equip, or navigate a vessel.

**CONGÉ D'ACCORDER.** Leave to accord. A permission granted by the court, in the old process of levying a fine, to the defendant to agree with the plaintiff. *Termes de la Ley*; Cowell. See *Licentia Concordandi*; 2 Bla.Comm. 350.

**CONGÉ D'EMPARLER.** Leave to imparl. The privilege of an imparlance, (*licentia loquendi.*) 3 Bl.Comm. 299.

**CONGÉ D'ESLIRE.** Also spelled *congé d'élire*, *congé délire*. Cowell; *Termes de la Ley*; 1 Bla. Comm. 379, 382. A permission or license from the British sovereign to a dean and chapter to elect a bishop, in time of vacation; or to an abbey or priory which is of royal foundation, to elect an abbot or prior.

**CONGEABLE.** L. Fr. Lawful; permissible; allowable. "Disseisin is properly where a man entereth into any lands or tenements where his entry is not *congeable*, and putteth out him that hath the freehold." Litt. § 279. See *Ricard v. Williams*, 7 Wheat. 107, 5 L.Ed. 398.

**CONGILDONES.** In Saxon law. Fellow-members of a guild.

**CONGIUS.** An ancient measure containing about a gallon and a pint. Cowell.

**CONGREGATE.** To come together; to assemble; to meet. *Board of Health of City of Paterson v. Clayton*, 93 N.J.L. 64, 106 A. 813, 814.

**CONGREGATION.** An assembly or gathering; specifically, an assembly or society of persons who together constitute the principal supporters of a particular parish, or habitually meet at the same church for religious exercises. *Laird v. State*, 69 Tex.Cr.R. 553, 155 S.W. 260, 262.

## CONJOINT

**CONJOINT ROBBERY.** Where the act is committed by two or more persons. *Patterson v. State*, 78 Okl.Cr. 244, 147 P.2d 179, 184.

**CONJOINTS.** Persons married to each other. *Story*, *Conf. Laws*, § 71; *Wolffius*, *Droit de la Nat.* § 858.

**CONJUDEX.** In old English law. An associate judge. *Bract*. 403.

**CONJUGAL.** Of or belonging to marriage or the married state; suitable or appropriate to the married state or to married persons; matrimonial; connubial. *Swanson v. Swanson*, 20 A.2d 617, 618, 128 Conn. 128, 135 A.L.R. 849.

**CONJUGAL RIGHTS.** Matrimonial rights; the right which husband and wife have to each other's society, comfort, and affection.

**CONJUGIUM.** One of the names of marriage, among the Romans. *Tayl. Civil Law*, 284.

**CONJUNCT.** In Scotch law. Joint.

**CONJUNCTA.** In the civil law. Things joined together or united; as distinguished from *disjuncta*, things disjoined or separated. *Dig.* 50, 16, 53.

**CONJUNCTIM.** Lat. In old English law. Jointly. *Inst.* 2, 20, 8.

**CONJUNCTIM ET DIVISIM.** L. Lat. In old English law. Jointly and severally.

**CONJUNCTIO.** In the civil law. Conjunction; connection of words in a sentence. See *Dig.* 50, 16, 29, 142.

**CONJUNCTIO MARITI ET FEMINÆ EST DE JURE NATURÆ.** The union of husband and wife is of the law of nature.

**CONJUNCTIVE.** Connecting in a manner denoting union.

A grammatical term for particles which serve for joining or connecting together. Thus, the word "and" is called a "conjunctive," and "or" a "disjunctive," conjunction.

**CONJUNCTIVE DENIAL.** Where several material facts are stated conjunctively in the complaint, an answer which undertakes to deny their averments as a whole, conjunctively stated, is called a "conjunctive denial." *Doll v. Good*, 38 Cal. 287.

**CONJUNCTIVE OBLIGATION.** See *Obligation*.

**CONJURATIO.** In Old English Law. A swearing together; an oath administered to several together; a combination or confederacy under oath. *Cowell*.

In Old European Law. A compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other and which was the basis of the commune. *Steph. Lect.* 119.

**CONJURATION.** In old English law. A plot or compact made by persons combining by oath to do any public harm. *Cowell*.

The offense of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. *Cowell*.

Classed by Blackstone with witchcraft, enchantment, and sorcery, but distinguished from each of these by other writers. 4 Bl.Comm. 60; *Cowell*. *Cooper v. Livingston*, 19 Fla. 693; *Mozley & W. Law Dict.*

**CONJURATOR.** In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; a conspirator.

**CONNECT.** To join or fasten together as by something intervening; to associate as in occurrence or in idea; to combine; to unite or link together, as in an electrical circuit; to establish a bond or relation between; to meet or make connections for transference of passengers or change of means of communication. *City of Independence v. Board of Com'rs of Montgomery County*, 140 Kan. 661, 38 P.2d 105.

**CONNECTED.** Joined; united by junction, by an intervening substance or medium, by dependence or relation, or by order in a series. *State v. Patterson*, 95 S.C. 463, 79 S.E. 309, 310.

With reference to buildings, the term does not generally denote such a close union as is implied by the word "attached" or "annexed," but rather signifies the connection effected by a flume: *Plattsburg Gas & Electric Co. v. Miller*, 206 N.Y.S. 42, 45, 123 Misc. 651; or by piping or telephone connections; *Williams Mfg. Co. v. Insurance Co. of North America*, 93 Vt. 161, 106 A. 657, 659.

A counterclaim, to be "connected" with the subject of the action, must be directly connected, so that the parties could be supposed to have foreseen and contemplated it in their mutual acts. *Haberle-Crystal Spring Brewing Co. v. Handrahan*, 165 N.Y.S. 251, 255, 100 Misc. 163; *Placerville Gold Mining Co. v. Beal*, 168 Cal. 682, 144 P. 748, 749.

As used in the Act to Regulate Commerce (Act Feb. 4, 1887, c. 104, § 15, 24 Stat. 384), as amended by Act June 29, 1906, c. 3591, § 4, 34 Stat. 589 (49 USCA § 15), "connected with" transportation means "a part of" transportation. *New York Cent. & H. R. R. Co. v. General Electric Co.*, 146 N.Y.S. 322, 327, 83 Misc. 529.

**CONNECTION.** The state of being connected or joined; union by junction, by an intervening substance or medium, by dependence or relation, or by order in a series. *State v. Patterson*, 95 S.C. 463, 79 S.E. 309, 310. *Annernen v. Penn, Cust. & Pat.App.*, 69 F.2d 653, 654.

A contract for a connection between railroads means a physical joining of the rails so as to permit trains to pass from one set of rails to the other. *Philip A. Ryan Lumber Co. v. Ball*, *Tex.Civ.App.*, 197 S.W. 1037, 1038. See, also, *State v. Babcock*, 161 Minn. 80, 200 N.W. 843, 844; *Raynor v. New York & L. I. Traction Co.*, 149 N.Y.S. 151, 155, 86 Misc. 201.

**CONNECTIONS.** Relations by blood or marriage, but more commonly the relations of a person with whom one is connected by marriage. In this sense, the relations of a wife are "connections" of her husband. The term is vague and indefinite. See *Storer v. Wheatley*, 1 Pa. 507.

**CONNEXITÉ.** In French law. This exists when two actions are pending which, although not identical as in *lis pendens*, are so nearly similar in object that it is expedient to have them both adjudicated upon by the same judges. *Arg. Fr. Merc. Law*, 553.

**CONNIVANCE.** The secret or indirect consent or permission of one person to the commission of an unlawful or criminal act by another. *State v. Gesell*, 124 Mo. 531, 27 S.W. 1101. A winking at; voluntary blindness; an intentional failure to discover or prevent the wrong; forbearance or passive consent. *Pierce v. Crisp*, 260 Ky. 519, 86 S.W.2d 293, 296.

The corrupt consent of one party to the commission of the acts of the other constituting the cause of divorce. *Dennis v. Dennis*, 36 A. 34, 68 Conn. 186, 34 L.R.A. 449, 57 Am.St.Rep. 95; *Manville v. Manville*, Mo.App., 81 S.W.2d 382, 388.

A corrupt intent is essential. *Ratcliff v. Ratcliff*, 221 Mo.App. 944, 288 S.W. 794, 796. But see *Leavitt v. Leavitt*, 229 Mass. 196, 118 N.E. 262, and 33 L.J.Mat.Cas. 161.

Connivance differs from condonation, though the same legal consequences may attend it. Connivance necessarily involves criminality on the part of the individual who connives; condonation may take place without imputing the slightest blame to the party who forgives the injury. Connivance must be the act of the mind before the offense has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. *Turton v. Turton*, 3 Hagg.Eccl. 350.

Connivance differs, also, from collusion: the former is generally collusion for a particular purpose, while the latter may exist without connivance. 3 Hagg.Eccl. 130.

**CONNIVE.** To co-operate secretly with, or to have a secret or clandestine understanding with. *People v. Munday*, 293 Ill. 191, 127 N.E. 364, 368. To take part or co-operate privily with another, to aid or abet. *People v. Munday*, 215 Ill.App. 356, 377. To look upon with secret favor; it implies both knowledge and assent, either active or passive. *State v. Furth*, 82 Wash. 665, 144 P. 907, 910.

**CONNOISSEMENT.** In French law. An instrument, signed by the master of a ship or his agent, containing a description of the goods loaded on a ship, the persons who have sent them, the persons to whom they were sent, and the undertaking to transport them;—similar to the English and American bill of lading. Guyot, *Répert. Univ.; Ord. de la Marine*, l. 3, t. 3, art. 1.

**CONNUBIUM.** In the civil law. Marriage. Among the Romans, a lawful marriage as distinguished from "concubinage" (*q. v.*), an inferior marriage.

**CONOCIAMIENTO.** In Spanish law. A recognizance. White, *New Recop.* b. 3, tit. 7, c. 5, § 3.

**CONOCIMIENTO.** In Spanish law. A bill of lading. In the Mediterranean ports it is called "*poliza de cargamento.*"

**CONPOSSESSIO.** In modern civil law. A joint possession. Mackeld. *Rom. Law*, § 245.

**CONQUEREUR.** In Norman and old English law. The same as "conqueror" (*q. v.*).

**CONQUEROR.** In old English and Scotch law. The first purchaser of an estate; he who first brought an estate into his family, or into the family owning it. 2 Bl.Comm. 242, 243.

**CONQUEST.** In feudal law. Conquest; acquisition by purchase; any method of acquiring the ownership of an estate other than by descent. Also an estate acquired otherwise than by inheritance.

In international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire. *Castillero v. U. S.*, 2 Black, 109, 17 L.Ed. 360; *American Ins. Co. v. Canter*, 1 Pet. 511, 7 L.Ed. 242.

In Scotch law. Purchase. Bell.

**CONQUESTOR.** Conqueror. The title given to William of Normandy.

**CONQUÊTS.** In French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, inures to the extent of one-half for the benefit of the other. Merl. *Repert.* "*Conquêt*"; Merl. *Quest.*, "*Conquêt.*" *Picotte v. Cooley*, 10 Mo. 312. In Louisiana, these gains are called *acquêts*.

**CONQUISITIO.** In feudal and old English law. Acquisition. 2 Bl.Comm. 242.

**CONQUISITOR.** In feudal law. A purchaser, acquirer, or conqueror. 2 Bl.Comm. 242, 243.

**CONSANGUINEUS.** Lat. A person related by blood; a person descended from the same common stock.

**CONSANGUINEUS EST QUASI EODEM SANGUINE NATUS.** Co. Litt. 157. A person related by consanguinity is, as it were, sprung from the same blood.

**CONSANGUINEUS FRATER.** In civil and feudal law. A half-brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side. 2 Bla.Comm. 231.

**CONSANGUINITY.** Kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor. 2 Bl.Comm. 202; *Rector v. Drury*, 3 Pin. (Wis.) 298; *Swezey v. Willis*, 1 Brad.Surr.R. (N.Y.) 495.

Consanguinity is distinguished from "affinity," which is the connection existing in consequence of a marriage, between each of the married persons and the kindred of the other. *Sizemore v. Commonwealth*, 210 Ky. 637, 276 S.W. 524, 525.

#### Lineal and Collateral Consanguinity

Lineal consanguinity is that which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between sons, grandson, great-grandson, and so downwards in the direct descending line. Collateral consanguinity is that which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other. Thus, father and



## CONSCIENCE

son are related by lineal consanguinity, uncle and nephew by collateral consanguinity. 2 Bl.Comm. 203; Capps v. State, 87 Fla. 388, 100 So. 172, 173.

**CONSCIENCE.** The moral sense; the faculty of judging the moral qualities of actions, or of discriminating between right and wrong; particularly applied to one's perception and judgment of the moral qualities of his own conduct, but in a wider sense, denoting a similar application of the standards of morality to the acts of others. The sense of right and wrong inherent in every person by virtue of his existence as a social entity; good conscience being a synonym of equity. Van Graafeland v. Wright, 286 Mo. 414, 228 S.W. 465, 469. In law, especially the moral rule which requires probity, justice, and honest dealing between man and man, as when we say that a bargain is "against conscience" or "unconscionable," or that the price paid for property at a forced sale was so inadequate as to "shock the conscience." This is also the meaning of the term as applied to the jurisdiction and principles of decision of courts of chancery, as in saying that such a court is a "court of conscience," that it proceeds "according to conscience," or that it has cognizance of "matters of conscience." See 3 Bl.Comm. 47-56; People v. Stewart, 7 Cal. 143; Miller v. Miller, 187 Pa. 572, 41 A. 277.

As an element of equitable jurisdiction it is not the private opinion of an individual court, but is rather to be regarded as a metaphorical term, designating the common standard of civil right and expediency combined, based upon general principles and limited by established doctrines, to which the court appeals and by which it tests the conduct and rights of suitors. National City Bank of New York v. Gelfert, 284 N.Y. 13, 29 N.E.2d 449, 452.

**CONSCIENCE OF THE COURT.** When an issue is sent out of chancery to be tried at law, to "inform the conscience of the court," the meaning is that the court is to be supplied with exact and dependable information as to the unsettled or disputed questions of fact in the case, in order that it may proceed to decide it in accordance with the principles of equity and good conscience in the light of the facts thus determined. Watt v. Starke, 101 U.S. 252, 25 L.Ed. 826.

**CONSCIENCE, COURTS OF.** Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise and more commonly called "Courts of Requests." 3 Steph.Comm. 451.

**CONSCIENCE, RIGHT OF.** As used in some constitutional provisions, this phrase is equivalent to religious liberty or freedom of conscience. Com. v. Leshner, 17 Serg. & R. (Pa.) 155; State v. Cummings, 36 Mo. 263.

**CONSCIENTIA DICITUR A CON ET SCIO, QUASI SCIRE CUM DEO.** 1 Coke, 100. Conscience is called from *con* and *scio*, to know, as it were, with God.

**CONSCIENTIA REI ALIENI.** In Scotch law. Knowledge of another's property; knowledge that a thing is not one's own, but belongs to another.

He who has this knowledge, and retains possession, is chargeable with "violent profits."

**CONSCIENTIOUS OBJECTOR.** One who, by reason of religious training and belief, is conscientiously opposed to participation in war. Selective Training & Service Act of 1940, § 5(g), 50 U.S.C.A. App., § 305(g). U. S. v. Kauten, C.C.A. N.Y., 133 F.2d 703.

One conscientiously opposed on religious grounds to participation in war need not be a member of a religious sect whose creed forbids participation in war to be entitled to classification as a conscientious objector. U. S. v. Bowles, C.C.A.N.J., 131 F.2d 818. It is sufficient if he has a conscientious scruple against war in any form. U. S. ex rel. Phillips v. Downer, C.C.A.N.Y., 135 F.2d 521, 524, 525.

**CONSCIENTIOUS SCRUPLE.** A conscientious scruple against taking an oath, serving as a juror in a capital case, doing military duty, or the like, is an objection or repugnance growing out of the fact that the person believes the thing demanded of him to be morally wrong, his conscience being the sole guide to his decision; it is thus distinguished from an "objection on principle," which is dictated by the reason and judgment, rather than the moral sense, and may relate only to the propriety or expediency of the thing in question. People v. Stewart, 7 Cal. 143.

**CONSCRIPTION.** Drafting into the military service of the state; compulsory military service falling upon all male subjects evenly, within or under certain specified ages. Kneedler v. Lane, 45 Pa. 267. Certain classes, however, may be exempt, and drafted men are sometimes released upon furnishing acceptable substitutes or by the payment of a sum of money. Davis, Mil. Law 51.

**CONSECRATE.** In ecclesiastical law. To dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop.

**CONSECRATIO EST PERIODUS ELECTIONIS; ELECTIO EST PRÆAMBULA CONSECRATIONIS.** 2 Rolle, 102. Consecration is the termination of election; election is the preamble of consecration.

**CONSECUTIVE.** Successive; succeeding one another in regular order. Walsworth v. Casassa, 219 Mass. 200, 106 N.E. 847; to follow in uninterrupted succession. People v. Hirschbein, 60 P.2d 532, 16 Cal.App.2d 458.

**CONSEDO.** Sp. A term used in conveyances under Mexican law, equivalent to the English word "grant." Mulford v. Le Franc, 26 Cal. 103.

**CONSEIL D'ÉTAT.** Council of state. One of the oldest of French institutions, its origin dating back to 1302. It decides or advises upon state questions and measures proposed for legislation, submitted to it by the President of the Republic, by the members of the Cabinet, and by Parliament. Coxe, Manual of French Law.

**CONSEIL DE FAMILLE.** In French law. A family council. Certain acts require the sanction of



this body. For example, a guardian can neither accept nor reject an inheritance to which the minor has succeeded without its authority, (Code Nap. 461;) nor can he accept for the child a gift *inter vivos* without the like authority, (Code Nap. 463.)

**CONSEIL DE PRUDHOMMES.** In French law. One of a species of trade tribunals, charged with settling differences between masters and workmen. They endeavor, in the first instance, to conciliate the parties. In default, they adjudicate upon the questions in dispute. Their decisions are final up to 200*f*. Beyond that amount, appeals lie to the tribunals of commerce. Arg. Fr. Merc. Law, 553.

**CONSEIL JUDICIAIRE.** In French law. When a person has been subjected to an interdiction on the ground of his insane extravagance, but the interdiction is not absolute, but limited only, the court of first instance, which grants the interdiction, appoints a council, called by this name, with whose assistance the party may bring or defend actions, or compromise the same, alienate his estate, make or incur loans, and the like. Brown.

**CONSENSUAL CONTRACT.** A term derived from the civil law, denoting a contract founded upon and completed by the mere consent of the contracting parties, without any external formality or symbolic act to fix the obligation.

**CONSENSUAL MARRIAGE.** Marriage resting simply on consent per verba de præsenti, between competent parties. Such marriage is valid. Fisher v. Fisher, 250 N.Y. 313, 165 N.E. 460, 461, 61 A. L.R. 1523. See, also, Common-law Marriage.

**CONSENSUS AD IDEM.** An agreement of parties to the same thing; a meeting of minds.

**CONSENSUS EST VOLUNTAS PLURIUM AD QUOS RES PERTINET, SIMUL JUNCTA.** Lofft, 514. Consent is the conjoint will of several persons to whom the thing belongs.

**CONSENSUS FACIT LEGEM.** Consent makes the law. (A contract is law between the parties agreeing to be bound by it.) Branch, Princ.

**CONSENSUS, NON CONCUBITUS, FACIT NUP-TIAS VEL MATRIMONIUM, ET CONSENTIRE NON POSSUNT ANTE ANNOS NUBILES.** 6 Coke, 22. Consent, and not cohabitation (or coition), constitutes nuptials or marriage, and persons cannot consent before marriageable years. 1 Bl.Comm. 434; Co. Litt. 33*a*; Dig. 50, 17, 30. See 10 Cl. & F. 534; Broom, Max. 505.

**CONSENSUS TOLLIT ERROREM.** Co. Litt. 126. Consent (acquiescence) removes mistake. 2 Inst. 123; Rogers v. Cruger, 7 Johns. (N.Y.) 611; Kuhler v. Hoover, 4 Pa. 335; Wilkinson's Appeal, 65 Pa. 190.

**CONSENSUS VOLUNTAS MULTORUM AD QUOS RES PERTINET, SIMUL JUNCTA.** Consent is the united will of several interested in one subject-matter. Davis, 48; Branch, Princ.

**CONSENT.** A concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith. Twin Ports Oil Co. v. Pure Oil Co., D.C.Minn., 26 F.Supp. 366, 371. Agreement; the act or result of coming into harmony or accord. Glantz v. Gabel, 66 Mont. 134, 212 P. 858, 860.

Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. 1 Story, Eq.Jur. § 222; Lervick v. White Top Cabs, La.App., 10 So.2d 67, 73. It means voluntary agreement by a person in the possession and exercise of sufficient mentality to make an intelligent choice to do something proposed by another. People v. Kangiesser, 44 Cal. App. 345, 186 P. 388, 389. It supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. Fonblanque, Eq. b. 1, c. 2, s. 1; New Jersey Mfrs' Casualty Ins. Co., 148 A. 790, 791, 106 N.J.L. 238. Consent is implied in every agreement. It is an act unclouded by fraud, duress, or sometimes even mistake. Heine v. Wright, 76 Cal.App. 338, 244 P. 955, 956.

There is a difference between consenting and submitting. Every consent involves a submission; but a mere submission does not necessarily involve consent. 9 Cal. & P. 722.

"Consent" is an active acquiescence as distinguished from "assent," meaning a silent acquiescence. People v. Lowe, 205 N.Y.S. 77, 78, 209 App.Div. 498. "Consent" means an active circumstance of concurrence; "assent" is a passive act of concurrence before another does the act charged. Perryman v. State, 63 Ga.App. 819, 12 S.E.2d 388, 390. But the two terms may be used interchangeably. Bartlett v. Sundin, 169 N.Y.S. 391, 393, 182 App.Div. 117.

"Consent" is sometimes synonymous merely with "waiver." Dahlquist v. Denver & R. G. R. Co., 52 Utah, 438, 174 P. 833, 844. See, also, Seegmiller v. Day, C.C.A.Ill., 249 F. 177, 178; Toledo Fence & Post Co. v. Lyons, C.C.A.Ohio, 290 F. 637, 640.

As used in the law of rape "consent" means consent of the will, and submission under the influence of fear or terror cannot amount to real consent. Hallmark v. State, 22 Okl. Cr. 422, 212 P. 322, 328. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. State v. Schwab, 109 Ohio St. 532, 143 N. E. 29, 31. And if woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent". People v. McIlvain, 130 P.2d 131, 135, 55 Cal. App.2d 322.

See Assent.

**Consent decree.** See Decree.

**Consent judgment.** See Judgment.

**Express Consent.** That directly given, either *viva voce* or in writing. It is positive, direct, unequivocal consent, requiring no inference or implication to supply its meaning. Pacific Nat. Agricultural Credit Corporation v. Hagerman, 40 N.M. 116, 55 P.2d 667, 670.

**Express or Implied Consent.** Under motor vehicle liability insurance law providing that policy should cover any person responsible for operation of insured vehicle with insured's express or implied consent, words "express or implied consent" primarily modify not the word "operation", but the word "responsible", and imply possession of vehicle with consent of owner and responsibility to him. Hurley v. Flanagan, 313 Mass. 567, 48 N. E.2d 621, 624.

**Implied Consent.** That manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been

## CONSENT

given. *Avery v. State*, 12 Ga.App. 562, 77 S.E. 892. See *State v. Horton*, 247 Mo. 657, 153 S.W. 1051, 1053; *White v. White*, 84 N.J.Eq. 512, 95 A. 197, 199.

**CONSENT RULE.** An entry of record by the defendant, confessing the lease, entry, and ouster by the plaintiff, in an action of ejectment. A superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession. See *Ad.Eject.* 233.

**CONSENTIBLE LINES.** See *Line*.

**CONSENTIENTES ET AGENTES PARI POENA PLECTENTUR.** They who consent to an act, and they who do it, shall be visited with equal punishment. 5 Coke 80.

**CONSENTIRE MATRIMONIO NON POSSUNT INFRA [ANTE] ANNOS NUBILES.** Parties cannot consent to marriage within the years of marriage, [before the age of consent.] 5 Coke 80; 6 Coke 22.

**CONSEQUENCE.** The result following in natural sequence from an event which is adapted to produce, or to aid in producing, such result;—the correlative of "cause." Board of Trustees of Firemen's Relief and Pension Fund for City of Tulsa v. Miller, 186 Okl. 586, 99 P.2d 146, 147.

### In Consequence of

This phrase has been used as equivalent to the words, "in the event of." In *re Spalding's Estate*, 84 Cal.App. 371, 258 P. 154, 155.

**CONSEQUENTIAE NON EST CONSEQUENTIA.** *Bac.Max.* The consequence of a consequence exists not.

**CONSEQUENTIAL CONTEMPT.** The ancient name for what is now known as "constructive" contempt of court. *Ex parte Wright*, 65 Ind. 508. See *Contempt*.

**CONSEQUENTIAL DAMAGES.** See *Damages*.

**CONSEQUENTS.** In Scotch law. Implied powers or authorities. Things which follow, usually by implication of law. A commission being given to execute any work, every power necessary to carry it on is implied. 1 Kames, Eq. 242.

**CONSERVATOR.** A guardian; protector; preserver.

"When any person having property shall be found to be incapable of managing his affairs, by the court of probate in the district in which he resides, \* \* \* it shall appoint some person to be his *conservator*, who, upon giving a probate bond, shall have the charge of the person and estate of such incapable person." *Gen.St.Conn.* 1875, p. 346, § 1 (*Gen.St.* 1930, § 4815); *Hutchins v. Johnson*, 12 Conn. 376, 30 Am.Dec. 622.

One whose business it is to attend to the enforcement of certain statutes. See *Conservators of the Peace, infra*.

One whose duty requires him to prevent and arrest for breaches of the peace in his presence, but not to arraign

and try for them. *Marcuchi v. Norfolk & W. Ry. Co.*, 81 W.Va. 548, 94 S.E. 979, 980.

A delegated umpire or standing arbitrator, chosen to compose and adjust difficulties arising between two parties. *Cowell*.

**CONSERVATOR TRUCIS.** Lat. An official appointed under an English act of 1414 passed to prevent breaches of truces made, or of safe conducts granted, by the king. 2 *Holdsw.Hist.E.L.* 392; 4 *Bla.Comm.* 69.

**CONSERVATORS OF RIVERS.** Commissioners or trustees in whom the control of a certain river is vested, in England, by act of parliament.

**CONSERVATORS OF THE PEACE.** Officers authorized to preserve and maintain the public peace. In England, these officers were locally elected by the people until the reign of Edward III, when their appointment was vested in the king. Their duties were to prevent and arrest for breaches of the peace, but they had no power to arraign and try the offender until about 1360, when this authority was given to them by act of parliament, and "then they acquired the more honorable appellation of justices of the peace." 1 *Bl.Comm.* 351.

Even after this time, however, many public officers were styled "conservators of the peace," not as a distinct office but by virtue of the duties and authorities pertaining to their offices. In this sense the term may include the king himself, the lord chancellor, justices of the king's bench, master of the rolls, coroners, sheriffs, constables, etc. 1 *Bl.Comm.* 350. See *Smith v. Abbott*, 17 N.J.L. 358. In Texas, the constitution provides that county judges shall be conservators of the peace. *Const.Tex.* art. 4, § 15; *Jones v. State*, *Tex.Cr.App.*, 65 S.W. 92. The Constitution of Delaware (1831) provides that: "The members of the senate and house of representatives, the chancellor, the judges, and the attorney-general shall, by virtue of their offices, be conservators of the peace throughout the state; and the treasurer, secretary, and prothonotaries, registers, recorders, sheriffs, and coroners, shall, by virtue of their offices, be conservators thereof within the counties respectively in which they reside."

**CONSERVE.** To save from loss. *U. S. v. Mammoth Oil Co.*, *D.C.Wyo.*, 5 F.2d 330, 351.

**CONSIDER.** To fix the mind on, with a view to careful examination; to examine; to inspect. *Eastman Kodak Co. v. Richards*, 204 N.Y.S. 246, 248, 123 Misc. 83. To deliberate about and ponder over. *People v. Tru-Sport Pub. Co.*, 291 N.Y.S. 449, 457, 160 Misc. 628. To entertain or give heed to. *Rodolf v. Board of Com'rs of Tulsa County*, 122 Okl. 120, 251 P. 740, 741. See, also, *Considered*.

**CONSIDERABLE.** Worthy of consideration; required to be observed. *Gougar v. Buffalo Specialty Co.*, 26 Colo.App. 8, 141 P. 511, 514.

A "considerable" number, as of persons, does not necessarily mean a very great or any particular number of persons; the term "considerable" being merely relative. *People v. Kings County Iron Foundry*, 209 N.Y. 207, 102 N. E. 598, 599.

**CONSIDERATIO CURIAE.** The judgment of the court.

**CONSIDERATION. Practice.** A technical term indicating that a tribunal has heard and judicially

determined matters submitted to it. *Meaney v. State Industrial Accident Commission*, 113 Or. 371, 232 P. 789, 791.

**Contracts**

The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. 2 Bla. Comm. 443; *Cassinelli v. Stacy*, 238 Ky. 827, 38 S.W.2d 980, 983.

Consideration is not to be confounded with motive. Consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant. *Patteson, J., in Langd.Sel.Cas.Contr.* 168; s. c. 2 Q.B. 851; *Miller v. Bank of Holly Springs*, 131 Miss. 55, 95 So. 129, 130, 31 A.L.R. 698. "Nothing is consideration that is not regarded as such by both parties." *Schlecht v. Schlecht*, 168 Minn. 168, 209 N.W. 883, 887. And "price" and "consideration," though sometimes the same, are not always identical. *Oregon Home Builders v. Crowley*, 87 Or. 517, 170 P. 718, 721.

The "inducement" for a contract is that which influences the act, while "consideration" means the parting with something by the one from whom it moves. *E. F. Spears & Sons v. Winkle*, 186 Ky. 585, 217 S.W. 691, 692.

An act or forbearance, or the promise thereof, which is offered by one party to an agreement, and accepted by the other as an inducement to that other's act or promise. *Poll.Contr.* 91.

Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor. Hence doing only of what one is already under obligation to do is not "consideration" for a contract. *Hogan v. Supreme Camp of the American Woodmen*, 146 Fla. 413, 1 So.2d 256, 258.

Any act of the plaintiff (or the promisee) from which the defendant (the promisor) or a stranger derives a benefit or advantage, or any labor, detriment, or inconvenience sustained by the plaintiff, however small, if such act is performed or inconvenience suffered by the plaintiff by the consent, express or implied, of the defendant. 3 *Scott*, 250.

A benefit to the promisor, or a loss or detriment to the promisee. *Harris v. Johnson*, 75 Wash. 291, 134 P. 1048, 1050; *Fowler v. Smith*, 24 Ohio App. 324, 156 N.E. 913, 914. Or benefit to a third party. *Wellshire Land Co. v. City and County of Denver*, 103 Colo. 416, 87 P.2d 1. But nothing is "consideration" that is not regarded as such by both parties. *Michael v. Holland*, 111 Ind.App. 34, 40 N.E.2d 362, 365.

Some right, interest, gain, advantage, benefit, or profit to one party, usually the promisor, or some forbearance, detriment, prejudice, inconvenience, disadvantage, loss, or responsibility, act, or service given, suffered, or undertaken by the promisee. *Exum v. Lynch*, 125 S.E. 15, 17, 188 N.C. 392; *Furman University v. Waller*, 117 S.E. 356, 358, 124 S.C. 68, 33 A.L.R. 615; *Robinson v. Oliver*, 156 N.Y.S. 896, 898, 171 App.Div. 349; L.R. 10 Ex. 162; *Train v. Gold*, 5 Pick.(Mass.) 380; *Bankers Trust Co. v. Economy Coal Co.*, 224 Iowa 36, 276 N.W. 16, 20.

Considerations are either *executed* or *executory*; *express* or *implied*; *good* or *valuable*. See definitions *infra*.

**Adequate Consideration.** See Adequate.

**Concurrent Consideration.** One which arises at the same time or where the promises are simultaneous.

**Continuing Consideration.** One consisting in acts or performances which must necessarily extend over a considerable period of time.

**Equitable or Moral Considerations.** Considerations which are devoid of efficacy in point of strict law, but are founded upon a moral duty, and may be made the basis of an express promise.

**Executed or Executory Considerations.** The former are acts done or values given before or at the time of making the contract; the latter are promises to give or do something in future.

**Express or Implied Considerations.** The former are those which are specifically stated in a deed, contract, or other instrument; the latter are those inferred or supposed by the law from the acts or situation of the parties.

Express consideration is a consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

**Failure of Consideration.** See Failure of Consideration.

**Fair and Valuable Consideration.** See Fair and Valuable Consideration.

**Fair Consideration.** See Fair Consideration.

**Good Consideration.** Such as is founded on natural duty and affection, or on a strong moral obligation. *Chit.Cont.* 7. A consideration for love and affection entertained by and for one within degree recognized by law. *Gay v. Fricks*, 211 Ala. 119, 99 So. 846, 847. See, also, *Berry v. Berry*, 83 W.Va. 763, 99 S.E. 79.

Motives of natural duty, generosity, and prudence come under this class. 2 Bla.Comm. 297; *Doran v. McConlogue*, 150 Pa. 98, 24 A. 357; *Mascolo v. Montasanto*, 61 Conn. 50, 23 A. 714, 29 Am.St.Rep. 170.

The term is sometimes used in the sense of a consideration valid in point of law; and it then includes a valuable or sufficient as well as a meritorious consideration. *Hodgson v. Butts*, 3 Cra. (U.S.) 140, 2 L.Ed. 391; *Lang v. Johnson*, 24 N.H. 302; *Ambl.* 598. Generally, however, *good* is used in antithesis to *valuable consideration* (*q. v.*).

**Gratuitous Consideration.** One which is not founded upon any such loss, injury, or inconvenience to the party to whom it moves as to make it valid in law.

**Illegal Consideration.** An act which if done, or a promise which if enforced, would be prejudicial to the public interest. *Harriman*, *Cont.* 101.

**Implied Considerations.** See Express or Implied Considerations, *supra*.

**Impossible Consideration.** One which cannot be performed.

**Inadequate Consideration.** See that title.

**Legal Consideration.** One recognized or permitted by the law as valid and lawful; as distinguished from such as are illegal or immoral. The term is also sometimes used as equivalent to

## CONSIDERATION

"good" or "sufficient" consideration. See *Sampson v. Swift*, 11 Vt. 315; *Albert Lea College v. Brown*, 88 Minn. 524, 93 N.W. 672, 60 L.R.A. 870.

**Meritorious Consideration.** See *Good Consideration*.

**Moral Considerations.** See *Equitable or Moral Considerations*, *supra*.

**Nominal Consideration.** One bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for "one dollar," no actual consideration passing, or the real consideration being concealed. This term is also sometimes used as descriptive of an inflated or exaggerated value placed upon property for the purpose of an exchange. *Boyd v. Watson*, 101 Iowa 214, 70 N.W. 123; *Emmi v. Patane*, 220 N.Y.S. 495, 498, 128 Misc. 901.

**Past Consideration.** An act done before the contract is made, which is ordinarily by itself no consideration for a promise. *Anson*, *Cont.* 82; *Witt v. Wilson*, *Tex.Civ.App.*, 160 S.W. 309, 310.

As to time, considerations may be of the past, present, or future. Those which are present or future will support a contract not void for other reasons. *Story*, *Contr.* 71.

**Pecuniary Consideration.** A consideration for an act or forbearance which consists either in money presently passing or in money to be paid in the future, including a promise to pay a debt in full which otherwise would be released or diminished by bankruptcy or insolvency proceedings. See *Phelps v. Thomas*, 6 Gray (Mass.) 328; *In re Eklings*, *D.C.N.J.*, 6 F. 170.

**Sufficient Consideration.** One deemed by the law of sufficient value to support an ordinary contract between parties, or one sufficient to support the particular transaction. *Golson v. Dunlap*, 73 Cal. 157, 14 P. 576.

**Valuable Consideration.** See *Consideration*.

**Want of Consideration.** See *Want of Consideration*.

**CONSIDERATUM EST PER CURIAM.** (It is considered by the court.) The formal and ordinary commencement of a judgment. *Baker v. State*, 3 Ark. 491.

**CONSIDERATUR.** L. Lat. It is considered. Held to mean the same with *consideratum est*. 2 *Strange*, 874.

**CONSIDERED.** Deemed; determined; adjudged; reasonably regarded. *State v. District Court of Eighth Judicial Dist. in and for Cascade County*, 64 Mont. 181, 208 P. 952, 955. See *Consider*.

Evidence may be said to have been "considered" when it has been reviewed by a court to determine whether any probative force should be given it. *Taylor v. Gossett*, *Tex. Civ.App.*, 269 S.W. 230, 233.

**CONSIGN.** In the civil law. To deposit in the custody of a third person a thing belonging to the debtor, for the benefit of the creditor, under the authority of a court of justice. *Poth.Obl.* pt. 3, c. 1, art. 8.

In Commercial Law. To deliver goods to a carrier to be transmitted to a designated factor or agent. *Powell v. Wallace*, 44 Kan. 656, 25 P. 42; *Ide Mfg. Co. v. Sager Mfg. Co.*, 82 Ill.App. 685. To deliver or transfer as a charge or trust; to commit, intrust, give in trust; to transfer from oneself to the care of another; to send or transmit goods to a merchant, factor, or agent for sale; to deposit with another to be sold, disposed of, or called for. *Edwards v. Baldwin Piano Co.*, 79 Fla. 143, 83 So. 915, 918.

**CONSIGNATION.** In Scotch law. The payment of money into the hands of a third party, when the creditor refuses to accept of it. The person to whom the money is given is termed the "consignatory." *Bell*.

In French law. A deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. 1 *Poth.Obl.* 536; *Weld v. Hadley*, 1 N. H. 304.

**CONSIGNEE.** In mercantile law. One to whom a consignment is made. The person to whom goods are shipped for sale. *Lyon v. Alvord*, 18 Conn. 80; *Comm. v. Harris*, 168 Pa. 619, 32 A. 92. One to whom goods are consigned, shipped, or otherwise transmitted. *State v. Chadbourne*, 132 Me. 5, 164 A. 630, 631. The one to whom the carrier may lawfully make delivery in accordance with its contract of carriage. *Great Northern Pac. S. S. Co. v. Rainier Brewing Co.*, *C.C.A.Wash.*, 255 F. 762, 764; One to whom merchandise has been delivered. *International Trust Co. v. Webster Nat. Bank*, 258 Mass. 17, 154 N.E. 330, 332, 49 A. L.R. 267; Under a statute, the person who, under circumstances in which he might be entitled to the delivery of the goods, represents that he is so entitled, tenders a bond in the statutory form, and requests delivery. *St. Louis, I. M. & S. R. Co. v. Bankers' Surety Co.*, 115 Ark. 58, 172 S.W. 266, 268.

**CONSIGNMENT.** The act or process of consigning goods; the transportation of goods consigned; an article or collection of goods sent to a factor; goods or property sent, by the aid of a common carrier, from one person in one place to another person in another place; something consigned and shipped. See *Consign*. In *re Taylor*, *D.C.Mich.*, 46 F.2d 326, 328.

Feature which distinguishes "conditional sale" from "consignment" is that in the former the purchaser undertakes an absolute obligation to pay for the goods, whereas the latter is nothing more than a bailment for sale. In *re Sachs*, *D.C.Md.*, 31 F.2d 799, 800.

In stockyard parlance, all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day. *Acker v. U. S.*, *D.C.Ill.*, 12 F.Supp. 776, 780. *Mutual Transfer Corporation of Galax v. Commonwealth*, 172 Va. 622, 1 S.E.2d 477, 479.

**CONSIGNOR.** One who sends or makes a consignment; a shipper of goods.

**CONSILIA MULTORUM QUÆRUNTUR IN MAGNIS.** 4 *Inst.* 1. The counsels of many are required in great things.

**CONSILIARIUS.** In the civil law. A counsellor, as distinguished from a pleader or advocate. An assistant judge. One who participates in the decisions. Du Cange.

**CONSILIUM.** A day appointed to hear the counsel of both parties. A case set down for argument.

It is commonly used for the day appointed for the argument of a demurrer, or errors assigned. 1 Tidd, Pr. 438; 2 Tidd, Pr. 684, 1122; 1 Sell.Pr. 336; 1 Archb.Pr. 191, 246.

**CONSIMILI CASU.** In practice. A writ of entry, framed under the provisions of the statute Westminster 2, (13 Edw. I.) c. 24, which lay for the benefit of the reversioner, where a tenant by the curtesy aliened in fee or for life. 3 Bla.Comm., 4th Dublin ed. 183 n.; Bac.Abr. Court of Chancery (A).

Many other new writs were framed under the provisions of this statute; but this particular writ was known emphatically by the title here defined. The writ is now practically obsolete. See 3 Bla.Comm. 51.

**CONSIST.** To stand together, to be composed of or made up of. Hoskins Mfg. Co. v. General Electric Co., D.C.Ill., 212 F. 422; In re Clark's Estate, 100 Vt. 217, 136 A. 389, 393. See Consisting.

**CONSISTENT.** Having agreement with itself or something else; accordant; harmonious; congruous; compatible; compliant; not contradictory. Baldwin-Heckes Co. v. Kammerlohr, 123 Neb. 317, 242 N.W. 661, 663; Ryan v. Roach Drug Co., 113 Okl. 130, 239 P. 912, 914.

"Consistent with" means in harmony with. Shay v. Roth, 64 Cal.App. 314, 221 P. 967, 969.

**CONSISTING.** Being composed or made up of. This word is not synonymous with "including;" for the latter, when used in connection with a number of specified objects, always implies that there may be others which are not mentioned. In re Wright's Estate, 166 Misc. 52, 2 N.Y.S.2d 25, 28.

**CONSISTOR.** A magistrate. Jacob L. D.

**CONSISTORIUM.** The state council of the Roman emperors. Mackeld.Rom.Law, § 58.

**CONSISTORY.** An assembly of cardinals convoked by the pope.

A tribunal (*prætorium*).

**CONSISTORY COURTS.** The courts of diocesan bishops held in their several cathedrals (before the bishop's chancellor, or commissary, who is the judge) for the trial of all ecclesiastical causes arising within their respective dioceses, and also for granting probates and administrations. Mozley & Whitley; 1 Holdsw.Hist.E.L. 369, citing L.R. 1902, 1 K.B. 816. From the sentence of these courts an appeal lies to the Provincial Court of the archbishop of each province respectively. 2 Steph. Comm. 230; 3 Steph.Comm. 430; 3 Bla.Comm. 64; 1 Woodd.Lect. 145; Halifax, An. b. 3, c. 10, n. 12.

**CONSOBRINI.** In the civil law. Cousins-german, in general; brothers' and sisters' children, considered in their relation to each other.

**CONSOCIATIO.** Lat. An association, fellowship, or partnership. Applied by some of the older writers to a corporation, and even to a nation considered as a body politic. Thomas v. Dakin, 22 Wend. (N.Y.) 104.

**CONSOLATION.** Comfort, contentment, ease, enjoyment, happiness, pleasure, satisfaction. National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291, 295.

**CONSOLATO DEL MARE.** The name of a code of sea-laws, said to have been compiled by order of the kings of Arragon (or, according to other authorities, at Pisa or Barcelona) in the fourteenth century, which comprised the maritime ordinances of the Roman emperors, of France and Spain, and of the Italian commercial powers. This compilation exercised a considerable influence in the formation of European maritime law.

**CONSOLIDATE.** In a general sense, to unite into one mass or body, as to consolidate the forces of an army, or various funds. In parliamentary usage, to consolidate two bills is to unite them into one. In law, to consolidate benefices is to combine them into one. The term means something more than to rearrange or redivide. Fairview v. Durland, 45 Iowa 56.

To make solid or firm; to unite, compress, or pack together and form into a more compact mass, body, or system. Marfield v. Cincinnati, D. & T. Traction Co., 111 Ohio St. 139, 144 N.E. 689, 696, 40 A.L.R. 357. To cause to become united and extinguished in a superior right or estate by both becoming vested in the same person. Swaim v. Smith, 174 Tenn. 688, 130 S.W.2d 116, 120.

**CONSOLIDATED FUND.** In England. (Usually abbreviated to *Consols*.) A fund for the payment of the public debt.

**CONSOLIDATED LAWS OR STATUTES.** A collection or compilation into one statute or one code or volume of all the laws of the state in general, or of those relating to a particular subject; nearly the same as "compiled laws" or "compiled statutes." See Compilation. And see Ellis v. Parsell, 100 Mich. 170, 58 N.W. 839.

**CONSOLIDATED ORDERS.** The orders regulating the practice of the English court of chancery, which were issued, in 1860, in substitution for the various orders which had previously been promulgated from time to time.

**CONSOLIDATION.** Act of consolidating, or the status of being consolidated. O'Malley v. Wilson, 182 Ga. 97, 185 S.E. 109, 114.

In the civil law. The union of the usufruct with the estate out of which it issues, in the same person; which happens when the usufructuary acquires the estate, or *vice versa*. In either case the usufruct is extinct. Lec.El.Dr.Rom. 424.

In ecclesiastical law. The union of two or more benefices in one. Cowell.

In practice. The union of two or more actions, as in the same declaration, or for the purpose of

## CONSOLIDATION

trial or appellate review. See Consolidation of Actions.

In Scotch law. The junction of the property and superiority of an estate, where they have been disjoined. Bell.

**Consolidation of actions.** The act or process of uniting several actions into one trial and judgment, by order of a court, where all the actions are between the same parties, pending in the same court, and involving substantially the same subject-matter, issues and defenses; or the court may order that one of the actions be tried, and the others decided without trial according to the judgment in the one selected. 249 N.Y.S. 33, 36, 139 Misc. 564; National Union Fire Ins. Co. v. Chesapeake and O. Ry. Co., D.C.Ky., 4 F.Supp. 25, 30.

It means the merging of two or more actions into one so that they lose their separate identity, while in trial of "several actions together" each retains its separate character and requires the entry of a separate judgment. *Ramswick v. Messerler*, 200 Minn. 299, 274 N.W. 179; *Reeves v. Philadelphia Gas Works Co.*, 107 Pa.Super. 422, 164 A. 132, 134, 107.

**CONSOLIDATION OF BENEFICES.** The act or process of uniting two or more of them into one.

**CONSOLIDATIONS OF CORPORATIONS.** Takes place when two or more corporations are extinguished, and by the same process a new one is created, taking over the assets and assuming the liabilities of those passing out of existence. A unifying of two or more corporations into a single new corporation having the combined capital, franchises, and powers of all its constituents. *Alabama Power Co. v. McNinch*, 68 App.D.C. 132, 94 F.2d 601, 611, 612. *Freeman v. Hiznay*, 349 Pa. 89, 36 A.2d 509; *Murphy v. Niehus*, 50 Ohio App. 299, 198 N.E. 197, 200.

*Merger distinguished.* In a "merger," one corporation absorbs the other and remains in existence while the other is dissolved, and in a "consolidation" a new corporation is created and the consolidating corporations are extinguished. *Von Weise v. Commissioner of Internal Revenue*, C.C.A., 69 F.2d 439, 442; *Alabama Power Co. v. McNinch*, 94 F.2d 601, 610, 611, 612, 68 App.D.C. 132. See, also, *Merger*.

**Consolidation rule.** In practice. A rule or order of court requiring a plaintiff who has instituted separate suits upon several claims against the same defendant, to consolidate them in one action, where that can be done consistently with the rules of pleading. *Brown v. Scott*, 1 Dall. (Pa.) 147, 1 L.Ed. 74; *Groff v. Musser*, 3 Serg. & R. (Pa.) 264; 2 Archb.Pr. 180. The Federal courts are authorized to consolidate actions involving a common question of law or fact. Federal Rules of Civil Procedure, Rule 42, 28 U.S.C.A.

**CONSOLS.** An abbreviation of the expression "consolidated annuities," and used in modern times as a name of various funds united in one for the payment of the British national debt. Also, a name given to certain issues of bonds of the state of South Carolina. *Whaley v. Gaillard*, 21 S.C. 568. See Consolidated Fund.

**CONSONANT STATEMENT.** A prior declaration of a witness whose testimony has been attacked

and whose credibility stands impeached, which the court will allow to be proved by the person to whom the declaration was made in order to support the credibility of the witness and which but for the existence of such impeachment would ordinarily be excluded as hearsay. *Commonwealth v. White*, 16 A.2d 407, 409, 340 Pa. 139.

**CONSORTIO MALORUM ME QUOQUE MALUM FACIT.** Moore, 817. The company of wicked men makes me also wicked.

**CONSORTIUM.** Conjugal fellowship of husband and wife, and the right of each to the company, co-operation, affection, and aid of the other in every conjugal relation. *McMillan v. Smith*, 47 Ga.App. 646, 171 S.E. 169, 170; *Shedrick v. Lathrop*, 106 Vt. 311, 172 A. 630, 632; *Harris v. Kunkel*, 227 Wis. 435, 278 N.W. 868, 869.

The term includes the exclusive right to the services of the spouse, and to his or her society, companionship, and conjugal affection. *Smith v. Nicholas Bldg. Co.*, 33 Ohio St. 101, 112 N.E. 204.

In its original application the term was not confined to society, companionship, and conjugal affection, but included service as a prominent, if not the predominant, factor—not so much the service resulting in the performance of labor or the earning of wages as the service which contributed aid and assistance in all the relations of domestic life. *Hinnant v. Tide Water Power Co.*, 189 N.C. 120, 126 S.E. 307, 309, 37 A.L.R. 889.

In the civil law. A union of fortunes; a lawful Roman marriage. The joining of several persons as parties to one action.

In old English law, the term signified company or society, and in the language of pleading, as in the phrase *per quod consortium amisit*, it has substantially the same meaning, viz., the companionship or society of a wife. 3 Bla.Comm. 140; *Kelley v. Railroad Co.*, 168 Mass. 308, 46 N.E. 1063, 38 L.R.A. 631, 60 Am.St.Rep. 397.

**CONSORTSHIP.** In maritime law. An agreement or stipulation between the owners of different vessels that they shall keep in company, mutually aid, instead of interfering with each other, in wrecking and salvage, and share any money awarded as salvage, whether earned by one vessel or both. *Andrews v. Wall*, 3 How. 571, 11 L.Ed. 729.

**CONSPICUOUS PLACE.** Within the meaning of a statute relating to the posting of notices, a "conspicuous place" means one which is reasonably calculated to impart the information in question. *Didier v. Webster Mines Corporation*, 49 Nev. 5, 234 P. 520, 523.

**CONSPIRACY.** In criminal law. A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful. *Pettibone v. U. S.*, 148 U.S. 197, 13 S.Ct. 542, 37 L.Ed. 419; *Mitchell v. Hitchman Coal & Coke Co.*, C.C.A.W.Va., 214 F. 685, 708; *Hamilton v. Cooley*, 184 N.E. 568, 571,

99 Ind.App. 1; *Browning v. Browning*, 226 Mo. App. 322, 41 S.W.2d 860, 868.

A combination, or an agreement between two or more persons, for accomplishing an unlawful end or a lawful end by unlawful means. 4 B. & Ad. 345; *Cumberland Telephone & Telegraph Co. v. Stevens*, D.C.Miss., 274 F. 745, 746; *Lauf v. E. G. Shinner & Co.*, C.C.A.Wis., 82 F.2d 68, 72; *Morrison v. Goodspeed*, 100 Colo. 470, 68 P.2d 458, 464.

A partnership in criminal purposes. *Marino v. United States*, C.C.A.Cal., 91 F.2d 691, 113 A.L.R. 975.

The essence of "conspiracy" is an agreement, together with an overt act, to do an unlawful act, or do a lawful act in an unlawful manner. *Cooper v. O'Connor*, 99 F.2d 135, 142, 69 App.D.C. 100, 118 A.L.R. 1440. Mere knowledge, acquiescence, approval, or attempt on part of one to perpetrate illegal act is insufficient. *People v. Link*, 365 Ill. 266, 6 N.E.2d 201.

A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. *Craig v. U. S.*, C.C.A.Cal., 81 F.2d 816, 822.

A consultation or agreement between two or more persons, either falsely to accuse another of a crime punishable by law; or wrongfully to injure or prejudice a third person, or any body of men, in any manner; or to commit any offense punishable by law; or to do any act with intent to prevent the course of justice; or to effect a legal purpose with a corrupt intent, or by improper means. *Hawk. P.C. c. 72, § 2*; *Archb.Crim.Pl.* 390, adding also combinations by journeymen to raise wages. *State v. Murphy*, 6 Ala. 765, 41 Am.Dec. 79.

**Civil and Criminal Conspiracies**

The term "civil" is used to designate a conspiracy which will furnish ground for a civil action, as where, in carrying out the design of the conspirators, overt acts are done causing legal damage, the person injured has a right of action. It is said that the gist of civil conspiracy is the injury or damage. While criminal conspiracy does not require such overt acts, yet, so far as the rights and remedies are concerned, all criminal conspiracies are embraced within the civil conspiracies. *Martha Mills v. Moseley*, 50 Ga.App. 536, 179 S.E. 159.

Accurately speaking, there is no such thing as a civil action for conspiracy. The better view is that the damage sustained, and not the conspiracy is the gist of the action. The combination may be of no consequence except as bearing upon rules of evidence or the persons liable. *Dahlquist v. Mattson*, 40 Idaho, 378, 233 P. 883, 885.

The essence of a "civil conspiracy" is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff. *Conner v. Bryce*, Sup., 170 N.Y.S. 94, 95.

**CONSPIRATIONE.** An ancient writ that lay against conspirators. *Reg.Orig.* 134; *Fitzh.Nat. Brev.* 114.

**CONSPIRATORS.** Persons guilty of a conspiracy. *State v. Collins*, 88 Mont. 514, 294 P. 957, 961, 73 A.L.R. 861.

Where two or more persons enter on a common enterprise or adventure and criminal offense is contemplated each is a "conspirator". *Kelly v. State*, 31 Ala.App. 194, 13 So.2d 691, 692.

Those who bind themselves by oath, covenant, or other alliance that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, etc. 33 Edw. I. St. 2. Besides these, there

are conspirators in treasonable purposes; as for plotting against the government. *Wharton*.

**CONSPIRE.** To engage in conspiracy. *Wright v. United States*, C.C.A.La., 48 C.C.A. 37, 108 F. 805, 809.

It carries with it the idea of agreement, concurrence and combination, and hence is inapplicable to a single person or thing, and one cannot agree or conspire with another who does not agree or conspire with him. *Horton v. Johnson*, 192 Ca. 338, 15 S.E.2d 605, 615.

**CONSTABLE.** In American law. An officer of a municipal corporation (usually elected) whose duties are similar to those of the sheriff, though his powers are less and his jurisdiction smaller. He is to preserve the public peace, execute the process of magistrates' courts, and of some other tribunals, serve writs, attend the sessions of the criminal courts, have the custody of juries, and discharge other functions sometimes assigned to him by the local law or by statute. *Allor v. Wayne County*, 43 Mich. 76, 4 N.W. 492.

In English law. A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 Bl.Comm. 356. There are "high," "petty," and "special" constables. See the definitions, *infra*.

In Medieval law. A high functionary under the French and English kings, the dignity and importance of whose office was second only to that of the monarch. He was in general the leader of the royal armies, and had cognizance of all matters pertaining to war and arms, exercising both civil and military jurisdiction. He was also charged with the conservation of the peace of the nation. Thus there was a "Constable of France" and a "Lord High Constable of England." *Rich v. Industrial Commission*, 80 Utah 511, 15 P.2d 641, 644.

**Constable of a castle.** In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a "castellain." *Stat. Westm. 1, c. 7* (3 Edw. I.); *Spelman, Gloss.*

**Constable of England.** (Called, also, "Marshal.") His office consisted in the care of the common peace of the realm in deeds of arms and matters of war. *Lamb. Const.* 4; 3 *Steph. Comm.* 47; 4 *Bl. Comm.* 92.

**Constable of Scotland.** An officer who was formerly entitled to command all the king's armies in the absence of the king, and to take cognizance of all crimes committed within four miles of the king's person or of parliament, the privy council, or any general convention of the states of the kingdom. The office was hereditary in the family of Errol, and was abolished by the 20 Geo. III, c. 43. *Bell*; *Ersk. Inst.* 1, 3, 37.

**Constable of the exchequer.** An officer mentioned in *Fleta*, lib. 2, c. 31, and in 51 *Hen. III*, stat. 5, cited by *Cowell*.

**High constables.** In England, officers appointed in every hundred or franchise, whose proper duty



## CONSTABLE

seems to be to keep the king's peace within their respective hundreds. 1 Bl.Comm. 356; 3 Steph. Comm. 47; Coke, 4th Inst. 267.

**High constable of England, lord.** His office has been disused (except only upon great and solemn occasions, as the coronation, or the like) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII.

**Petty constables.** Inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace; though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 Bl.Comm. 356; 3 Steph. Comm. 47, 48.

**Special constables.** Persons appointed (with or without their consent) by the magistrates to execute warrants on particular occasions, as in the case of riots, etc.

**CONSTABLEWICK.** In English law. The territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff. 5 Nev. & M. 261.

**CONSTABULARIUS.** An officer of horse; an officer having charge of foot or horse; a naval commander; an officer having charge of military affairs generally. Spelman.

In England his power was early diminished and restricted to those duties which related to the preservation of the king's peace. The office is now abolished in England, except as a matter of ceremony, and in France. Guyot, *Rep. Univ.*; Cowell.

**CONSTANT.** Fixed or invariable; uniform. Webster. Continually recurring, regular, steady. Pfisterer v. Key, 218 Ind. 521, 33 N.E.2d 330, 335.

**CONSTANTLY.** In a constant manner; uniformly; continuously. Pfisterer v. Key, 218 Ind. 521, 33 N.E.2d 330, 335.

An instruction that a train crew knew that a railroad right of way had been "constantly," frequently, and regularly used by a considerable number of persons at a particular hour of the day was not subject to the criticism that the word "constantly" imported an uninterrupted and continuous presence of such persons on the track, so that at no moment of time it would be vacant of pedestrians. Grauer v. Alabama Great Southern R. Co., 209 Ala. 568, 96 So. 915, 919.

**CONSTAT.** It is clear or evident; it appears; it is certain; there is no doubt. *Non constat*, it does not appear.

A certificate which the clerk of the pipe and auditors of the exchequer made, at the request of any person who intended to plead or move in that court, for the discharge of anything. The effect of it was the certifying what appears (*constat*) upon record, touching the matter in question. Wharton.

A certificate by an officer that certain matters therein stated appear of record. Wilcox v. Ray, 2 N.C. 410.

An exemplification under the great seal of the enrolment of letters patent. Co. Litt. 225.

**CONSTAT D'HUISSIER.** In French law. An affidavit made by a *huissier*, setting forth the appearance, form, quality, color, etc., of any article upon which a suit depends. Arg. Fr. Merc. Law, 554.

**CONSTATE.** To establish, constitute, or ordain.

"*Constatting instruments*" of a corporation are its charter, organic law, or the grant of powers to it. See examples of the use of the term, Green's Brice, *Ultra Vires*, p. 39; Ackerman v. Halsey, 37 N.J.Eq. 363.

**CONSTITUENT.** He who gives authority to another to act for him.

The term is used as a correlative to "attorney," to denote one who constitutes another his agent or invests the other with authority to act for him. Kunz v. Lowden, C.C.A.Kan., 124 F.2d 911, 913.

It is also used in the language of politics, as a correlative to "representative," the constituents of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district.

**CONSTITUERE.** Lat. To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

**CONSTITUIMUS.** A Latin term, signifying *we constitute* or *appoint*.

**CONSTITUTED AUTHORITIES.** Officers properly appointed under the constitution for the government of the people.

**CONSTITUTIO.** In the Civil law. An imperial ordinance, decree, or constitution, distinguished from *Lex*, *Senatus-Consultum*, and other kinds of law and having its effect from the sole will of the emperor. Dig. 1, 4, 1, Cooper's notes. An establishment or settlement. Used of controversies settled by the parties without a trial. Calvin. A sum paid according to agreement. Du Cange.

### In Old English Law

An ordinance or statute. A provision of a statute.

**CONSTITUTIO DOTIS.** Establishment of dower.

**CONSTITUTION.** The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A charter of government deriving its whole authority from the governed. Fairhope Single Tax Corporation v. Melville, 193 Ala. 289, 69 So. 466, 470. See, also, Browne v. City of New York, 213 App. Div. 206, 211 N.Y.S. 306.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

**CONSTITUTION.** In American law. The written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void. Cooley, Const. Lim. 3.

**CONSTITUTIONAL.** Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

**CONSTITUTIONAL ALCALDE.** A person of official status under Mexican law corresponding in many respects in dignity and authority to a justice of the peace under the American system of government. Tietzel v. Southwestern Const. Co., 48 N.M. 567, 154 P.2d 238, 242.

**CONSTITUTIONAL CONVENTION.** A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Bass v. Albright, Tex.Civ.App., 59 S.W.2d 891, 894.

**CONSTITUTIONAL COURT.** A court named or described and expressly protected by Constitution, or recognized by name or definite description in Constitution but given no express protection thereby. Gorham v. Robinson, 57 R.I. 1, 186 A. 832.

**CONSTITUTIONAL LAW.** (1) That branch of the public law of a state which treats of the organization and frame of government, the organs and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subject, and which prescribes generally the plan and method according to which the public affairs of the state are to be administered. (2) That department of the science of law which treats of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law. (3) A constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state.

**CONSTITUTIONAL LIBERTY OR FREEDOM.** Such freedom as is enjoyed by the citizens of a country or state under the protection of its constitution; the aggregate of those personal, civil, and political rights of the individual which are guaranteed by the constitution and secured against invasion by the government or any of its agencies. People v. Hurlbut, 24 Mich. 106, 9 Am.Rep. 103.

**CONSTITUTIONAL OFFICER.** One whose tenure and term of office are fixed and defined by the

constitution, as distinguished from the incumbents of offices created by the legislature. Foster v. Jones, 79 Va. 642, 52 Am.Rep. 637.

**CONSTITUTIONAL PSYCHOPATHIC INFIRMITY.** Individuals who show a lifelong and constitutional tendency not to conform to the customs of the group, and who habitually misbehave, and have no sense of responsibility to their fellowmen or to society as a whole. These individuals fail to learn by experience and are inadequate, incompatible, and inefficient. State ex rel. Pearson v. Probate Court of Ramsey County, 205 Minn. 545, 287 N.W. 297, 300; Wilson v. Walters, Cal.App., 112 P.2d 964.

**CONSTITUTIONAL RIGHT.** A right guaranteed to the citizens by the Constitution and so guaranteed as to prevent legislative interference therewith. Delaney v. Plunkett, 146 Ga. 547, 91 S.E. 561, 567, L.R.A.1917D, 926, Ann.Cas.1917E, 685.

**CONSTITUTIONES.** Laws promulgated, *i. e.*, enacted, by the Roman Emperor. They were of various kinds, namely, the following: (1) *Edicta*; (2) *decreta*; (3) *rescripta*, called also "*epistolæ*." Sometimes they were general, and intended to form a precedent for other like cases; at other times they were special, particular, or individual, (*personales*,) and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain *lex regia*, whereby he was made the fountain of justice and of mercy. Brown.

**CONSTITUTIONES TEMPORE POSTERIORES POTIORES SUNT HIS QUÆ IPSAS PRÆCESSERUNT.** Dig. 1, 4, 4. Later laws prevail over those which preceded them.

**CONSTITUTIONS OF CLARENDON.** See Clarendon.

**CONSTITUTIONS OF THE FOREST.** See Charta de Foresta.

**CONSTITUTOR.** In the civil law. One who, by a simple agreement, becomes responsible for the payment of another's debt. Inst. 4, 6, 9.

**CONSTITUTUM.** In the civil law. An agreement to pay a subsisting debt which exists without any stipulation, whether of the promisor or another party. It differs from a stipulation in that it must be for an existing debt. Du Cange.

A day appointed for any purpose. A form of appeal. Calvinus, Lex.

**CONSTITUTUM ESSE EAM DOMUM UNICUIQUE NOSTRUM DEBERE EXISTIMARI, UBI QUISQUE SEDES ET TABULAS HABERET, SUARUMQUE RERUM CONSTITUTIONEM FACISSET.** It is settled that that is to be considered the home of each one of us where he may have his habitation and account-books, and where he may have made an establishment of his business. Dig. 50, 16, 203.

## CONSTRAINT

**CONSTRAINT.** This term is held to be exactly equivalent with "restraint." *Edmondson v. Harris*, 2 Tenn.Ch. 427.

An abridgement of liberty or hindrance of the will, identical in meaning with the word "compulsion." *Edmondson v. Harris*, 2 Tenn.Ch. 427.

In Scotch law. *Duress*.

**CONSTRUCT.** To build; erect; put together; make ready for use. *State v. Abele*, 119 Ohio St. 210, 162 N.E. 807, 809. To adjust and join materials, or parts of, so as to form a permanent whole. *Kinney v. Ehrensperger*, 16 Ala.App. 289, 77 So. 439, 440. To put together constituent parts of something in their proper place and order. *State ex rel. St. Louis County v. State Highway Commission*, 315 Mo. 707, 286 S.W. 1, 2.

"Construct" is distinguishable from "maintain," which means to keep up, to keep from change, to preserve. *State v. Olympia Light & Power Co.*, 91 Wash. 519, 158 P. 85, 89. Under a broad interpretation, however, "construct" may be synonymous with maintain, repair, or improve. *Independent Highway Dist. No. 2 of Ada County v. Ada County*, 24 Idaho 416, 134 P. 542, 545.

**CONSTRUCTIO LEGIS NON FACIT INJURIAM.** The construction of the law (a construction made by the law) works no injury. *Co. Litt.* 183; *Broom*, Max. 603. The law will make such a construction of an instrument as not to injure a party.

**CONSTRUCTION.** The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision. *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 884.

As applied to statutes, constitutions, contracts, etc., the term necessarily presupposes doubt, obscurity, or ambiguity. *Cohn-Hall-Marx Co. v. Vanosdall*, 25 Ohio App. 360, 157 N.E. 908, 909.

Drawing conclusions respecting subjects that lie beyond the direct expression of the term. *Lieber*, Leg. & Pol. Herm. 20; *Roberts v. Portland Water Dist.*, 124 Me. 63, 126 A. 162, 163.

This term is properly distinguished from *interpretation*, although the two are often used synonymously. In strictness, interpretation is limited to exploring the written text, while construction goes beyond and may call in the aid of extrinsic considerations, as above indicated.

The process of bringing together and correlating a number of independent entities, so as to form a definite entity. *The Dredge A*, D.C.N.C., 217 F. 617, 631.

The creation of something new, as distinguished from the repair or improvement of something already existing. *Cabell v. City of Portland*, 153 Or. 528, 57 P.2d 1292, 1297. The act of fitting an object for use or occupation in the usual way, and for some distinct purpose. *Paterson N. & R. R. Co. v. City of Paterson*, 81 N.J.Eq. 124, 86 A. 68, 69. See *Construct*.

**Construction, court of.** A court of equity or of common law, as the case may be, is called the court of construction with regard to wills, as opposed to the court of probate, whose duty is to decide whether an instrument be a will at all. Now, the court of probate may decide that a given instrument is a will, and yet the court of construction may decide that it has no operation, by reason of perpetuities, illegality, uncertainty, etc. *Wharton*.

**Equitable construction.** A construction of a law, rule, or remedy which has regard more to the equities of the particular transaction or state of affairs involved than to the strict application of the rule or remedy; that is, a liberal and extensive construction, as opposed to a literal and restrictive. *Smiley v. Sampson*, 1 Neb. 91.

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

The modern doctrine is that to construe a statute liberally or according to its equity is nothing more than to give effect to it according to the intention of the lawmaker as indicated by its terms and purposes. *Read v. Dingess*, C. C.A.W.Va., 60 F. 21, 29, 8 C.C.A. 389.

**Strict and liberal construction.** Strict (or literal) construction is construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications. *Warner v. King*, 267 Ill. 82, 107 N.E. 837, 839.

Liberal (or equitable) construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used; it resolves all reasonable doubts in favor of the applicability of the statute to the particular case. *Black*, *Interp.Laws*, 282; *Causey v. Guilford County*, 192 N.C. 298, 135 S.E. 40, 46. It means, not that the words should be forced out of their natural meaning, but simply that they should receive a fair and reasonable interpretation with respect to the objects and purposes of the instrument. *Lawrence v. McCalmont*, 2 How. 426, 11 L.Ed. 326.

**CONSTRUCTIVE.** That which is established by the mind of the law in its act of *construing* facts, conduct, circumstances, or instruments; that which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, made out by legal interpretation;—the word "legal" being sometimes used in lieu of "constructive." *Middleton v. Parke*, 3 App.D. C. 160.

As to constructive "Bailment," "Breaking," "Contempt," "Contracts," "Conversion," "Deliv-

ery," "Escape," "Fraud," "Larceny," "Malice," "Notice," "Possession," "Seisin," "Service of Process," "Total Loss," "Treason," and "Trusts," see those titles.

**CONSTRUCTIVE ASSENT.** An assent or consent imputed to a party from a construction or interpretation of his conduct; as distinguished from one which he actually expresses.

**CONSTRUCTIVE AUTHORITY.** Authority inferred or assumed to have been given because of the grant of some other antecedent authority. *Middleton v. Parke*, 3 App.D.C. 160.

**CONSTRUCTIVE BREAKING INTO A HOUSE.** A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud, or conspiracy. 2 Russ. Crimes, 9, 10; *Hawkins v. Commonwealth*, 284 Ky. 33, 143 S.W.2d 853, 854.

**CONSTRUCTIVE CRIME.** Where, by a strained construction of a penal statute, it is made to include an act not otherwise punishable, it is said to be a "constructive crime," that is, one built up by the court with the aid of inference and implication. *Ex parte McNulty*, 77 Cal. 164, 19 P. 237, 11 Am.St.Rep. 257.

**CONSTRUCTIVE EVICTION.** As the term is used with reference to breach of the covenants of warranty and of quiet enjoyment, it means the inability of the purchaser to obtain possession by reason of a paramount outstanding title. *Fritz v. Pusey*, 31 Minn. 368, 18 N.W. 94.

With reference to the relation of landlord and tenant, there is a "constructive eviction" when the former, without intent to oust the latter, does some act which deprives the tenant of the beneficial enjoyment of the demised premises or materially impairs such enjoyment. *Santrizos v. Public Drug Co.*, 143 Minn. 222, 173 N.W. 563, 564. Any disturbance of the tenant's possession by the landlord whereby the premises are rendered unfit or unsuitable for occupancy in whole or in substantial part for the purposes for which they were leased amounts to a constructive eviction, if the tenant so elects and surrenders his possession. *Murry v. Merchants' Southwest Transfer & Storage Co.*, 98 Okl. 270, 225 P. 547, 549. There must be injurious interference with tenant's possession, substantial deprivation of tenant's beneficial use of premises, and material impairment of tenant's beneficial enjoyment of premises, so that he is compelled to vacate. *Ben Hur Holding Corporation v. Fox*, 263 N.Y.S. 695, 147 Misc. 300.

**CONSTRUCTIVE FORCE.** This has been said to be an acquiescence to an act obtained through duress or fear of personal violence. *Shepherd v. State*, 135 Ala. 9, 12, 33 So. 266.

With regard to rape, the force necessary to constitute the offense need not be actual, but may be constructive or implied. 52 C.J. p. 1018.

As regards robbery, a taking by force is the gist of the crime, but the force may be either actual or constructive. 54 C.J. p. 1016. "Constructive force" is anything which produces fear sufficient to suspend the power of resistance and prevent the free exercise of the will." *Montsdoca v. State*, 84 Fla. 82, 93 So. 157, 159, 27 A.L.R. 1291. "Actual force is applied to the body, constructive is by threatening words or gestures and operates

on the mind." *Tones v. State*, 48 Tex.Cr. 363, 88 S.W. 217, 122 Am.St.Rep. 759, 1 L.R.A.,N.S., 1024.

**CONSTRUCTIVE LOSS.** One resulting from such injuries to the property, without its destruction, as render it valueless to the assured or prevent its restoration to the original condition except at a cost exceeding its value.

**CONSTRUCTIVE MORTGAGE.** A deed absolute on its face but intended as a mortgage is sometimes referred to as a "constructive mortgage," or, more commonly perhaps, as an "equitable mortgage." See Mortgage.

**CONSTRUCTIVE TAKING.** A phrase used in the law to characterize an act not amounting to an actual appropriation of chattels, but which shows an intention to convert them to his use; as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

**CONSTRUCTIVE VACANCY IN PUBLIC OFFICE.** When the incumbent has no legal right or claim to continue in office, but can be legally replaced by another functionary. *State ex rel. Satterthwaite v. Stover*, 5 W.W.Harr. 85, 159 A. 239, 241.

**CONSTRUCTIVE WILLFULNESS.** Intentional disregard of a known duty necessary to the safety of a person, and an entire absence of care for the life, the person, or the property of others, such as exhibits a conscious indifference to consequences. *Collins v. Missouri-Illinois R. Co.*, 233 Ill. App. 545, 551; *Hughes v. Medendorp*, 294 Ill.App. 424, 13 N.E.2d 1015, 1018.

**CONSTRUE.** To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See Construction.

**CONSTUPRATE.** To ravish, debauch, violate, rape. See *Harper v. Delp*, 3 Ind. 230; *Koenig v. Nott*, 2 Hilt. (N.Y.) 329.

**CONSUE TUDINARIUS.** In ecclesiastical law. A ritual or book, containing the rites and forms of divine offices or the customs of abbeys and monasteries.

**CONSUE TUDINARY LAW.** Customary law. Law derived by oral tradition from a remote antiquity. Bell.

**CONSUE TUDINES.** In old English law. Customs. Thus, *consuetudines et assisa forestæ*, the customs and assise of the forest.

**CONSUE TUDINES FEUDORUM.** (Lat. feudal customs.) A compilation of the law of feuds or fiefs in Lombardy, made A.D. 1170. It is of great authority.

**CONSUE TUDINIBUS ET SERVICIIS.** In old English law. A writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him. Reg. Orig. 159; Fitzh. Nat. Brev. 151.

## CONSUECUDO

**CONSUECUDO.** Lat. A custom; an established usage or practice. Co. Litt. 58, 58b; Tolls; duties; taxes.

**CONSUECUDO ANGLICANA.** The custom of England; the ancient common law, as distinguished from *lex*, the Roman or civil law.

**CONSUECUDO CONTRA RATIONEM INTRODUCTA POTIUS USURPATIO QUAM CONSUECUDO APPELLARI DEBET.** A custom introduced against reason ought rather to be called a "usurpation" than a "custom." Co.Litt. 113.

**CONSUECUDO CURIÆ.** The custom or practice of a court. Hardr. 141.

**CONSUECUDO DEBET ESSE CERTA; NAM INCERTA PRO NULLA HABETUR.** Dav. 33. A custom should be certain; for an uncertain custom is considered null.

**CONSUECUDO EST ALTERA LEX.** Custom is another law. 4 Coke, 21.

**CONSUECUDO EST OPTIMUS INTERPRES LEGUM.** 2 Inst. 18. Custom is the best expounder of the laws.

**CONSUECUDO ET COMMUNIS ASSUECUDO VINCIT LEGEM NON SCRIPTAM, SI SIT SPECIALIS; ET INTERPRETATUR LEGEM SCRIPTAM, SI LEX SIT GENERALIS.** Jenk. Cent. 273. Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general.

**CONSUECUDO EX CERTA CAUSA RATIONABILI USITATA PRIVAT COMMUNEM LEGEM.** A custom, grounded on a certain and reasonable cause, supersedes the common law. Litt. § 169; Co. Litt. 113; Broom, Max. 919.

**CONSUECUDO, LICET SIT MAGNÆ AUCTORITATIS, NUNQUAM TAMEN, PRÆJUDICAT MANIFESTÆ VERITATI.** A custom, though it be of great authority, should never prejudice manifest truth. 4 Coke, 18.

**CONSUECUDO LOCI OBSERVANDA EST.** Litt. § 169. The custom of a place is to be observed.

**CONSUECUDO MANERII ET LOCI OBSERVANDA EST.** 6 Coke, 67. A custom of a manor and place is to be observed.

**CONSUECUDO MERCATORUM.** Lat. The custom of merchants, the same with *lex mercatoria*.

**CONSUECUDO NEQUE INJURIA ORIRI NEQUE TOLLI POTEST.** Lofft, 340. Custom can neither arise from nor be taken away by injury.

**CONSUECUDO NON TRAHITUR IN CONSEQUENTIAM.** 3 Keb. 499. Custom is not drawn into consequence. 4 Jur. (N.S.) Ex. 139.

**CONSUECUDO PRÆSCRIPTA ET LEGITIMA VINCIT LEGEM.** A prescriptive and lawful custom overcomes the law. Co. Litt. 113; 4 Coke, 21.

**CONSUECUDO REGNI ANGLIÆ EST LEX ANGLIÆ.** Jenk. Cent. 119. The custom of the kingdom of England is the law of England. See 2 Bl. Comm. 422.

**CONSUECUDO SEMEL REPROBATA NON POTEST AMPLIUS INDUCI.** A custom once disallowed cannot be again brought forward, [or relied on]. Dav. 33.

**CONSUECUDO TOLLIT COMMUNEM LEGEM.** Co. Litt. 33b. Custom takes away the common law.

**CONSUECUDO VINCIT COMMUNEM LEGEM.** Custom overrules common law. 1 Rop. H. & W. 351; Co. Litt. 33b.

**CONSUECUDO VOLENTES DUCIT, LEX NOLENTES TRAHIT.** Custom leads the willing, law compels [drags] the unwilling. Jenk. Cent. 274.

## CONSUL.

### International Law

An officer of a commercial character, appointed by the different states to watch over the mercantile interests of the appointing state and of its subjects in foreign countries. There are usually a number of consuls in every maritime country, and they are usually subject to a chief consul, who is called a "consul general." *Schunior v. Russell*, 18 S.W. 484, 83 Tex. 83.

### Old English Law

An ancient title of an earl.

### Roman Law

During the republic, the name "consul" was given to the chief executive magistrate, two of whom were chosen annually. The office was continued under the empire, but its powers and prerogatives were greatly reduced. The name is supposed to have been derived from *consulo*, to consult, because these officers consulted with the senate on administrative measures.

The word "consul" has two meanings: (1) It denotes an officer of a particular grade in the consular service; (2) it has a broader generic sense, embracing all consular officers. *Dainese v. U. S.*, 15 Ct.Cl. 64.

See, also, Foreign Service Act of 1946, 22 U.S.C.A. § 801 et seq.

**CONSULAR COURTS.** Courts held by the consuls of one country, within the territory of another, under authority given by treaty, for the settlement of civil cases. In some instances they have also a criminal jurisdiction, but in this respect are subject to review by the courts of the home government. See Rev.St. U.S. § 4083 (22 U.S.C.A. § 141.)

**CONSULTA ECCLESIA.** In ecclesiastical law. A church full or provided for. Cowell.

**CONSULTARY RESPONSE.** The opinion of a court of law on a special case.

**CONSULTATION.** A writ whereby a cause which has been wrongfully removed by prohibition out of an ecclesiastical court to a temporal court is returned to the ecclesiastical court. Phillim. Ecc. Law, 1439. Deliberation of persons on some subject. State v. District Court of Third Judicial Dist. in and for Powell County, 85 Mont. 215, 278 P. 122, 125.

A conference between the counsel engaged in a case, to discuss its questions or arrange the method of conducting it.

In French law. The opinion of counsel upon a point of law submitted to them.

**CONSULTO.** Lat. In the civil law. Designedly; intentionally. Dig. 28, 41.

**CONSUMER.** One who uses economic goods and so diminishes or destroys their utilities; opposed to producer. Ex parte Mehlman, 127 Tex.Cr.R. 257, 75 S.W.2d 689, 690.

**CONSUMMATE**, *adj.* Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 Bl. Comm. 126, 128; Co. Litt. 30a.

**CONSUMMATE**, *v.* To finish by completing what was intended; bring or carry to utmost point or degree; carry or bring to completion; finish; perfect; fulfill; achieve. American Mercantile Corporation v. Spielberg, C.C.A.N.Y., 262 F. 492, 496; Purcell v. Firth, 175 Cal. 746, 167 P. 379, 380; Oregon Home Builders v. Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 492; Dahlinger v. Commissioner of Internal Revenue, C.C.A., 51 F.2d 662, 663.

**CONSUMMATE LIEN.** A term which may be used to describe the lien of a judgment when a motion for a new trial has been denied (the lien having theretofore been merely inchoate). Sterling v. Parker-Washington Co., 185 Mo.App. 192, 170 S.W. 1156, 1159.

**CONSUMMATION.** The completion of a thing; the completion of a marriage between two affianced persons by cohabitation. Sharon v. Sharon, 79 Cal. 633, 22 P. 26.

**CONSUMPTION.** Act or process of consuming; waste; decay; destruction; and using up of anything, as food, heat, or time. Moore v. Pleasant Hasler Const. Co., 50 Ariz. 370, 72 P.2d 573, 578. Destruction by use. Revzan v. Nudelman, 370 Ill. 180, 18 N.E.2d 219, 222.

**CONTAGIOUS ABORTION.** A disease of cows generally contracted through the digestive tract from infected food which causes premature birth of calves. Gesme v. Potter, 118 Or. 621, 247 P. 765, 766.

**CONTAGIOUS DISEASE.** One capable of being transmitted by mediate or immediate contact. Ex

parte Liang Buck Chew, D.C.Mass., 296 F. 183. See Infection.

**CONTANGO.** A double bargain, consisting of a sale for cash of stock previously bought which the broker does not wish to carry, and a repurchase for the re-settlement two weeks ahead of the same stock at the same price as at the sale plus interest accrued up to the date of that settlement. The rate of interest is called a "contango" and contango days are the two days during the settlement when these arrangements are in effect.

**CONTEK.** L. Fr. A contest, dispute, disturbance, opposition, Britt. c. 42; Kelham. *Conteckours*; brawlers; disturbers of the peace. Britt. c. 29.

**CONTEMNER.** One who has committed contempt of court. Wyatt v. People, 17 Colo. 252, 28 P. 961.

**CONTEMPLATE.** To view or consider with continued attention; to regard thoughtfully; to have in view as contingent or probable as an end or intention. Wright v. Fuel Oil Co., Mo., 342 Mo. 173, 114 S.W.2d 959, 962. To ponder, to study, to plan, to meditate, to reflect. In re Thompson's Estate, 72 Utah, 17, 269 P. 103, 115.

**CONTEMPLATION.** The act of the mind in considering with attention. Continued attention of the mind to a particular subject. Consideration of an act or series of acts with the intention of doing or adopting them. The consideration of an event or state of facts with the expectation that it will transpire.

**CONTEMPLATION OF BANKRUPTCY.** Contemplation of the breaking up of one's business or an inability to continue it; knowledge of, and action with reference to, a condition of bankruptcy or ascertained insolvency, coupled with an intention to commit what the law declares to be an "act of bankruptcy," or to make provision against the consequences of insolvency, or to defeat the general distribution of assets which would take place under a proceeding in bankruptcy. Buckingham v. McLean, 13 How. 167, 14 L.Ed. 90; In re Carmichael, D.C.Iowa, 96 F. 594.

**CONTEMPLATION OF DEATH.** The apprehension or expectation of approaching dissolution; not that general expectation which every mortal entertains, but the apprehension which arises from some presently existing sickness or physical condition or from some impending danger. As applied to transfers of property, the phrase "in contemplation of death" means that thought of death is the impelling cause of transfer and that motive which induces transfer is of sort which leads to testamentary disposition and is practically equivalent to "causa mortis." In re Cornell's Estate, 73 N.Y.S. 32, 66 App.Div. 162; Nicholas v. Martin, 128 N.J.Eq. 344, 15 A.2d 235, 243; Pate v. C. I. R., C.C.A.8, 149 F.2d 669, 670.

**CONTEMPLATION OF INSOLVENCY.** Knowledge of, and action with reference to, an existing or contemplated state of insolvency, with a

## CONTEMPORANEA

design to make provision against its results or to defeat the operation of the insolvency laws. *Flockhart Foundry Co. v. Cox Automatic Pipe Bending Co.*, 95 N.J.Eq. 382, 123 A. 151, 152.

**CONTEMPORANEA EXPOSITIO.** Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated.

**CONTEMPORANEA EXPOSITIO EST OPTIMA ET FORTISSIMA IN LEGE.** Contemporaneous exposition is the best and strongest in the law. 2 Inst. 11. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after. 10 Coke, 70; Broom, Max. 682.

**CONTEMPT.** A willful disregard or disobedience of a public authority.

**CONTEMPT OF COURT.** Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. *Ex parte Hobbrook*, 133 Me. 276, 177 A. 418, 420. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given. *Snow v. Hawkes*, 183 N.C. 365, 111 S.E. 621, 622, 23 A.L.R. 183.

### Classification

Contempts are of two kinds, direct and constructive.

Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. These are punishable summarily. They are also called "criminal" contempts, but that term is better used in contrast with "civil" contempts. See *infra*. *State v. McClaugherty*, 33 W.Va. 250, 10 S.E. 407. *Pelletier v. Glacier County*, Mont., 107 Mont. 221, 82 P.2d 595, 597.

Constructive (or indirect) contempts are those which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, and the term is chiefly used with reference to the failure or refusal of a party to obey a lawful order, injunction, or decree of the court laying upon him a duty of action or forbearance. *Maryott v. Maryott*, 124 Neb. 274, 246 N.W. 343.

Constructive contempts were formerly called "consequential," and this term is still in occasional use.

Contempts are also classed as civil or criminal. The former are those quasi contempts which consists in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts

are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued, and a fine is imposed for his indemnity. But criminal contempts are offenses or injuries offered to the court, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment. *Staley v. South Jersey Realty Co.*, 90 A. 1042, 1043, 83 N.J.Eq. 300, L.R.A.1917B, 113, Ann.Cas.1916E, 955; *Fenton v. Walling*, C.C.A.Cal., 139 F.2d 608, 609.

**CONTEMPT OF CONGRESS, LEGISLATURE, or PARLIAMENT.** Whatever obstructs or tends to obstruct the due course of proceeding of either house, or grossly reflects on the character of a member of either house, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of the house, and thereby a breach of privilege. Sweet.

**CONTEMPTIBILITER.** Lat. Contemptuously.

In old English law. Contempt, contempts. *Fleta*, lib. 2, c. 60, § 35.

**CONTENEMENTUM.** See *Wainagium*; *Contentment*.

**CONTENTIOUS.** Contested; adversary; litigated between adverse or contending parties; a judicial proceeding not merely *ex parte* in its character, but comprising attack and defense as between opposing parties, is so called. The litigious proceedings in ecclesiastical courts are sometimes said to belong to its "contentious" jurisdiction, in contradistinction to what is called its "voluntary" jurisdiction, which is exercised in the granting of licenses, probates of wills, dispensations, faculties, etc.

**CONTENTIOUS JURISDICTION.** In English ecclesiastical law. That branch of the jurisdiction of the ecclesiastical courts which is exercised upon adversary or *contentious* (opposed, litigated) proceedings.

**CONTENTIOUS POSSESSION.** In stating the rule that the possession of land necessary to give rise to a title by prescription must be a "contentious" one, it is meant that it must be based on opposition to the title of the rival claimant (not in recognition thereof or subordination thereto) and that the opposition must be based on good grounds, or such as might be made the subject of litigation. *Railroad Co. v. McFarlan*, 43 N.J. L. 621.

**CONTENTMENT, CONTENEMENT.** A man's countenance or credit, which he has together with, and by reason of, his freehold; or that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life. Wharton; Cowell.

Comfort; consolation; ease; enjoyment; happiness; pleasure; satisfaction. *National Surety Co. v. Jarrett*, 95 W.Va. 420, 121 S.E. 291, 295.



**CONTENTS.** The contents of a promissory note or other commercial instrument or chose in action means the specific sum named therein and payable by the terms of the instrument. *Trading Co. v. Morrison*, 20 S.Ct. 869, 178 U.S. 262, 44 L. Ed. 1061.

**CONTENTS AND NOT CONTENTS.** In parliamentary law. The "contents" are those who, in the house of lords, express assent to a bill; the "not" or "non contents" dissent. *May, Parl. Law*, cc. 12, 357.

**CONTENTS UNKNOWN.** Words sometimes annexed to a bill of lading of goods in cases. Their meaning is that the master only means to acknowledge the shipment, in good order, of the cases, as to their external condition. *Miller v. Railroad Co.*, 90 N.Y. 433, 43 Am.Rep. 179.

**CONTERMINOUS.** Adjacent; adjoining; having a common boundary; coterminous.

**CONTEST, v.** To make defense to an adverse claim in a court of law; to oppose, resist, or dispute the case made by a plaintiff. *Pratt v. Breckinridge*, 112 Ky. 1, 65 S.W. 136; *Parks v. State*, 100 Ala. 634, 13 So. 756. To strive, to win or hold; to controvert, litigate, call in question, challenge; to defend, as a suit or other proceeding. *Equitable Life Assur. Soc. of the United States v. First Nat. Bank of Birmingham*, C.C.A. Ala., 113 F.2d 272, 274.

**CONTESTATIO LITIS.** In Roman law. Contestation of suit; the framing an issue; joinder in issue. The formal act of both the parties with which the proceedings *in jure* were closed when they led to a judicial investigation, and by which the neighbors whom the parties brought with them were called to testify. *Mackeld, Rom.Law*, § 219.

In old English law. Coming to an issue; the issue so produced. *Crabb, Eng.Law*, 216.

**CONTESTATIO LITIS EGET TERMINOS CONTRADICTARIOS.** An issue requires terms of contradiction. *Jenk. Cent.* 117. To constitute an issue, there must be an affirmative on one side and a negative on the other.

**CONTESTATION OF SUIT.** In an ecclesiastical cause, that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation.

**CONTESTED ELECTION.** This phrase has no technical or legally defined meaning. An election may be said to be contested whenever an objection is formally urged against it which, if found to be true in fact, would invalidate it. This is true both as to objections founded upon some constitutional provision and to such as are based on statutes. *Robertson v. State*, 109 Ind. 116, 10 N.E. 600.

**CONTEXT.** The context of a particular sentence or clause in a statute, contract, will, etc., comprises those parts of the text which immediately precede and follow it. The context may some-

times be scrutinized, to aid in the interpretation of an obscure passage.

**CONTIGUOUS.** In close proximity; near, though not in contact; neighboring; adjoining; near in succession; in actual close contact; touching; bounded or traversed by. The term is not synonymous with "vicinal." *Ehle v. Tenney Trading Co.*, 56 Ariz. 241, 107 P.2d 210, 212.

**CONTIGUOUS AND COMPACT.** In respect of school district, territory so closely united and so nearly adjacent to the school building that all the children residing in the district, their ages considered, may conveniently travel from their homes to the school building and return in a reasonable time and with a reasonable degree of comfort. *People v. Simpson*, 308 Ill. 418, 139 N.E. 890, 893; *People v. Dodds*, 310 Ill. 607, 142 N.E. 241, 242.

**CONTINENCIA.** In Spanish law. Continency or unity of the proceedings in a cause. *White, New Recop. b. 3, tit. 6, c. 1.*

**CONTINENS.** In the Roman law. Continuing; holding together. Adjoining buildings were said to be *continentia*.

**CONTINENTAL.** Pertaining or relating to a continent; characteristic of a continent; as broad in scope or purpose as a continent. *Continental Ins. Co. v. Continental Fire Ass'n*, C.C.Tex., 96 F. 848.

**CONTINENTAL CONGRESS.** The first national legislative assembly in the United States, which met in 1774, in pursuance of a recommendation made by Massachusetts and adopted by the other colonies. In this congress all the colonies were represented except Georgia. The delegates were in some cases chosen by the legislative assemblies in the states; in others by the people directly. The powers of the congress were undefined, but it proceeded to take measures and pass resolutions which concerned the general welfare and had regard to the inauguration and prosecution of the war for independence. *Black, Const.Law* (3d Ed.) 40; 1 Story, *Const.* §§ 198-217.

**CONTINENTAL CURRENCY.** Paper money issued under the authority of the continental congress. *Wharton v. Morris*, 1 Dall. 125, 1 L.Ed. 65.

**CONTINENTIA.** In old English practice. Continuance or connection. Applied to the proceedings in a cause. *Bract. fol. 362b.*

**CONTINGENCY.** Quality of being contingent or casual; the possibility of coming to pass; an event which may occur; a possibility; a casualty. *Vandegrift v. Riley*, 30 P.2d 516, 523, 220 Cal. 340. A fortuitous event, which comes without design, foresight, or expectation. *People v. Yonkers*, 39 Barb. (N.Y.) 272; *American Ins. Co. v. Black*, 46 Ga.App. 471, 168 S.E. 85.

**CONTINGENCY OF A PROCESS.** In Scotch law. Where two or more processes are so connected that the circumstances of the one are likely to throw light on the others, the process first enrolled is considered as the leading process, and

## CONTINGENCY

those subsequently brought into court, if not brought in the same division, may be remitted to it, *ob contingentiam*, on account of their nearness or proximity in character to it. The effect of remitting processes in this manner is merely to bring them before the same division of the court or same lord ordinary. In other respects they remain distinct. Bell.

**CONTINGENCY WITH DOUBLE ASPECT.** A remainder is said to be "in a contingency with double aspect," when there is another remainder limited on the same estate, not in derogation of the first, but as a substitute for it in case it should fail. *Fearne*, Rem. 373.

**CONTINGENT.** Possible, but not assured; doubtful or uncertain, conditioned upon the occurrence of some future event which is itself uncertain, or questionable. *Verdier v. Roach*, 96 Cal. 467, 31 P. 554, synonymous with provisional. *Robinson v. Edler*, C.C.A.Nev., 78 F.2d 817, 819.

This term, when applied to a use, remainder, devise, bequest, or other legal right or interest, implies that no present interest exists, and that whether such interest or right ever will exist depends upon a future uncertain event. *Jemison v. Blowers*, 5 Barb. (N.Y.) 692.

As to contingent "Damages," "Fee," "Legacy," "Limitation," "Remainder," "Trust," and "Use," see those titles.

**CONTINGENT CLAIM.** One which has not accrued and which is dependent on some future event that may never happen. *Hospes v. Car Co.*, 48 Minn. 174, 50 N.W. 1117, 15 L.R.A. 470, 31 Am. St.Rep. 637; *Hicks v. Wilbur*, 38 R.I. 268, 94 A. 872, 874; *Cotting v. Hooper, Lewis & Co.*, 220 Mass. 273, 107 N.E. 931; *In re Lexington Surety & Indemnity Co.*, 272 N.Y. 210, 5 N.E.2d 204, 205.

**CONTINGENT ESTATE, INTEREST or RIGHT.** An estate, interest or right which depends for its effect upon an event which may or may not happen; as an estate limited to a person not *in esse*, or not yet born. 2 *Crabb*, Real Prop. p. 4, § 946; *Avery v. Curtiss*, 108 Okl. 154, 235 P. 195, 197; *Kahn v. Rockhill*, 132 N.J.Eq. 188, 28 A.2d 34, 36.

**CONTINGENT FUND.** One set up by a municipality to pay expense items which will necessarily arise during the year but cannot appropriately be classified under any of the specific purposes for which other taxes are levied. *First Nat. Bank of Norman v. City of Norman*, 182 Okl. 7, 75 P.2d 1109, 1110.

**CONTINGENT INTEREST IN PERSONAL PROPERTY.** A future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession. *Mozley & Whitley*.

Thus, if a testator leaves the income of a fund to his wife for life, and the capital of the fund to be distributed among such of his children as shall be living at her death, the interest of each child during the widow's life-time is *contingent*, and in case of his death is not transmissible to his representatives. *Mozley & Whitley*.

**CONTINGENT LIABILITY.** One which is not now fixed and absolute, but which will become

so in case of the occurrence of some future and uncertain event. *Warren Co. v. C. I. R.*, C.C.A. Ga., 135 F.2d 679, 684, 685.

**CONTINUAL CLAIM.** In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual," because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. Litt. §§ 419-423; *Co.Litt.* 250a; 3 *Bl.Comm.* 175.

**CONTINUANCE.** The adjournment or postponement of an action pending in a court, to a subsequent day of the same or another term. *Com. v. Maloney*, 145 Mass. 205, 13 N.E. 482. *Ferber v. Brueckl*, 332 Mo. 892, 17 S.W.2d 524, 527.

Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record so as to make one continuous whole.

**CONTINUANDO.** In pleading. A form of allegation in which the trespass, criminal offense, or other wrongful act complained of is charged to have been committed on a specified day and to have "continued" to the present time, or is averred to have been committed at divers days and times within a given period or on a specified day and on divers other days and times between that day and another. This is called "laying the time with a continuando." *State v. Brown*, 10 Okl.Cr. 52, 133 P. 1143, 1144.

**CONTINUING.** Enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.

As to continuing "Breach," "Consideration," "Conspiracy," "Covenant," "Damages," "Guaranty," "Nuisance," and "Offense," see those titles.

**CONTINUOUS.** Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. *Ingraham v. Hough*, 46 N.C. 43. Connected, extended, or prolonged without cessation or interruption of sequence. *Sullivan v. John Hancock Mut. Life Ins. Co. of Boston*, Mo. App., 110 S.W.2d 870, 877.

As to continuous "Crime" and "Easements," see those titles.

**CONTINUOUS ADVERSE USE.** Is interchangeable with the term "uninterrupted adverse use." *Davidson v. Nicholson*, 59 Ind. 411.

**CONTINUOUS INJURY.** One recurring at repeated intervals, so as to be of repeated occurrence; not necessarily an injury that never ceases. *Wood v. Sutcliffe*, 8 Eng.Law & Eq. 217.

**CONTINUOUSLY.** Uninterruptedly; in unbroken sequence; without intermission or cessation; without intervening time; with continuity or continuation. U. S. v. Wooten, C.C.A.N.M., 40 F.2d 882, 887.

**CONTIONES.** General meetings of the Roman people. Launspach, State and Family in Early Rome 69.

**CONTRA.** Against, confronting, opposite to; on the other hand; on the contrary.

The word is used in many Latin phrases, as appears by the following titles. In the books of reports, *contra*, appended to the name of a judge or counsel, indicates that he held a view of the matter in argument *contrary* to that next before advanced. Also, after citation of cases in support of a position, *contra* is often prefixed to citations of cases opposed to it.

**CONTRA BONOS MORES.** Against good morals. Contracts *contra bonos mores* are void.

**CONTRA FORMAM COLLATIONIS.** In old English law. A writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of a hospital and his convent, to find certain poor men with necessities, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands. Reg.Orig. 238; Fitz. Nat.Brev. 210.

**CONTRA FORMAM DONI.** Against the form of the grant. See Formedon.

**CONTRA FORMAM FEOFFAMENTI.** In old English law. A writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter. Reg.Orig. 176; Old Nat.Brev. 162.

**CONTRA FORMAM STATUTI.** In criminal pleading. (Contrary to the form of the statute in such case made and provided.) The usual conclusion of every indictment, etc., brought for an offense created by statute.

**CONTRA JUS BELLII.** Lat. Against the law of war. 1 Kent.Comm. 6.

**CONTRA JUS COMMUNE.** Against common right or law; contrary to the rule of the common law. Bract. fol. 48b.

**CONTRA LEGEM FACIT QUI ID FACIT QUOD LEX PROHIBIT; IN FRAUDEM VERO QUI, SALVIS VERBIS LEGIS, SENTENTIAM EJUS CIRCUMVENIT.** He does contrary to the law who does what the law prohibits; he acts in fraud of the law who, the letter of the law being inviolate, uses the law contrary to its intention. Dig. 1, 3, 29.

**CONTRA LEGEM TERRÆ.** Against the law of the land.

**CONTRA NEGANTEM PRINCIPIA NON EST DISPUTANDUM.** There is no disputing against one who denies first principles. Co.Litt. 343.

**CONTRA NON VALENTEM AGERE NULLA CURRIT PRÆSCRIPTIO.** No prescription runs against a person unable to bring an action. Broom, Max. 903.

**CONTRA OMNES GENTES.** Against all people. Formal words in old covenants of warranty. Fle-ta, lib. 3, c. 14, § 11.

**CONTRA PACEM.** Against the peace. A phrase used in the Latin forms of indictments, and also of actions for trespass, to signify that the offense alleged was committed against the public peace, *i. e.*, involved a breach of the peace. The full formula was *contra pacem domini regis*, against the peace of the lord the king. In modern pleading, in this country, the phrase "against the peace of the commonwealth" or "of the people" is used.

**CONTRA PROFERENTEM.** Against the party who proffers or puts forward a thing. J. Zimmer-n's Co. v. Granade, 212 Ala. 172, 102 So. 210, 211.

**CONTRA TABULAS.** In the civil law. Against the will, (testament.) Dig. 37, 4.

**CONTRA VADIUM ET PLEGIUM.** In old English law. Against gage and pledge. Bract. fol. 15b.

**CONTRA VERITATEM LEX NUNQUAM ALIQUID PERMITTIT.** The law never suffers anything contrary to truth. 2 Inst. 252.

**CONTRABAND.** Against law or treaty; prohibited. Goods exported from or imported into a country against its laws. Brande. Articles, the importation or exportation of which is prohibited by law. State v. Butler, 148 S.C. 495, 146 S.E. 418, 419.

**CONTRABAND OF WAR.** Certain classes of merchandise, such as arms and ammunition, which, by the rules of international law, cannot lawfully be furnished or carried by a neutral nation to either of two belligerents; if found in transit in neutral vessels, such goods may be seized and condemned for violation of neutrality. The Peterhoff, 5 Wall. 58, 18 L.Ed. 564; Richardson v. Insurance Co., 6 Mass. 114, 4 Am.Dec. 92.

A recent American author on international law says that, "by the term 'contraband of war,' we now understand a class of articles of commerce which *neutrals* are prohibited from furnishing to either one of the belligerents, for the reason that, by so doing, injury is done to the other belligerent;" and he treats of the subject, chiefly, in its relation to commerce upon the high seas. Hall, Int.Law, 570, 592; Elrod v. Alexander, 4 Heisk. (Tenn.) 345.

**CONTRABAND OIL.** Oil produced contrary to state laws. Panama Refining Co. v. Railroad Commission of Texas, D.C.Tex., 16 F.Supp. 289, 291.

**CONTRACAUSATOR.** A criminal; one prosecuted for a crime.

## CONTRACT

**CONTRACT.** A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation. Buffalo Pressed Steel Co. v. Kirwan, 138 Md. 60, 113 A. 628, 630; Mexican Petroleum Corporation of Louisiana v. North German Lloyd, D.C.La., 17 F.2d 113, 114.

An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 Bl.Comm. 442; 2 Kent, Comm. 449. Justice v. Lang, 42 N.Y. 496, 1 Am.Rep. 576; Rabon v. State Finance Corporation, 203 S.C. 183, 26 S.E.2d 501, 502.

An agreement between two or more parties, preliminary step in making of which is offer by one and acceptance by other, in which minds of parties meet and concur in understanding of terms. Lee v. Travelers' Ins. Co. of Hartford, Conn., 173 S.C. 185, 175 S.E. 429.

A deliberate engagement between competent parties, upon a legal consideration, to do, or abstain from doing, some act. Wharton; Smith v. Thornhill, Tex.Com.App. 25 S.W.2d 597, 599.

It is agreement creating obligation, in which there must be competent parties, subject-matter, legal consideration, mutuality of agreement, and mutuality of obligation, and agreement must not be so vague or uncertain that terms are not ascertainable. H. Liebes & Co. v. Klengenberg, C. C.A.Cal., 23 F.2d 611, 612.

A contract or agreement is either where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side. 2 Steph.Comm. 54.

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

### Certain and Hazardous

Certain contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. Hazardous contracts are those in which the performance of that which is one of its objects depends on an uncertain event. Civ.Code La. 1776.

### Classification

Contracts may be classified on several different methods, according to the element in them which is brought into prominence. The usual classifications are as follows:

#### Commutative and Independent

Commutative contracts are those in which what is done, given, or promised by one party is considered as an equivalent to or in consideration of what is done, given, or promised by the other. Civ.Code La. 1768; Ridings v. Johnson, 9 Sup.Ct. 72, 128 U.S. 212, 32 L.Ed. 401. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations. Civ.Code La. 1769.

#### Conditional Contract

An executory contract the performance of which depends upon a condition. It is not simply an executory contract, since the latter may be an absolute agreement to do or not to do something, but it is a contract whose very existence and performance depend upon a contingency. Railroad

Co. v. Jones, 2 Cold. (Tenn.) 584; French v. Osmer, 67 Vt. 427, 32 A. 254.

### Consensual and Real

Consensual contracts are such as are founded upon and completed by the mere agreement of the contracting parties, without any external formality or symbolic act to fix the obligation. Real contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit or pledge, which, from their nature, require a delivery of the thing, (*res.*) Inst. 3, 14, 2; Id. 3, 15; Halifax, Civil Law, b. 2, c. 15, No. 1. In the common law a contract respecting real property (such as a lease of land for years) is called a "real" contract. 3 Coke, 22a.

### Constructive Contract

Constructive contracts are such as arise when the law prescribes the rights and liabilities of persons who have not in reality entered into a contract at all, but between whom circumstances make it just that one should have a right, and the other be subject to a liability, similar to the rights and liabilities in cases of express contract. Donovan v. Kansas City, 352 Mo. 430, 175 S.W.2d 874, 884.

### Divisible and Indivisible

The effect of the breach of a contract depends in a large degree upon whether it is to be regarded as indivisible or divisible; *i. e.* whether it forms a whole, the performance of every part of which is a condition precedent to bind the other party, or is composed of several independent parts, the performance of any one of which will bind the other party *pro tanto*. The only test is whether the whole quantity of the things concerned, or the sum of the acts to be done, is of the essence of the contract. It depends, therefore, in the last resort, simply upon the intention of the parties. Integrity Flooring v. Zandon Corporation, 130 N.J.L. 244, 32 A.2d 507, 509.

When a consideration is entire and indivisible, and it is against law, the contract is void *in toto*. Frazier v. Thompson, 2 Watts & S. (Pa.) 235. When the consideration is divisible, and part of it is illegal, the contract is void only *pro tanto*. Harr.Contr. 132; Gelpcke v. Dubuque, 1 Wall. 220, 17 L.Ed. 530.

### Entire and Severable

An *entire* contract is one the consideration of which is entire on both sides. The entire fulfillment of the promise by either is a condition precedent to the fulfillment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as

corresponds to a sample. *Orenstein v. Kahn*, 13 Del.Ch. 376, 119 A. 444, 446; *Integrity Flooring v. Zandon Corporation*, 130 N.J.L. 244, 32 A.2d 507, 509; *Ruby v. United Sugar Cos.*, 56 Ariz. 535, 109 P.2d 845, 848.

Where a contract consists of many parts, which may be considered as parts of one whole, the contract is entire. When the parts may be considered as so many distinct contracts, entered into at one time, and expressed in the same instrument, but not thereby made one contract, the contract is a separable contract. But, if the consideration of the contract is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct and wholly independent items. 2 Pars.Cont. 517.

**Executed and Executory**

Contracts are also distinguished into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory*, where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time. *Farrington v. Tennessee*, 95 U.S. 683, 24 L.Ed. 558; *Fox v. Kitton*, 19 Ill. 532; *Mather v. Mather*, 25 Cal.2d 582, 154 P.2d 684, 686.

But executed contracts are not properly contracts at all, except reminiscently. The term denotes rights in property which have been acquired by means of contract; but the parties are no longer bound by a contractual tie. *Mettel v. Gales*, 12 S.D. 632, 82 N.W. 181.

**Express and Implied**

An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing. 2 Bl.Comm. 443; 2 Kent, Comm. 450; *Linn v. Ross*, 10 Ohio 414, 36 Am.Dec. 95; *A. J. Yawger & Co. v. Joseph*, 184 Ind. 228; 108 N.E. 774, 775; *In re Pierce, Butler & Pierce Mfg. Co.*, D.C.N.Y., 231 F. 312, 318.

An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. *Miller's Appeal*, 100 Pa. 568, 45 Am.Rep. 394; *Landon v. Kansas City Gas Co.*, C.C.A.Kan., 10 F.2d 263, 266; *Caldwell v. Missouri State Life Ins. Co.*, 230 S.W. 566, 568, 148 Ark. 474; *Cameron, to Use of Cameron, v. Eynon*, 332 Pa. 529, 3 A.2d 423, 424; *American La France Fire Engine Co., to Use of American La France & Foamite Industries, v. Borough of Shenandoah*, C.C.A.Pa., 115 F.2d 866, 867.

Implied contracts are sometimes subdivided into those "implied in fact" and those "implied in law," the former being covered by the definition just given, while the latter are obligations imposed upon a person by the law, not in pursuance of his intention and agreement, either expressed or implied, but even against his will and design, because

the circumstances between the parties are such as to render it just that the one should have a right, and the other a corresponding liability, similar to those which would arise from a contract between them. This kind of obligation therefore rests on the principle that whatsoever it is certain a man ought to do that the law will suppose him to have promised to do. And hence it is said that, while the liability of a party to an express contract arises directly from the contract, it is just the reverse in the case of a contract "implied in law," the contract there being implied or arising from the liability. *Bliss v. Hoyt*, 70 Vt. 534, 41 A. 1026; *Kellum v. Browning's Adm'r*, 231 Ky. 308, 21 S.W.2d 459, 465. But obligations of this kind are not properly contracts at all, and should not be so denominated. There can be no true contract without a mutual and concurrent intention of the parties. Such obligations are more properly described as "quasi contracts." *Union Life Ins. Co. v. Glasscock*, 270 Ky. 750, 110 S.W.2d 681, 686, 114 A.L.R. 373.

**Fair and Reasonable Contract**

See Fair and Reasonable Contract.

**Gratuitous and Onerous**

Gratuitous contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceed either from gratitude for a benefit before received or from the hope of receiving one thereafter, although such benefit be of a pecuniary nature. Onerous contracts are those in which something is given or promised as a consideration for the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value. *Civ.Code La.1773, 1774*; *Penitentiary Co. v. Nelms*, 65 Ga. 505, 38 Am.Rep. 793. A gratuitous contract is sometimes called a contract of beneficence. *Howe, Studies in the Civil Law* 107.

**Joint and Several**

A joint contract is one made by two or more promisors, who are jointly bound to fulfill its obligations, or made to two or more promisees, who are jointly entitled to require performance of the same. A contract may be "several" as to any one of several promisors or promisees, if he has a legal right (either from the terms of the agreement or the nature of the undertaking) to enforce his individual interest separately from the other parties. *Jens-Marie Oil Co. v. Rixse*, 72 Okl. 93, 178 P. 658. Generally all contracts are joint where the interest of the parties for whose benefit they are created is joint, and separate where that interest is separate. *Shurtleff v. Udall*, 97 Vt. 156, 122 A. 465, 468.

**Mutual Interest, Mixed, etc.**

Contracts of "mutual interest" are such as are entered into for the reciprocal interest and utility of each of the parties; as sales, exchange, partnership, and the like. "Mixed" contracts are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge. Contracts "of beneficence" are those by which only one of the contracting parties is benefited; as loans, deposit and mandate. *Poth.Obl.* 1, 1, 1, 2.

## CONTRACT

### Parol

A contract not entirely in writing. *Louisville, N. A. and C. Ry. Co. v. Reynolds*, 118 Ind. 170, 173, 20 N.E. 711.

A written contract, which leaves some essential term thereof to be shown by parol, is only "parol contract" not enforceable under statute of fraud. *Sheldmyer v. Bias*, 112 Ind.App. 522, 45 N.E.2d 347, 349.

### Personal Contract

A contract relating to personal property, or one which so far involves the element of personal knowledge or skill or personal confidence that it can be performed only by the person with whom made, and therefore is not binding on his executor. See *Janin v. Browne*, 59 Cal. 44; *Lucas v. J. H. Gross Motor Car Co.*, 27 Ohio App. 183, 161 N.E. 362, 363.

### Pre-contract

An obligation growing out of a contract or contractual relation, of such a nature that it debars the party from legally entering into a similar contract at a later time with any other person; particularly applied to marriage.

### Principal and Accessory

A principal contract is one entered into by both parties on their own account or in the several qualities they assume. It is one which stands by itself, justifies its own existence, and is not subordinate or auxiliary to any other. Accessory contracts are those made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledge. Civ.Code La. art. 1771.

### Quasi Contracts

In the civil law. A contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. *Keener*, *Quasi Contr.* 1; *Elbert County v. Brown*, 16 Ga.App. 834, 86 S.E. 651, 665. The lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties. Civ. Code La. art. 2293.

Persons who have not contracted with each other are often regarded by the Roman law, under a certain state of facts, as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a similarity to a contract obligation, is therefore termed "*obligatio quasi ex contractu*." Such a relation arises from the conducting of affairs without authority, (*negotiorum gestio*), from the payment of what was not due, (*solutio indebiti*), from tutorship and curatorship, and from taking possession of an inheritance. *Mackeld.Rom.Law* § 491.

Legal fiction invented by common law courts to permit recovery by contractual remedy of assumpsit in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise. *Clark v. Peoples Savings and Loan Ass'n of De Kalb County*, 221 Ind. 168, 46 N.E.2d 681, 682, 144 A.L.R. 1495. It is not based on inten-

tion or consent of the parties, but is founded on considerations of justice and equity, and on doctrine of unjust enrichment. *Bruggeman v. Independent School Dist., No. 4, Union Tp., Mitchell County*, 227 Iowa 661, 289 N.W. 5, 8, 11.

It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it. *Grossbier v. Chicago, St. P., M. & O. Ry. Co.*, 173 Wis. 503, 181 N.W. 746, 748; It is an implication of law. *First Nat. Bank v. Matlock*, 99 Okl. 150, 226 P. 328, 331, 36 A.L.R. 1088; *Caldwell v. Missouri State Life Ins. Co.*, 148 Ark. 474, 230 S.W. 566, 568.

It is what was formerly known as the contract implied in law; it has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of their intention. *Town of Balkan v. Village of Buhl*, 158 Minn. 271, 197 N.W. 266, 35 A.L.R. 470.

### Record, Specialty, Simple

Contracts of record are such as are declared and adjudicated by courts of competent jurisdiction, or entered on their records, including judgments, recognizances, and statutes staple. *Harde-man v. Downer*, 39 Ga. 425. These are not properly speaking contracts at all, though they may be enforced by action like contracts. Specialties, or special contracts, are contracts under seal, such as deeds and bonds. *Ludwig v. Bungart*, 26 Misc. Rep. 247, 56 N.Y.S. 51. All others are included in the description "simple" contracts; that is, a simple contract is one that is not a contract of record and not under seal; it may be either written or oral, in either case, it is called a "parol" contract, the distinguishing feature being the lack of a seal. *Stackpole v. Arnold*, 11 Mass. 30, 6 Am. Dec. 150; 4 B. & Ald. 588; 2 Bla.Comm. 472.

### Special Contract

A contract under seal; a specialty; as distinguished from one merely oral or in writing not sealed. But in common usage this term is often used to denote an express or explicit contract, one which clearly defines and settles the reciprocal rights and obligations of the parties, as distinguished from one which must be made out, and its terms ascertained, by the inference of the law from the nature and circumstances of the transaction.

A special contract may rest in parol, and does not mean a contract by specialty; it is defined as one with peculiar provisions not found in the ordinary contracts relating to the same subject-matter. *Midland Roofing Mfg. Co. v. Pickens*, 96 S.C. 286, 80 S.E. 484, 485.

### Subcontract

A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a stranger. 1 H.Bl. 37, 45. One made under a prior contract. *Mobley v. Leeper Bros. Lumber Co.*, 89 Okl. 95, 214 P. 174, 175.

Where a person has contracted for the performance of certain work (*e. g.*, to build a house,) and he in turn engages a third party to perform the whole or a part of that which is included in the original contract, (*e. g.*, to do the carpenter work,) his agreement with such third person is called a "subcontract," and such person is called a "sub-

contractor." *Central Trust Co. v. Railroad Co., C.C.Ky., 54 F. 723; Lester v. Houston, 101 N.C. 605, 8 S.E. 366.* The term "subcontractor" means one who has contracted with the original contractor for the performance of all or a part of the work or services which such contractor has himself contracted to perform. *Republic Supply Co. v. Allen, Tex.Civ.App., 262 S.W. 113, 114.*

**Unconscionable Contract**

One which no sensible man not under delusion, duress, or in distress would make, and such as no honest and fair man would accept. *Franklin Fire Ins. Co. v. Noll, 115 Ind.App. 289, 58 N.E.2d 947, 949, 950.*

**Unilateral and Bilateral**

A unilateral contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any express engagement or promise of performance from the other. Bilateral (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements, such as sale or hire. *Civ. Code La. art. 1765; Poth. Obl. 1, 1, 1, 2; Kling Bros. Engineering Works v. Whiting Corporation, 320 Ill.App. 630, 51 N.E.2d 1004, 1007.* When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. *La. Civ. Code, art. 1765.* A contract is also said to be "unilateral" when there is a promise on one side only, the consideration on the other side being executed. *McMahan v. McMahon, 122 S.C. 336, 115 S.E. 293, 294, 26 A.L.R. 1295.*

**Usurious Contract**

See that title.

**Written Contract**

A "written contract" is one which in all its terms is in writing. *Fey v. Loose-Wiles Biscuit Co., 147 Kan. 31, 75 P.2d 810, 813; and instrument signed by one party is orally accepted by other, Reeves Furniture Co. v. Simms, Tex.Civ.App., 59 S.W.2d 262, 263.*

**CONTRACT, ESTOPPEL BY.** There are two sorts of "estoppel by contract," estoppel to deny truth of facts agreed on and settled by force of entering into contract, and estoppel arising from acts done under or in performance of contract. *In re Schofield's Estate, 101 Colo. 443, 73 P.2d 1381. Finch v. Smith, 177 Okl. 307, 58 P.2d 850, 851.*

"Estoppel by contract" is intended to embrace all cases in which there is an actual or virtual undertaking to treat a fact as settled. *Jackson v. United Gas Public Service Co., 198 So. 633, 640, 196 La. 1.* It means party is bound by terms of own contract until set aside or annulled for fraud, accident, or mistake. *United Fidelity Life Ins. Co. v. Fowler, Tex.Civ.App., 38 S.W.2d 128, 131.*

**CONTRACT OF BENEVOLENCE.** A contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

**CONTRACT OF RECORD.** A contract of record is one which has been declared and adjudicated by a court having jurisdiction, or which is entered of record in obedience to, or in carrying out, the judgments of a court.

**CONTRACT OF SALE.** A contract by which one of the contracting parties, called the "seller," enters into an obligation to the other to cause him to have freely, by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the "buyer," on his part obliges himself to pay. *Topzant v. Koshe, 242 Wis. 585, 9 N.W.2d 136, 138.*

**CONTRACT SYSTEM.** As applied to state prisons, this phrase signifies that the labor of the prisoners is utilized by private persons or contractors, who thus secure the profits of such labor. *People v. Hawkins, 157 N.Y. 1, 51 N.E. 257, 260, 42 L.R.A. 490, 68 Am.St.Rep. 736.*

**CONTRACTION.** Abbreviation; abridgment or shortening of a word by omitting a letter or letters or a syllable, with a mark over the place where the elision occurs. This was customary in records written in the ancient "court hand," and is frequently found in the books printed in black-letter.

**CONTRACTOR.** This term is strictly applicable to any person who enters into a contract (*Kent v. Railroad Co., 12 N.Y. 628*), but is commonly reserved to designate one who, for a fixed price, undertakes to procure the performance of works on a large scale, or the furnishing of goods in large quantities, whether for the public or a company or individual. *McCarthy v. Second Parish, 71 Me. 318, 36 Am.Rep. 320.*

One who in pursuit of independent business undertakes to perform a job or piece of work, retaining in himself control of means, method and manner of accomplishing the desired result. *Marion Malleable Iron Works v. Baldwin, 82 Ind.App. 206, 145 N.E. 559, 560.*

**CONTRACTUAL OBLIGATION.** The obligation which arises from a contract or agreement.

**CONTRACTUS.** Lat. Contract; a contract; contracts.

**CONTRACTUS BONÆ FIDELI.** In Roman law. Contracts of good faith. Those contracts which, when brought into litigation, were not determined by the rules of the strict law alone, but allowed the judge to examine into the *bona fides* of the transaction, and to hear equitable considerations against their enforcement. In this they were opposed to contracts *stricti juris*, against which equitable defenses could not be entertained.

**CONTRACTUS CIVILES.** In Roman law. Civil contracts. Those contracts which were recognized as actionable by the strict civil law of Rome, or as being founded upon a particular statute, as distinguished from those which could not be enforced in the courts except by the aid of the prætor, who, through his equitable powers, gave an action upon them. The latter were called "*contractus prætorii.*"



## CONTRACTUS

**CONTRACTUS EST QUASI ACTUS CONTRA ACTUM.** 2 Coke, 15. A contract is, as it were, act against act.

**CONTRACTUS EX TURPI CAUSA, VEL CONTRA BONOS MORES, NULLUS EST.** A contract founded on a base consideration, or against good morals, is null. Hob. 167.

**CONTRACTUS LEGEM EX CONVENTIONE ACCIPIUNT.** Contracts receive legal sanction from the agreement of the parties. Dig. 16, 3, 1, 6.

**CONTRADICT.** In practice. To disprove. To prove a fact contrary to what has been asserted by a witness.

**CONTRADICTION IN TERMS.** A phrase of which the parts are expressly inconsistent, as *e. g.*, "an innocent murder;" "a fee-simple for life."

**CONTRÆSCRITURA.** In Spanish law. A counter-writing; counter-letter. A document executed at the same time with an act of sale or other instrument, and operating by way of defeasance or otherwise modifying the apparent effect and purport of the original instrument.

**CONTRÆTATIO REI ALIENÆ ANIMO FURANDI, EST FURTUM.** The touching or removing of another's property, with an intention of stealing, is theft. Jenk. Cent. 132.

**CONTRAFACTIO.** Counterfeiting; as *contrafactio sigilli regis*, counterfeiting the king's seal. Cowell.

**CONTRAINTÉ PAR CORPS.** In French law. The civil process of arrest of the person, which is imposed upon vendors falsely representing their property to be unincumbered, or upon persons mortgaging property which they are aware does not belong to them, and in other cases of moral heinousness. Brown.

**CONTRALIGATIO.** In old English law. Counter-obligation. Literally, counter-binding. *Est enim obligatio quasi contraligatio.* Fleta, lib. 2, c. 56, § 1.

**CONTRAMANDATIO.** A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, by countermanding the day fixed for him to plead, and appointing a new day; a sort of imparlance.

**CONTRAMANDATUM.** A lawful excuse, which a defendant in a suit by attorney alleges for himself to show that the plaintiff has no cause of complaint. Blount.

**CONTRAPLACITUM.** In old English law. A counter-plea. Townsh. Pl. 61.

**CONTRAPOSITIO.** In old English law. A plea or answer. Blount. A counter-position.

**CONTRARIENTS.** This word was used in the time of Edw. II. to signify those who were opposed to the government, but were neither rebels nor traitors. Jacob.

**CONTRARIORUM CONTRARIA EST RATIO.** Hob. 344. The reason of contrary things is contrary.

**CONTRAROTULATOR.** A controller. One whose business it was to observe the money which the collectors had gathered for the use of the king or the people. Cowell.

**CONTRAROTULATOR PIPÆ.** An officer of the exchequer that writeth out summons twice every year, to the sheriffs, to levy the rents and debts of the pipe. Blount.

**CONTRARY.** Against; opposed or in opposition to; in conflict with.

**CONTRARY TO THE EVIDENCE.** Against the evidence; against the weight of the evidence. *Olson v. Elliott*, 245 Wis. 279, 15 N.W. 37, 39.

**CONTRARY TO LAW.** Illegal; in violation of statute or legal regulations at a given time. *Feathers of Wild Birds v. U. S.*, C.C.A.N.Y., 267 F. 964, 967; *Goldberg v. U. S.*, C.C.A.Minn., 277 F. 211, 215. In respect of verdict. In conflict with the law contained in court's instructions. *Chetopa Motor Co. v. Douglas*, 132 Okl. 92, 269 P. 365, 366.

**CONTRAT.** In French law. Contracts are of the following varieties: (1) *Bilateral*, or *synallagmatique*, where each party is bound to the other to do what is just and proper; or (2) *unilateral*, where the one side only is bound; or (3) *commutatif*, where one does to the other something which is supposed to be an equivalent for what the other does to him; or (4) *aléatoire*, where the consideration for the act of the one is a mere chance; or (5) *contrat de bienfaisance*, where the one party procures to the other a purely gratuitous benefit; or (6) *contrat à titre onéreux*, where each party is bound under some duty to the other. Brown.

**CONTRATALLIA.** In old English law. A counter-tally. A term used in the exchequer. Mem. in Scacc. M. 26 Edw. 1.

**CONTRATENERE.** To hold against; to withhold. Whishaw.

**CONTRAVENING EQUITY.** A right or equity, in another person, which is inconsistent with and opposed to the equity sought to be enforced or recognized.

**CONTRAVENTION.** In French Law. An act which violates the law, a treaty, or an agreement which the party has made. That infraction of the law punished by a fine which does not exceed fifteen francs and by an imprisonment not exceeding three days. Pen.Code, 1.

In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court.

**CONTRACTARE.** Lat. In the civil law. To handle; to take hold of; to meddle with.

In old English law. To treat. *Vel malè contractet*; or shall ill treat. Fleta, lib. 1, c. 17, § 4.

**CONTRACTATIO.** In the civil and old English law. Touching; handling; meddling. The act of removing a thing from its place in such a manner that, if the thing be not restored, it will amount to theft.

**CONTRACTATIO REI ALIENÆ, ANIMO FUR-ANDI, EST FURTUM.** Jenk. Cent. 132. The touching or removing of another's property, with an intention of stealing, is theft.

**CONTREFAÇON.** In French law. The offense of printing or causing to be printed a book, the copyright of which is held by another, without authority from him. Merl. Repert.

**CONTRE-MAITRE.** In French marine law. The chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the countermaster.

**CONTRIBUTE.** To lend assistance or aid, or give something, to a common purpose; to have a share in any act or effect; to discharge a joint obligation. *Christman v. Reichholdt*, Mo.App., 150 S.W.2d 527, 532; *James McCord Co. v. Citizens Hotel Co.*, Tex.Civ.App., 287 S.W. 906; *Park v. Missionary Soc.*, 62 Vt. 19, 20 A. 107.

As applied to negligence signifies causal connection between injury and negligence, which transcends and is distinguished from negligent acts or omissions which play so minor a part in producing injuries that law does not recognize them as legal causes. *Connellan v. Coffey*, 122 Conn. 136, 187 A. 901, 903.

**CONTRIBUTION.** In the civil law. A partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property proportionably to the amount of their respective credits. Code La. art. 3556, par. 9. Division which is made among the heirs of the succession of the debts with which the succession is charged, according to the proportion which each is bound to bear. Civ.Code La. art. 1420.

In common law. The sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share. *Canosia Tp. v. Grand Lake Tp.*, 80 Minn. 357, 83 N.W. 346; *Ratte v. Ratte*, 260 Mass. 165, 156 N.E. 870, 871. Right of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear. *St. Lewis v. Morrison*, D.C.Ky., 50 F.Supp. 570, 572, 573. *Parten v. First Nat. Bank & Trust Co.*, 283 N.W. 408, 412, 204 Minn. 200, 120 A.L.R. 962; *Chapman v. Lamar-Rankin Drug Co.*, 64 Ga.App. 493, 13 S.E.2d 734, 737. *Fidelity & Casualty Ins. Co. of New York v. Sears, Roebuck & Co.*, 124 Conn. 227, 199 A. 93, 94.

In maritime law. Where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety, (as by throwing goods overboard to lighten the vessel,) such loss must be made good by the contribution of the others, which is termed "gen-

eral average." 3 Kent, Comm. 232-244; 1 Story, Eq. Jur. § 490.

**CONTRIBUTION TO CAPITAL.** A fund or property contributed by shareowners as financial basis for prosecution of corporation's business, and signifies resources whose dedication to users of the corporation is made the foundation for issuance of capital stock and which became irrevocably devoted to satisfaction of all obligations of corporation. *Detroit Edison Co. v. Commissioner of Internal Revenue*, C.C.A.6, 131 F.2d 619, 623.

**CONTRIBUTIO FACIENDA.** In old English law. A writ that lay where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution. Reg. Orig. 175; Fitzh. Nat. Brev. 162.

**CONTRIBUTORY, n.** A person liable to contribute to the assets of a company which is being wound up, as being a member or (in some cases) a past member thereof. *Mozley & Whitley*.

**CONTRIBUTORY, adj.** Joining in the promotion of a given purpose; lending assistance to the production of a given result. *Armstrong v. Green*, 113 Okl. 254, 241 P. 789, 791.

As to contributory "Infringement" and "Negligence," see those titles.

**CONTROL, v.** To exercise restraining or directing influence over; regulate; restrain; dominate; curb; to hold from action; overpower; counteract; govern. *Owen v. Trail*, 302 Mo. 292, 258 S.W. 699, 702; *Hopkins v. Howard's Ex'x*, 266 Ky. 685, 99 S.W.2d 810, 812.

To control a thing is to have the right to exercise a directing or governing influence over it. *Trust Co. of New Jersey v. Greenwood Cemetery*, 21 N.J.Misc. 169, 32 A.2d 519, 523.

**CONTROL, n.** Power or authority to manage, direct, superintend, restrict, regulate, direct, govern, administer, or oversee. *State v. First State Bank of Jud*, 52 N.D. 231, 202 N.W. 391, 402.

The "control" involved in determining whether "principal and agent relationship" or "master and servant relationship" is involved must be accompanied by power or right to order or direct. *Mid-Continent Petroleum Corporation v. Vicars*, 221 Ind. 387, 47 N.E.2d 972, 975.

Driver must at all times have automobile under control, means having it under such control that it can be stopped before doing injury to any person in any situation that is reasonably likely to arise under the circumstances. *Kindt v. Reading Co.*, 352 Pa. 419, 43 A.2d 145, 147.

**CONTROL OF CARBON.** Such a chemical action upon the carbon in an alloy as will keep it largely in a combined graphitic state. *Pittsburgh Iron & Steel Foundries Co. v. Seaman-Sleeth Co.*, D.C. Pa., 236 F. 756, 760.

**CONTROLLER.** A comptroller, which see.

**CONTROLMENT.** In old English law. The controlling or checking of another officer's account; the keeping of a counter-roll.

**CONTROVER.** In old English law. An inventor or deviser of false news. 2 Inst. 227.

## CONTROVERSIES

**CONTROVERSIES ARISING IN BANKRUPTCY PROCEEDINGS.** Within Bankruptcy Act § 24a, 11 U.S.C.A. § 47(a), investing Circuit Courts of Appeals with appellate jurisdiction, include those matters arising in the course of a bankruptcy proceeding, which are not mere steps in the ordinary administration of the bankrupt estate, but present distinct and separable issues, between the trustee and adverse claimants concerning the right and title to the bankrupt's estate. *Handlan v. Bennett, C.C.A.W.Va., 51 F.2d 21, 23.*

**CONTROVERSY.** A litigated question; adversary proceeding in a court of law; a civil action or suit, either at law or in equity; a justiciable dispute. *Barber v. Kennedy, 18 Minn. 216 (Gil. 196); State v. Guinotte, 156 Mo. 513, 57 S.W. 281, 50 L.R.A. 787.*

It differs from "case," which includes all suits, criminal as well as civil; whereas "controversy" is a civil and not a criminal proceeding. *Chisholm v. Georgia, 2 Dall. 419, 431, 432, 1 L.Ed. 440.*

**CONTROVERT.** To dispute; to deny; to oppose or contest; to take issue on. *Reese v. Adamson, 297 Pa. 13, 146 A. 262, 263.*

**CONTUBERNIUM.** In Roman law. The marriage of slaves; a permitted cohabitation.

**CONTUMACE CAPIENDO.** In English law. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III, c. 127, § 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the court of chancery, whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*. (2 & 3 Wm. IV, c. 93; 3 & 4 Vict. c. 93.) *Wharton; 1 Holdsw. Hist. Engl. Law App. XVIII. See Excommunication.*

**CONTUMACY.** The refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him, or, if he is duly before the court, to obey some lawful order or direction made in the cause. In the former case it is called "presumed" contumacy; in the latter, "actual." The term is chiefly used in ecclesiastical law. See 3 Curt. Ecc. 1.

**CONTUMAX.** One accused of a crime who refuses to appear and answer to the charge. An outlaw.

**CONTUMELY.** Rudeness compounded of haughtiness and contempt; scornful insolence; despiteful treatment; disdain, contemptuousness in act or speech; disgrace. *United States v. Strong, D.C.Wash., 263 F. 789, 796.*

**CONTUSE.** To bruise; to injure or disorganize a part of without breaking the skin. *Ansley v. Travelers Ins. Co., 27 Tenn.App. 720, 173 S.W.2d 702, 704.*

**CONTUSION.** In medical jurisprudence. A bruise; an injury to any external part of the body by the impact of a fall or the blow of a blunt instrument, without laceration of the flesh, and either with or without a tearing of the skin, but in the former case it is more properly called a "contused wound." *Gasperino v. Prudential Ins. Co. of America, Mo.App., 107 S.W. 819, 827.*

**CONTUTOR.** Lat. In the civil law. A co-tutor, or co-guardian. *Inst. 1, 24, 1.*

**CONUSANCE.** In English law. Cognizance or jurisdiction. Conusance of pleas. *Termes de la Ley.*

**CONUSANCE, CLAIM OF.** See Cognizance.

**CONUSANT.** Cognizant; acquainted with; having actual knowledge; as, if a party knowing of an agreement in which he has an interest makes no objection to it, he is said to be conusant. *Co. Litt. 157.*

**CONUSEE.** See Cognizee.

**CONUSOR.** See Cognizor.

**CONVALESCENCE.** Gradual recovery of health or physical strength after illness. *Romesburg v. Federal Life Ins. Co., 147 Kan. 378, 76 P.2d 829, 831.*

**CONVENABLE.** In old English law. Suitable; agreeable; convenient; fitting. *Litt. § 103.*

**CONVENE.** In the civil law. To bring an action.

**CONVENIENCE AND NECESSITY.** If there is a reasonable need apparent for use of the service, and if a common carrier is not unduly interfered with, nor the public highways unduly burdened, a case of "convenience and necessity" exists with respect to an application for a license to operate as a contract motor carrier. *Short Way Lines v. Black, 182 S.W.2d 17, 19, 298 Ky. 67.*

**CONVENIENT.** Proper; just; suitable; fit; adapted; proper; becoming appropriate. *Finlay v. Dickerson, 29 Ill. 20; Railway Co. v. Smith, 19 S.Ct. 565, 173 U.S. 684, 43 L.Ed. 858; Prina v. Board of Sup'rs of Graham County, 16 Ariz. 252, 143 P. 567, 568.*

**CONVENIT.** Lat. In civil and old English law. It is agreed; it was agreed.

**CONVENT.** The fraternity of an abbey or priory, as *societas* is the number of fellows in a college. A religious house, now regarded as a merely voluntary association, not importing civil death. *33 Law J. Ch. 308.*

An association or community of recluses devoted to a religious life under a superior; a body of monks, friars, or nuns, constituting one local community; now usually restricted to a convent of nuns; as, to go into a convent. *Sacred Heart Academy of Galveston v. Karsch, 122 S.W.2d 416, 417, 173 Tenn. 613.*

**CONVENTICLE.** A private assembly or meeting for the exercise of religion. The word was first an appellation of reproach to the religious assem-

blies of Wycliffe in the reigns of Edward III, and Richard II., and was afterwards applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law. Wharton.

**CONVENTIO.** Canon Law. The act of summoning or calling together the parties by summoning the defendant.

The Civil Law. A compact, agreement, or convention. An agreement between two or more persons respecting a legal relation between them. Mackeld. Rom. Law, §§ 385, 386.

The term is one of very wide scope, and applies to all classes of subjects in which an engagement or business relation may be founded by agreement. It is to be distinguished from the negotiations or preliminary transactions on the object of the convention and fixing its extent, which are not binding so long as the convention is not concluded.

In contracts. An agreement; a covenant. Cowell.

**CONVENTIO IN UNUM.** In the civil law. The agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the solicitation or proposal emanating from the one, and followed by the consension or agreement of the other.

**CONVENTIO PRIVATORUM NON POTEST PUBLICO JURI DEROGARE.** The agreement of private persons cannot derogate from public right, *i. e.*, cannot prevent the application of general rules of law, or render valid any contravention of law. Co. Litt. 166a; Wing. Max. p. 746, max. 201.

**CONVENTIO VINCIT LEGEM.** The express agreement of parties overcomes [prevails against] the law. Story, Ag. § 368.

**CONVENTION.** In English law. An extraordinary assembly of the houses of lords and commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as the parliament which restored Charles II., and that which disposed of the crown and kingdom to William and Mary. Wharton. Also the name of an old writ that lay for the breach of a covenant.

In Roman law. An agreement between parties; a pact. A convention was a mutual engagement between two persons, possessing all the subjective requisites of a contract, but which did not give rise to an action, nor receive the sanction of the law, as bearing an "obligation," until the objective requisite of a solemn ceremonial, (such as *stipulatio*) was supplied. In other words, convention was the informal agreement of the parties, which formed the basis of a contract, and which became a contract when the external formalities were superimposed. See Maine, Anc. Law, 313.

"The division of conventions into contracts and pacts was important in the Roman law. The former were such conventions as already, by the older civil law, founded an obligation and action; all the other conventions were termed

'pacts.' These generally did not produce an actionable obligation. Actionability was subsequently given to several pacts, whereby they received the same power and efficacy that contracts received." Mackeld. Rom. Law, § 395.

In legislation. An assembly of delegates or representatives chosen by the people for special and extraordinary legislative purposes, such as the framing or revision of a state constitution. Also an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory, to nominate candidates for an approaching election. In re Opinion of the Justices, 132 Me. 491, 167 A. 176, 179.

In public and international law. A pact or agreement between states or nations in the nature of a treaty; usually applied (a) to agreements or arrangements preliminary to a formal treaty or to serve as its basis, or (b) international agreements for the regulation of matters of common interest but not coming within the sphere of politics or commercial intercourse, such as international postage or the protection of submarine cables. U. S. v. Hunter, C.C.Mo., 21 F. 615.

Constitutional convention. See Constitution.

Judicial convention. See Judicial.

**CONVENTIONAL.** Depending on, or arising from, the mutual agreement of parties; as distinguished from *legal*, which means created by, or arising from, the act of the law. De Vita v. Pianisani, 217 N.Y.S. 438, 440, 127 Misc. 611.

As to conventional "Estates," "Interest," "Mortgage," "Subrogation," and "Trustees," see those titles.

**CONVENTIONAL LIEN.** A lien is conventional where the lien, general or particular (Cro. Car. 271; 6 Term. 14; 2 Kent 637) is raised by the express agreement and stipulation of the parties, in circumstances where the law alone would not create a lien from the mere relation of the parties or the details of their transaction.

**CONVENTIONE.** The name of a writ for the breach of any covenant in writing, whether real or personal. Reg. Orig. 115; Fitzh. Nat. Brev. 145.

**CONVENTIONS.** This name is sometimes given to compacts or treaties with foreign countries as to the apprehension and extradition of fugitive offenders. See Extradition.

**CONVENTUAL CHURCH.** In ecclesiastical law. That which consists of regular clerks, professing some order or religion; or of dean and chapter; or other societies of spiritual men.

**CONVENTUALS.** Religious men united in a convent or religious house. Cowell.

**CONVENTUS.** Lat. A coming together; a convention or assembly. *Conventus magnatum vel procerum* (the assembly of chief men or peers) was one of the names of the English parliament. 1 Bl. Comm. 148.

In the civil law. The term meant a gathering together of people; a crowd assembled for any purpose; also a convention, pact, or bargain.

## CONVENTUS

**CONVENTUS JURIDICUS.** In the Roman law. A court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of counsellors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province. Schm. Civil Law, Introd. 17.

**CONVERSANT.** One who is in the habit of being in a particular place is said to be conversant there. Barnes, 162. Acquainted; familiar.

**CONVERSANTES.** In old English law. Conversant or dwelling; commorant.

**CONVERSATION.** Manner of living; habits of life; conduct; as in the phrase "chaste life and conversation." Bradshaw v. People, 153 Ill. 156, 38 N.E. 652. Criminal conversation means seduction of another man's wife, considered as an actionable injury to the husband. Prettyman v. Williamson, 1 Pennewill (Del.) 224, 39 A. 731; Crocker v. Crocker, C.C.Mass., 98 F. 702.

**CONVERSE.** The transposition of the subject and predicate in a proposition, as: "Everything is good in its place." *Converse*, "Nothing is good which is not in its place." Wharton.

**CONVERSION.** Equity. The exchange of property from real to personal or from personal to real, which takes place under some circumstances in the consideration of the law, such as, to give effect to directions in a will or settlement, or to stipulations in a contract, although no such change has actually taken place, 1 Bro.C.C. 497; 1 Lead.Cas.Eq. 619; 1 Lead. Cas.Eq. 872; Lawrence v. Elliott, 3 Redf.Sur. (N.Y.) 235; Dodge v. Williams, 46 Wis. 70, 1 N.W. 92, 50 N.W. 1108; Mattison v. Stone, 99 S.C. 151, 82 S.E. 1046, 1047; and by which exchange the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted; Seymour v. Freer, 8 Wall. 214, 19 L.Ed. 306; Haward v. Peavey, 128 Ill. 430, 21 N.E. 503, 15 Am.St.Rep. 120.

Although it is sometimes necessary for certain purposes of devolution and transfer to regard the property in its changed condition as though the change has not absolutely taken place; Davidson v. Bright, 267 Pa. 580, 110 A. 301, 302.

A qualified conversion is one directed for some particular purpose; Harker v. Reilly, 4 Del.Ch. 72.

### Law

An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Stickney v. Munroe, 44 Me. 197; Baldwin v. Cole, 6 Mod. 212; In re Di Crocco's Estate, 12 N. Y.S.2d 276, 278, 170 Misc. 826; Powell v. A. K. Brown Motor Co., 20 S.E.2d 636, 637, 200 S.C. 75. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time. Forbush v. San Diego Fruit & Produce Co., 46 Idaho, 231, 266 P. 659, 663.

Also one who aids and abets another in keeping property from its rightful owner is guilty of "conversion". Edwards v. Max Thieme Chevrolet Co., La.App., 191 So. 569, 571, 572.

**Constructive conversion.** An implied or virtual conversion, which takes place where a person does such acts in reference to the goods of another as amount in law to the appropriation of the property to himself. Scruggs v. Scruggs, C.C. Mo., 105 F. 28; Laverty v. Snethen, 68 N.Y. 524, 23 Am.Rep. 184; Wade v. Ray, 67 Okl. 39, 168 P. 447, 449, L.R.A.1918B, 796.

**Direct conversion.** The act of actually appropriating the property of another to his own beneficial use and enjoyment, or to that of a third person, or destroying it, or altering its nature. Ross v. Lewis, 23 N.M. 524, 169 P. 468, 469; or wrongfully assuming title in himself; Cass v. Ocean Park Bath Co., 45 Cal.App. 656, 188 P. 616, 617; there must be a positive wrong or act of malfeasance; American Surety Co. of New York v. Hill County, Tex.Civ.App., 254 S.W. 241, 245.

**CONVEY.** To pass or transmit the title to property from one to another; to transfer property or the title to property by deed or instrument under seal. Used popularly in sense of "assign," "sale," or "transfer." Crookshanks v. Ransbarger, 80 W.Va. 21, 92 S.E. 78, 82; McQuiddy Printing Co. v. Hirsig, 23 Tenn.App. 434, 134 S.W.2d 197, 205.

Convey relates properly to the disposition of real property, not to personal. Dickerman v. Abrahams, 21 Barb., N.Y., 551, 561. To convey real estate is, by an appropriate instrument, to transfer the legal title to it from the present owner to another. Abendroth v. Greenwich, 29 Conn. 356.

**CONVEYANCE.** In pleading. Introduction or inducement.

In real property law. In the strict legal sense, a transfer of legal title to land. In the popular sense, and as generally used by lawyers, it denotes any transfer of title, legal or equitable. Chupco v. Chapman, 76 Okl. 201, 170 P. 259, 266. The transfer of the title of land from one person or class of persons to another. Klein v. McNamara, 54 Miss. 105; Alexander v. State, 28 Tex. App. 186, 12 S.W. 595; In re Loes' Will, 55 N.Y.S. 2d 723, 726. An instrument in writing under seal, (anciently termed an "assurance,") by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc. 2 Bl. Comm. 293, 295, 309.

Conveyance includes every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands. Stearns Lighting & Power Co. v. Central Trust Co., C.C.A.Mich., 223 F. 962, 966; Shraiberg v. Hanson, 138 Minn. 80, 163 N.W. 1032, 1033.

### General

**Absolute or conditional conveyance.** An absolute conveyance is one by which the right or property in a thing is transferred, free of any condition or qualification, by which it might be defeated

## CONVICTION

or changed; as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance. *Burrill; Falconer v. Buffalo*, etc., R. Co., 69 N.Y. 491; *Brown v. United States*, C.C.A.Pa., 95 Fed.2d 487, 489.

**Fraudulent conveyance.** See *Fraudulent*.

**Mesne conveyance.** An intermediate conveyance; one occupying an intermediate position in a chain of title between the first grantee and the present holder.

**Primary conveyances.** Those by means whereof the benefit or estate is created or first arises; as distinguished from those whereby it may be enlarged, restrained, transferred, or extinguished. The term includes feoffment, gift, grant, lease, exchange, and partition, and is opposed to *derivative* conveyances, such as release, surrender, confirmation, etc. 2 Bl. Comm. 309.

**Secondary conveyances.** The name given to that class of conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 2 Bl. Comm. 324. Otherwise termed "derivative conveyances" (q. v.).

**Voluntary conveyance.** A conveyance without valuable consideration; such as a deed or settlement in favor of a wife or children. *Gentry v. Field*, 143 Mo. 399, 45 S.W. 286; *Shannon v. Duffield*, 218 Ky. 770, 292 S.W. 322, 323; *English v. Brown*, D.C.N.J., 219 F. 248, 256.

**CONVEYANCER.** One whose business it is to draw deeds, bonds, mortgages, wills, writs, or other legal papers, or to examine titles to real estate. 14 St. at Large, 118.

He who draws conveyances; especially a barrister who confines himself to drawing conveyances, and other chamber practice. *Mozley & Whitley*.

**CONVEYANCING.** A term including both the science and art of transferring titles to real estate from one man to another.

Conveyancing is that part of the lawyer's business which relates to the alienation and transmission of property and other rights from one person to another, and to the framing of legal documents intended to create, define, transfer, or extinguish rights. It therefore includes the investigation of the title to land, and the preparation of agreements, wills, articles of association, private statutes operating as conveyances, and many other instruments in addition to conveyances properly so called. *Sweet; Livermore v. Bagley*, 3 Mass. 505.

**CONVEYANCING COUNSEL TO THE COURT OF CHANCERY.** Certain counsel, not fewer than six in number, appointed by the lord chancellor, for the purpose of assisting the court of chancery, or any judge thereof, with their opinion in matters of title and conveyancing. *Mozley & Whitley*.

**CONVICIA SI IRASCARIS TUA DIVULGAS; SPRETA EXOLESCUNT.** 3 Inst. 198. If you be moved to anger by insults, you publish them; if despised, they are forgotten.

**CONVICIUM.** In the civil law. The name of a species of slander or injury uttered in public, and which charged some one with some act *contra bonos mores*.

**CONVICIT, v.** To condemn after judicial investigation; to find a man guilty of a criminal charge. The word was formerly used also in the sense of finding against the defendant in a civil case.

Formerly a man was said to be convict when he had been found guilty of treason or felony, but before judgment had been passed on him, after which he was said to be attaint, (q. v.). *Co.Litt. 390b*.

**CONVICIT, n.** One who has been finally condemned by a court. One who has been adjudged guilty of a crime or misdemeanor. Usually spoken of as condemned felons or the prisoners in penitentiaries. *Molineux v. Collins*, 177 N.Y. 395, 69 N.E. 727, 65 L.R.A. 104.

**CONVICITED.** Means that a judgment of final condemnation has been pronounced against the accused. *Gallagher v. State*, 10 Tex.App. 469; *Neibling v. Terry*, 177 S.W.2d 502, 504, 352 Mo. 396, 152 A.L.R. 249.

**CONVICTION.** In a general sense, the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged.

The act of convicting a person, or state of being convicted, of a criminal offense. *Hershey v. People*, 91 Colo. 113, 12 P.2d 345, 347. Finding a person guilty by verdict of a jury. 1 *Bish.Crim.Law*, § 223; *Emmertson v. State Tax Commission of Utah*, 93 Utah 219, 72 P.2d 467, 470, 113 A.L.R. 1174.

A record of the summary proceedings upon any penal statute before one or more justices of the peace or other persons duly authorized, in a case where the offender has been *convicted* and sentenced. *Holthouse*. In respect of pardoning power, verdict of guilty. *State v. Garrett*, 135 Tenn. 617, 183 S.W. 58, L.R.A.1917B, 567. *Contra*, *Ex parte White*, 28 Okl.Cr. 180, 230 P. 522.

In ordinary phrase, the meaning of the word "conviction" is the finding by the jury of a verdict that the accused is guilty. But, in legal parlance, it often denotes the final judgment of the court. *Blaufus v. People*, 69 N.Y. 109, 25 Am.Rep. 148; *Marino v. Hibbard*, 243 Mass. 90, 137 N.E. 369; *Commonwealth v. Minnich*, 250 Pa. 363, 95 A. 565, 567, L.R.A.1916B, 950.

The ordinary legal meaning of "conviction," when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while "judgment" or "sentence" is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained. A pardon granted after verdict of guilty, but before sentence, and pending a hearing upon exceptions taken by the accused during the trial, is granted after conviction, within the meaning of a constitutional restriction upon granting pardon before conviction. When, indeed, the word "conviction" is used to describe the effect of the guilt of the accused as judicially proved in one case, when pleaded or given in evidence in another, it is sometimes used in a more comprehensive sense, including the judgment of the court upon the verdict or confession of guilt; as, for instance, in speaking of the plea of *autrefois convict*, or of the effect of guilt, judicially ascertained, as a disqualification of the convict. *Com. v. Lockwood*, 109 Mass. 323, 12 Am.Rep. 699; *In re Anderson*, 34 Cal.App.2d 48, 92 P.2d 1020, 1022. *Attorney General ex rel. O'Hara v. Montgomery*, 275 Mich. 504, 267 N.W. 550, 554.

## CONVICTION

**Former Conviction.** A previous trial and conviction of the same offense as that now charged; pleadable in bar of the prosecution. State v. Ellsworth, 131 N.C. 773, 42 S.E. 699, 92 Am.St.Rep. 790; Williams v. State, 13 Tex.App. 285, 46 Am. Rep. 237.

**Summary Conviction.** The conviction of a person, (usually for a minor misdemeanor,) as the result of his trial before a magistrate or court, without the intervention of a jury, which is authorized by statute in England and in many of the states. In these proceedings there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed to be his judge. A conviction reached on such a magistrate's trial is called a "summary conviction." Brown; Blair v. Com., 25 Grat. (Va.) 853.

**CONVINCING PROOF.** Such as is sufficient to establish the proposition in question, beyond hesitation, ambiguity, or reasonable doubt, in an unprejudiced mind. Evans v. Rugee, 57 Wis. 623, 16 N.W. 49; French v. Day, 89 Me. 441, 36 A. 909. See Clear.

**CONVIVIAM.** A tenure by which a tenant was bound to provide meat and drink for his lord at least once in the year. Cowell.

**CONVOCATION.** In ecclesiastical law. The general assembly of the clergy to consult upon ecclesiastical matters.

**CONVOY.** A naval force, under the command of an officer appointed by government, for the protection of merchant-ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. b. 1, c. 9, § 5; Park, Ins. 388; Peake, Add. Cas. 143n; 2 H. Bl. 551.

**CO-OBLIGOR.** A joint obligor; one bound jointly with another or others in a bond or obligation.

**COOL BLOOD.** In the law of homicide. Calmness or tranquillity; the undisturbed possession of one's faculties and reason; the absence of violent passion, fury, or uncontrollable excitement.

**COOLING TIME.** Time to recover "cool blood" after severe excitement or provocation; time for the mind to become so calm and sedate as that it is supposed to contemplate, comprehend, and coolly act with reference to the consequences likely to ensue. May v. People, 8 Colo. 210, 6 P. 816; Keiser v. Smith, 71 Ala. 481, 46 Am.Rep. 342.

**CO-OPERATE.** To act jointly or concurrently toward a common end. Darnell v. Equity Life Ins. Co.'s Receivers, 179 Ky. 465, 200 S.W. 967, 970.

**CO-OPERATION.** In economics. The combined action of numbers. It is of two distinct kinds: (1) Such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different em-

ployments. These may be termed "simple co-operation" and "complex co-operation." Mill, Pol. Ec. 142.

In patent law. Unity of action to a common end or a common result, not merely joint or simultaneous action. Boynton Co. v. Morris Chute Co., C.C.N.J., 82 F. 444; Fastener Co. v. Webb, C. C. Ohio, 89 F. 987; Holmes Burglar Alarm Tel. Co. v. Domestic, etc., Tel. Co., C.C.N.J., 42 F. 227.

**CO-OPERATIVE ASSOCIATION.** A union of individuals commonly laborers, farmers, or small capitalists, formed for the prosecution in common of some productive enterprise, the profits being shared in accordance with the capital or labor contributed by each. Mooney v. Farmers' Mercantile & Elevator Co. of Madison, 138 Minn. 199, 164 N.W. 804, 805.

**CO-OPERATIVE NEGLIGENCE.** Contributory negligence. Otte v. Miller, 24 S.E.2d 90, 93, 125 W.Va. 317.

**COOPERTIO.** In old English law. The head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood. Cowell.

**COOPERTUM.** In forest law. A covert; a thicket (*dumetum*) or shelter for wild beasts in a forest. Spelman.

**COOPERTURA.** In forest law. A thicket, or covert of wood.

**COOPERTUS.** Covert; covered.

**CO-OPTATION.** A concurring choice; the election, by the members of a close corporation, of a person to fill a vacancy.

**CO-ORDINATE.** Equal, of the same order, rank, degree or importance; not subordinate. Empire Ins. Co. of Texas v. Cooper, Tex.Civ.App., 138 S. W.2d 159, 164. Adjusted to, in harmony with. Æolian-Skinner Organ Co. v. Shepard Broadcasting Service, C.C.A.Mass., 81 F.2d 392, 395. As to courts of "co-ordinate jurisdiction," see Jurisdiction.

*Co-ordinate* and *Subordinate* are terms often applied as a test to ascertain the doubtful meaning of clauses in an act of parliament. If there be two, one of which is grammatically governed by the other, it is said to be "subordinate" to it; but, if both are equally governed by some third clause, the two are called "co-ordinate." Wharton.

**CO-ORDINATE JURISDICTION.** That which is possessed by courts of equal rank, degree, or authority, equally competent to deal with the matter in question, whether belonging to the same or different systems; concurrent jurisdiction.

**COPARCENARY.** A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises in England either by common law or particular custom. By common law, as where a person, seised in fee-simple or fee-tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representa-



tives; in this case they all inherit, and these co-heirs, are then called "coparceners," or, for brevity, "parceners" only. Litt. §§ 241, 242; 2 Bl. Comm. 187. By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, etc. Litt. § 265; 1 Steph. Comm. 319. An estate which several persons hold as one heir, whether male or female. This estate has the three unities of time, title, and possession; but the interests of the coparceners may be unequal. 1 Washb. Real Prop. 414; 2 Bl. Comm. 188; 4 Kent 366; Flynn v. Herye, 4 Mo.App. 360.

While joint tenancies refer to persons, the idea of coparcenary refers to the estate. The title to it is always by descent. The respective shares may be unequal; as, for instance, one daughter and two granddaughters, children of a deceased daughter, may take by the same act of descent. As to strangers, the tenants' seisin is a joint one, but, as between themselves, each is seised of his or her own share, on whose death it goes to the heirs, and not by survivorship. The right of possession of coparceners is in common, and the possession of one is, in general, the possession of the others. 1 Washb. Real Prop. \*414.

**COPARCENERS.** Persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate. 2 Bl. Comm. 187.

**COPARTICEPS.** In old English law. A coparcener.

**COPARTNER.** One who is a partner with one or more other persons; a member of a partnership.

**COPARTNERSHIP.** A partnership.

**COPARTNERY.** In Scotch law. The contract of copartnership. A contract by which the several partners agree concerning the communication of loss or gain, arising from the subject of the contract. Bell.

**COPE.** A custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment.

**COPEMAN, or COPESMAN.** A chapman, (*q. v.*).

**COPESMATE.** A merchant; a partner in merchandise.

**COPIA.** Lat. In civil and old English law. Opportunity or means of access.

In old English law. A copy. *Copia libelli*, the copy of a libel. Reg. Orig. 58.

**COPIA LIBELLI DELIBERANDA.** The name of a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him. Reg. Orig. 51.

**COPIA VERA.** In Scotch practice. A true copy. Words written at the top of copies of instruments.

**COPPA.** In English law. A crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

**COPPER AND SCALES.** See Mancipatio.

**COPPER MATTE.** A product of smelting copper ore in a furnace consisting almost entirely of a mixture of iron sulphide and copper sulphide. It requires further treatment to break up and remove iron sulphide, and then convert remaining copper sulphide which is called white metal to metallic copper. United Verde Copper Co. v. Peirce-Smith Converter Co., C.C.A. Del., 7 F.2d 13. Also known as "regulus of copper." U. S. v. Consolidated Kansas City Smelting & Refining Co., 8 Ct. Cust. App. 226, 227.

**COPPICE, or COPSE.** A small wood consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

**COPROLALIA.** In medical jurisprudence. A disposition or habit of using obscene language, developing unexpectedly in the particular individual or contrary to his previous history and habits, recognized as a sign of insanity or of aphasia.

**COPULA.** The corporal consummation of marriage. *Copula*, (in logic,) the link between subject and predicate contained in the verb.

**COPULATIO VERBORUM INDICAT ACCEPTATIONEM IN EODEM SENSU.** Coupling of words together shows that they are to be understood in the same sense. 4 Bacon's Works, p. 26; Broom, Max. 588.

**COPULATIVE TERM.** One which is placed between two or more others to join them together.

**COPY.** The transcript or double of an original writing; as the copy of a patent, charter, deed, etc. Nations v. Lowenstern, 27 N.M. 613, 204 P. 60, 62; State Text-Book Commission v. Weathers, 184 Ky. 748, 213 S.W. 207, 210; In re Janes' Estate, 18 Cal.2d 512, 116 P.2d 438, 441.

*Carbon copies.* Carbon copies made at the same time and with the same device as the original are not "copies" but duplicate originals. Martin & Lanier Paint Co. v. Daniels, 27 Ga.App. 302, 108 S.E. 246, 247; Liberty Nat. Bank and Trust Co. v. Louisville Trust Co., 295 Ky. 825, 175 S.W.2d 524, 528.

*Exemplifications* are copies verified by the great seal or by the seal of a court. West Jersey Traction Co. v. Board of Public Works, 57 N.J. Law, 313, 30 A. 581.

*Examined copies* are those which have been compared with the original or with an official record thereof.

*Office copies* are those made by officers intrusted with the originals and authorized for that purpose. Id., Stamper v. Gay, 3 Wyo. 322, 23 P. 69. See, also, Office.

In the law of copyrights. A reproduction or duplication of a thing, or that which comes so near to the original as to give to every person seeing it the idea created by the original. McConnor v. Kaufman, D.C.N.Y., 49 F. Supp. 738, 744.

**COPYHOLD.** A species of estate at will, or customary estate in England, the only visible title

## COPYHOLD

to which consists of the copies of the court rolls, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. It is an estate at the will of the lord, yet such a will as is agreeable to the custom of the manor, which customs are preserved and evidenced by the rolls of the several courts baron, in which they are entered. 2 Bl.Comm. 95. In a larger sense, copyhold is said to import every customary tenure, (that is, every tenure pending on the particular custom of a manor,) as opposed to free socage, or freehold, which may now (since the abolition of knight-service) be considered as the general or common-law tenure of the country. 1 Steph. Comm. 210.

**Copyhold commissioners.** Commissioners appointed to carry into effect various acts of parliament, having for their principal objects the compulsory commutation of manorial burdens and restrictions, (fines, heriots, rights to timber and minerals, etc.,) and the compulsory enfranchisement of copyhold lands. 1 Steph. Comm. 643; Elton, Copyh.

**Copyholder.** A tenant by copyhold tenure, (by copy of court-roll.) 2 Bl. Comm. 95.

**Privileged copyholds.** Those copyhold estates which are said to be held according to the custom of the manor, and not *at the will of the lord*, as common copyholds are. They include customary freeholds and ancient demesnes. 1 Crabb, Real Prop. p. 709, § 919.

**COPYRIGHT.** The right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. In re Rider, 16 R.I. 271, 15 A. 72; Mott Iron Works v. Clow, C.C.A.Ill., 82 F. 316, 27 C.C.A. 250; Palmer v. De Witt, 47 N.Y. 536, 7 Am.Rep. 480; Stuff v. La Budde Feed & Grain Co., D.C.Wis., 42 F.Supp. 493, 497; Schill v. Remington Putnam Book Co., 179 Md. 83, 17 A.2d 175.

International copyright is the right of a subject of one country to protection against the republication in another country of a work which he originally published in his own country. Sweet.

**CORAAGIUM, or CORAAGE.** Measures of corn. An unusual and extraordinary tribute, arising only on special occasions. They are thus distinguished from services. Mentioned in connection with *hidage* and *carvage*. Cowell.

**CORAM.** Lat. Before; in presence of. Applied to persons only. Townsh. Pl. 22.

**CORAM DOMINO REGE.** Before our lord the king. *Coram domino rege ubicumque tunc fuerit Angliæ*, before our lord the king wherever he shall then be in England.

**CORAM IPSO REGE.** Before the king himself. The old name of the court of king's bench, which was originally held before the king in person. 3 Bl.Comm. 41.

**CORAM NOBIS.** Before us ourselves, (the king, *i. e.*, in the king's or queen's bench.) Applied to writs of error directed to another branch of the same court, *e. g.*, from the full bench to the court at *nisi prius*. 1 Archb. Pr. K. B. 234. See Writ of Error.

**CORAM NON JUDICE.** In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and the judgment is void. Manufacturing Co. v. Holt, 51 W.Va. 352, 41 S.E. 351.

**CORAM PARIBUS.** Before the peers or freeholders. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus*. 2 Bl.Comm. 307. *Coram paribus de vicineto*, before the peers or freeholders of the neighborhood. Id. 315.

**CORAM SECTATORIBUS.** Before the suitors. Cro. Jac. 582.

**CORAM VOBIS.** Before you. A writ of error directed by a court of review to the court which tried the cause, to correct an error in fact. 3 Md. 325; 3 Steph.Comm. 642. See Writ of Error.

**CORD.** A measure of wood containing 128 cubic feet, otherwise expressed as a pile of wood 8 feet long, 4 feet high, and 4 feet wide. Sacks v. State, 83 Tex.Cr.R. 560, 204 S.W. 430.

**CO-RESPONDENT.** A person summoned to answer a bill, petition, or libel, together with another respondent. Now chiefly used to designate the person charged with adultery with the respondent in a suit for divorce for that cause, and joined as a defendant with such party. Lowe v. Bennett, 27 Misc. 356, 58 N.Y.S. 88. Mortensen v. Los Angeles Examiner, 112 Cal.App. 194, 296 P. 927, 930.

**CORIUM FORISFACERE.** To forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping. Wharton.

**CORN.** In English law, a general term for any sort of grain; but in America it is properly applied only to maize. Sullins v. State, 53 Ala. 476; Kerrick v. Van Dusen, 32 Minn. 317, 20 N.W. 228; Com. v. Pine, 3 Pa.Law J. 412.

In the memorandum clause in policies of insurance it includes pease and beans, but not rice. Park, Ins. 112; Scott v. Bourdillion, 2 Bos. & P., N. R., 213.

**CORN LAWS.** A species of protective tariff formerly in existence in England, imposing import duties on various kinds of grain. The corn laws were abolished in 1846.

**CORN MEAL.** An unmixed meal made from entire grains of corn. *Miller Grain & Commission Co. v. International Sugar Feed No. 2 Co.*, 197 Ala. 100, 72 So. 368.

**CORN RENT.** A rent in wheat or malt paid on college leases by direction of St. 18 Eliz. c. 6. 2 Bl.Comm. 609.

**CORN WHISKY.** An intoxicating whisky or liquor made from corn or containing a corn product, otherwise known as "moonshine," "white mule," "hootch," "corn liquor," "moonshine corn whisky." *State v. Bilyeu*, Mo.Sup., 295 S.W. 104, 105; *State v. Pinto*, 312 Mo. 99, 279 S.W. 144, 148; *Mullins v. Commonwealth*, 115 Va. 945, 79 S.E. 324, 327.

**CORNAGE.** A species of tenure in England, by which the tenant was bound to blow a horn for the sake of alarming the country on the approach of an enemy. It was a species of grand serjeanty. *Bac. Abr.* "Tenure," N.

**CORNER.** A combination among the dealers in a specific commodity, or outside capitalists, for the purpose of buying up the greater portion of that commodity which is upon the market or may be brought to market, and holding the same back from sale, until the demand shall so far outrun the limited supply as to advance the price abnormally. *Kirkpatrick v. Bonsall*, 72 Pa. 158; *Wright v. Cudahy*, 168 Ill. 86, 48 N.E. 39; *United States v. Patten*, C.C.N.Y., 187 F. 664, 668.

A "corner" is a condition arising when a much greater quantity of any given commodity is sold for future delivery within a given period than can be purchased in the market. The buyers, who are called in the slang of the exchanges, the "longs," then insist on delivery, and thus succeed in running up the prices to a fictitious point, at which the deals are "rung out" between the dealers by the payment of differences, or, where the buyers insist, by actual delivery. *Kent v. Miltenberger*, 13 Mo.App. 503, 506.

**Surveying.** An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other.

**Lost corner.** One whose location as established by the government surveyors cannot be found. The mere fact that evidence of the physical location cannot now be seen, or that no one who saw the marked corner is produced, does not necessarily make the corner a lost one. *Goroski v. Tawney*, 121 Minn. 189, 141 N.W. 102, 103; *Cooper v. Quade*, 191 Iowa, 461, 182 N.W. 798, 799; *Fehrman v. Bissell Lumber Co.*, 188 Wis. 82, 204 N.W. 582.

**Obliterated corner.** One where no visible evidence remains of the work of the original surveyor in establishing it. *Fellows v. Willett*, 98 Okl. 248, 224 P. 298, 300; *Fehrman v. Bissell Lumber Co.*, 188 Wis. 82, 204 N.W. 582.

**CORNET.** A commissioned officer of cavalry, abolished in England in 1871, and not existing in the United States army.

**CORODIO HABENDO.** The name of a writ to exact a corody of an abbey or religious house.

**CORODIUM.** In old English law. A corody.

**CORODY.** In old English law. A sum of money or allowance of meat, drink, and clothing due to the crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice. *Fitzh. Nat. Brev.* 250. See 1 Bl.Comm. 283.

**COROLLARY.** In logic. A collateral or secondary consequence, deduction, or inference.

**CORONA.** The crown. *Placita coronæ*; pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor.

**CORONA MALA.** In old English law. The clergy who abuse their character were so called. *Blount*.

**CORONARE.** In old records. To give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest. *Cowell*.

**CORONARE FILIUM.** To make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns. *Cowell*.

**CORONATION.** It "is but a royal ornament and solemnization of the royal descent, but no part of the title." By the laws of England there can be no interregnum; 7 Co.Rep. 10b.

**CORONATION OATH.** The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty, in acknowledgment of his right to govern the kingdom, in which he swears to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto. *Wharton*.

**CORONATOR.** A coroner, (*q. v.*) *Spelman*.

**CORONATORE ELIGENDO.** The name of a writ issued to the sheriff, commanding him to proceed to the election of a coroner.

**CORONATORE EXONERANDO.** In English law. The name of a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it.

**CORONER.** The name of an ancient officer of the common law, whose office and functions are continued in modern English and American administration. The coroner is an officer belonging to each county, and is charged with duties both judicial and ministerial, but chiefly the former. It is his special province and duty to make inquiry into the causes and circumstances of any death happening within his territory which occurs through violence or suddenly and with marks of

## CORONER'S

suspicion. This examination (called the "coroner's inquest") is held with a jury of proper persons upon view of the dead body. See Bract. fol. 121; 1 Bl.Comm. 346-348; 3 Steph.Comm. 33. In England, another branch of his judicial office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning treasure trove, who were the finders, and where it is, and whether any one be suspected of having found and concealed a treasure. 1 Bl.Comm. 349. It belongs to the ministerial office of the coroner to serve writs and other process, and generally to discharge the duties of the sheriff, in case of the incapacity of that officer or a vacancy in his office. On the office and functions of coroners, see, further, Cox v. Royal Tribe, 42 Or. 365, 71 Pac. 73, 60 L.R.A. 620; Lancaster County v. Holyoke, 37 Neb. 328, 55 N.W. 950, 21 L.R.A. 394.

**CORONER'S COURT.** In England. A tribunal of record, where a coroner holds his inquiries. Cox v. Royal Tribe, 42 Or. 365, 71 P. 73, 60 L.R.A. 620.

**CORONER'S INQUEST.** An inquisition or examination into the causes and circumstances of any death happening by violence or under suspicious conditions within his territory, held by the coroner with the assistance of a jury. Boisliniere v. County Com'rs, 32 Mo. 378; Ehlers v. Blood, 175 Misc. 72, 22 N.Y.S.2d 1001, 1005.

**CORPORAL.** Relating to the body; bodily. Should be distinguished from corporeal (*q. v.*)

**CORPORAL IMBECILITY.** Physical inability to perform completely the act of sexual intercourse; not necessarily congenital, and not invariably a permanent and incurable impotence. Griffeth v. Griffeth, 162 Ill. 368, 44 N.E. 820.

**CORPORAL OATH.** An oath, the external solemnity of which consists in laying one's hand upon the Gospels while the oath is administered to him. More generally, a solemn oath. Jackson v. State, 1 Ind. 185; State v. Norris, 9 N.H. 102; Com. v. Jarboe, 89 Ky. 143, 12 S.W. 138.

The terms "corporal oath" and "solemn oath" are, in Indiana, at least, used synonymously; and an oath taken with the uplifted hand may be properly described by either term.

**CORPORAL PUNISHMENT.** Physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body, such as whipping or the pillory; the term may or may not include imprisonment, according to the context. Ritchey v. People, 22 Colo. 251, 43 P. 1026; Fowler v. American Mail Line, C. C.A.Cal., 69 F.2d 905, 907.

The use of rubber hose or other weapon to suppress a threatened riot or to prevent prisoner from doing bodily harm to an officer or another inmate is not corporal punishment. O'Brien v. Olson, 42 Cal.App.2d 449, 109 P.2d 8, 16.

**CORPORAL TOUCH.** Bodily touch; actual physical contact; manual apprehension.

**CORPORALE SACRAMENTUM.** In old English law. A corporal oath.

**CORPORALIS INJURIA NON RECIPIT ÆSTIMATIONEM DE FUTURO.** A personal injury does not receive satisfaction from a future course of proceeding, [is not left for its satisfaction to a future course of proceeding.] Bac. Max. reg. 6; Broom, Max. 278.

**CORPORATE.** Belonging to a corporation; as a corporate name. Incorporated; as a corporate body.

**CORPORATE ACT OR MINISTERIAL ACT OF MUNICIPAL CORPORATION.** For which it can be held liable is act which is done by virtue of powers exercised for municipality's own advantage or in negligent performance of duty specifically imposed by statute. Broome v. City of Charlotte, 208 N.C. 729, 182 S.E. 325, 326.

**CORPORATE ALTER EGO, DOCTRINE OF.** Means that courts ignoring forms and looking to substance will regard stockholders as owners of corporation's property, or as the real parties in interest whenever it is necessary to do so to prevent fraud which might otherwise be perpetrated, to redress a wrong which might otherwise go without redress, or to do justice which might otherwise fail. Geary v. Cain, 79 Utah 268, 9 P. 2d 396, 398.

**CORPORATE AUTHORITIES.** The title given in statutes of several states to the aggregate body of officers of a municipal corporation, or to certain of those officers (excluding the others) who are vested with authority in regard to the particular matter spoken of in the statute, as, taxation, bonded debt, regulation of the sale of liquors, etc. See People v. Knopf, 171 Ill. 191, 49 N.E. 424; State v. Andrews, 11 Neb. 523, 10 N.W. 410; White v. Papillion Drainage Dist., 96 Neb. 241, 147 N.W. 218, 219; Schaeffer v. Bonham, 95 Ill. 382.

**CORPORATE BODY.** This term, or its equivalent "body corporate," is applied to private corporations aggregate; not including municipal corporations. Cedar County v. Johnson, 50 Mo. 225; East Oakland Tp. v. Skinner, 94 U.S. 256, 24 L.Ed. 125; County Board of Education for Houston County v. Hunt, 29 Ga.App. 665, 116 S.E. 900.

**CORPORATE BONDS.** A written promise by a corporation under seal to pay a fixed sum of money at some future time named, with stated interest payable at some fixed time or intervals, given in return for money or its equivalent received by the corporation, sometimes secured, and sometimes not. Hammond Lumber Co. v. Adams, 7 Cal.2d 24, 59 P.2d 1030, 1031.

**CORPORATE FRANCHISE.** The right to exist and do business as a corporation; the right or privilege granted by the state or government to the persons forming an aggregate private corporation, and their successors, to exist and do business as a corporation and to exercise the rights and powers incidental to that form of organiza-

tion or necessarily implied in the grant. *Bank of California v. San Francisco*, 142 Cal. 276, 75 Pac. 832, 64 L.R.A. 918; *State on inf. Wear v. Business Men's Athletic Club*, 178 Mo.App. 548, 163 S.W. 901, 907.

**CORPORATE LEGAL INDIVIDUAL.** Municipal corporation possesses two kinds of power, governmental and public, and proprietary and private, and in exercise of former, corporation is a "municipal government," while as to latter, it is a "corporate legal individual." *Herkimer County v. Village of Herkimer*, 251 App.Div. 126, 295 N.Y.S. 629, 633.

**CORPORATE NAME.** When a corporation is erected, a name is always given to it, or, supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. *Wharton*.

**CORPORATE PURPOSE.** In reference to municipal corporations, and especially to their powers of taxation, a "corporate purpose" is one which shall promote the general prosperity and the welfare of the municipality. *Dickinson v. Salt Lake City*, 57 Utah 530, 195 P. 1110, 1111; *City of Quitman v. Jelks & McLeod*, 139 Ga. 238, 77 S.E. 76; *People ex rel. Moshier v. City of Springfield*, 370 Ill. 541, 19 N.E.2d 598, 602; or a purpose necessary or proper to carry into effect the object of the creation of the corporate body, *People v. School Trustees*, 78 Ill. 140; or one which is germane to the general scope of the objects for which the corporation was created or has a legitimate connection with those objects and a manifest relation thereto. *Weightman v. Clark*, 103 U.S. 256, 26 L. Ed. 392; *Denman v. City of Tacoma*, 170 Wash. 406, 16 P.2d 596, 597.

**CORPORATION.** An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. *Dartmouth College v. Woodward*, 4 Wheat. 518, 636, 657, 4 L.Ed. 629; *U. S. v. Trinidad Coal Co.*, 137 U.S. 160, 11 S.Ct. 57, 34 L.Ed. 640; *Andrews Bros. Co. v. Youngstown Coke Co.*, 86 F. 585, 30 C.C.A. 293; *Porter v. Railroad Co.*, 76 Ill. 573; *Nebraska Wheat Growers' Ass'n v. Smith*, 115 Neb. 177, 212 N.W. 39, 44; *State v. Thistle*

*Down Jockey Club*, 114 Ohio St. 582, 151 N.E. 709, 711; *Congdon v. Congdon*, 160 Minn. 343, 200 N.W. 76, 87; *Forest City Mfg. Co. v. International Ladies' Garment Workers' Union*, Local No. 104, 233 Mo.App. 935, 111 S.W.2d 934; *In re Crown Heights Hospital*, 183 Misc. 563, 49 N.Y.S.2d 658, 660; *Froelich and Kuttner, of Manila, P. I., v. Sutherland*, 57 App.D.C. 294, 22 F.2d 870, 872.

A franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. 2 *Kent*, Comm. 267.

An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a "corporation sole," ) or of a collection of several individuals, (which is termed a "corporation aggregate.") 3 *Steph.Comm.* 166; 1 *Bl.Comm.* 467, 469. An intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals who compose it, and which, for certain purposes, is considered a natural person. *Civil Code La. art. 427*.

A "corporation" is more nearly a method than a thing, and the law, in dealing with a corporation, need not define it as a person or entity, or even as an embodiment of functions, rights, and duties. *Farmers' Loan & Trust Co. v. Pierson*, 222 N.Y.S. 532, 543, 130 Misc. 110.

The statement that a "corporation" is an artificial person or entity, apart from its members, is merely a description, in figurative language, of a corporation viewed as a collective body. *McIntosh v. Dakota Trust Co.*, 52 N.D. 752, 204 N.W. 818, 825, 40 A.L.R. 1021.

A corporation is a collection of natural persons, joined together by their voluntary action or by legal compulsion, by or under the authority of an act of the Legislature, consisting either of a special charter or of a general permissive statute, to accomplish some purpose, pecuniary, ideal, or governmental, authorized by the charter or governing statute. *State v. Knights of Ku Klux Klan*, 117 Kan. 564, 232 P. 254, 257, 37 A.L.R. 1267.

**Classification**

According to the accepted definitions and rules, corporations are classified as follows:

**Public and private.** A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil government, generally within a particular territory or subdivision of the state, and usually invested, for that purpose, with subordinate and local powers of legislation; such as a county, city, town, or school district. These are also sometimes called "political corporations." *Goodwin v. East Hartford*, 70 Conn. 18, 38 A. 876; *Dean v. Davis*, 51 Cal. 409; *Ten Eyck v. Canal Co.*, 18 N.J. Law, 200, 37 Am.Dec. 233; *Murphy v. Mercer County*, 57 N.J.Law, 245, 31 A. 229; *Van Campen v. Olean General Hospital*, 210 App.Div. 204, 205 N.Y.S. 554, 555; *Providence Engineering Corporation v. Downey Shipbuilding Corporation*, C.C.A. N.Y., 294 F. 641, 646; *National Bank of Commerce in New Orleans v. Board of Sup'rs of La. State University and Agricultural and Mechanical College*, 206 La. 913, 20 So.2d 264, 269.

Private corporations are those founded by and composed of private individuals, for private pur

## CORPORATION

poses, as distinguished from governmental purposes, and having no political or governmental franchises or duties. *Santa Clara County v. Southern Pac. R. Co.*, C.C.Cal., 18 F. 385, 402; *People v. McAdams*, 82 Ill. 361; *Providence Engineering Corporation v. Downey Shipbuilding Corporation*, C.C.A.N.Y., 294 F. 641, 648.

The true distinction between public and private corporations is that the former are organized for governmental purposes, the latter not. The term "public" has sometimes been applied to corporations of which the government owned the entire stock, as in the case of a state bank. But bearing in mind that "public" is here equivalent to "political," it will be apparent that this is a misnomer. Again the fact that the business or operations of a corporation may directly and very extensively affect the general public (as in the case of a railroad company or a bank or an insurance company) is no reason for calling it a public corporation. If organized by private persons for their own advantage,—or even if organized for the benefit of the public generally, as in the case of a free public hospital or other charitable institution,—it is none the less a private corporation, if it does not possess governmental powers or functions. The uses may in a sense be called "public," but the corporation is "private," as much so as if the franchises were vested in a single person. *Dartmouth College v. Woodward*, 4 Wheat. 562, 4 L.Ed. 629; *Ten Eyck v. Canal Co.*, 18 N.J.Law, 204, 37 Am.Dec. 233. It is to be observed, however, that those corporations which serve the public or contribute to the comfort and convenience of the general public, though owned and managed by private interests, are now (and quite appropriately) denominated "public-service corporations." See *infra*. Another distinction between public and private corporations is that the former are not voluntary associations (as the latter are) and that there is no contractual relation between the government and a public corporation or between the individuals who compose it. *Mor.Priv.Corp.* § 3; *Goodwin v. East Hartford*, 70 Conn. 18, 38 A. 876.

The terms "public" and "municipal," as applied to corporations, are not convertible. All municipal corporations are public, but not vice versa. *Brown v. Board of Education*, 108 Ky. 783, 57 S.W. 612. But there may also be "public" corporations which are not "municipal" even in this wider sense of the latter term. Such, according to some of the authorities, are the "irrigation districts" now known in several of the western states. *Irrigation Dist. v. Collins*, 46 Neb. 411, 64 N.W. 1086. Compare *Herring v. Modesta Irrigation Dist.*, C.C.Cal., 95 F. 705.

**Ecclesiastical and lay.** In the English law, all corporations private are divided into ecclesiastical and lay, the former being such corporations as are composed exclusively of ecclesiastics organized for spiritual purposes, or for administering property held for religious uses, such as bishops and certain other dignitaries of the church and (formerly) abbeys and monasteries. 1 Bl. Comm. 470. Lay corporations are those composed of laymen, and existing for secular or business purposes. This distinction is not recognized in American law. Corporations formed for the purpose of maintaining or propagating religion or of supporting public religious services, according to the rites of particular denominations, and incidentally owning and administering real and personal property for religious uses, are called "religious corporations," as distinguished from business corporations; but they are "lay" corporations, and not "ecclesiastical" in the sense of the English law. *Robertson v. Bullions*, 11 N.Y. 243.

**Eleemosynary and civil.** Lay corporations are classified as "eleemosynary" and "civil;" the former being such as are created for the distribution of alms or for the administration of charities or

for purposes falling under the description of "charitable" in its widest sense, including hospitals, asylums, and colleges; the latter being organized for the facilitating of business transactions and the profit or advantage of the members. 1 Bl.Comm. 471; *Dartmouth College v. Woodward*, 4 Wheat. 660, 4 L.Ed. 629.

In the law of Louisiana, the term "civil" as applied to corporations, is used in a different sense, being contrasted with "religious." Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions. Civ.Code La. art. 431.

**Aggregate and sole.** A corporation sole is one consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 Steph.Comm. 168, 169; *First Parish v. Dunning*, 7 Mass. 447; *Reid v. Barry*, 93 Fla. 849, 112 So. 846, 859.

A corporation aggregate is one composed of a number of individuals vested with corporate powers; and a "corporation," as the word is used in general popular and legal speech, and as defined at the head of this title, means a "corporation aggregate."

**Domestic and foreign.** With reference to the laws and the courts of any given state, a "domestic" corporation is one created by, or organized under, the laws of that state; a "foreign" corporation is one created by or under the laws of another state, government, or country. In re *Grand Lodge*, 110 Pa. 613, 1 A. 582; *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667, 669; In re *Ewles' Estate*, 105 Utah 507, 143 P.2d 903, 905.

**Close and open.** A "close" corporation is one in which the directors and officers have the power to fill vacancies in their own number, without allowing to the general body of stockholders any choice or vote in their election. An "open" corporation is one in which all the members or corporators have a vote in the election of the directors and other officers. *McKim v. Odom*, 3 Bland, Md., 416.

A close corporation is one which fills its own vacancies or in which power of voting is held through manipulation under fixed and virtually perpetual proxies. *Brooks v. Willcuts*, C.C.A.Minn., 78 F.2d 270, 273.

**Subsidiary and parent.** Subsidiary corporation is one in which another corporation (called parent corporation) owns at least a majority of the shares, and thus has control. *Wheeler v. New York, N. H. and H. R. Co.*, 112 Conn. 510, 153 A. 159, 160; *International Order of Twelve Knights and Daughters of Tabor v. Fridia*, Tex.Civ.App., 91 S.W.2d 404.

**Other Compound and Descriptive Terms**

**A business corporation.** One formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit; contrasted with religious, charitable, educational, and other like organizations, which are sometimes grouped in the statutory law of a state under the general designation of "corporations not for profit." *Winter v. Railroad Co.*, 30 Fed.Cas. 329; *McLeod v. College*, 69 Neb. 550, 96 N.W. 265.

**Corporation de facto.** One existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute; an association of men claiming to be a legally incorporated company, and exercising the powers and functions of a corporation, but without actual lawful authority to do so. *Foster v. Hare*, 26 Tex. Civ.App. 177, 62 S.W. 541; *Cedar Rapids Water Co. v. Cedar Rapids*, 118 Iowa, 234, 91 N.W. 1081; *Tulare Irrig. Dist. v. Shepard*, 185 U.S. 1, 22 S.Ct. 531, 46 L.Ed. 773; *Evens v. Anderson*, 132 Minn. 59, 155 N.W. 1040, 1041.

Its elements are a law or charter authorizing such a corporation, an attempt in good faith to comply with law authorizing its incorporation, and unintentional omission of essential requirements of the law or charter, and exercise in good faith of corporate functions under the law or charter. *Richmond v. Town of Largo*, 155 Fla. 226, 19 So.2d 791, 793.

**Corporation de jure.** That which exists by reason of full compliance by incorporators with requirements of an existing law permitting organization of such corporation; it is impregnable to assault in the courts from any source. *Henderson v. School Dist. No. 44*, 75 Mont. 154, 242 P. 979, 980.

**Joint-stock corporation.** This differs from a joint-stock *company* in being regularly incorporated, instead of being a mere partnership, but resembles it in having a capital divided into shares of stock. Most business corporations (as distinguished from eleemosynary corporations) are of this character.

A "joint-stock corporation" is one organized under a general statute authorizing the creation of such corporations and providing the procedure for creating it, and is distinguished from a "corporation" created by special resolution or act of the Legislature, which resolution or act is the charter of the corporation, when accepted, and the corporation organized thereunder, and the corporation is a chartered corporation, as distinguished from a joint-stock corporation. *Barber v. Morgan*, 89 Conn. 583, 94 A. 984, 986, Ann.Cas.1916E, 102.

**Migratory corporation.** A corporation, organized under laws of another state than that of incorporators' residence for purpose of doing all or greater part of their business in state of their residence or in other state than that of incorporation. *Toklan Royalty Corporation v. Tiffany*, 193 Okl. 120, 141 P.2d 571, 573.

**Moneyed corporations** are, properly speaking, those dealing in money or in the business of receiving deposits, loaning money, and exchange;

but in a wider sense the term is applied to all business corporations having a money capital and employing it in the conduct of their business. *Mutual Ins. Co. v. Erie County*, 4 N.Y. 444; *In re California Pac. R. Co.*, 4 Fed.Cas. 1,060; *Hobbs v. National Bank*, C.C.A.N.Y., 101 F. 75, 41 C.C.A. 205.

**Municipal corporations.** See that title.

**Public-service corporations.** Those whose operations serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroads, gas, water, and electric light companies. The business of such companies is said to be "affected with a public interest," and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this character. *Washington & C. Ry. Co. v. Mobile & O. R. Co.*, C.C.A.Ala., 255 F. 12, 14.

**Quasi corporations.** Organizations resembling corporations; municipal societies or similar bodies which, though not true corporations in all respects, are yet recognized, by statutes or immemorial usage, as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may be maintained, by suits at law. They may be considered *quasi* corporations, with limited powers, co-extensive with the duties imposed upon them by statute or usage, but restrained from a general use of the authority which belongs to those metaphysical persons by the common law. *Scates v. King*, 110 Ill. 456; *Barnes v. District of Columbia*, 91 U.S. 552, 23 L.Ed. 440.

This term is lacking in definiteness and precision. It appears to be applied indiscriminately (a) to all kinds of municipal corporations, the word "quasi" being introduced because it is said that these are not voluntary organizations like private corporations, but created by the legislature for its own purposes and without reference to the wishes of the people of the territory affected; (b) to all municipal corporations except cities and incorporated towns, the latter being considered the only true municipal corporations because they exist and act under charters or statutes of incorporation while counties, school districts, and the like are merely created or set off under general laws; (c) to municipal corporations possessing only a low order of corporate existence or the most limited range of corporate powers, such as hundreds in England, and counties, villages, and school districts in America.

A term applied to those bodies, or municipal societies, which, though not vested with the general powers of corporations, are yet recognized, by statutes or immemorial usage, as persons, or aggregate corporations, with precise duties, which may be enforced, and privileges, which may be maintained, by suits at law. *State v. Hagen*, 136 La. 868, 67 So. 935, 936.

There is a well-defined and marked distinction between municipal corporations proper and political or quasi corporations. Cities, towns, and villages are municipal corporations proper, while counties, townships, school districts, road districts, and the like are quasi corporations. *City of East Cleveland v. Board of Education of City School Dist. of East Cleveland*, 112 Ohio St. 607, 148 N.E. 350, 351.

"Quasi corporation" is a phrase used to designate bodies which possess a limited number of corporate powers, and which are low down in the scale or grade of corporate existence, and is generally applied to a body which exercises certain functions of a corporate character, but which has not been created a corporation by any statute, general or special. *Eakle v. Board of Education of Independent School Dist. of Henry*, 97 W.Va. 434, 125 S.E. 165, 167.



## CORPORATION

**Quasi public corporation.** This term is sometimes applied to corporations which are not strictly public, in the sense of being organized for governmental purposes, but whose operations contribute to the comfort, convenience, or welfare of the general public, such as telegraph and telephone companies, gas, water, and electric light companies, and irrigation companies. More commonly and more correctly styled "public-service corporations." *Wiemer v. Louisville Water Co.*, C.C.Ky., 130 F. 251; *Campbell v. Watson*, 62 N.J. Eq. 396, 50 A. 120; *Burgess v. City of Brockton*, 235 Mass. 95, 126 N.E. 456, 460; *Van Valkenburgh v. Ford*, Tex.Civ.App., 207 S.W. 405, 414; *Borough of Mt. Union v. Kunz*, 290 Pa. 356, 139 A. 118, 121.

There is a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. This class of corporations is known as public service corporations, and in legal phraseology as "quasi public corporations," or corporations affected with a public interest. A "quasi public corporation" may be said to be a private corporation which has given to it certain powers of a public nature, such, for instance, as the power of eminent domain, in order to enable it to discharge its duties for the public benefit, in which respect it differs from an ordinary private corporation, the powers of which are given and exercised for the exclusive advantage of its stockholders. *State ex rel. Coco v. Riverside Irr. Co.*, 142 La. 10, 76 So. 216, 218.

The term is also applied to corporations of that class sometimes called "quasi municipal corporations," such as school districts; *Courtright v. Consolidated Independent School Dist. of Mapleton*, 203 Iowa, 26, 212 N.W. 368, 369; road districts; *Road Improvement Dist. No. 7 of Poinsett County, Ark.*, v. *Guardian Savings & Trust Co.*, C.C.A. Ark., 298 F. 272, 274; *Taylor Coal Co. v. Board of Drainage Com'rs of Ohio County*, 189 Ky. 793, 225 S.W. 368, 369; irrigation districts; *Bonneville Irr. Dist. v. Ririe*, 57 Utah, 306, 195 P. 204, 205; and counties, townships, etc. *Forbes Pioneer Boat Line v. Board of Com'rs of Everglades Drainage Dist.*, 77 Fla. 742, 82 So. 346, 350.

**Spiritual corporations.** Corporations, the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

**Trading corporations.** A commercial corporation engaged in buying and selling. The word "trading," is much narrower in scope than "business," as applied to corporations, and though a trading corporation is a business corporation, there are many business corporations which are not trading companies. *Dartmouth College v. Woodward*, 4 Wheat. 669, 4 L.Ed. 629; *Adams v. Railroad Co.*, 1 Fed.Cas. 92.

**Tramp corporations.** Companies chartered in one state without any intention of doing business therein, but which carry on their business and operations wholly in other states. *State v. Georgia Co.*, 112 N.C. 34, 17 S.E. 10, 19 L.R.A. 485.

### Synonyms

The words "company" and "corporation" are commonly used as interchangeable terms. In strictness, however, a company is an association of persons for business or other purposes, embracing a considerable number of individuals, which may or may not be incorporated. In the former case, it is legally a partnership or a joint-stock company; in the latter case, it is properly

called a "corporation." *Goddard v. Railroad Co.*, 202 Ill. 362, 66 N.E. 1066. For the particulars in which corporations differ from "Joint-Stock Companies" and "Partnerships," see those titles.

**CORPORATION ACT.** In English law. The statute 13 Car. II. St. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person so elected was also required to take the oaths of allegiance and supremacy. 3 Steph.Comm. 103, 104; 4 Bl.Comm. 58. This statute is now repealed. 4 Steph.Comm. 511.

**CORPORATION COURTS.** Certain courts in Virginia described as follows: "For each city of the state, there shall be a court called a 'corporation court,' to be held by a judge, with like qualifications and elected in the same manner as judges of the county court." Code Va.1887, § 3050, Code 1919, § 5905.

**CORPORATOR.** A member of a corporation aggregate. *Grant, Corp.* 48; *Seaborn v. Wingfield*, 56 Nev. 260, 48 P.2d 881, 883.

**CORPORE ET ANIMO.** Lat. By the body and by the mind; by the physical act and by the mental intent. Dig. 41, 2, 3.

**CORPOREAL.** A term descriptive of such things as have an objective, material existence; perceptible by the senses of sight and touch; possessing a real body. Opposed to incorporeal and spiritual. *Sullivan v. Richardson*, 33 Fla. 1, 14 So. 692; *Bourland v. State*, 133 Tex.Cr.R. 544, 112 S.W.2d 720, 721.

There is a distinction between "corporeal" and "corporal." The former term means "possessing a body," that is, tangible, physical, material; the latter means "relating to or affecting a body," that is, bodily, external. Corporeal denotes the nature or physical existence of a body; corporal denotes its exterior or the co-ordination of it with some other body. Hence we speak of "corporeal hereditaments," but of "corporal punishment," "corporal touch," "corporal oath," etc.

**CORPOREAL HEREDITAMENTS.** See Hereditaments.

**CORPOREAL PROPERTY.** Such as affects the senses, and may be seen and handled, as opposed to incorporeal property, which cannot be seen or handled, and exists only in contemplation. *Mozley & Whitley*.

Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if movable, capable of manual transfer; if immovable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing.

In Roman law, the distinction between things corporeal and incorporeal rested on the sense of touch; tangible objects only were considered corporeal. In modern law, all things which may be perceived by any of the bodily senses are termed corporeal, although a common definition of the word includes merely that which can be touched and seen. 14a C.J. 1424 (citing *Abbott's Dict.*). *Marnett Oil & Gas Co. v. Munsey*, Tex.Civ.App., 232 S.W. 867, 869; *Sullivan v. Richardson*, 33 Fla. 1, 116, 14 So. 692.

The term "property," however, is a generic term of extensive application. 32 Cyc. 647. In its strict legal sense, "property" is nothing but the right of dominion, possession, and disposition which may be acquired over physical things. *Braceville Coal Co. v. People*, 147 Ill. 66, 35 N.E. 62, 22 L.R.A. 340; *Fears v. State*, 102 Ga. 274, 29 S.E. 463; *De Lauder v. Baltimore County*, 94 Md. 1, 50 A. 427. It follows that from that point of view, there is no such thing as "tangible" property or "corporeal" property, and the only meaning which can in law be given to the expression "corporeal property" is the right to possess, use, occupy, and enjoy corporeal things and take the profits thereof. *Transcontinental Oil Co. v. Emmerson*, 298 Ill. 394, 131 N.E. 645, 648, 16 A.L.R. 507.

**CORPS DIPLOMATIQUE.** In international law. Ambassadors and diplomatic persons at any court or capital.

**CORPSE.** The dead body of a human being. 1 Russ. & R. 366, n.; 2 Term 733; 1 Leach 497; *Com. v. Loring*, 8 Pick., Mass., 370; Dig. 47. 12. 3. 7; 11. 7. 38; Code, 3. 44. 1; Co. 3d Inst. 203; 1 Russ.Cr. 629.

**CORPUS.** (Lat.) Body; an aggregate or mass, (of men, laws, or articles;) physical substance, as distinguished from intellectual conception; the principal sum or capital, as distinguished from interest or income. In *re Barron's Will*, 163 Wis. 275, 155 N.W. 1087, 1089; *United States Trust Co. of New York v. Heye*, 181 App.Div. 544, 168 N.Y.S. 1051, 1057; *Macy v. Ladd*, 128 Misc. 732, 219 N.Y.S. 449, 460; In *re Schley*, 181 App.Div. 931, 173 N.Y.S. 317, 319.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offense) is the fact of its having been actually committed. Best, Pres. 269-279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing, whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense in the civil law. *Mackeld. Rom.Law*, § 248.

**Corpus comitatus.** The body of a county. The whole county, as distinguished from a part of it, or any particular place in it. *U. S. v. Grush*, 5 Mason, 290, Fed.Cas.No.15,268.

**Corpus corporatum.** A corporation; a corporate body, other than municipal.

**Corpus cum causa.** (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. *Cowell; Blount*.

**Corpus delicti.** The body of a crime. The body (material substance) upon which a crime has been committed, *e. g.*, the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed. *People v. Dick*, 37 Cal. 281;

*White v. State*, 49 Ala. 347; *Goldman v. Com.*, 100 Va. 865, 42 S.E. 923; *State v. Schyhart*, Mo. Sup., 199 S.W. 205, 211; *State v. Brown*, 103 S.C. 437, 88 S.E. 21, 22, L.R.A.1916D, 1295; *State v. Johnson*, 95 Utah 572, 83 P.2d 1010, 1014. When applied to any particular offense, the actual commission by some one of particular offense charged. *Gorum v. State*, 60 Okl.Cr. 248, 63 P.2d 765, 766.

**Corpus pro corpore.** In old records. Body for body. A phrase expressing the liability of manufacturers. 3 How.State Tr. 110.

**CORPUS CHRISTI DAY.** In English law. A feast instituted in 1264, in honor of the sacrament. 32 Hen. VIII. c. 21.

**CORPUS HUMANUM NON RECIPIT ÆSTIMATIONEM.** The human body does not admit of valuation. Hob. 59.

**CORPUS JURIS.** A body of law. A term used to signify a book comprehending several collections of law. There are two principal collections to which this name is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*. Also name of an encyclopædic statement of the principles of Anglo-American law.

**Corpus juris canonici.** The body of the canon law. A compilation of the canon law, comprising the decrees and canons of the Roman Church, constituting the body of ecclesiastical law of that church.

**Corpus juris civilis.** The body of the civil law. The system of Roman jurisprudence compiled and codified under the direction of the emperor Justinian, in A.D. 528-534. This collection comprises the Institutes, Digest, (or Pandects,) Code, and Novels. The name is said to have been first applied to this collection early in the seventeenth century.

**CORRECT ATTEST.** These words, used before the signatures of bank directors to reports made to the commissioner of banking, mean not alone to bear witness, but to affirm to be true or genuine, and such words are appropriately used for the affirmation of persons in their official capacity to attest the truth of a writing. *Eland State Bank v. Massachusetts Bonding & Ins. Co.*, 165 Wis. 493, 162 N.W. 662, 663.

**CORRECTED POLICY.** Policy issued after investigation of risk to correct misstatements in policy first issued. *Sherri v. National Surety Co.*, of New York, 243 N.Y. 266, 153 N.E. 70, 71.

**CORRECTION.** Discipline; chastisement administered by a master or other person in authority to one who has committed an offense, for the purpose of curing his faults or bringing him into proper subjection.

**CORRECTION, HOUSE OF.** A prison for the reformation of petty or juvenile offenders.

**CORRECTOR OF THE STAPLE.** In old English law. A clerk belonging to the staple, to write and record the bargains of merchants there made.

## CORREGIDOR

**CORREGIDOR.** In Spanish law. A magistrate who took cognizance of various misdemeanors, and of civil matters. 2 White, New Recop. 53.

**CORREI.** Lat. In the civil law. Co-stipulators; joint stipulators.

**CORREI CREDENDI.** In the civil and Scotch law. Joint creditors; creditors *in solido*. Poth. Obl. pt. 2, c. 4, art. 3, § 11.

**CORREI DEBENDI.** In Scotch law. Two or more persons bound as principal debtors to another. Ersk.Inst. 3, 3, 74.

**CORRELATIVE.** Having a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the existence of the other. *Father* and *son* are correlative terms. *Claim* and *duty* are correlative terms.

**CORRESPONDENCE.** Interchange of written communications. The letters written by a person and the answers written by the one to whom they are addressed.

**CORROBORATE.** To strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence. *Lassiteo v. Seaboard Air Line Ry. Co.*, 171 N.C. 283, 88 S.E. 335, 337; *Bradley v. State*, 19 Ala.App. 578, 99 So. 321, 322; *Holmes v. State*, 70 Tex.Cr.R. 423, 157 S.W. 487, 493; *State v. Fullerton Lumber Co.*, 35 S.D. 410, 152 N.W. 708, 715; *Kincaid v. State*, 131 Tex.Cr. R. 101, 97 S.W.2d 175, 177.

The expression "corroborating circumstances" clearly does not mean facts which, independent of a confession, will warrant a conviction; for then the verdict would stand not on the confession, but upon those independent circumstances. To corroborate is to strengthen, to confirm by additional security, to add strength. The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness, or to comport with some facts otherwise known or established. Corroborating circumstances, then, used in reference to a confession, are such as serve to strengthen it, to render it more probable; such, in short, as may serve to impress a jury with a belief in its truth. *State v. Guild*, 10 N.J.Law, 163, 18 Am.Dec. 404.

**CORROBORATING EVIDENCE.** Evidence supplementary to that already given and tending to strengthen or confirm it; additional evidence of a different character to the same point. In re *Cardoner's Estate*, 27 N.M. 105, 196 P. 327, 328; *State v. Smith*, 75 Mont. 22, 241 P. 522, 523; *People v. Follette*, 74 Cal.App. 178, 240 P. 502, 519; *Radcliffe v. Chavez*, 15 N.M. 258, 110 P. 699, 701.

**CORROBORATIVE EVIDENCE.** See Corroborating Evidence.

**CORRUPT.** Spoiled; tainted; vitiated; depraved; debased. Webster.

**CORRUPT INTENT.** A "corrupt intent," as an element of usury, consists in the charging or receiving of excessive interest with knowledge that it is prohibited by law and the purpose to violate the law. *Ector v. Osborne*, 179 N.C. 667, 103 S.E. 388, 389, 13 A.L.R. 1207; *Teshner v. Roome*, 106 Or. 382, 212 P. 473, 474. But see *Dege v. Produce Exchange Bank of St. Paul*, 212 Minn. 44, 2 N.W.

2d 423, 425, which only requires intent to receive more than the law permits for forbearance of money, but does not require that taker knows that he is violating usury law.

**CORRUPT PRACTICES ACT.** The Act of June 25, 1910, c. 392, 36 Stat. 822, which, like the English act of 1883 and supplements, dealt with "corrupt and illegal practices" in connection with elections, and which was repealed by the "Federal Corrupt Practices Act" of Feb. 28, 1925, c. 368, Title III, 2 U.S.C.A. § 241 et seq.

**CORRUPTIO OPTIMI EST PESSIMA.** Corruption of the best is worst. *Jacobs v. Beecham*, 221 U.S. 263, 31 S.Ct. 555, 55 L.Ed. 729.

**CORRUPTION.** Illegality; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. *State v. Barnett*, 60 Okl.Cr. 355, 69 P.2d 77, 87.

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. *Johnson v. U. S.*, C.C.A.Alaska, 260 F. 783, 786.

The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. *U. S. v. Johnson*, C.C.Ga., 26 F. 682; *Worsham v. Murchison*, 66 Ga. 719; *U. S. v. Edwards*, C.C.Ala., 43 F. 67.

**CORRUPTION OF BLOOD.** In English law. The consequence of *attainder*, being that the attainted person could neither inherit lands or other hereditaments from his ancestor, nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted. *Avery v. Everett*, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264; 1 Steph.Comm. 446. This was abolished by St. 3 & 4 Wm. IV. c. 106, and 33 & 34 Vict. c. 23, and is unknown in America. Const.U.S. art. 3, § 3.

**CORRUPTLY.** When used in a statute, this term generally imports a wrongful design to acquire some pecuniary or other advantage. *Grebe v. State*, 112 Neb. 715, 201 N.W. 143, 144; *Bosselman v. U. S.*, C.C.A.N.Y., 239 F. 82, 86; *State v. Shipman*, 202 N.C. 518, 163 S.E. 657.

**CORSELET.** Ancient armor which covered the body.

**CORSE-PRESENT.** In old English law. A mortuary, thus termed because, when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corse-present was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne St. 2, c. 6. 2 Bl. Comm. 426; Stat. 21 Hen. VIII. cap. 6; Cowell.

**CORSNED.** In Saxon law. The morsel of execration. A species of ordeal in use among the Saxons, performed by eating a piece of bread over

which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but, if it stuck in his throat, it was considered as a proof of his guilt. Crabb, Eng.Law, 30; 1 Reeve, Eng.Law, 21; 4 Bl.Comm. 345; Spelman, Gloss. 439.

**CORTES.** The name of the legislative assemblies, the parliament or congress, of Spain and Portugal.

**CORTEX.** The bark of a tree; the outer covering of anything.

**CORTIS.** A court or yard before a house. Blount.

**CORTULARIUM, or CORTARIUM.** In old records. A yard adjoining a country farm.

**CORVÉE.** In French law. Gratuitous labor exacted from the villages or communities, especially for repairing roads, constructing bridges, etc. State v. Covington, 125 N.C. 641, 34 S.E. 272.

**CORVÉE SEIGNEURIALE.** Services due the lord of the manor. Guyot, *Rép.Univ.*; 3 Low.C. 1.

**COSA JUZGADA.** In Spanish law. A cause or matter adjudged, (*res judicata.*) White, New Recop. b. 3, tit. 8, note.

**COSAS COMUNES.** In Spanish law. A term corresponding to the *res communes* of the Roman law, and descriptive of such things as are open to the equal and common enjoyment of all persons and not to be reduced to private ownership, such as the air, the sea, and the water of running streams. Hall, Mex.Law, 447; Lux v. Haggin, 69 Cal. 255, 10 P. 707.

**COSBERING.** See Coshering.

**COSDUNA.** In feudal law. A custom or tribute.

**COSEN, COZEN.** In old English law. To cheat. "A cosening knave." 3 Leon. 171.

**COSENAGE.** (Also spelled "Cosinage," "Cousinage.") In old English law. A writ that lay for the heir where the *tresail*, i. e., the father of the *besail*, or great-grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated. Fitzh.Nat.Brev. 221; 3 Bla. Comm. \*186.

Kindred; cousinship; relationship; affinity. Stat. 4 Hen. III. cap. 8; 3 Bla.Comm. 186; Co. Litt. 160a.

**COSENING.** In old English law. An offense, mentioned in the old books, where anything was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. The same as the *stellionatus* of the civil law. Cowell; West.Symb. pt. 2, *Indictment*, § 68; Blount; 4 Bla.Comm. 158.

**COSHERING.** In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. Cowell.

**COSMOPATHIC.** Open to the access of supernatural knowledge or emotion supposedly from a

preternatural world;—applied to methods of healing. Commonwealth v. Zimmerman, 221 Mass. 184, 108 N.E. 893, 895, Ann.Cas.1916A, 858.

**COSMUS.** Clean. Blount.

**COSS.** A term used by Europeans in India to denote a road-measure of about two miles, but differing in different parts. Wharton.

**COST.** Expense. Barton v. Bowlin, 111 Ark. 123, 163 S.W. 502, 504. The price paid, as for an article purchased for exportation, with all incidental charges paid at the place of exportation. Goodwin v. U. S., 2 Wash.C.C. 493, Fed.Cas.No.5,554. The amount originally expended in performing a particular act or operation, or for production or construction, as of a building. Kempf v. Ranger, 132 Minn. 64, 155 N.W. 1059, 1060; Hoggson Bros. v. Spiekerman, 161 N.Y.S. 930, 933, 175 App.Div. 144. Cost is sometimes used as equivalent to "value." Loughney v. Klein, C.C.A.Pa., 221 F. 197, 199.

**Cost-book.** In English law. A book in which a number of adventurers who have obtained permission to work a lode, and have agreed to share the enterprise in certain proportions, enter the agreement, and from time to time the receipts and expenditures of the mine, the names of the shareholders, their respective accounts with the mine, and transfers of shares. These associations are called "Cost-Book Mining Companies," and are governed by the general law of partnership. Lindl.Partn. \*147.

**Cost-plus contract.** One which fixes the amount to be paid the contractor on a basis, generally, of the cost of the material and labor, plus an agreed percentage thereof. The Spica, C.C.A.N.Y., 289 F. 436, 445.

**Cost price.** That which is actually paid for goods. Buck v. Burk, 18 N.Y. 337; Esternan-Verkamp Co. v. Rouse, 211 Ky. 791, 278 S.W. 124, 127.

**Costs of collection.** Strictly, expenses involved in endeavoring to make collection, as of a promissory note; but as used in or with reference to such notes, the phrase is synonymous with attorney's fees. McClain v. Continental Supply Co., 66 Okl. 225, 168 P. 815, 818; Wood v. Ferguson, 71 Mont. 540, 230 P. 592, 594. It does not refer to costs of suit, which are recoverable by law. Cox v. Hagan, 125 Va. 656, 100 S.E. 666, 674.

**CO-STIPULATOR.** A joint promisor.

**COSTS.** A pecuniary allowance, made to the successful party, (and recoverable from the losing party,) for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit. Stevens v. Bank, 168 N.Y. 560, 61 N.E. 904; Bennett v. Kroth, 37 Kan. 235, 15 P. 221, 1 Am.St.Rep. 248; Pezel v. Yerex, 56 Cal.App. 304, 205 P. 475, 478; In re Leary's Estate, 172 Misc. 286, 14 N.Y.S. 2d 960, 961.

Expenses pending suit as allowed or taxed by the court. Jones v. Adkins, 170 Ark. 208, 280 S.W. 389, 394.

Fees and charges required by law to be paid to the courts or some of their officers, the amount

## COSTS

of which is fixed by law. *Blair v. Brownstone Oil & Refining Co.*, 20 Cal.App. 316, 128 P. 1022.

Costs and fees were originally altogether different in their nature. The one is an allowance to a party for expenses incurred in prosecuting or defending a suit; the other, a compensation to an officer for services rendered in the progress of a cause. Therefore, while an executor or administrator was not personally liable to his adversary for costs, yet, if at his instance an officer performed services for him, he had a personal demand for his fees. *Musser v. Good*, 11 Serg. & R., Pa., 247. Moreover, costs are an incident to the judgment; fees are compensation to public officers for services rendered individuals not in the course of litigation. *Tillman v. Wood*, 58 Ala. 579.

In Georgia, however, it is held that "costs," include all charges fixed by statute as compensation for services rendered by officers of the court in the progress of the cause. *Walton County v. Dean*, 23 Ga.App. 97, 97 S.E. 561, 562.

There is no general or controlling provision or principle of law to the effect that attorney fees that may by statute be recovered by the winning party against the losing party in a suit or action are, or should be regarded as, costs in the case. "Costs" do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case. *State ex rel. Royal Ins. Co. v. Barrs*, 87 Fla. 168, 99 So. 668, 669; *McRostie v. City of Owatonna*, 152 Minn. 63, 188 N.W. 52, 54; *Littlefield v. Scott*, Tex.Civ.App., 244 S.W. 824, 826; *Calman v. Cox*, Mo.App., 296 S.W. 845, 846; *City of Los Angeles v. Abbott*, 217 Cal. 184, 17 P.2d 993, 996.

But the word "costs" is frequently understood as including attorney fees. *McClain v. Continental Supply Co.*, 66 Okl. 225, 168 P. 815, 817; *Livesley v. Strauss*, 104 Or. 356, 207 P. 1095; *Lonoke County v. Reed*, 122 Ark. 111, 182 S.W. 563, 564; *J. I. Case Plow-Works v. J. I. Case Threshing Mach. Co.*, 162 Wis. 185, 155 N.W. 128, 138.

In England, the term "costs" is also used to designate the charges which an attorney or solicitor is entitled to make and recover from his client, as his remuneration for professional services, such as legal advice, attendances, drafting and copying documents, conducting legal proceedings, etc.

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

**Certificate for Costs.** In English practice, a certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts, the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.

**Cost Bond, or Bond for Costs.** A bond given by a party to an action to secure the eventual payment of such costs as may be awarded against him.

**Costs de Incremento.** Increased costs, costs of increase. Costs adjudged by the court in addition to those assessed by the jury. *Day v. Woodworth*, 13 How. 372, 14 L.Ed. 181.

Those extra expenses incurred which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc. *Wharton*.

**Costs of the Day.** Costs which are incurred in preparing for the trial of a cause on a specified day, consisting of witnesses' fees, and other fees of attendance. *Archb.N.Prac.* 281; *Ad.Eq.* 343.

**Costs to Abide Event.** When an order is made by an appellate court reversing a judgment, with "costs to abide the event," the costs intended by

the order include those of the appeal, so that, if the appellee is finally successful, he is entitled to tax the costs of the appeal. *First Nat. Bank v. Fourth Nat. Bank*, 84 N.Y. 469; *Casualty Co. of America v. A. L. Swett Electric Light & Power Co.*, 121 Misc. 268, 200 N.Y.S. 796, 801.

**Double Costs.** The ordinary single costs of suit, and one-half of that amount in addition. 2 Tidd, Pr. 987. "Double" is not used here in its ordinary sense of "twice" the amount. *Van Aulen v. Decker*, 2 N.J.Law, 108; *Gilbert v. Kennedy*, 22 Mich. 19. But see *Moran v. Hudson*, 34 N.J.Law, 531. These costs are now abolished in England by St. 5 & 6 Vict. c. 97. *Wharton*.

**Final Costs.** Such costs as are to be paid at the end of the suit; costs, the liability for which depends upon the final result of the litigation. *Good-year v. Sawyer*, C.C.Tenn., 17 F. 8.

**Interlocutory Costs.** In practice. Costs accruing upon proceedings in the intermediate stages of a cause, as distinguished from final costs; such as the costs of motions. 3 Chit.Gen.Pr. 597; *Good-year v. Sawyer*, C.C.Tenn., 17 F. 6.

**Security for Costs.** In practice. A security which a defendant in an action may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs as may be awarded to the defendant. 1 Tidd, Pr. 534. *Ex parte Louisville & N. R. Co.*, 124 Ala. 547, 27 So. 239.

**Treble Costs.** A rate of costs given in certain actions, consisting, according to its technical import, of the common costs, half of these, and half of the latter. 2 Tidd, Pr. 988. The word "treble," in this application, is not understood in its literal sense of thrice the amount of single costs, but signifies merely the addition together of the three sums fixed as above. *Id.* Treble costs have been abolished in England, by St. 5 & 6 Vict. c. 97. In American law. In Pennsylvania and New Jersey the rule is different. When an act of assembly gives treble costs, the party is allowed three times the usual costs, with the exception that the fees of the officers are not to be trebled when they are not regularly or usually payable by the defendant. *Shoemaker v. Nesbit*, 2 Rawle, Pa., 203; *Welsh v. Anthony*, 16 Pa. 256; *Mairs v. Sparks*, 5 N.J.Law, 516.

**COSTUMBRE.** In Spanish law. Custom; an unwritten law established by usage, during a long space of time. *Las Partidas*, pt. 1, tit. 2, l. 4.

**CO-SURETIES.** Joint sureties; two or more sureties to the same obligation. *State of Arkansas v. Pufahl*, C.C.A.Ark., 52 F.2d 116, 120; *French v. Young*, 292 Mich. 443, 290 N.W. 861, 862, 863.

**COTA.** A cot or hut. *Blount*.

**COTAGIUM.** In old English law. A cottage.

**COTARIUS.** In old English law. A cottager, who held in free socage, and paid a stated fine or rent in provisions or money, with some occasional personal services. See *Coterellus*.

**COTENANCY.** A tenancy by several distinct titles but by unity of possession, or any joint ownership or common interest with its grantor. *Shepard v. Mt. Vernon Lumber Co.*, 192 Ala. 322, 68 So. 880, 881, 15 A.L.R. 23. The term is broad enough to comprise both tenancy in common and joint tenancy. *Caldwell v. Farrier*, Tex.Civ.App., 248 S.W. 425, 427.

**COTERELLI.** Anciently, a kind of peasantry who were outlaws; robbers. *Blount*.

**COTERELLUS.** In feudal law. A cottager; a servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure. A coterellus, therefore, occupied a less favorable position than a cotarius (*q. v.*), for the latter held by socage tenure. *Cowell*.

**COTERIE.** A fashionable association, or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss. *Wharton*.

**COTESWOLD.** In old records. A place where there is no wood.

**COTLAND.** In old English law. Land held by a cottager, whether in socage or villenage. *Cowell*; *Blount*.

**COTSETHLA.** In old English law. The little seat or mansion belonging to a small farm.

**COTSETHLAND.** The seat of a cottage with the land belonging to it. *Spelman*.

**COTSETUS.** A cottager or cottage-holder who held by servile tenure and was bound to do the work of the lord. *Cowell*.

**COTTAGE.** In English law. A small dwelling-house that has no land belonging to it. *Shep. Touch.* 94; *Emerton v. Selby*, 2 Ld.Raym. 1015; *Scholes v. Hargreaves*, 5 Term, 46; *Hubbard v. Hubbard*, 15 Adol. & E. (N.S.) 240; *Gibson v. Brockway*, 8 N.H. 470, 31 Am.Dec. 200. It has been held that the term includes a two-family house, not being limited to a structure for the use of only one family. *Jones v. Mulligan*, N.J.Ch., 121 A. 608, 609.

**COTTIER TENANCY.** A species of tenancy in Ireland, constituted by an agreement in writing, and subject to the following terms: That the tenement consists of a dwelling-house with not more than half an acre of land; at a rental not exceeding £5 a year; the tenancy to be for not more than a month at a time; the landlord to keep the house in good repair. *Landlord and Tenant Act, Ireland*, 23 & 24 Vict. c. 154, § 81.

**COTTOLENE.** A registered trade-mark name for cooking fat. *Imperial Cotto Sales Co. v. N. K. Fairbanks Co.*, 50 App.D.C. 250, 270 F. 686, 687.

**COTTON.** A term which is applicable to such substance in whatever state it exists after it has been gathered and before it is manufactured into some article of merchandise, whether the seed

have been removed at the gin or whether it is lint cotton in the seed or in the bale. *Freeman v. State*, 156 Ark. 592, 247 S.W. 51.

**COTTON GIN.** A term sometimes used as synonymous with ginhouse. *State v. Rodgers*, 168 N.C. 112, 83 S.E. 161, 162.

**COTTON LINTERS.** Called also "linters." An inferior grade of cotton, obtained by reginning cotton seed. *Commercial Union Assur. Co., Limited, of London, England, v. Creek Cotton Oil Co.*, 96 Okl. 189, 221 P. 499, 501.

**COTTON MILL OF FACTORY.** One which manufactures cotton from the raw state into a finished product. *Dumas v. State*, 17 Ala.App. 492, 86 So. 162, 163.

**COTTON NOTES.** Receipts given for each bale of cotton received on storage by a public warehouse. *Fourth Nat. Bank v. St. Louis Cotton Compress Co.*, 11 Mo.App. 337.

**COTTON SEASON.** The season for buying and selling cotton between September 1 and the following May 1. *Morris v. Hellums Co.*, 131 Ark. 585, 199 S.W. 927, 928.

**COTUCA.** Coat armor.

**COTUCHANS.** A term used in Domesday for peasants, boors, husbandmen.

**COUCHANT.** Lying down; squatting. *Couchant and levant* (lying down and rising up) is a term applied to animals trespassing on the land of one other than their owner, for one night or longer. 3 Bl.Comm. 9.

**COUCHER, or COURCHER.** A factor who continues abroad for traffic, (37 Edw. III. c. 16;) also the general book wherein any corporation, etc., register their acts, (3 & 4 Edw. VI. c. 10.)

**COULISSE.** The stockbrokers' curb market in Paris.

**COUNCIL.** An assembly of persons for the purpose of concerting measures of state or municipal policy; hence called "councillors."

In American Law. The legislative body in the government of cities or boroughs. An advisory body selected to aid the executive; particularly in the colonial period (and at present in some of the United States) a body appointed to advise and assist the governor in his executive or judicial capacities or both. *Opinion of the Justices*, 14 Mass. 470; *Opinion of the Justices*, 3 Pick., Mass., 517; *In re Adams*, 4 Pick., Mass., 25; *Answers of the Justices*, 70 Me. 570.

**Common Council.** In American law. The lower or more numerous branch of the legislative assembly of a city. In English law. The councillors of the city of London. The parliament, also, was anciently called the "common council of the realm." *Fleta*, 2, 13.

**Privy Council.** See that title.

## COUNCIL

**Select Council.** The name given, in some states, to the upper house or branch of the council of a city.

**COUNCIL OF CONCILIATION.** By the Act 30 & 31 Vict. c. 105, power is given for the crown to grant licenses for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They have power to apply to a justice to enforce the performance of their award. The members are elected by persons engaged in the trade. Davis, Bldg.Soc. 232; Sweet.

**COUNCIL OF JUDGES.** Under the English judiciary act, 1873, § 75, an annual council of the judges of the supreme court is to be held, for the purpose of considering the operation of the new practice, offices, etc., introduced by the act, and of reporting to a secretary of state as to any alterations which they consider should be made in the law for the administration of justice. An extraordinary council may also be convened at any time by the lord chancellor. Sweet.

**COUNCIL OF THE BAR.** A body composed of members of the English bar which governs the bar. It hears complaints against barristers and reports its findings with recommendations to the benchers of the Inn of Court of which the barrister is a member, who alone can act. Leaming, Phila. Lawy. in Lond. Courts 67.

**COUNCIL OF THE NORTH.** A court instituted by Henry VIII. in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presidency of Stratford, the court showed great rigor, bordering, it is alleged, on harshness. It was abolished by 16 Car. I., the same act which abolished the Star Chamber. Brown.

**COUNSEL.** 1. In practice. An advocate, counsellor, or pleader. 3 Bl.Comm. 26; 1 Kent, Comm. 307. One who assists his client with advice, and pleads for him in open court. One who has been admitted as an attorney and counsellor at law. Baker v. State, 9 Okl.Cr. 62, 130 P. 820, 821. See Counsellor.

Counsellors who are associated with those regularly retained in a cause, either for the purpose of advising as to the points of law involved, or preparing the case on its legal side, or arguing questions of law to the court, or preparing or conducting the case on its appearance before an appellate tribunal, are said to be "of counsel."

2. Knowledge. A grand jury is sworn to keep secret "the commonwealth's counsel, their fellows', and their own."

3. Advice given by one person to another in regard to a proposed line of conduct, claim, or contention. State v. Russell, 83 Wis. 330, 53 N.W. 441.

The words "counsel" and "advise" may be, and frequently are, used in criminal law to describe the offense of a person who, not actually doing the felonious act, by his will contributed to it or procured it to be done. Omer v. Com., 95 Ky. 353, 25 S.W. 594.

**Counsel's signature.** This is required, in some jurisdictions, to be affixed to pleadings, etc., as affording the court a means of judging whether they are interposed in good faith and upon legal grounds. It has been held that the word "counsel" in this connection denotes a person capable of testifying, and that a certificate bearing only the firm signatures of partnerships of attorneys is insufficient. Benedict v. Seiberling, D.C., 17 F.2d 831, 838.

**Junior counsel.** The younger of the counsel employed on the same side of a case, or the one lower in standing or rank, or who is intrusted with the less important parts of the preparation or trial of the cause.

**COUNSELLOR.** An advocate or barrister. A member of the legal profession whose special function is to give counsel or advice as to the legal aspects of judicial controversies, or their preparation and management, and to appear in court for the conduct of trials, or the argument of causes, or presentation of motions, or any other legal business that takes him into the presence of the court.

In some of the states, the two words "counsellor" and "attorney" are used interchangeably to designate all lawyers. In others, the latter term alone is used, "counsellor" not being recognized as a technical name. In still others, the two are associated together as the full legal title of any person who has been admitted to practice in the courts; while in a few they denote different grades, it being prescribed that no one can become a counsellor until he has been an attorney for a specified time and has passed a second examination.

In the practice of the United States supreme court, the term denotes an officer who is employed by a party in a cause to conduct the same on its trial on his behalf. He differs from an attorney at law.

In the supreme court of the United States, the two degrees of attorney and counsel were at first kept separate, and no person was permitted to practice in both capacities, but the present practice is otherwise. Weeks, Attys. at Law, 54. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Comm. 307.

**COUNT, v.** In pleading. To declare; to recite; to state a case; to narrate the facts constituting a plaintiff's cause of action. In a special sense, to set out the claim or count of the demandant in a real action.

To plead orally; to plead or argue a case in court; to recite or read in court; to recite a count in court.

**Count upon a statute.** To make express reference to it, as by the words "against the form of the statute" (or "by the force of the statute") "in such case made and provided." Richardson v. Fletcher, 74 Vt. 417, 52 A. 1064.

"Pleading the statute" is stating the facts which bring the case within it, and "counting" on it is making express reference to it by apt terms to show the source of right relied on. Atlantic Coast Line R. Co. v. State, 73 Fla. 609, 74 So. 595, 599.



**COUNT, n.** In pleading. The plaintiff's statement of his cause of action. The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action. Used also to signify the several parts of an indictment, each charging a distinct offense. *Boren v. State*, 23 Tex.App. 28, 4 S.W. 463; *Bailey v. Mosher*, C. C.A.Neb., 63 F. 490, 11 C.C.A. 304; *Ryan v. Riddle*, 109 Mo.App. 115, 82 S.W. 1117.

"Count" and "charge" when used relative to allegations in an indictment or information are synonymous. *State v. Thornton*, 142 La. 797, 77 So. 634, 636; *State v. Puckett*, 39 N.M. 511, 50 P.2d 964, 965.

**Count sur concessit solvere.** A claim based upon a promise to pay;—a count in the mayor's court of London. Under it the plaintiff can sue for any liquidated demand, but not for money due under a covenant. Particulars defining more precisely the nature of the claim must be delivered with the declaration. *Odger*, C. L. 1029.

**Common counts.** Certain general counts or forms inserted in a declaration in an action to recover a money debt, not founded on the circumstances of the individual case, but intended to guard against a possible variance, and to enable the plaintiff to take advantage of any ground of liability which the proof may disclose, within the general scope of the action. *Nugent v. Teauchot*, 67 Mich. 571, 35 N.W. 254.

In the action of *assumpsit*, these counts are as follows: For goods sold and delivered, or bargained and sold; for work done; for money lent; for money paid; for money received to the use of the plaintiff; for interest; or for money due on an account stated.

**General count.** One stating in a general way the plaintiff's claim. *Wertheim v. Casualty Co.*, 72 Vt. 326, 47 A. 1071.

**Money counts.** A species of common counts, so called from the subject-matter of them; embracing the *indebitatus assumpsit* count for money lent and advanced, for money paid and expended, and for money had and received, together with the *insimul computassent* count, or count for money due on an account stated. 1 Burrill, Pr. 132.

**Omnibus count.** A count which combines in one all the money counts with one for goods sold and delivered, work and labor, and an account stated. *Webber v. Tivill*, 2 Saund. 122; *Griffin v. Murdock*, 88 Me. 254, 34 A. 30.

**Several counts.** Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribes. *Wharton*.

**Special count.** As opposed to the common counts, in pleading, a special count is a statement of the actual facts of the particular case, or a count in which the plaintiff's claim is set forth with all needed particularity. *Wertheim v. Casualty Co.*, 72 Vt. 326, 47 A. 1071.

**COUNT.** (Fr. *comte*; from the Latin *comes*.) An earl.

It gave way as a distinct title to the Saxon earl, but was retained in countess, viscount, and as the basis of county. *Termes de la ley*; 1 Bla.Comm. 398.

**COUNT-OUT.** In English parliamentary law. Forty members form a house of commons; and, though there be ever so many at the beginning of a debate, yet, if during the course of it the house should be deserted by the members, till reduced below the number of forty, any one member may have it adjourned upon its being counted; but a debate may be continued when only one member is left in the house, provided no one choose to move an adjournment. *Wharton*.

The words "count and count-out" refer to the count of the house of commons by the speaker. Forty members, including the speaker, are required to constitute a quorum. Each day after parliament is opened, the speaker counts the house. If forty members are not present he waits till four o'clock, and then counts the house again. If forty members are not then present, he at once adjourns it to the following meeting day. *May*, Parl.Prac. 219.

**COUNTEE.** In old English law. The most eminent dignity of a subject before the Conquest. He was *præfectus* or *præpositus comitatus*, and had the charge and custody of the county; but this authority is now vested in the sheriff. 9 Coke, 46.

**COUNTENANCE.** In old English law. Credit; estimation. *Wharton*. Also, encouragement; aiding and abetting. *Cooper v. Johnson*, 81 Mo. 487.

**COUNTER, n.** (Spelled, also, "Compter.") The name of two prisons formerly standing in London, but now demolished. They were the Poultry Counter and Wood Street Counter. *Cowell*; *Whish.L.D.*; *Coke*, 4th Inst. 248.

**COUNTER, adj.** Adverse; antagonistic; opposing or contradicting; contrary. *Silliman v. Eddy*, 8 How.Prac., N.Y., 122.

**Counter-affidavit.** An affidavit made and presented in contradiction or opposition to an affidavit which is made the basis or support of a motion or application.

**Counter-bond.** In old practice. A bond of indemnity. 2 Leon. 90.

**Counterclaim.** See that title.

**Counter-deed.** A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

**Counter-letter.** A species of instrument of defeasance common in the civil law. It is executed by a party who has taken a deed of property, absolute on its face, but intended as security for a loan of money, and by it he agrees to reconvey the property on payment of a specified sum. The two instruments, taken together, constitute what is known in Louisiana as an "*antichresis*," (*q. v.*). *Karcher v. Karcher*, 138 La. 288, 70 So. 228, 229; *Livingston v. Story*, 11 Pet. 351, 9 L.Ed. 746.

**Counter-mark.** A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

**Counter-plea.** See *Plea*.

## COUNTER

**Counter-security.** A security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

**COUNTERCLAIM.** A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. A species of set-off or recoupment introduced by the codes of civil procedure in many of the states, of a broad and liberal character. Quoted in *Wollan v. McKay*, 24 Idaho, 691, 135 P. 832, 837.

It is an offensive as well as a defensive plea, which is not necessarily confined to the justice of plaintiff's claim, and it represents the right of the defendant to have the claims of the parties counterbalanced in whole or in part, with judgment to be entered for the excess, if any. *Olsen v. McMaken & Pentzien*, 139 Neb. 506, 297 N.W. 830, 833.

Its sole requisites are that it must tend to defeat or diminish plaintiff's demand, and that demands must be reciprocal. *Bond v. Farmers & Merchants Nat. Bank, Los Angeles*, 64 Cal.App.2d 842, 149 P.2d 722, 724; *Dobbins v. Horsfall*, 58 Cal. App.2d 23, 136 P.2d 35, 38.

It is in effect a new suit in which the party named as defendant under the bill is plaintiff and the party named as plaintiff under the bill is defendant. *Roberts Min. & Mill. Co. v. Schrader, C.C.A.Nev.*, 95 F.2d 522, 524.

The term is broader in meaning than set-off or recoupment, and includes them both. *Williams v. Williams*, 192 N.C. 405, 135 S.E. 39, 40; *Fricke v. W. E. Fuetterer Battery & Supplies Co.*, 220 Mo.App. 623, 288 S.W. 1000, 1002; *Curtis-Warner Corporation v. Thirkettle*, 99 N.J.Eq. 806, 134 A. 299, 302; *Otto v. Lincoln Sav. Bank of Brooklyn*, 51 N.Y.S.2d 561, 563, 268 App.Div. 400; *Aetna Life Ins. Co. v. Griffin*, 200 N.C. 251, 156 S.E. 515, 516.

The counterclaim is a substitute for the cross-bill in equity. *McAnarney v. Lembeck*, 97 N.J.Eq. 361, 127 A. 197, 198; *Vidal v. South American Securities Co., C.C.A.N.Y.*, 276 F. 855. It is but another name for a cross-petition, and may be so styled, especially in actions prosecuted by equitable proceedings. *Taylor v. Wilson*, 182 Ky. 592, 206 S.W. 865, 866; *Clark v. Duncanson*, 79 Okl. 180, 192 P. 806, 809, 16 A.L.R. 450.

Under rule 30 of Federal rules in equity see Fed.Rules Civ.Proc. rules 8, 13, 28 U.S.C.A., "counterclaim" means any claim, not such as to constitute a set-off, which, in equity, a defendant might assert against the plaintiff in the same suit. *Terry Steam Turbine Co. v. B. F. Sturtevant Co.*, D.C.Mass., 204 F. 103, 105.

A counterclaim may be any cause of action in favor of defendants or some of them against plaintiffs or some of them, a person whom a plaintiff represents or a plaintiff and another person or persons alleged to be liable. *New York Civ.Prac.Act*, § 266.

A "counterclaim" must be a cause of action, and seeks affirmative relief, while a defense merely defeats the plaintiff's cause of action by a denial or confession and avoidance, and does not admit of affirmative relief to the defendant. *Lovett v. Lovett*, 93 Fla. 611, 112 So. 768, 780; *Secor v. Siver*, 165 Iowa, 673, 146 N.W. 845, 847.

**COUNTEREXTENSION.** In surgery, in connection with "Buck's extension" process, which is some uniform, continuous force or pull applied to the leg or foot below a break, to overcome the natural contraction of the muscles of the thigh, which have a strong tendency to pull the broken ends together and cause them to slip by each other and overlap, especially when the break is oblique across bone, "counterextension" denotes the pull upwards holding the body against the extension downwards, effected by a splint appliance, on the upper end of which is a ring fitting around

the thigh and against the patient's groin. *Sweet v. Douge*, 145 Wash. 142, 259 P. 25.

**COUNTERFEIT.** In criminal law. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money. *State v. McKenzie*, 42 Me. 392; *U. S. v. Barrett, D.C.N.D.*, 111 F. 369; *DeRose v. People*, 64 Colo. 332, 171 P. 359, L.R.A.1918C, 1193; *Metropolitan Nat. Bank v. National Surety Co., D.C.Minn.*, 48 F. 2d 611, 612.

**COUNTERFEIT COIN.** Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination. *U. S. v. Hopkins, D.C.N.C.*, 26 F. 443; *U. S. v. Bogart*, 24 Fed.Cas. 1185; *U. S. v. Gellman, D.C.Minn.*, 44 F.Supp. 360, 363.

**COUNTERFEITER.** In criminal law. One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is lawful and genuine, with an intention of deceiving and imposing upon mankind. *Thirman v. Matthews*, 1 Stew., Ala., 384.

**COUNTER-FESANCE.** The act of forging.

**COUNTER LETTER.** An agreement to reconvey where property has been passed by absolute deed with the intention that it shall serve as security only. *Standard Oil Co. of Louisiana v. Futral*, 204 La. 215, 15 So.2d 65, 73.

**COUNTERMAND.** A change or revocation of orders, authority, or instructions previously issued. It may be either express or implied; the former where the order or instruction already given is explicitly annulled or recalled; the latter where the party's conduct is incompatible with the further continuance of the order or instruction, as where a new order is given inconsistent with the former order.

**COUNTERPART.** In conveyancing. The corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the "original," and the rest are "counterparts"; although, where all the parties execute every part, this renders them all originals. 2 Bl. Comm. 296; *Shep. Touch.* 50. *Roosevelt v. Smith*, 17 Misc.Rep. 323, 40 N.Y.S. 381. See Duplicate.

In granting lots subject to a ground-rent reserved to the grantor, both parties execute the deeds, of which there are two copies; although both are original, one of them is sometimes called the counterpart. See 12 Vin.Abr. 104; *Dane, Abr.Index*; 7 Com.Dig. 443; *Merlin, Rép. Double Ecrit*.

**COUNTERPART WRIT.** A copy of the original writ, authorized to be issued to another county when the court has jurisdiction of the cause by reason of the fact that some of the defendants are residents of the county or found therein. *White v. Lea*, 9 Lea, Tenn., 450.

**COUNTER-ROLLS.** In English law. The rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc. 3 Edw. I. c. 10.

**COUNTERSIGN.** As a noun, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it. *Fifth Ave. Bank v. Railroad Co.*, 137 N.Y. 231, 33 N.E. 378, 19 L.R.A. 331; *Gurnee v. Chicago*, 40 Ill. 167.

As a verb, to sign in addition to the signature of another in order to attest the authenticity. *Winsor v. Hunt*, 29 Ariz. 504, 243 P. 407, 411; *Henning v. American Ins. Co.*, 108 Kan. 194, 194 P. 647, 648; *Waldo Bros. Co. v. Downing*, 131 Me. 410, 163 A. 787, 789.

**COUNTERVAIL.** To counterbalance; to avail against with equal force or virtue; to compensate for, or serve as an equivalent of or substitute for.

**COUNTERVAIL LIVERY.** At common law, a release was a form of transfer of real estate where some right to it existed in one person but the actual possession was in another; and the possession in such case was said to "countervail livery," that is, it supplied the place of and rendered unnecessary the open and notorious delivery of possession required in other cases. *Miller v. Emans*, 19 N.Y. 387.

**COUNTERVAILING EQUITY.** See Equity.

**COUNTEUR.** In the time of Edward I, a pleader; also called a *Nurrator*, and *Serjeant-Counteur*. See Counters.

**COUNTEZ.** L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given in his time, in good English, "count these." 4 Bl. Comm. 340, note (u.).

**COUNTING UPON A STATUTE.** See Count Upon a Statute.

**COUNTORS.** Advocates, or serjeants at law, whom a man retains to defend his cause and speak for him in court, for their fees. 1 Inst. 17.

**COUNTRY.** The portion of the earth's surface occupied by an independent nation or people, or the inhabitants of such territory.

In its primary meaning "country" signifies "place;" and, in a larger sense, the territory or dominions occupied by a community; or even waste and unpeopled sections or regions of the earth. But its metaphorical meaning is no less definite and well understood; and in common parlance, in historical and geographical writings, in diplomacy, legislation, treaties, and international codes, the word is employed to denote the population, the nation, the state, or the government, having possession and dominion

over a territory. *Stairs v. Peaslee*, 18 How. 521, 15 L.Ed. 474; *U. S. v. Recorder*, 1 Blatchf. 218, 225, 5 N.Y. Leg. Obs. 286, Fed. Cas. No. 16,129.

The word "country" as used in treaties made by the United States government, in so far as it applies to the United States, means the states of such country. *Pagano v. Cerri*, 93 Ohio St. 345, 112 N.E. 1037, 1039, L.R.A. 1917A, 486.

In pleading and practice. The inhabitants of a district from which a jury is to be summoned; pais; a jury. 3 Bl. Comm. 349; 4 Bl. Comm. 349; *Steph. Pl.* 73, 78, 230.

**COUNTRY WHENCE HE CAME.** Within statute providing for deportation of aliens means country of alien's nativity, where domicile has not been acquired elsewhere. *Immigration Act 1924*, § 13, 8 U.S.C.A. § 213; 8 U.S.C.A. § 156. *Schenck ex rel. Capodilupo v. Ward*, C.C.A. Mass., 80 F.2d 422, 426.

Term means the country territorially rather than governmentally from which the alien came. *Immigration Act 1917*, § 20, 8 U.S.C.A. § 156. *Moraitis v. Delany*, D.C. Md., 46 F. Supp. 425, 430.

But deportation to "country whence alien came" would be complied with if the alien was returned to political dominion in exile and control of country from whence he came. *Delany v. Moraitis*, C.C.A. Md., 136 F.2d 129, 130, 131, 132, 133.

**COUNTY.** One of the civil divisions of a country for judicial and political purposes. 1 Bla. Comm. 113.

Etymologically, it denotes that portion of the country under the immediate government of a count or earl. 1 Bla. Comm. 116.

One of the principal subdivisions of the kingdom of England and of most of the states of the American Union, denoting a distinct portion of territory organized by itself for political and judicial purposes. In modern use, the word may denote either the territory marked off to form a county, or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers, or an organized jural society invested with specific rights and duties. *Eagle v. Beard*, 33 Ark. 501; *Wooster v. Plymouth*, 62 N.H. 208; *In re Becker*, 179 App. Div. 789, 167 N.Y.S. 118, 119; *Grebe v. King County*, 187 Wash. 587, 60 P.2d 690, 692.

In the English law, this word signifies the same as *shire*, —county being derived from the French, and *shire* from the Saxon. Both these words signify a circuit or portion of the realm into which the whole land is divided, for the better government thereof and the more easy administration of justice. There is no part of England that is not within some county; and the shirereeve (*sheriff*) was the governor of the province, under the *comes*, earl, or count.

Counties are political subdivisions of the state, created to aid in the administration of state law for the purpose of local self-government. *Hunt v. Mohave County*, 18 Ariz. 480, 162 P. 600, 602; *Board of Com'rs of Osborne County v. City of Osborne*, 104 Kan. 671, 180 P. 233, 234; *Divide County v. Baird*, 55 N.D. 45, 212 N.W. 236, 243, 51 A.L.R. 296; *Dolezal v. Bostick*, 41 Okl. 743, 139 P. 964, 968; *Middlesex County v. City of Waltham*, 278 Mass. 514, 180 N.E. 318, 319, and hence not "municipal corporations." *Housing Authority of Birmingham Dist. v. Morris*, 244 Ala. 557, 14 So.2d 527, 535.

Counties are held in some jurisdictions to be municipal corporations. *Mosier v. Cowan*, 295 Mich. 27, 294 N.W. 85, 86; *Pacific Fruit & Produce Co. v. Oregon Liquor Control Commission*, D.C. Or., 41 F. Supp. 175, 179; and are sometimes said to be involuntary municipal corporations. *Perkins v. Board of Com'rs of Cook County*, 271 Ill. 449, 111 N.E. 580, 584, Ann. Cas. 1917A, 27. Other cases, seeking to distinguish between the two, say that counties are agencies or political subdivisions of the state for governmental pur-

## COUNTY

poses, and not, like municipal corporations, incorporations of the inhabitants of specified regions for purposes of local government. *Dillwood v. Riecks*, 42 Cal.App. 602, 184 P. 35, 37; *Bexar County v. Linden*, 110 Tex. 339, 220 S.W. 761. Counties are also said to be merely quasi corporations. *Breathitt County v. Hagins*, 183 Ky. 294, 207 S.W. 713, 714; *MacKenzie v. Douglas County*, 91 Or. 375, 178 P. 350, 352; *Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court*, 274 Ky. 91, 118 S.W.2d 181, 184.

"Vicinage," in its primary and literary meaning, denotes a neighborhood or vicinity; a "county," on the other hand, is a definitely designated territory. *Commonwealth v. Collins*, 268 Pa. 295, 110 A. 738, 739.

**Body of the county.** The county at large, as distinguished from any particular place within it; a county considered as a territorial whole. *Fluke v. State*, 27 Okl.Cr. 234, 226 P. 118, 120.

**County affairs.** Those relating to the county in its organic and corporate capacity and included within its governmental or corporate powers. *Scarborough v. Wooten*, 23 N.M. 616, 170 P. 743, 744. Such as affect the people of the county in question. *Bradford v. Cole*, 95 Okl. 35, 217 P. 470, 471.

**County attorney.** The public prosecutor. *Kytka v. Weber County*, 48 Utah, 421, 160 P. 111, 113.

A constitutional officer, acting under oath, vested with authority, and it is his duty to inquire into alleged violations of law, to institute criminal proceedings, and to represent the state in matters and proceedings in his county, he signs all informations, and may make application for leave to file information before examination, commitment, or admission to bail. *State ex rel. Juhl v. District Court of First Judicial Dist. in and for Jefferson County, Mont.*, 107 Mont. 309, 84 P.2d 979, 981, 120 A.L.R. 353.

**County board of equalization.** A body created for the purpose of equalizing values of property subject to taxation. *Overland Co. v. Utter*, 44 Idaho, 385, 257 P. 480, 482.

**County board of supervisors.** Is not the county, but a body of town and city officers acting for and on behalf of county in such matters as have been turned over to them by law. *Cort v. Smith*, 249 App.Div. 1, 291 N.Y.S. 54, 60.

**County bonds.** Broadly, any bonds issued by county officials to be paid for by a levy on a special taxing district, whether or not coextensive with the county. *Forrey v. Board of Com'rs of Madison County*, 189 Ind. 257, 126 N.E. 673.

**County bridge.** A bridge of the larger class, erected by the county, and which the county is liable to keep in repair. *Boone County v. Mutchler*, 137 Ind. 140, 36 N.E. 534.

**County business.** All business pertaining to the county as a corporate entity. *City of Astoria v. Cornelius*, 119 Or. 264, 240 P. 233, 235. All business of the county, and any other business of such county connected with or interrelated with the business of any other county properly within the jurisdiction of the county commissioners' court. *Glenn v. Dallas County Bois d'Arc Island Levee Dist.*, Tex.Civ.App., 275 S.W. 137, 145.

**County commissioners.** Officers of a county, charged with a variety of administrative and executive duties, but principally with the manage-

ment of the financial affairs of the county, its police regulations, and its corporate business. Sometimes the local laws give them limited judicial powers. In some states they are called "supervisors." *Com. v. Krickbaum*, 199 Pa. 351, 49 A. 68.

In Georgia, the term is used interchangeably with "commissioners of roads and revenue." *Morris v. Smith*, 153 Ga. 438(2), 112 S.E. 468; *Rhodes v. Jernigan*, 155 Ga. 523, 117 S.E. 432, 434.

**County corporate.** A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county; such as London, York, Bristol, Norwich, and other cities in England. 1 Bl. Comm. 120. See *State v. Finn*, 4 Mo.App. 347. They differ in no material points from other counties.

**County court.** A court of high antiquity in England, incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. The freeholders of the county (anciently termed the "suitors" of the court) are the real judges in this court, and the sheriff is the ministerial officer. See 3 Bl. Comm. 35, 36; 3 Steph. Comm. 395. But in modern English law the name is appropriated to a system of tribunals established by the statute 9 & 10 Vict. c. 95, having a limited jurisdiction, principally for the recovery of small debts. It is also the name of certain tribunals of limited jurisdiction in the county of Middlesex, established under the statute 22 Geo. II. c. 33. In American law. The name is used in many of the states to designate the ordinary courts of record having jurisdiction for trials *in nisi prius*. Their powers generally comprise ordinary civil jurisdiction, also the charge and care of persons and estates coming within legal guardianship, a limited criminal jurisdiction, appellate jurisdiction over justices of the peace, etc.

**County farm bureaus.** Governmental agencies intrusted with the duty of disseminating among farmers scientific knowledge of an educational nature for the improvement of agriculture. *State v. Miller*, 104 Neb. 838, 178 N.W. 846, 848.

**County funds.** This term may include township funds, the legal title of which is in the county, which holds them for disbursement in accordance for the purpose for which they are created. *Fidelity & Deposit Co. of Maryland v. Wilkinson County*, 109 Miss. 879, 69 So. 865, 868. See, also, *State v. McGraw*, 74 Mont. 152, 240 P. 812, 817. Compare *Board of Education v. Wake County*, 167 N.C. 114, 83 S.E. 257, 258.

**County general fund.** A fund raised to meet the expenses incident to county government. *County Board of Education v. Austin*, 169 Ark. 436, 276 S.W. 2, 5.

**County jail.** A place of incarceration for the punishment of minor offenses and the custody of transient prisoners, where the ignominy of confinement is devoid of the infamous character

which an imprisonment in the state jail or penitentiary carries with it. *U. S. v. Greenwald*, D.C. Cal., 64 F. 8.

**County line.** This term, when used in a statute providing that the trial for an offense committed on a county line may be in either county divided by such line, is not to be given the geometrical definition of a "line" as having neither breadth nor thickness, but includes all of a fenced public highway dividing two counties, so that a prosecution for robbery committed upon the highway may be maintained in either county, regardless of the side of the center line of the highway upon which the offense was committed. *Stone v. People*, 71 Colo. 162, 204 P. 897, 898.

**County line bridge.** A bridge over a stream constituting the boundary line between two counties, one end of which bridge is in one county and the other end in another county. *Newberry v. Hall County*, 52 Ga.App. 472, 183 S.E. 664, 665.

**County officers.** Those whose general authority and jurisdiction are confined within the limits of the county in which they are appointed, who are appointed in and for a particular county, and whose duties apply only to that county, and through whom the county performs its usual political functions. *State v. Burns*, 38 Fla. 367, 21 So. 290; *State v. Glenn*, 7 Heisk., Tenn., 473; *In re Carpenter*, 7 Barb., N.Y., 34; *Hamilton v. Monroe*, Tex.Civ.App., 287 S.W. 304, 306; *State ex rel. Osborn v. Eddington*, 208 Ind. 160, 195 N.E. 92.

Public officers who fill a position usually provided for in the organization of counties and county governments, and are selected by the county to represent it continuously and as part of the regular and permanent administration of public power in carrying out certain acts with the performance of which it is charged in behalf of the public. *Coulter v. Pool*, 187 Cal. 181, 201 P. 120, 123.

**County palatine.** A term bestowed upon certain counties in England, the lords of which in former times enjoyed especial privileges. They might pardon treasons, murders, and felonies. All writs and indictments ran in their names, as in other counties in the king's; and all offenses were said to be done against their peace, and not, as in other places, *contra pacem domini regis*. But these privileges have in modern times nearly disappeared. 1 Holdsw. Hist. E. L. 49; 4 Inst. 205.

**County powers.** Such only as are expressly provided by law or which are necessarily implied from those expressed. *Hersey v. Nelson*, 47 Mont. 132, 131 P. 30, 32, Ann.Cas.1914C, 963.

**County property.** That which a county is authorized to acquire, hold, and sell. *State v. Brown*, 73 Mont. 371, 236 P. 548, 549; *State v. Poland*, 61 Mont. 600, 203 P. 352, 353.

**County purposes.** Those exercised by the county acting as a municipal corporation. *Conrad v. Shearer*, 197 Iowa 1078, 198 N.W. 633, 634.

As regards the rate of taxation, all purposes for which county taxation may be levied. Test whether a tax is levied for county purposes is whether it is for strictly county uses, for which county or its inhabitants alone would benefit, or is it for a purpose in which entire state

is concerned and will profit. *Public Utilities Commission v. Manley*, 99 Colo. 153, 60 P.2d 913, 917. *Seaboard Air Line Ry. Co. v. Wright*, 34 Ga.App. 88, 128 S.E. 234, 235. With reference to budgets, all legitimate components of a county budget. *Garrison v. Jersey City*, 92 N.J.Law, 624, 105 A. 460, 462. The term has been held to apply only to the constantly recurring expenditures, such as salaries of county officers. *Obenchain v. Daggett*, 68 Or. 374, 137 P. 212, 214. But it has also been held not to be equivalent to "current expenses." *Seaboard Air-Line Ry. Co. v. Wright*, 157 Ga. 722, 122 S.E. 35, 36.

**County rate.** In English law. An imposition levied on the occupiers of lands, and applied to many miscellaneous purposes, among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. 15 & 16 Vict. c. 81.

**County road.** One which lies wholly within one county, and which is thereby distinguished from a state road, which is a road lying in two or more counties. *State v. Wood County*, 17 Ohio, 186.

**County-seat.** A county-seat or county-town is the chief town of a county, where the county buildings and courts are located and the county business transacted. *Williams v. Reutzell*, 60 Ark. 155, 29 S.W. 374; *In re Allison*, 13 Colo. 525, 22 P. 820, 10 L.R.A. 790; *McGregor v. Cain*, 177 Ark. 474, 7 S.W.2d 13, 14.

The county town as the seat of government. *Dunne v. Rock Island County*, 283 Ill. 628, 119 N.E. 591, 595. The place where the courthouse is situated, and the district and county courts are held. *Turner v. Tucker*, 113 Tex. 434, 258 S.W. 149, 150.

**County sessions.** In England, the court of general quarter sessions of the peace held in every county once in every quarter of a year. *Mozley & Whitley*.

**County site.** The seat of government of the county. Board of Revenue of Covington County v. Merrill, 193 Ala. 521, 68 So. 971, 977. The courthouse site. Board of Revenue of Jefferson County v. Huey, 195 Ala. 83, 70 So. 744, 746.

**County tax.** Tax exclusively for county purposes, in which state has no sovereign interest or responsibility, and which has no connection with duties of county in its relation to state. *Amos v. Mathews*, 99 Fla. 1, 126 So. 308, 323.

**County-town.** The county-seat; the town in which the seat of government of the county is located. *State v. Cates*, 105 Tenn. 441, 58 S.W. 649.

**County treasury.** Not the physical place of deposit, but the funds deposited to the credit of the county. *State v. Kurtz*, 110 Ohio St. 332, 144 N.E. 120, 123.

**County warrant.** An order or warrant drawn by some duly authorized officer of the county, directed to the county treasurer and directing him to pay out of the funds of the county a designated sum of money to a named individual, or to his order or to bearer. *Savage v. Mathews*, 98 Ala. 535, 13 So. 328; *Crawford v. Noble County*, 8 Okl. 450, 58 P. 616; *Quinn v. Reed*, 130 Ark. 116, 197

## COUNTY

S.W. 15, 16; Tyler v. Shelby County, Tex., C.C.A. Tex., 47 F.2d 103, 105.

**Foreign county.** Any county having a judicial and municipal organization separate from that of the county where matters arising in the former county are called in question, though both may lie within the same state or country.

**COUPLED WITH AN INTEREST.** This phrase, in the law of agency, has reference to a writing creating, conveying to, or vesting in the agent an interest in the estate or property which is the subject of the agency, as distinguished from the proceeds or profits resulting from the exercise of the agency. George H. Rucker & Co. v. Glennan, 130 Va. 511, 107 S.E. 725, 728.

**COUPONS.** Interest and dividend certificates; also those parts of a commercial instrument which are to be cut, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. Wharton. Toon v. Wapinitia Irr. Co., 117 Or. 374, 243 P. 554, 556.

In England, they are known as *warrants* or *dividend warrants*, and the securities to which they belong, debentures; 13 C. B. 372.

Coupons are written contracts for the payment of a definite sum of money on a given day, and being drawn and executed in a form and mode for the purpose, that they may be separated from the bonds and other instruments to which they are usually attached, it is held that they are negotiable and that a suit may be maintained on them without the necessity of producing the bonds. Each matured coupon upon a negotiable bond is a separable promise, distinct from the promises to pay the bonds or the other coupons, and gives rise to a separate cause of action. Aurora v. West, 7 Wall. 88, 19 L.Ed. 42. Haven v. Depot Co., 109 Mass. 88; Thompson v. Perrine, 106 U.S. 589, 1 S.Ct. 564, 27 L.Ed. 298.

**Coupon bonds.** Bonds to which are attached coupons for the several successive installments of interest to maturity. Benwell v. Newark, 55 N. J.Eq. 260, 36 A. 668; Tennessee Bond Cases, 114 U.S. 663, 5 S.Ct. 974, 29 L.Ed. 281.

**Coupon notes.** Promissory notes with coupons attached, the coupons being notes for interest written at the bottom of the principal note, and designed to be cut off severally and presented for payment as they mature. Williams v. Moody, 95 Ga. 8, 22 S.E. 30.

**COUR DE CASSATION.** The supreme judicial tribunal of France, having appellate jurisdiction only. For an account of its composition and powers, see Jones, French Bar, 22; Guyot. Repert. Univ.

**COURSE.** In surveying, the direction of a line with reference to a meridian.

**COURSE OF BUSINESS.** What is usually done in the management of trade or business. Idom v. Weeks & Russell, 135 Miss. 65, 99 So. 761, 764; In re Malschick, D.C.Pa., 217 F. 492, 494.

In Workmen's Compensation Acts, the usual course of business of the employer covers the normal operations which form part of the ordinary business carried on, and not including incidental and occasional operations having for their purpose the preservation of the premises or the appliances used in the business. Walker v. Industrial Accident Commission, 177 Cal. 737, 171 P. 954, 955, L.R.A. 1918F, 212.

Commercial paper is said to be transferred, or sales alleged to have been fraudulent may be shown to have been made, "in the course of business," or "in the usual and ordinary course of business," when the circumstances of the transaction are such as usually and ordinarily attend dealings of the same kind and do not exhibit any signs of haste, secrecy, or fraudulent intention. Walbrun v. Babbitt, 16 Wall. 581, 21 L.Ed. 489; Brooklyn, etc., R. Co. v. National Bank, 102 U.S. 14, 26 L.Ed. 61.

**COURSE OF EMPLOYMENT.** Those words as applied to compensation for injuries within the purview of Workmen's Compensation Acts, refer to the time, place, and circumstances under which the accident takes place. Fogg's Case, 125 Me. 168, 132 A. 129, 130; Brady v. Oregon Lumber Co., 117 Or. 188, 243 P. 96, 99, 45 A.L.R. 812; Walker v. Hyde, 43 Idaho, 625, 253 P. 1104, 1105; Wilson v. Town of Mooresville, 222 N.C. 283, 22 S.E.2d 907, 910. A workman is in course of employment when, within time covered by employment, he is doing something which he might reasonably do while so employed at proper place. Dambold v. Industrial Commission, 323 Ill. 377, 154 N.E. 128, 129; In re Employers' Liability Assur. Corporation, 215 Mass. 497, 102 N.E. 697, L.R.A.1916A, 306; Conrad v. Cook-Lewis Foundry Co., 198 N.C. 723, 153 S.E. 266, 269; In re McCrary, 109 Neb. 796, 192 N.W. 237, 239.

In order that an injury may arise out of and in the course of employment, it must be received while the workman is doing the duty he is employed to perform and also as a natural incident of the work flowing therefrom as a natural consequence and directly connected therewith. Di Salvio v. Menihan Co., 225 N.Y. 123, 121 N.E. 766, 767. "In course of employment," as used in Workmen's Compensation Act, means in service of master, and is not synonymous with "during the period covered by his actual employment." An injury, to be within course of employment, must occur during hours of employment, which includes hours of leisure set apart in working hours for rest, recreation, or refreshment, but not time when employee is off premises, not engaged in employer's business, or at home preparing for work, or coming to or leaving work. Shoffler v. Lehigh Valley Coal Co., 290 Pa. 480, 139 A. 192, 193. An employee, even after closing time, is in the "course of employment" until a suitable opportunity has been given for him to leave the place of work. Field v. Charmette Knitted Fabric Co., 245 N.Y. 139, 156 N.E. 642, 643; Munn v. Industrial Board, 274 Ill. 70, 113 N.E. 110, 112.

The expression "in the course of his employment," in the rule that a master is liable for the torts of his servant done in the course of his employment, means while engaged in the service of the master, while engaged generally in the master's work, as distinguished from acts done when the servant steps outside of his employment to do an act for himself, not connected with his master's business. Sina v. Carlson, 120 Minn. 283, 139 N.W. 601, 602. And see Birmingham Ledger Co. v. Buchanan, 10 Ala.App. 527, 65 So. 667, 670.

See, also, Arising Out of and in the Course of Employment.

**COURSE OF RIVER.** The course of a river is a line parallel with its banks; the term is not synonymous with the "current" of the river. Attorney General v. Railroad Co., 9 N.J.Eq. 550.

**COURSE OF THE VOYAGE.** By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185; Phill. Ins. 981.

**COURSE OF TRADE.** What is customarily or ordinarily done in the management of trade or business.

**COURSE OF VEIN.** In mining, the "course of the vein" appearing on the surface is the course of its apex, which is generally inclined and undulated and departs more or less materially from the strike. *Stewart Mining Co. v. Bourne, C.C.A. Idaho*, 218 F. 327, 329.

**COURSE OF VESSEL.** In navigation, the "course" of a vessel is her apparent course, and not her heading at any given moment. *The Eastern Glade, C.C.A.N.Y.*, 101 F.2d 4, 6. It is her actual course. *Liverpool, Brazil & River Plate Steam Nav. Co. v. U. S., D.C.N.Y.*, 12 F.2d 128, 129.

**COURT.** A space which is uncovered, but which may be partly or wholly inclosed by buildings or walls. *Smith v. Martin*, 95 Okl. 271, 219 P. 312, 313. When used in connection with a street, indicates a short street, blind alley, or open space like a short street inclosed by dwellings or other buildings facing thereon. *City of Miami v. Saunders*, 151 Fla. 699, 10 So.2d 326, 329.

#### Legislation

A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. *Finch, Law*, b. 4, c. 1, p. 233; *Fleta*, lib. 2, c. 2.

The application of the term—which originally denoted the place of assembling—to denote the assemblage, resembles the similar application of the Latin term *curia*, and is readily explained by the fact that the earlier courts were merely assemblages, in the court-yard of the baron or of the king himself, of those who were qualified and whose duty it was so to appear at stated times or upon summons. Traces of this usage and constitution of courts still remain in the courts baron, the various courts for the trial of impeachments in England and the United States, and in the control exercised by the parliament of England and the legislatures of the various states of the United States over the organization of courts of justice, as constituted in modern times. This meaning of the word has also been retained in the titles of some deliberative bodies, such as the "general court" of Massachusetts, *i. e.*, the legislature.

#### International Law

The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

#### Practice

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. *White County v. Gwin*, 136 Ind. 562, 36 N.E. 237, 22 L.

R.A. 402; *Bradley v. Town of Bloomfield*, 85 N.J. Law, 506, 89 A. 1009.

The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. *Brumley v. State*, 20 Ark. 77; *Wightman v. Karsner*, 20 Ala. 446.

A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury. *Houston Belt & Terminal Ry. Co. v. Lynch, Tex.Com.App.*, 221 S.W. 959, 960; *People ex rel. Thaw v. Grifenhagen, Sup.*, 154 N.Y.S. 965, 970; *Peterson v. Fargo-Moorhead St. Ry. Co.*, 37 N.D. 440, 164 N.W. 42, 49.

A tribunal officially assembled under authority of law at the appropriate time and place, for the administration of justice. *In re Carter's Estate*, 254 Pa. 518, 99 A. 58.

An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in due course of law at times and places previously determined by lawful authority. *Isbill v. Stovall, Tex.Civ.App.*, 92 S.W.2d 1067, 1070.

An incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. *State v. Le Blond*, 108 Ohio St. 126, 140 N.E. 510, 512. An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, *viz.*, attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. *Ex parte Gardner*, 22 Nev. 280, 39 P. 570; *Hertzen v. Hertzen*, 104 Or. 423, 208 P. 580, 582.

It is a passive forum for adjusting disputes and has no power to investigate facts or to initiate proceedings. *Sale v. Railroad Commission*, 15 Cal.2d 612, 104 P.2d 38, 41.

The place where justice is judicially administered. *Co. Litt.* 58a; 3 Bl. Comm. 23. *Railroad Co. v. Harden*, 113 Ga. 456, 38 S.E. 950; *Croft v. Croft*, 119 N.J.Eq. 468, 182 A. 853.

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. *State v. Caywood*, 96 Iowa, 367, 65 N.W. 385; *Sale v. Railroad Commission*, 15 Cal.2d 612, 104 P.2d 38, 41.

The word "court" is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character. *State v. Howat*, 107 Kan. 423, 191 P. 585, 589; for example, in New Jersey, the "court of pardons"; *In re Court of Pardons*, 97 N.J.Eq. 555, 129 A. 624, 625.

#### Classification

Courts may be classified and divided according to several methods, the following being the more usual:

**Courts of record and courts not of record.** The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual



## COURT

memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal. 225; Erwin v. U. S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

A "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

Courts may be at the same time of record for some purposes and not of record for others. Lester v. Redmond, 6 Hill, N.Y., 590; Ex parte Gladhill, 8 Metc., Mass., 168.

**Superior and inferior courts.** The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari*; the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. Simons v. De Bare, 4 Bosw., N.Y., 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. Nugent v. State, 18 Ala. 521.

**Civil and criminal courts.** The former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

**Equity courts and law courts.** The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction*, see Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, see Arches Court, Appellate, Circuit Courts, Consistory Courts, County, Customary Court-Baron, Ecclesiastical Courts, Federal Courts, Forest Courts, High Commission Court, Instance Court, Justice Court, Justiciary Court, Legislative Courts, Maritime Court, Mayor's Court,

Moot Court, Municipal Court, Orphans' Court, Police Court, Prerogative Court, Prize Court, Probate Court, Superior Courts, Supreme Court, and Surrogate's Court.

As to **court-hand, court-house, court-lands, court rolls, courtyard**, see those titles in their alphabetical order *infra*.

### General

**Court above, court below.** In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or *certiorari*; while the "court below" is the one from which the case is removed. Going v. Schnell, 6 Ohio Dec. 933.

**Court in bank.** A meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or justice.

**Court of competent jurisdiction.** One having power and authority of law at the time of acting to do the particular act. Ex parte Plaistridge, 68 Okl. 256, 173 P. 646, 647.

One having jurisdiction under the state Constitution and laws to determine the question in controversy. Texas Employers' Ins. Ass'n v. Nunamaker, Tex.Civ.App., 267 S.W. 749, 751. A court for the administration of justice as established by the Constitution or statute. Bradley v. Town of Bloomfield, 85 N.J.Law, 506, 89 A. 1009.

**Court of limited jurisdiction.** When a court of general jurisdiction proceeds under a special statute, it is a "court of limited jurisdiction" for the purpose of that proceeding, and its jurisdiction must affirmatively appear. Osage Oil & Refining Co. v. Interstate Pipe Co., 124 Okl. 7, 253 P. 66, 71.

**De facto court.** One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government. 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; Gildemeister v. Lindsay, 212 Mich. 299, 180 N.W. 633, 635.

**Full court.** A session of a court, which is attended by all the judges or justices composing it.

**Spiritual courts.** In English law. The ecclesiastical courts, or courts Christian. See 3 Bl. Comm. 61.

**COURT-BARON.** In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton; 1 Poll. & Maitl. Hist. E. L. 580.

*Customary court-baron* is one appertaining entirely to copyholders. 3 Bl.Comm. 33.

*Freeholders' court-baron* is one held before the freeholders who owe suit and service to the manor. It is the court-baron proper.

Coke (1st Inst. 58a) speaks of the Court Baron as being of the two natures just indicated. Blackstone, 3 Comm. 33, says that, though in their nature distinct, they are frequently confounded together. Later writers doubt if there were two courts; 1 Poll. & Maitl. Hist. E.L. 580.

**COURT CHRISTIAN.** The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 Bl. Comm. 83; 3 Bl. Comm. 64; 3 Steph. Comm. 430.

**COURT FOR CONSIDERATION OF CROWN CASES RESERVED.** A court established by St. 11 & 12 Vict. c. 78, composed of such of the judges of the superior courts of Westminster as were able to attend, for the consideration of questions of law reserved by any judge in a court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner had been found guilty by verdict. Such question is stated in the form of a special case. Mozley & Whiteley; 4 Steph. Comm. 442. The trial judge was empowered to "state a case" for the opinion of that court. He could not be compelled to do so, and only a question of law could be raised. If the court considered that the point had been wrongly decided at the trial, the conviction would be quashed. By Act of 1907, the Court of Criminal Appeal was created and the Court for Crown Cases Reserved was abolished.

**COURT FOR DIVORCE AND MATRIMONIAL CAUSES.** This court was established by St. 20 & 21 Vict. c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common-law courts, and the judge ordinary, who together constituted, and still constitute, the "full court." The judge ordinary heard almost all matters in the first instance. By the judicature act, 1873, § 3, the jurisdiction of the court was transferred to the supreme court of judicature. Sweet.

**COURT FOR THE CORRECTION OF ERRORS.** The style of a court having jurisdiction for review, by appeal or writ of error. The name was formerly used in New York and South Carolina.

**COURT FOR THE RELIEF OF INSOLVENT DEBTORS.** In English law. A local court which had its sittings in London only, which received the petitions of insolvent debtors, and decided upon the question of granting a discharge. See 3 Steph. Com. 426; 4 *id.* 287. Abolished by the Bankruptcy Act of 1861.

**COURT FOR THE TRIAL OF IMPEACHMENTS.** A tribunal empowered to try any officer of government or other person brought to its bar by the process of impeachment. In England, the house of lords constitutes such a court; in the United States, the senate; and in the several states, usually the upper house of the legislative assembly.

**COURT-HAND.** In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of "clerkship," as it was called. Two sizes of it were employed, a large and a small hand; the former, called "great court-hand," being used for initial words or clauses, the *placita* of records, etc. Bur- rill.

**COURT-HOUSE.** The building occupied for the public sessions of a court, with its various offices. The building occupied and appropriated according to law for the holding of courts. Board of Sup'rs of Stone County v. O'Neal, 130 Miss. 57, 93 So. 483, 484. Johnson City Buick Co. v. Johnson, 165 Tenn. 349, 54 S.W.2d 946.

The term may be used of a place temporarily occupied for the sessions of a court, though not the regular court-house. Harris v. State, 72 Miss. 960, 18 So. 387, 33 L.R.A. 85; Vigo County v. Stout, 136 Ind. 53, 35 N.E. 683, 22 L.R.A. 398.

The word may be synonymous with "county site" and signify the seat of government. Board of Revenue of Jefferson County v. Huey, 195 Ala. 83, 70 So. 744, 746.

**COURT, HUNDRED.** See Hundred Court.

**COURT-LANDS.** Domains or lands kept in the lord's hands to serve his family.

**COURT-LEET.** The name of an English court of record held once in the year, and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet; being the king's court granted by charter to the lords of those hundreds or manors. Its office was to view the frankpledges,—that is, the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanors. It has now, however, for the most part, fallen into total desuetude; though in some manors a court-leet is still periodically held for the transaction of the administrative business of the manor. Mozley & Whitley; Odgers, C. L. 965; Powell, Courts Leet; 1 Reeve, Hist. Eng. Law; Inderwick, King's Peace, 11; 1 Poll. & Maitl. 568; 4 Steph. Com. 306.

**COURT-MARTIAL.** A military court, convened under authority of government and the Uniform Code of Military Justice, 10 U.S.C.A. § 801 et seq., for trying and punishing offenses committed by members of the armed forces.

Such courts exist and have their jurisdiction by virtue of the military law, the court being constituted and empowered to act in each instance by authority from a commanding officer.

## COURT OF ADMIRALTY

**COURT OF ADMIRALTY.** A court having jurisdiction of causes arising under the rules of admiralty law. See Admiralty.

**High Court of Admiralty.** In English law. This was a court which exercised jurisdiction in prize cases, and had general jurisdiction in maritime causes, on the instance side. Its proceedings were usually *in rem*, and its practice and principles derived in large measure from the civil law. The judicature acts of 1873 transferred all the powers and jurisdiction of this tribunal to the probate, divorce, and admiralty division of the high court of justice.

**COURT OF ANCIENT DEMESNE.** In English law. A court of peculiar constitution, held by a bailiff appointed by the king, in which alone the tenants of the king's demesne could be impleaded. 2 Burrows, 1046; 1 Spence, Eq.Jur. 100; 2 Bl. Comm. 99; 1 Steph. Comm. 224; 1 Poll. & Maitl. 367.

**COURT OF APPEAL, HIS MAJESTY'S.** The chief appellate tribunal of England. It was established by the judicature acts of 1873 and 1875, and is invested with the jurisdiction formerly exercised by the court of appeal in chancery, the exchequer chamber, the judicial committee of the privy council in admiralty and lunacy appeals, and with general appellate jurisdiction from the high court of justice.

**COURT OF APPEALS.** In American law. An appellate tribunal which, in Kentucky, Maryland, the District of Columbia, and New York, is the court of last resort. In Virginia and West Virginia, it is known as the "supreme court of appeals"; in Connecticut, the Supreme Court of Errors; in Massachusetts and Maine, the Supreme Judicial Court. In other states the court of last resort is known as the Supreme Court. In Texas the Courts of Civil Appeals are inferior to the supreme court.

The United States is divided into eleven judicial circuits in each of which there is established a court of appeals known as the United States Court of Appeals for the circuit. 28 U.S.C.A. §§ 41, 43.

**COURT OF APPEALS IN CASES OF CAPTURE.** A court erected by act of congress under the articles of confederation which preceded the adoption of the constitution. It had appellate jurisdiction in prize causes.

**COURT OF ARBITRATION OF THE CHAMBER OF COMMERCE.** A court of arbitrators, created for the convenience of merchants in the city of New York, by act of the legislature of New York. It decides disputes between members of the chamber of commerce, and between members and outside merchants who voluntarily submit themselves to the jurisdiction of the court.

**COURT OF ARCHDEACON.** The most inferior of the English ecclesiastical courts, from which an appeal generally lies to that of the bishop (i. e., to the Consistory Court). 3 Bl. Comm. 64; 1 Holdsw. Hist. E. L. 369.

**COURT OF ASSISTANTS.** A court in Massachusetts organized in 1630, consisting of the governor, deputy governor and assistants. It exercised the whole power both legislative and judicial of the colony and an extensive chancery jurisdiction as well. S. D. Wilson in 18 Am.L.Rev. 226.

**COURT OF ATTACHMENTS.** The lowest of the three courts held in the forests. It has fallen into total disuse.

It was held before the verderers of the forest once in every forty days, to view the attachments by the foresters for offences against the vert and the venison. It had cognizance only of small trespasses. Larger ones were enrolled and heard by the Justices in Eyre. 1 Holdsw. Hist. E. L. 343.

**COURT OF AUDIENCE.** An ecclesiastical court, in which the primates once exercised in person a considerable part of their jurisdiction. Such courts seem to be now obsolete, or at least to be only used on the rare occurrence of the trial of a bishop. Phillim. Ecc. Law, 1201, 1204; 1 Holdsw. Hist. E. L. 371.

**COURT OF AUGMENTATION.** An English court created in the time of Henry VIII (27 Hen. VIII, c. 27), with jurisdiction over the property and revenue of certain religious foundations, which had been made over to the king by act of parliament, and over suits relating to the same.

It was called "The Court of the Augmentations of the Revenues of the King's Crown" (from the *augmentation* of the revenues of the crown derived from the suppression of the monasteries), and was dissolved in the reign of Queen Mary, but the Office of Augmentation remained long after; the records of the court are now at the Public Record Office. Cowell.

**COURT OF BANKRUPTCY.** An English court of record, having original and appellate jurisdiction in matters of bankruptcy, and invested with both legal and equitable powers for that purpose. The Bankrupt Law Consolidation Act, 1849. By the judicature acts, 1873 and 1875, the court of bankruptcy was consolidated into the supreme court of judicature.

In the United States, the Bankruptcy Act, § 1 (10), 11 U.S.C.A. § 1(10), as amended, provides that "'courts of bankruptcy' shall include the district courts of the United States and of the Territories and possessions to which this title is or may hereafter be applicable, and the District Court of the United States for the District of Columbia."

**COURT OF BROTHERHOOD.** An assembly of the mayors or other chief officers of the principal towns of the Cinque Ports in England, originally administering the chief powers of those ports, now almost extinct. Cent. Dict.

**COURT OF CHANCERY.** A court having the jurisdiction of a chancellor; a court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to

a court possessing general equity powers, distinct from the courts of common law. *Parmeter v. Bourne*, 8 Wash. 45, 35 P. 586; *Bull v. International Power Co.*, 84 N.J.Eq. 209, 93 A. 86, 88.

The terms "equity" and "chancery," "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions. *Wagner v. Armstrong*, 93 Ohio St. 443, 113 N.E. 397, 401.

**COURT OF CHIVALRY.** In English law. The name of a court anciently held as a court of honor merely, before the earl-marshal, and as a criminal court before the lord high constable, jointly with the earl-marshal. (But it is also said that this court was held by the constable, and after that office reverted to the crown in the time of Henry VIII., by the earl-marshal. *Davis*, Mil. Law 13.) 3 Bl.Comm. 68; 4 Broom & H. Comm. 360, note; 3 Bl. Comm. 103; 3 Steph. Comm. 335, note *i*; 7 Mod. 137.

It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armor, precedency, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record.

**COURT OF CLAIMS.** One of the courts of the United States, established in 1855. *U. S. v. Klein*, 13 Wall., U.S., 128, 144, 20 L.Ed. 519. It consists of a chief justice and four associates, and holds one annual session. It is located at Washington. Its jurisdiction extends to all claims against the United States arising out of any contract with the government or based on an act of congress or regulation of the executive, and all claims referred to it by either house of congress, as well as to claims for exoneration by a disbursing officer. Its judgments are, in certain cases, reviewable by the United States supreme court. It has no equity powers. Its decisions are reported and published.

This name is also given, in some of the states, either to a special court or to the ordinary county court sitting "as a court of claims," having the special duty of auditing and ascertaining the claims against the county and expenses incurred by it, and providing for their payment by appropriations out of the county levy or annual tax. *Meriweather v. Muhlenburg County Court*, 120 U.S. 354, 7 S.Ct. 563, 30 L.Ed. 653.

**COURT OF COMMISSIONERS OF SEWERS.** The name of certain English courts created by commission under the great seal pursuant to the statute of sewers (23 Hen. VIII. c. 5).

**COURT OF COMMON PLEAS.** In English law. One of the four superior courts at Westminster, which existed up to the passing of the judicature acts. It was also styled the "Common Bench." It was one of the courts derived from the breaking up of the *aula regis*, and had exclusive jurisdiction of all real actions and of *communia placita*, or common pleas, *i. e.*, between subject and subject. It was presided over by a chief justice with four puisne judges (later five, by virtue of 31 & 32

Vict. c. 125, § 11, subsec. 8). Appeals lay anciently to the king's bench, but afterwards to the exchequer chamber. See 3 Bl.Comm. 37, et seq. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the queen's bench and exchequer in personal actions and ejectment. *Wharton*.

In American law. The name sometimes given to a court of original and general jurisdiction for the trial of issues of fact and law according to the principles of the common law. *Moore v. Barry*, 30 S.C. 530, 9 S.E. 589, 4 L.R.A. 294.

**COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK.** The oldest court in the state of New York, no longer in existence.

**COURT OF CONCILIATION.** A court which proposes terms of adjustment, so as to avoid litigation. *Kashefsky v. Futernick*, 153 Misc. 733, 276 N.Y.S. 253.

**COURT OF CONSCIENCE.** The same as courts of request, (*q. v.*). This name is also frequently applied to the courts of equity or of chancery, not as a name but as a description. *Harper v. Clayton*, 84 Md. 346, 35 A. 1083, 35 L.R.A. 211. And see *Conscience*.

**COURT OF CONVOCATION.** In English ecclesiastical law. A court, or assembly, comprising all the high officials of each province and representatives of the minor clergy. It is in the nature of an ecclesiastical parliament; and, so far as its judicial functions extend, it has jurisdiction of cases of heresy, schism, and other purely ecclesiastical matters. An appeal lies to the king in council. 2 & 3 Will. IV. c. 92; *Cowell*; *Bac. Abr. Ecclesiastical Courts*, A, 1; 1 Bla. Comm. 279; 2 Steph. Com. 525, 668; 2 Burn. Eccl. Law, 18. Convocation exercises no jurisdiction at the present day. 1 Holdsw. Hist. E. L. 373.

**COURT OF COUNTY COMMISSIONERS.** In some states, a court of record in each county. Thus, in Alabama, it is composed of the judge of probate, as principal judge, and four commissioners, who are elected at the times prescribed by law, and hold office for four years.

**COURT OF CUSTOMS AND PATENT APPEALS.** The title given by Act Mar. 2, 1929, c. 488, § 1, 45 Stat. 1475, to a court of the United States created by Act Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, 105, and then known as the Court of Customs Appeals, consisting of a presiding judge and four associate judges. In patent and trade-mark cases it has the appellate jurisdiction which prior to April 1, 1929, was vested in the Court of Appeals of the District of Columbia. Act Mar. 2, 1929, c. 488, § 2 (*a, d*), 45 Stat. 1476. As to its jurisdiction over appeals from the "Customs Court," see that title.

**COURT OF DELEGATES.** An English tribunal composed of delegates appointed by royal commission, and formerly the great court of appeal in all ecclesiastical causes. The powers of the

## COURT OF DELEGATES

court were, by 2 & 3 Wm. IV. c. 92, transferred to the privy council. Brown; 3 Bl. Comm. 66; 1 Holdsw. Hist. E. L. 373.

A commission of review was formerly granted, in extraordinary cases, to revise a sentence of the court of delegates, when that court had apparently been led into material error.

**COURT OF EQUITY.** A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. Thomas v. Phillips, 4 Smedes & M., Miss., 423.

**COURT OF ERROR.** An expression applied especially to the court of exchequer chamber and the house of lords, as taking cognizance of error brought. Mozley & Whitley; 3 Steph. Comm. 333. It is applied in some of the United States to the court of last resort in the state; and in its most general sense denotes any court having power to review the decisions of lower courts on appeal, error, *certiorari*, or other process. See Court of Appeals.

**COURT OF ERRORS AND APPEALS.** The court of last resort in the state of New Jersey is so named. Formerly, the same title was given to the highest court of appeal in New York.

**COURT OF EXCHEQUER.** In English law. A very ancient court of record, set up by William the Conqueror as a part of the *aula regis*, and afterwards one of the four superior courts at Westminster. It was, however, inferior in rank to both the king's bench and the common pleas. It was presided over by a chief baron and four puisne barons. It was originally the king's treasury, and was charged with keeping the king's accounts and collecting the royal revenues. But pleas between subject and subject were anciently heard there, until this was forbidden by the *Articula super Chartas*, (1290,) after which its jurisdiction as a court only extended to revenue cases arising out of the non-payment or withholding of debts to the crown. But the privilege of suing and being sued in this court was extended to the king's accountants, and later, by the use of a convenient fiction to the effect that the plaintiff was the king's debtor or accountant, the court was thrown open to all suitors in personal actions. The exchequer had formerly both an equity side and a common-law side, but its equity jurisdiction was taken away by the statute 5 Vict. c. 5, (1842,) and transferred to the court of chancery. The judicature act (1873) transferred the business and jurisdiction of this court to the "Exchequer Division" of the "High Court of Justice."

In Scotch law. A court which formerly had jurisdiction of matters of revenue, and a limited jurisdiction over cases between the crown and its vassals where no questions of title were involved.

**COURT OF EXCHEQUER CHAMBER.** The name of a former English court of appeal, intermediate between the superior courts of common law and the house of lords. When sitting as a court of appeal from any one of the three superior courts of common law, it was composed of judges of the other two courts. 3 Bl. Comm. 56, 57; 3 Steph. Comm. 333, 356. By the judicature act (1873) the jurisdiction of this court is transferred to the court of appeal.

**COURT OF FACULTIES.** A tribunal of the archbishop in England.

It does not hold pleas in any suits, but creates rights to pews, monuments, and other mortuary matters. It had also various other powers under 25 Hen. VIII. c. 21. Co. 4th Inst. 337; 2 Chit. Gen. Pr. 507.

**COURT OF FIRST INSTANCE.** A court of primary jurisdiction. Courts of this title may be found in the jurisprudence of the Philippine Islands. 15 C.J. 688.

**COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.** In American law. A court of criminal jurisdiction in New Jersey.

In English law. A court of criminal jurisdiction, in England, held in each county once in every quarter of a year, but in the county of Middlesex twice a month. 4 Steph. Comm. 317-320. When held at other times than quarterly, the sessions are called "general sessions of the peace." See 2 Odgers, C.L. 966.

**COURT OF GENERAL SESSIONS.** The name given in some states to a court of general original jurisdiction in criminal cases.

**COURT OF GREAT SESSIONS IN WALES.** A court formerly held in Wales; abolished by 11 Geo. IV. and 1 Wm. IV. c. 70, and the Welsh judicature incorporated with that of England. 3 Steph. Comm. 317, note; 3 Bla. Comm. 77.

**COURT OF GUESTLING.** An assembly of the members of the Court of Brotherhood (*supra*) together with other representatives of the corporate members of the Cinque Ports, invited to sit with the mayors of the seven principal towns. Cent. Dict.

**COURT OF HIGH COMMISSION.** In English law. An ecclesiastical court of formidable jurisdiction, for the vindication of the peace and dignity of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offenses, contempts, and enormities. 3 Bl. Comm. 67. It was erected by St. 1 Eliz. c. 1, and abolished by 16 Car. I, c. 11. 1 Holdsw. Hist. E. L. 375.

**COURT OF HONOR.** A court having jurisdiction to hear and redress injuries or affronts to a man's honor or personal dignity, of a nature not cognizable by the ordinary courts of law, or encroachments upon his rights in respect to heraldry, coat-armour, right of precedence, and the like. It was one of the functions of the Court of Chivalry (*q. v.*) in England to sit and act as a court of honor. 3 Bl. Comm. 104.

The name is also given in some European countries to a tribunal of army officers (more or less distinctly recognized by law as a "court") convened for the purpose of inquiring into complaints affecting the honor of brother officers and punishing derelictions from the code of honor and deciding on the causes and occasions for fighting duels, in which officers are concerned, and the manner of conducting them.

**COURT OF HUSTINGS.** In English law. The county court of London, held before the mayor, recorder, and sheriff, but of which the recorder, is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 Steph.Comm. 293, n.; 449, note 1; 3 Bla.Comm. 80, n.; Madox, Hist. Exch. c. 20; Co. 2d Inst. 327. Since the abolition of all real and mixed actions except ejectment, the jurisdiction of this court has fallen into comparative desuetude. Pulling on Cust. Lond.

In American Law. A local court in some parts of Virginia. *Smith v. Commonwealth*, 6 Grat. 696.

**COURT OF INQUIRY.** In English law. A court sometimes appointed by the crown to ascertain whether it be proper to resort to extreme measures against a person charged before a court-martial. 2 Steph.Comm. 590; 1 Coler.Bla.Comm. 418, n.; 2 Brod. & B. 130. Also a court for hearing the complaints of private soldiers. Moz. & W. Dict.; Simmons, Cts.Mart. § 341.

In American law. Formerly, a court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, when demanded by him. Rev.St. § 1342, arts. 115, 116. Repealed by Act June 4, 1920, c. 227, § 4, 41 Stat. 812.

They were not strictly courts, having no power to try and determine guilt or innocence. They were rather agencies created by statute to investigate facts and report thereon. They could not compel the attendance of witnesses nor require them to testify. Davis, Mil.Law 220.

**COURT OF JUSTICE SEAT.** In English law. The principal of the forest courts. Called also Court of the Chief Justice in Eyre (*q. v.*).

**COURT OF JUSTICIARY.** A Scotch court of general criminal jurisdiction of all offenses committed in any part of Scotland, both to try causes and to review decisions of inferior criminal courts. It is composed of five lords of session with the lord president or justice-clerk as president. It also has appellate jurisdiction in civil causes involving small amounts. An appeal lies to the house of lords.

**COURT OF KING'S BENCH.** In English law. The supreme court of common law in the kingdom, now merged in the high court of justice under the judicature act of 1873, § 16.

It was one of the successors of the *curia regis* and received its name, it is said, because the king formerly sat in it in person. During the reign of a queen it was called the Queen's Bench, and during Cromwell's Protectorate it was called the Upper Bench.

**COURT OF LAW.** In a wide sense, any duly constituted tribunal administering the laws of the state or nation; in a narrower sense, a court pro-

ceeding according to the course of the common law and governed by its rules and principles, as contrasted with a "court of equity."

**COURT OF LODEMANAGE.** An ancient court of the Cinque Ports, having jurisdiction in maritime matters, and particularly over pilots (*lodemen*).

**COURT OF MAGISTRATES AND FREEHOLDERS.** In American law. The name of a court formerly established in South Carolina for the trial of slaves and free persons of color for criminal offenses.

**COURT OF MARSHALSEA.** In English law, the court or seat of the marshal. A court originally held before the steward and marshal of the king's house, instituted to administer justice between the king's domestic servants. It had jurisdiction of all trespasses committed within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. It was abolished by 12 & 13 Vict. c. 101, § 13. Mozley & Whitley.

**COURT OF NISI PRIUS.** In American law. Though this term is frequently used as a general designation of any court exercising general, original jurisdiction in civil cases, (being used interchangeably with "trial-court,") it belonged as a legal title only to a court which formerly existed in the city and county of Philadelphia, and which was presided over by one of the judges of the supreme court of Pennsylvania. This court was abolished by the constitution of 1874. See Courts of Assize and Nisi Prius.

**COURT OF ORDINARY.** In some of the United States (*e. g.*, Georgia) the name given to the probate or surrogate's court, or the court having the usual jurisdiction in respect to the proving of wills and the administration of decedents' estates. *Veach v. Rice*, 131 U.S. 293, 9 S.Ct. 730, 33 L.Ed. 163. Such a court formerly existed in New Jersey, South Carolina, and Texas. 2 Kent 409.

**COURT OF ORPHANS.** In English law. The court of the lord mayor and aldermen of London, which has the care of those orphans whose parent died in London and was free of the city. It is now said to be fallen into disuse. 2 Steph. Comm. 313; Pull. Cust. Lond. 196, *Orphans' Court*.

In American law. In Pennsylvania (and perhaps some other states) the name "orphans' court" is applied to that species of tribunal which is elsewhere known as the "probate court" or "surrogate's court."

**COURT OF OYER AND TERMINER.** In English law. A court for the trial of cases of treason and felony. The commissioners of assize and *nisi prius* are judges selected by the king and appointed and authorized under the great seal, including usually two of the judges at Westminster, and sent out twice a year into most of the counties of England, for the trial (with a jury of the county) of causes then depending at Westminster,

## COURT OF OYER

both civil and criminal. They sit by virtue of several commissions, each of which, in reality, constitutes them a separate and distinct court. The commission of *oyer and terminer* gives them authority for the trial of treasons and felonies; that of *general gaol delivery* empowers them to try every prisoner then in gaol for whatever offense; so that, altogether, they possess full criminal jurisdiction.

In American law. This name is generally used (sometimes, with additions) as the title, or part of the title, of a state court of criminal jurisdiction, or of the criminal branch of a court of general jurisdiction, being commonly applied to such courts as may try *felonies*, or the higher grades of crime. Such courts exist in Delaware and Pennsylvania. They were abolished in New York and New Jersey in 1895.

**COURT OF OYER AND TERMINER AND GENERAL GAOL (or JAIL) DELIVERY.** In American law. A court of criminal jurisdiction in the state of Pennsylvania. It is held at the same time with the court of quarter sessions, as a general rule, and by the same judges. Const.Pa. art. 5, § 1; 17 P.S. §§ 371, 391, 471.

In English law. A tribunal for the examination and trial of criminals. 3 Steph. Comm. 352.

**COURT OF PALACE AT WESTMINSTER.** This court had jurisdiction of personal actions arising within twelve miles of the palace at Whitehall. Abolished by 12 & 13 Vict. c. 101, 3 Steph. Comm. 317, note. See Court of the Steward and Marshal.

**COURT OF PASSAGE.** An inferior court, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool. It appears to have been also called the "Borough Court of Liverpool." It has the same jurisdiction in admiralty matters as the Lancashire county court. Rosc. Adm. 75.

**COURT OF PECULIARS.** A spiritual court in England, being a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions are originally cognizable by this court, from which an appeal lies to the Court of Arches. 3 Steph. Comm. 431; 4 Reeve, Eng. Law, 104. Most of such courts have been abolished by legislation. 1 Holdsw. Hist. Eng. Law 352. See, also, Arches Court.

**COURT OF PIEPOUDRE.** (Also spelled Pipowder, Pie Powder, Py-Powder, Piedpoudre, etc.) The lowest (and most expeditious) of the courts of justice known to the older law of England. It is supposed (by Cowell and Blount) to have been so called from the dusty feet of the suitors. For another conjecture as to the origin of the name, see Co. 4th Inst. 472. It was a court of record incident to every fair and market, was held by the

steward, and had jurisdiction to administer justice for all commercial injuries and minor offenses done in that same fair or market, (not a preceding one.) Inderwick, King's Peace 105. An appeal lay to the courts at Westminster. This court long ago fell into disuse. 3 Bl. Comm. 32; Barrington, Stat. 337; 3 Steph. Comm. 317, n.; Skene, *de verb. sig. Pede pulverosus*; Bracton 334; 22 L.Q.R. 244; 1 Holdsw. Hist. E. L. 309. See, however, Odgers, C. L. 102L

**COURT OF PLEAS.** A court of the county palatine of Durham, having a local common-law jurisdiction. It was abolished by the judicature act, which transferred its jurisdiction to the high court. Jud.Act 1873, § 16; 3 Bl.Comm. 79.

**COURT OF POLICIES OF ASSURANCE.** A court established by statute 43 Eliz. c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance. Crabb, Eng. Law, 503. The court was formally abolished by stat. 26 & 27 Vict. c. 125. 3 Bl.Comm. 74; 3 Steph. Comm. 317, n.

**COURT OF PRIVATE LAND CLAIMS.** A federal court created by act of Congress in 1891 (26 Stat. 854), to hear and determine claims by private parties to lands within the public domain, where such claims originated under Spanish or Mexican grants, and had not already been confirmed by Congress or otherwise adjudicated. The existence and authority of this court were to cease and determine at the end of the year 1895.

**COURT OF PROBATE.** In English law. The name of a court established in 1857, under the probate act of that year, (20 & 21 Vict. c. 77,) to be held in London, to which court was transferred the testamentary jurisdiction of the ecclesiastical courts. 2 Steph. Comm. 192. By the judicature acts, this court is merged in the high court of justice.

In American law. A court having jurisdiction over the probate of wills, the grant of administration, and the supervision of the management and settlement of the estates of decedents, including the collection of assets, the allowance of claims, and the distribution of the estate. In some states the probate courts also have jurisdiction of the estates of minors, including the appointment of guardians and the settlement of their accounts, and of the estates of lunatics, habitual drunkards, and spendthrifts. *Pons v. Pons*, 132 La. 370, 61 So. 406, 407. And in some states these courts possess a limited jurisdiction in civil and criminal cases. They are also called in some jurisdictions "orphans' courts" and "surrogate's courts."

**COURT OF PYPOWDER, PY-POWDER, or PY-POWDERS.** See Court of Piepoudre.

**COURT OF QUARTER SESSIONS OF THE PEACE.** In American law. A court of criminal jurisdiction in the state of Pennsylvania, having power to try misdemeanors, and exercising cer-



tain functions of an administrative nature. There is one such court in each county of the state. Its sessions are, in general, held at the same time and by the same judges as the *court of oyer and terminer* and *general jail delivery*. Const.Pa. art. 5, § 1; 17 P.S. §§ 331, 361.

**COURT OF QUEEN'S BENCH.** See Court of King's Bench.

**COURT OF RECORD.** See Court, *supra*.

**COURT OF REGARD.** In English law. One of the forest courts, in England, held every third year, for the lawing or expeditation of dogs, to prevent them from running after deer. It is now obsolete. 3 Steph. Comm. 440; 3 Bl. Comm. 71, 72.

**COURT OF SESSION.** The name of the highest court of civil jurisdiction in Scotland. It was composed of fifteen judges, now of thirteen. It sits in two divisions. The lord president and three ordinary lords form the first division; the lord justice clerk and three other ordinary lords form the second division. There are five permanent lords ordinary attached equally to both divisions; the last appointed of whom officiates on the bills, *i. e.*, petitions preferred to the court during the session, and performs the other duties of junior lord ordinary. The chambers of the parliament house in which the first and second divisions hold their sittings are called the "inner house;" those in which the lords ordinary sit as single judges to hear motions and causes are collectively called the "outer house." The nomination and appointment of the judges is in the crown. Wharton.

**COURT OF SESSIONS.** Courts of criminal jurisdiction existing in California, New York, and one or two other of the United States.

**COURT OF SHEPWAY.** A court held before the lord warden of the Cinque Ports. A writ of error lay from the mayor and jurats of each port to the lord warden in this court, and thence to the queen's bench. The civil jurisdiction of the Cinque Ports is abolished by 18 & 19 Vict. c. 48.

**COURT OF SPECIAL SESSIONS.** A generic term, applicable to those courts which have no stated terms and are not continuous, but which are organized only for the trial of each particular case and become *functus officio* when judgment is rendered therein. *People v. Wagner*, 45 N.Y.S.2d 314, 316.

**COURT OF STANNARIES.** In English law. A court established in Devonshire and Cornwall, for the administration of justice among the miners and tanners, that they might not be drawn away from their business to attend suits in distant courts. The stannary court is a court of record, with a special jurisdiction. 3 Bl. Comm. 79.

**COURT OF STAR CHAMBER.** This was an English court of very ancient origin, but new-modeled by St. 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of

the courts of common law, without the intervention of any jury. The jurisdiction extended legally over riots, perjury, misbehavior of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies; holding for honorable that which it pleased, and for just that which it profited, and becoming both a court of law to determine civil rights and a court of revenue to enrich the treasury. It was finally abolished by St. 16 Car. I, c. 10, to the general satisfaction of the whole nation. Brown.

**COURT OF SURVEY.** A court for the hearing of appeals by owners or masters of ships, from orders for the detention of unsafe ships, made by the English board of trade, under the merchant shipping act, 1876, § 6.

**COURT OF SWEINMOTE** (spelled, also, *Swainmote*, *Swain-gemote*; Saxon, *swang*, an attendant, a freeholder, and *mote* or *gemote*, a meeting). One of the old forest courts, held before the verders, as judges, by the steward, thrice in every year,—the sweins or freeholders within the forest composing the jury. This court had jurisdiction to inquire into grievances and oppressions committed by the officers of the forest, and also to receive and try presentments certified from the court of attachments, certifying the cause, in turn, under the seals of the jury, in case of conviction, to the court of justice seat for the rendition of judgment. Cowell; 3 Bla. Com. 71, 72; 3 Steph. Com. 317, n. See *Inderwick*, *King's Peace* 150; *Forest Laws*.

**COURT OF THE CHIEF JUSTICE IN EYRE.** The highest of the courts of the forest, held every three years, by the chief justice, to inquire of purprestures or encroachments, assarts, or cultivation of forest land, claims to franchises, parks, warrens, and vineyards in the forest, as well as claims of the hundred, claims to the goods of felons found in the forest, and any other civil questions that might arise within the forest limits. But it had no criminal jurisdiction, except of offenses against the forest laws. It was called also the court of justice seat. *Inderwick*, *King's Peace*. Since the Restoration the forest laws have fallen into disuse. The office was abolished in 1817.

**COURT OF THE CLERK OF THE MARKET.** An English court of inferior jurisdiction held in every fair or market for the punishment of misdemeanors committed therein. The jurisdiction over weights and measures formerly exercised was taken away by stat. 5 & 6 Will. IV. c. 63; 9 M. & W. 747. 4 Steph. Comm. 323.

**COURT OF THE CORONER.** In English law. A court of record, to inquire, when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end. 4 Steph. Comm. 323; 4 Bl. Comm. 274. Now generally known as an inquest. See *Coroner*.

## COURT OF THE COUNTIES

**COURT OF THE COUNTIES PALATINE.** In English law. A species of private court which formerly appertained to the counties palatine of Lancaster and Durham. 1 Holdsw. Hist. E. L. 47; 1 Steph. Hist. C. L. 138; Coke, 4 Inst. 239; 1 Harg. L. Tr. 378.

**COURT OF THE DUCHY OF LANCASTER.** A court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 Bl. Comm. 78.

**COURT OF THE EARL MARSHAL.** In the reign of William the Conqueror the marshal was next in rank to the constable, in command of the army. When the constable's office ceased, his duties devolved upon the earl marshal. The military Court of the Constable came to be known as the Marshal's Court, or, in its modern form, Court-Martial. Aside from its criminal jurisdiction, it had much to do with questions relating to fiefs and military tenures, though not to property rights involved therein. Davis, Mil. Laws of U. S. 14. See Hale, Hist. C. L. 36; Grose, Mil. Antiq. See Court of Chivalry; Courts-Martial; Constable of England.

**COURT OF THE LORD HIGH ADMIRAL.** In the earlier part of the 14th century, the Admiral possessed a disciplinary jurisdiction over his fleet. After 1340 it is reasonable to suppose that the Admiral could hold an independent court and administer justice in piracy and other maritime cases. There were at first several admirals and several courts. From the early 15th century there was one Lord High Admiral and one Court of Admiralty. 1 Holdsw. Hist. E. L. 313.

**COURT OF THE LORD HIGH STEWARD.** In English law. A court instituted for the trial, during the recess of parliament, of peers indicted for treason or felony, or for misprision of either. This court is not a permanent body, but is created in modern times, when occasion requires, and for the time being, only; and the lord high steward, so constituted, with such of the temporal lords as may take the proper oath, and act, constitute the court.

All peers who have a right to sit and vote in Parliament must be summoned. They are the sole judges of fact, and the majority, which must consist of twelve at least, decides. The Lord High Steward has a vote, and is judge of all matters of law.

**COURT OF THE LORD HIGH STEWARD OF THE UNIVERSITIES.** In English law. A court constituted for the trial of scholars or privileged persons connected with the university at Oxford or Cambridge who are indicted for treason, felony, or mayhem. 3 Bla. Comm. 83; 4 *id.* 277; 1 Steph. Comm. 67; 3 *id.* 341; 4 *id.* 261.

**COURT OF THE OFFICIAL PRINCIPAL.** This court, the Court of the "Official Principal" of the Archbishop of Canterbury, is more commonly called the Arches Court, or Court of the Arches. See Arches Court.

**COURT OF THE STEWARD AND MARSHAL.** A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the "verge." Crabb, Eng. Law, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 Reeve, Eng. Law, 235, 247. This court was created by Charles I., and abolished in 1849. It was held in the borough of Southwark, and was called also the "palace court," having jurisdiction of all personal actions arising within twelve miles of the royal palace of Whitehall, exclusive of London.

**COURT OF THE STEWARD OF THE KING'S HOUSEHOLD.** In English law. A court which had jurisdiction of all cases of treason, misprision of treason, murder, manslaughter, bloodshed, and other malicious striking whereby blood is shed, occurring in or within the limits of any of the palaces or houses of the king, or any other house where the royal person is abiding. It was created by statute 33 Hen. VIII. c. 12, but long ago fell into disuse. 4 Bl. Comm. 276, 277, and notes.

**COURT OF WARDS AND LIVERIES.** A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by St. 32 Hen. VIII. c. 46, called the "Court of the King's Wards." To this was annexed, by St. 33 Hen. VIII. c. 22, the "Court of Liveries;" so that it then became the "Court of Wards and Liveries." 4 Reeve, Eng. Law, 258. This court was not only for the management of "wards," properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. *Id.* 259. It was abolished by St. 12 Car. II. c. 24. Crabb, Eng. Law, 468; 4 Reeve, Hist. E. L. 259; Crabb, Hist. E. L. 468; 1 Steph. Com. 183; 4 *id.* 40; 2 Bla. Com. 68; 3 *id.* 258.

**COURT ROLLS.** The rolls of a manor, containing all acts relating thereto. While belonging to the lord of the manor, they are not in the nature of public books for the benefit of the tenant.

**COURTS OF APPEALS.** A system of courts of the United States (one in each circuit) created by act of congress, composed of three or more judges (provision being made also for the allotment of the justices of the supreme court among the circuits), and having appellate jurisdiction as defined by statute. 28 U.S.C.A. §§ 41-48, 1291-1294.

Court of Appeals of the District of Columbia was held to be Circuit Court of Appeals, *Swift & Co. v. U. S.*, App.D.C., 276 U.S. 311, 48 S.Ct. 311, 313, 72 L.Ed. 587.

**COURTS OF ASSIZE AND NISI PRIUS.** Courts in England composed of two or more commissioners, called "judges of assize," (or of "assize and *nisi prius*,") who are twice in every year sent by the king's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of

fact as are there under dispute in the courts of Westminster Hall. 3 Steph. Comm. 421, 422; 3 Bl. Comm. 57; 2 Odger, Com. Law, 985.

**COURTS OF CINQUE PORTS.** In English law. Courts of limited local jurisdiction formerly held before the mayor and jurats (aldermen) of the Cinque Ports. Their jurisdiction was not affected by the Judicature Act of 1873. 1 Holdsw. Hist. E. L. 305; 3 Bla. Comm. 79; 2 Steph. Comm. 499.

**COURTS OF THE FOREST.** Courts held for the enforcement of the forest laws. Inderwick, King's Peace. See Forest Courts.

**COURTS OF THE FRANCHISES.** Jurisdictions in the early Norman period which rested upon royal grants—often assumed. Edward I., in 1274, sent out commissioners to enquire by what warrant different landowners were exercising their *jura regalia*. There were many varieties of lesser franchises. Some of these franchises were recognized as existing by the County Courts Acts, 1846–1888. 1 Holdsw. Hist. E. L. 61.

**COURTS OF PRINCIPALITY OF WALES.** A species of private courts of a limited though extensive jurisdiction, which, upon the thorough reduction of that principality and the settling of its polity in the reign of Henry VIII, were erected all over the country. These courts, however, have been abolished by 1 Wm. IV. c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do the circuits in England, for the purpose of disposing of those causes which are ready for trial. Brown.

**COURTS OF REQUEST.** Inferior courts, in England, having local jurisdiction in claims for small debts, established in various parts of the kingdom by special acts of parliament. They were abolished in 1846, and the modern county courts (*q. v.*) took their place. 3 Steph. Comm. 283, 449; 1 Holdsw. H. E. L. 208; Bac. Abridg.; Select Cases in the Court of Requests (Selden Society, Publ. vol. 12).

**COURTS OF THE UNITED STATES** comprise the following: The senate of the United States, sitting as a court of impeachment; the supreme court; the courts of appeals; the district courts; the court of claims; the court of customs and patent appeals; the customs court; the tax court of the United States; and provisional courts; courts of territories and outlying possessions.

**COURTS OF THE UNIVERSITIES** of Oxford and Cambridge have jurisdiction in all personal actions to which any member or servant of the respective university is a party, provided that the cause of action arose within the liberties of the university, and that the member or servant was resident in the university when it arose, and when the action was brought. 3 Steph. Comm. 299; St. 25 & 26 Vict. c. 26, § 12, St. 19 & 20 Vict. c. 17. Each university court also has a criminal jurisdiction in all offenses committed by its members. 4 Steph. Comm. 325.

**COURTS OF WESTMINSTER HALL.** The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III., that "common pleas should no longer follow the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity also sit at Westminster, nominally, during term time, although, actually, only during the first day of term, for they generally sit in courts provided for the purpose in, or in the neighborhood of, Lincoln's Inn. Brown.

**COURTESY.** See Courtesy.

**COURTYARD.** A corrupted form of "curtilage," signifying a space of land about a dwelling house, which not only might be inclosed, but within which appurtenant buildings and structures might be erected. In re Lafayette Ave. in City of New York, 118 Misc. Rep. 161, 193 N.Y.S. 802, 804.

**COUSIN.** Kindred in the fourth degree, being the issue (male or female) of the brother or sister of one's father or mother. Harris v. Harris, 97 N. J. Eq. 190, 127 A. 108, 109; In re Hering's Estate, 137 Misc. 867, 244 N.Y.S. 138.

Those who descend from the brother or sister of the father of the person spoken of are called "paternal cousins;" "maternal cousins" are those who are descended from the brothers or sisters of the mother. Cousins-german are first cousins. Sanderson v. Bayley, 4 Myl. & C. 59.

In English writs, commissions, and other formal instruments issued by the crown, the word signifies any peer of the degree of an earl. The appellation is as ancient as the reign of Henry IV., who, being related or allied to every earl then in the kingdom, acknowledged that connection in all his letters and public acts; from which the use has descended to his successors, though the reason has long ago failed. Mozley & Whitley.

**First cousins.** Cousins-german; the children of one's uncle or aunt. Sanderson v. Bayley, 4 Mylne & C. 59.

**Second cousins.** Persons who are related to each other by descending from the same great-grandfather or great-grandmother. The children of one's first cousins are his second cousins. These are sometimes called "first cousins once removed." Slade v. Fooks, 9 Sim. 387; Corporation of Bridgnorth v. Collins, 15 Sim. 541.

**Quarter cousin.** Properly, a cousin in the fourth degree; but the term has come to express any remote degree of relationship, and even to bear an ironical signification in which it denotes a very trifling degree of intimacy and regard. Often corrupted into "cater" cousin.

## COUSINAGE

**COUSINAGE.** See Cosinage.

**COUSTOM.** (Fr. Coutum.) Custom; duty; toll; tribute. 1 Bl. Comm. 314.

**COUSTOUMIER.** (Otherwise spelled "*Coustumier*" or "*Coutumier*.") In old French law. A collection of customs, unwritten laws, and forms of procedure. Two such volumes are of especial importance in juridical history, viz., the *Grand Coustumier de Normandie*, and the *Coutumier de France* or *Grand Coutumier*.

**COUTHUTLAUGH.** A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offense he underwent the same punishment as the outlaw himself. Bract. 128*b*; Spelman.

**COUVERTURE.** In French law. The deposit ("margin") made by the client in the hands of the broker, either of a sum of money or of securities, in order to guaranty the broker for the payment of the securities which he purchases for the client. Arg.Fr.Merc.Law, 555.

**COVENABLE.** A French word signifying convenient or suitable; as covenantly endowed. Anciently written "convenable." *Termes de la Ley*.

### COVENANT.

#### Practice

The name of a common-law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal. *Stickney v. Stickney*, 21 N.H. 68; *Utilities Production Corporation v. Southwestern Natural Gas Co.*, Del., 1 Terry 401, 11 A.2d 275, 276.

#### Law of Contracts

An agreement, convention, or promise of two or more parties, *by deed* in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts. *Commonwealth v. Robinson*, 1 Watts, Pa., 160; *Kent v. Edmondston*, 49 N.C. 529; *Schram v. Coyne*, C.C.A.Mich., 127 F.2d 205, 209; *Sabin v. Hamilton*, 2 Ark. 485, 490 (see, however, the later case of *Dyer v. Gill*, 32 Ark. 410, pointing out that by virtue of statute in Arkansas, the distinction between sealed and unsealed instruments, with reference to contracts between individuals, has been abolished).

An agreement between two or more parties, reduced to writing and executed by a sealing and delivery thereof, whereby some of the parties named therein engage, or one of them engages, with the other, or others, or some of them, therein also named, that some act hath or hath not already been done, or for the performance or non-performance of some specified duty. *De Bolle v. Insurance Co.*, 4 Whart., Pa., 71, 33 Am.Dec. 38.

In common parlance, any agreement, whether under seal or not. 15 C.J. 1209; 7 R.C.L. 1084; *Jenkins v. John Taylor Dry Goods Co.*, 352 Mo. 660, 179 S.W.2d 54, 58.

In effect, this has become the legal meaning in many states, in which private seals have been abolished by statute. For a number of these state statutes, see 66 L.R.A.

686, 687. In those states it is commonly held that the affixing of a seal, when unnecessary to the validity of the instrument, has no effect, and may be disregarded. 24 R.C.L. 689. "Seals are a relic of that period when men, as a rule, could not write," and a covenant may "be created in this state [Georgia] by a writing not under seal." *Atlanta, K. & N. Ry. Co. v. McKinney*, 124 Ga. 929, 53 S.E. 701, 703, 6 L.R.A., N.S., 436.

#### Classification

Covenants may be classified according to several distinct principles of division. According as one or other of these is adopted, they are:

**Express or implied.** The former being those which are created by the express words of the parties to the deed declaratory of their intention, while implied covenants are those which are inferred by the law from certain words in a deed which imply (though they do not express) them. Express covenants are also called covenants "in deed," as distinguished from covenants "in law." *McDonough v. Martin*, 88 Ga. 675, 16 S.E. 59, 18 L.R.A. 343; *Garstang v. Davenport*, 90 Iowa 359, 57 N.W. 876.

**Dependent, concurrent, and independent.** Covenants are either dependent, concurrent, or mutual and independent. The first depends on the prior performance of some act or condition, and, until the condition is performed, the other party is not liable to an action on his covenant. In the second, mutual acts are to be performed at the same time; and if one party is ready, and offers to perform his part, and the other neglects or refuses to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. The third sort is where either party may recover damages from the other for the injuries he may have received by a breach of the covenants in his favor; and it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. *Bailey v. White*, 3 Ala. 330; *Gray v. Smith*, C.C.Cal., 76 F. 534; *Lowery v. May*, 213 Ala. 66, 104 So. 5, 8; *Roberts v. Steelman*, C.C.A.N.J., 1 F.2d 180, 182.

Mutual and independent covenants are such as do not go to the whole consideration on both sides, but only to a part, and where separate actions lie for breaches on either side to recover damages for the injury sustained by breach. *Lowery v. May*, 213 Ala. 66, 104 So. 5, 8; *Big Run Coal Co. v. Employers' Indemnity Co.*, 163 Ky. 596, 174 S.W. 25, 26.

Covenants are dependent where performance by one party is conditioned on and subject to performance by the other, and in such case the party who seeks performance must show performance or a tender or readiness to perform on his part; but covenants are independent when actual performance of one is not dependent on another, and where, in consequence, the remedy of both sides is by action. *Roberts v. Steelman*, C.C.A.N.J., 1 F.2d 180, 182.

**Principal and auxiliary.** The former being those which relate directly to the principal matter of the contract entered into between the parties; while auxiliary covenants are those which do not relate directly to the principal matter of contract between the parties, but to something connected with it.

**Inherent and collateral.** The former being such as immediately affect the particular property, while the latter affect some property collateral thereto or some matter collateral to the grant or lease. Shep.Touch. 161.

A covenant inherent is one which is conversant about the land, and knit to the estate in the land; as, that the thing demised shall be quietly enjoyed, shall be kept in repair, or shall not be aliened. A covenant collateral is one which is conversant about some collateral thing that doth nothing at all, or not so immediately, concern the thing granted; as to pay a sum of money in gross, etc.

**Joint or several.** The former bind both or all the covenantors together; the latter bind each of them separately. A covenant may be both joint and several at the same time, as regards the covenantors; but, as regards the covenantees, they cannot be joint and several for one and the same cause, (5 Coke, 19a,) but must be either joint or several only. Brown. See Capen v. Barrows, 1 Gray, Mass., 379; In re Slingsby, 5 Coke, 18b.

Covenants are usually joint or several according as the interests of the covenantees are such; but the words of the covenant, where they are unambiguous, will decide, although, where they are ambiguous the nature of the interests as being joint or several is left to decide.

**General or specific.** The former relate to land generally and place the covenantee in the position of a specialty creditor only; the latter relate to particular lands and give the covenantee a lien thereon. Brown.

**Executed or executory.** The former being such as relate to an act already performed; while the latter are those whose performance is to be future. Shep.Touch. 161.

**Affirmative or negative.** The former being those in which the party binds himself to the existence of a present state of facts as represented or to the future performance of some act; while the latter are those in which the covenantor obliges himself *not* to do or perform some act.

**Declaratory or obligatory.** The former being those which serve to limit or direct uses; while the latter are those which are binding on the party himself. 1 Sid. 27; 1 Keb. 337.

**Real and personal.** A real covenant is one which binds the heirs of the covenantor and passes to assignees or purchasers; a covenant the obligation of which is so connected with the realty that he who has the latter is either entitled to the benefit of it or is liable to perform it; a covenant which has for its object something annexed to, or inherent in, or connected with, land or other real property, and runs with the land, so that the grantee of the land is invested with it and may sue upon it for a breach happening in his time. 4 Kent, Comm. 470; 2 Bl.Comm. 304; Chapman v. Holmes, 10 N.J.Law, 20; Skinner v. Mitchell, 5 Kan.App. 366, 48 P. 450; Oil Co. v. Hinton, 159 Ind. 398, 64 N.E. 224; Davis v. Lyman, 6 Conn. 249.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. Termes de la Ley; 3 Bl. Comm. 156; Shep.Touch. 161. A personal covenant, on the

other hand, is one which, instead of being a charge upon real estate of the covenantor, only binds himself and his personal representatives in respect to assets. 4 Kent, Comm. 470; Carter v. Denman, 23 N.J.Law, 270; Hadley v. Bernero, 97 Mo.App. 314, 71 S.W. 451. The phrase may also mean a covenant which is personal to the covenantor, that is, one which he must perform in person, and cannot procure another person to perform for him. De Sanno v. Earle, 273 Pa. 265, 117 A. 200, 202; Pearson v. Richards, 106 Or. 78, 211 P. 167, 171. "Real covenants" relate to realty and have for their main object some benefit thereto, inuring to benefit of and becoming binding on subsequent grantees, while "personal covenants" do not run with land. Bank of Hoxie v. Meriwether, 166 Ark. 39, 265 S.W. 642, 645. Very considerable confusion exists among the authorities in the use of the term real covenants. The definition of Blackstone which determines the character of covenants from the insertion or noninsertion of the word "heir" by the covenantor, is pretty generally rejected.

**Transitive or intransitive.** The former being those personal covenants the duty of performing which passes over to the representatives of the covenantor; while the latter are those the duty of performing which is limited to the covenantee himself, and does not pass over to his representative. Bac.Abr.Cov.

**Disjunctive covenants.** Those which are for the performance of one or more of several things at the election of the covenantor or covenantee, as the case may be. Platt, Cov. 21.

**Absolute or conditional.** An absolute covenant is one which is not qualified or limited by any condition.

#### Other Compound and Descriptive Terms

**Continuing covenant.** One which indicates or necessarily implies the doing of stipulated acts successively or as often as the occasion may require; as, a covenant to pay rent by installments, to keep the premises in repair or insured, to cultivate land, etc. McGlynn v. Moore, 25 Cal. 395.

**Full covenants.** As this term is used in American law, it includes the following: The covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty, this last often taking the place of the covenant for quiet enjoyment, and indeed in many states being the only covenant in practical use. Rawle, Cov. for Title, § 21.

**Mutual covenants.** A mutual covenant is one where either party may recover damages from the other for the injury he may have received from a breach of the covenants in his favor. Bailey v. White, 3 Ala. 330.

**Separate covenant.** A several covenant; one which binds the several covenantors each for himself, but not jointly.

**Usual covenants.** An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances." Wilson v. Wood, 17 N.J.Eq. 216, 88 Am.Dec. 231; Drake v. Barton, 18 Minn. 467, Gil. 414.

## COVENANT

The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing "usual covenants," or, which is the same thing, in an open agreement without any reference to the covenants, and there are no special circumstances justifying the introduction of other covenants, the following are the only ones which either party can insist upon, namely: Covenants by the lessee (1) to pay rent; (2) to pay taxes, except such as are expressly payable by the landlord; (3) to keep and deliver up the premises in repair; and (4) to allow the lessor to enter and view the state of repair; and the usual qualified covenant by the lessor for quiet enjoyment by the lessee. 7 Ch.Div. 561.

### Specific Covenants

**Covenants against incumbrances.** A covenant that there are no incumbrances on the land conveyed; a stipulation against all rights to or interests in the land which may subsist in third persons to the diminution of the value of the estate granted. *Bank v. Parisette*, 68 Ohio St. 450, 67 N.E. 896; *Shearer v. Ranger*, 22 Pick., Mass., 447; *Matzger v. Arcade Building & Realty Co.*, 102 Wash. 423, 173 P. 47.

**Covenant for further assurance.** An undertaking, in the form of a covenant, on the part of the vendor of real estate to do such further acts for the purpose of perfecting the purchaser's title as the latter may reasonably require. This covenant is deemed of great importance, since it relates both to the vendor's title and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts necessary for supplying any defect in the former as to remove all objections to the sufficiency and security of the latter. *Platt, Cov.*; *Rawle, Cov.* §§ 98, 99. See *Sugd.Vend.* 500; *Armstrong v. Darby*, 26 Mo. 520.

**Covenant for quiet enjoyment.** An assurance against the consequences of a defective title, and of any disturbances thereupon. *Platt, Cov.* 312; *Rawle, Cov.* 125. *Gulf Refining Co. v. Fetschan*, C.C.A.Ohio, 130 F.2d 129, 132.

A covenant that the tenant or grantee of an estate shall enjoy the possession of the premises in peace and without disturbance by hostile claimants. *Poposkey v. Munkwitz*, 68 Wis. 322, 32 N.W. 35, 60 Am.Rep. 858; *Stewart v. Drake*, 9 N.J.Law, 141; *Christy v. Bedell*, 10 Kan.App. 435, 61 P. 1095.

**Covenants for title.** Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin, for right to convey, against incumbrances, or quiet enjoyment, sometimes for further assurance, and almost always of warranty." *Rawle, Cov.* § 21.

**Covenants in gross.** Such as do not run with the land.

**Covenant not to sue.** A covenant by one who had a right of action at the time of making it against another person, by which he agrees not to sue to enforce such right of action. *Pacific States Lumber Co. v. Bargar*, C.C.A.Or., 10 F.2d 335, 337; *McDonald v. Goddard Grocery Co.*, 184 Mo.App. 432, 171 S.W. 650, 651.

**Covenant of non-claim.** A covenant sometimes employed, particularly in the New England states, and in deeds of extinguishment of ground rents in Pennsylvania, that neither the vendor, nor his heirs, nor any other person, etc., shall claim any title in the premises conveyed. *Rawle, Cov.* § 22.

**Covenant of right to convey.** An assurance by the covenantor that the grantor has sufficient capacity and title to convey the estate which he by his deed undertakes to convey.

**Covenant of seisin.** An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 641; *Rawle, Cov.* § 58; *Burton v. Price*, 105 Fla. 544, 141 So. 728, 729.

It is said that the covenant of seisin is not now in use in England, being embraced in that of a right to convey; but it is used in several of the United States. 2 Wash. Real Prop. \*648.

**Covenant of warranty.** An assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title. *King v. Kilbride*, 58 Conn. 109, 19 A. 519; *Blair v. Morris*, 212 Ala. 91, 101 So. 745, 746; *Biwer v. Martin*, 294 Ill. 488, 128 N.E. 518, 522.

**Covenant running with land.** A covenant which goes with the land, as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 Kent, Comm. 472, note.

A covenant is said to run with the land, when not only the original parties or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable (as the case may be) to its obligation. 1 Steph. Comm. 455. Or, in other words, it is so called when either the liability to perform it or the right to take advantage of it passes to the assignee of the land. *Tillotson v. Pritchard*, 60 Vt. 94, 14 A. 302, 6 Am.St.Rep. 95; *Spencer's Case*, 3 Coke, 31. One which touches and concerns the land itself, so that its benefit or obligation passes with the ownership. *Local Federal Savings & Loan Ass'n of Oklahoma City v. Eckroat*, 186 Okl. 660, 100 P.2d 261, 262.

**Covenant running with title.** A covenant which goes with the title. Stipulation in a lease granting to lessee the option of renewing it for another specified period was such a covenant. *Magnolia Petroleum Co. v. Carter*, La.App., 2 So.2d 680, 682.

**Covenant to convey.** A covenant by which the covenantor agrees to convey to the covenantee a certain estate, under certain circumstances.

**Covenant to renew.** An executory contract, giving lessee the right to renew on compliance with the terms specified in the renewal clause, if any, or, if none, on giving notice, prior to termination of the lease, of his desire to renew, whereupon the contract becomes executed as to him. *Freiheit v. Broch*, 98 Conn. 166, 118 A. 828, 830.

**Covenant to stand seised.** A conveyance adapted to the case where a person seised of land in possession, reversion, or vested remainder, proposes to convey it to his wife, child, or kinsman. In its terms it consists of a covenant by him, in consid-

eration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the statute of uses this would merely have raised a use in favor of the covenantee; but by that act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now almost obsolete. 1 Steph.Comm. 532; Williams, Seis. 145; French v. French, 3 N.H. 261; Jackson v. Swart, 20 Johns., N.Y., 85.

**COVENANTEE.** The party to whom a covenant is made. Shep.Touch. 160.

**COVENANTOR.** The party who makes a covenant. Shep.Touch. 160.

**COVENANTS PERFORMED.** In Pennsylvania practice. This is the name of a plea to the action of covenant whereby the defendant, upon informal notice to the plaintiff, may give anything in evidence which he might have pleaded. With the addition of the words "absque hoc" it amounts to a denial of the allegations of the declaration; and the further addition of "with leave," etc., imports an equitable defense, arising out of special circumstances, which the defendant means to offer in evidence. Zents v. Legnard, 70 Pa. 192; Stewart v. Bedell, 79 Pa. 336.

**COVENT.** A contraction, in the old books, of the word "convent."

**COVENTRY ACT.** The name given to the statute 22 & 23 Car. II. c. 1, which provided for the punishment of assaults with intent to maim or disfigure a person. It was so named from its being occasioned by an assault on Sir John Coventry in the street as was supposed, for some obnoxious words uttered by him in parliament. 4 Bl.Comm. 207; State v. Cody, 18 Or. 506, 23 P. 891.

**COVER, v.** In insurance. To protect by means of insurance; sometimes orally pending issuance of policy. Barrette v. Casualty Co. of America, 79 N.H. 59, 104 A. 126, 127; Michigan Idaho Lumber Co. v. Northern Fire & Marine Ins. Co., 35 N.D. 244, 160 N.W. 130, 136; Muntz v. Travelers Mut. Casualty Co., 229 Iowa 1015, 295 N.W. 837, 841.

**COVER INTO.** The phrase "covered into the treasury," as used in acts of congress and the practice of the United States treasury department, means that money has actually been paid into the treasury in the regular manner, as distinguished from merely depositing it with the treasurer. U. S. v. Johnston, 124 U.S. 236, 8 S.Ct. 446, 31 L.Ed. 389.

**COVERING DEED.** A trust deed executed by a trading company to secure an issue of debentures. Simonson, Debentures, 38.

**COVERT.** Covered, protected, sheltered. A *pound covert* is one that is closed or covered over, as distinguished from *pound overt*, which is open overhead. Co.Litt. 47b; 3 Bl.Comm. 12. A *feme covert* is so called, as being under the wing, protection, or *cover* of her husband. 1 Bl.Comm. 442.

**COVERT BARON, or COVERT DE BARON.** Under the protection of a husband; married. 1 Bl. Comm. 442. *La feme que est covert de baron*, the woman which is covert of a husband. Litt. § 670.

**COVERTURE.** The condition or state of a married woman. Sometimes used elliptically to describe the legal disability arising from a state of coverture. Osborn v. Horine, 19 Ill. 124; Roberts v. Lund, 45 Vt. 86.

**COVIN.** A secret conspiracy or agreement between two or more persons to injure or defraud another. Mix v. Muzzy, 28 Conn. 191; Anderson v. Oscamp, Ind.App., 35 N.E. 707; Hyslop v. Clarke, 14 Johns., N.Y., 465; Co.Litt. 357b; Comyns, Dig. *Covin*, A; 1 Viner, Abr. 473.

**COVINOUS.** Deceitful; fraudulent; having the nature of, or tainted by covin.

**COW.** Female of bovine genus of animals. Strictly, one that has calved. Often loosely used to include heifer, or young female that has not calved. 2 East, Pl.Cr. 616; 1 Leach 105. See Taylor v. State, 6 Humph., Tenn., 285; Tombigbee Valley R. Co. v. Wilks, 6 Ala.App. 473, 60 So. 559; Mathis v. State, 70 Fla. 194, 69 So. 697, 698; Parsons v. Kimmel, 206 Mich. 676, 173 N.W. 539, 540.

**COWARDICE.** Pusillanimity; fear; misbehavior through fear in relation to some duty to be performed before an enemy. O'Brien Ct.M. 142; Coi! v. State, 62 Neb. 15, 86 N.W. 925.

**CRACKING.** The conversion, by means of heat and usually pressure, of the complex hydrocarbon molecules of heavier oils into the molecular structure of the desired lighter oils. Universal Oil Products Co. v. Skelly Oil Co., D.C.Del., 20 F.2d 995.

**CRAFT.** A general term, now commonly applied to all kinds of sailing vessels, though formerly restricted to the smaller vessels. The Wenonah, 21 Grat., Va., 697; Reed v. Ingham, 3 El. & B. 898.

A trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art; also the body of persons pursuing such a calling; a guild. Ganahl v. Shore, 24 Ga. 23, Cole v. Commonwealth, 169 Va. 868, 193 S.E. 517, 519.

Guile, artful cunning, trickiness. Not a legal term in this sense, though often used in connection with such terms as "fraud" and "artifice."

**CRANAGE.** A liberty to use a crane for drawing up goods and wares of burden from ships and vessels, at any creek of the sea, or wharf, unto the land, and to make a profit of doing so. It also signifies the money paid and taken for the service. Tomlins.

**CRANK.** A term vulgarly applied to a person of eccentric, ill-regulated, and unpractical mental habits; a person half-crazed; a monomaniac; not necessarily equivalent to "insane person," "lunatic," or any other term descriptive of complete



## CRASSUS

mental derangement, and not carrying any implication of homicidal mania. *Walker v. Tribune Co.*, C.C.Ill., 29 F. 827.

**CRASSUS.** Large; gross; excessive; extreme. *Crassa ignorantia*, gross ignorance. *Fleta*, lib. 5, c. 22, § 18.

**Crassa negligentia.** Gross neglect; absence of ordinary care and diligence. *Hun v. Cary*, 82 N.Y. 72, 37 Am.Rep. 546.

**CRASTINO.** Lat. On the morrow, the day after. The return-day of writs; because the first day of the term was always some saint's day, and writs were returnable on the day after. 2 *Reeve*, Eng. Law, 56.

**CRATES.** An iron gate before a prison. 1 *Vent.* 304.

**CRAVE.** To ask or demand; as to crave oyer. See *Oyer*.

**CRAVEN.** In old English law. A word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant, *i. e.*, yielding. *Glanville* calls it "*infestum et inverecundum verbum.*" His condemnation was *amittere liberam legem, i. e.*, to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness. *Wharton*.

**CRAZY.** A broken, shattered, or deranged condition of the mind; insane. *Bates v. Oden*, 198 Ala. 569, 73 So. 921. *Thompson v. State*, 104 Tex. Cr.R. 637, 285 S.W. 826, 830.

**CREAMER.** A foreign merchant, but generally taken for one who has a stall in a fair or market. *Blount*.

**CREAMUS.** Lat. We create. One of the words by which a corporation in England was formerly created by the king. 1 *Bl.Comm.* 473.

**CREANCE.** In French law. A claim; a debt; also belief, credit, faith.

**CREANCER.** One who trusts or gives credit; a creditor. *Britt. cc.* 28, 78.

**CREANSOR.** A creditor. *Cowell*.

**CREATE.** To bring into being; to cause to exist; to produce; as, to create a trust in lands, to create a corporation. *Edwards v. Bibb*, 54 Ala. 481; *McClellan v. McClellan*, 65 Me. 500; *Pickett v. Board of Com'rs of Fremont County*, 24 Idaho 200, 133 P. 112, 114; *People v. California Fish Co.*, 166 Cal. 576, 138 P. 79, 91.

To create a charter or a corporation is to make one which never existed before, while to renew one is to give vitality to one which has been forfeited or has expired; and to extend one is to give an existing charter more time than originally limited. *Indianapolis v. Navin*, 151 Ind. 139, 51 N.E. 80, 41 L.R.A. 344; *State v. Powell*, 109 Ohio St. 383, 142 N.E. 401, 403; *Town of Westernport v. Green*, 144 Md. 85, 124 A. 403.

**CREDENTIALS.** In international law. The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, *mandatum manifestum*. *Vattel*, liv. 4, c. 6, § 76.

**CREDIBILITY.** Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. 3 *Bl.Comm.* 369; 1 *Burrows*, 414, 417; *Smith v. Jones*, 68 Vt. 132, 34 A. 424; *Loeb v. State*, 133 Miss. 883, 98 So. 449, 451; *Dewein v. State*, 120 Ark. 302, 179 S.W. 346, 347. As to the distinction between *competency* and *credibility*, see *Competency*.

**CREDIBLE.** Worthy of belief; entitled to credit. See *Competency*.

**Credible person.** One who is trustworthy and entitled to be believed; in law and legal proceedings, one who is entitled to have his oath or affidavit accepted as reliable, not only on account of his good reputation for veracity, but also on account of his intelligence, knowledge of the circumstances, and disinterested relation to the matter in question. Also one who is competent to testify. *Dunn v. State*, 7 Tex.App. 605; *Territory v. Leary*, 8 N.M. 180, 43 P. 688; *Loeb v. State*, 133 Miss. 883, 98 So. 449, 451; *Burleson v. State*, 131 Tex.Cr.R. 576, 100 S.W.2d 1019, 1020.

**Credible witness.** One who is competent to give evidence; also one who is worthy of belief. *Peck v. Chambers*, 44 W.Va. 270, 28 S.E. 706; *Savage v. Bulger*, 77 S.W. 717, 25 Ky.Law.Rep. 1269; *Appeal of Clark*, 114 Me. 105, 95 A. 517, Ann.Cas. 1917A, 837; *Hill v. Chicago Title & Trust Co.*, 322 Ill. 42, 152 N.E. 545, 546; *Burleson v. State*, 131 Tex.Cr.R. 576, 100 S.W.2d 1019, 1020.

**CREDIBLY INFORMED.** The statement in a pleading or affidavit, that one is "credibly informed and verily believes" such and such facts, means that, having no direct personal knowledge of the matter in question, he has derived his information in regard to it from authentic sources or from the statements of persons who are not only "credible," in the sense of being trustworthy, but also informed as to the particular matter or conversant with it.

**CREDIT.** The ability of a business man to borrow money, or obtain goods on time, in consequence of the favorable opinion held by the community, or by the particular lender, as to his solvency and reliability. *People v. Wasservogle*, 77 Cal. 173, 19 P. 270; *In re Ford*, D.C.Wash., 14 F.2d 848, 849; *State ex rel. Globe-Democrat Pub. Co. v. Gehner*, 316 Mo. 694, 294 S.W. 1017, 1018. That influence connected with certain social positions. 20 *Toullier*, n. 19. Time allowed to the buyer of goods by the seller, in which to make payment for them. The correlative of a *debt*;

that is, a debt considered from the creditor's standpoint, or that which is incoming or due to one. *Mountain State Motor Car Co. v. Solof*, 97 W.Va. 196, 124 S.E. 824, 825. That which is due to a person, as distinguished from debit, that which is due by him. Claim or cause of action for specific sum of money. *Richard v. American Union Bank*, 204 N.Y.S. 719, 722, 123 Misc.Rep. 92; *Thaden v. Bagan*, 139 Minn. 46, 165 N.W. 864, 865; *Richard v. American Union Bank*, 204 N.Y.S. 719, 722, 123 Misc.Rep. 92; *New York Life Ins. Co. v. Edwards*, C.C.A.N.Y., 8 F.2d 851, 856; *Humphreys v. County Court*, 90 W.Va. 315, 110 S.E. 701, 702, 703.

A sum credited on the books of a company to person who appears to be entitled to it. *Coons v. Home Life Ins. Co. of New York*, 291 Ill.App. 313, 9 N.E.2d 419, 421. The credit of an individual is the trust reposed in him by those who deal with him that he is of ability to meet his engagements; and he is trusted because through the tribunals of the country he may be made to pay. The credit of a government is founded on a belief of its ability to comply with its engagements, and a confidence in its honor, that it will do that voluntarily which it cannot be compelled to do. *Owen v. Branch Bank*, 3 Ala. 258.

**Bill of Credit.** See Bill.

**Letter of Credit.** An open or sealed letter, from a merchant in one place, directed to another, in another place or country, requiring him, if a person therein named, or the bearer of the letter, shall have occasion to buy commodities, or to want money to any particular or unlimited amount, either to procure the same or to pass his promise, bill, or bond for it, the writer of the letter undertaking to provide him the money for the goods, or to repay him by exchange, or to give him such satisfaction as he shall require, either for himself, or the bearer of the letter. 3 Chit.Com.Law, 336. *Powerine Co. v. Russel Inc.*, 103 Utah 441, 135 P.2d 906, 909, 910, 912.

A written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. *Mechanics Bank v. New York & N. H. R. Co.*, 13 N.Y. 599; *Lafargue v. Harrison*, 70 Cal. 380, 9 P. 261, 59 Am.Rep. 416. A letter of credit is in the nature of a negotiable instrument, and is a letter whereby a person requests another to advance money or give credit to a third person, and promises to repay person making advancement. *Second Nat. Bank of Toledo v. M. Samuel & Sons*, C.C.A.N.Y., 12 F.2d 963, 966, 53 A.L.R. 49; *Border Nat. Bank of Eagle Pass, Tex.*, v. *American Nat. Bank of San Francisco, Cal.*, C.C.A.Tex., 282 F. 73, 77; *Liggett v. Levy*, 233 Mo. 590, 136 S.W.2d 299, 301, Ann.Cas.1912C, 70; *General and special.* A general letter of credit is one addressed to any and all persons, without naming any one in particular, while a special letter of credit is addressed to a particular individual, firm, or corporation by name. *Birckhead v. Brown*, 5 Hill, N.Y., 642; *American Steel Co. v. Irving Nat. Bank*, C.C.A.N.Y., 266 F. 41, 43. A "confirmed irrevocable letter of credit," an "irrevocable letter," or a "confirmed credit" is a contract to pay on compliance with its terms, and needs no formal acknowledgment or acceptance other than is therein stated. *Lamborn v. National Park Bank of New York*, 240 N.Y. 520, 148 N.E. 664, 665.

**Line of Credit.** See Line.

**Personal Credit.** Personal credit is that credit which a person possesses as an individual, and which is founded on the opinion entertained of his character and business standing.

**CRÉDIT.** Fr. Credit in the English sense of the term, or more particularly, the security for a loan or advancement.

**CRÉDIT FONCIER.** A company or corporation formed for the purpose of carrying out improvements, by means of loans and advances on real estate security.

**CRÉDIT MOBILIER.** A company or association formed for carrying on a banking business or for the construction of public works, building of railroads, operation of mines, or other such enterprises, by means of loans or advances on the security of personal property. *Barrett v. Savings Inst.*, 64 N.J.Eq. 425, 54 A. 543.

**CREDITED.** The alternative to paid. *Lynchburg Trust & Savings Bank v. Commissioner of Internal Revenue*, C.C.A.4, 68 F.2d 356, 358.

**CREDITOR.** A person to whom a debt is owing by another person who is the "debtor." *Woolverton v. Taylor Co.*, 43 Ill.App. 424; *Insurance Co. v. Meeker*, 37 N.J.Law. 300; *Walsh v. Miller*, 51 Ohio St. 462, 38 N.E. 381; *Rooney v. Inheritance Tax Commission of Kansas*, 143 Kan. 143, 53 P.2d 500, 501. One who has a right to require the fulfillment of an obligation or contract. *Mohr v. Minnesota Elevator Co.*, 40 Minn. 343, 41 N.W. 1074; *Murphy v. Jos. Hollander, Inc.*, 131 N.J.L. 165, 34 A.2d 780, 783; one to whom money is due, and, in ordinary acceptance, has reference to financial or business transactions. *State v. Ord State Bank*, 117 Neb. 189, 220 N.W. 265, 266; The antonym of "debtor." *Erickson v. Grande Ronde Lumber Co.*, 162 Or. 556, 92 P.2d 170, 177; The word is susceptible of latitudinous construction. *Commerce Trust Co. v. Farmers' Exchange Bank of Gallatin*, 332 Mo. 979, 61 S.W.2d 928, 89 A.L.R. 373.

The foregoing is the strict legal sense of the term; but in a wider sense it means one who has a legal right to demand and recover from another a sum of money on any account whatever, and hence may include the owner of any right of action against another, whether arising on contract or for a tort, a penalty, or a forfeiture. *Bongard v. Block*, 81 Ill. 186, 25 Am.Rep. 276; one having a claim for tort, *Chalmers v. Sheehy*, 132 Cal. 459, 64 P. 709, 84 Am.St. Rep. 62; an antenuptial agreement as constituting wife a "creditor" of husband's estate. In *re Wilson's Estate*, 346 Pa. 562, 31 A.2d 106, 108; parties claiming as trust funds deposits in insolvent bank, *Dewey v. Commercial State Bank*, 141 Kan. 356, 41 P.2d 1006, 1007.

The term "creditor," within the common-law and statutes that conveyances with intent to defraud creditors shall be void, includes every one having right to require the performance of any legal obligation, contract, or guaranty, or a legal right to damages growing out of contract or tort, *Hernton v. Short*, 121 Ark. 383, 181 S.W. 142, 144; and includes not merely the holder of a fixed and certain present debt, but every one having a right to require the performance of any legal obligation, contract, or guaranty, or a legal right to damages growing out of contract or tort, and includes one entitled to damages for breach of contract to convey real estate, notwithstanding the abandonment of his action for specific performance. In *re Littleton's Estate*, 223 N.Y.S. 470, 479, 129 Misc.Rep. 845; *Mackenzie Oil Co. v. Omar Oil & Gas Co.*, 14 Del.Ch. 36, 120 A. 852, 854; holders of judgment for conversion, *Bays v. Brown*, 160 Or. 594, 86 P.2d 951, 954; a "person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent." *Richards v. Jones*, 16 Del.Ch. 227, 142 A. 832, 833. Those having a cause of action for damages for wrongful death. *Evers v. Evers*, 146 Neb. 104,

## CREDITOR

18 N.W.2d 673, 678; in its broad sense the word "creditor" means one who has any legal liability upon a contract, express or implied, or in tort; in its narrow sense, the term is limited to one who holds a demand which is certain and liquidated. *Superior Plating Works v. Art Metal Crafts Co.*, 218 Ill.App. 148, 150.

Plaintiff, in action to recover damages for a tort committed against him, is a "creditor" of defendant, within meaning of that term as it is employed in Shannon's Code, § 3143, denouncing conveyances and transfers of property collusively made with intent to delay, hinder, or defraud creditors. *Olliphant v. Moore*, 155 Tenn. 359, 293 S.W. 541, 542.

In statutes the term has various special meanings, dependent upon context, purpose of statute, etc. *Toof v. City Nat. Bank of Paducah, Ky.*, C.C.A.Ky., 206 F. 250, 252; a bank taking chattel mortgage for pre-existing debt. *Lindig v. Johnson City State Bank*, Tex.Com.App., 41 S.W.2d 222, 224. An assignee of conditional seller taking trucks as creditor of purchaser, *John W. Snyder, Inc., v. Aker*, 134 Misc. 721, 236 N.Y.S. 28, 30. One who had recovered verdict against principal on attachment bond, *Amer Realty Co. v. Spack*, 280 Mass. 96, 181 N.E. 753, 754; the receiver of an insolvent national bank suing to enforce statutory stockholder's liability for benefit of creditors as a "creditor", *Coffey v. Fisher*, C.C.A.Tenn., 100 F.2d 51, 53; person to whom letters of administration granted. *State ex rel. Gentry v. O'Byrne*, 221 Ind. 282, 46 N.E.2d 687, 690. One, seeking to recover from a special administrator for conversion, *United States Fidelity & Guaranty Co. v. Krow*, 184 Okl. 444, 87 P.2d 950, 954; holders of participation certificates in mortgage, *In re R. A. Security Holdings*, D.C.N.Y., 46 F.Supp. 254, 255; persons who seize property under a legal process. *Neils v. Bohlson*, 181 Minn. 25, 231 N.W. 248; state and political subdivisions, to which the forfeit is payable, *International Harvester Co. v. Gully*, 188 Miss. 115, 194 So. 472, 473. The National Labor Relations Board, seeking enforcement of a back pay allowance, *National Labor Relations Board v. Killoren*, C.C.A.Mo., 122 F.2d 609, 612. The United States which filed for record, *Underwood v. United States*, D.C.Tex., 37 F.Supp. 824, 826. The Reconstruction Finance Corporation, which had purchased over 86 per cent. of outstanding bonds of insolvent irrigation district, pursuant to plan to refinance entire bond indebtedness of district, *West Coast Life Ins. Co. v. Merced Irr. Dist.*, C.C.A.Cal., 114 F.2d 654, 668, 669.

### Classification

A creditor is called a "simple contract creditor," a "specialty creditor," a "bond creditor," or otherwise, according to the nature of the obligation giving rise to the debt.

### Attaching creditor.

One who has caused an attachment to be issued and levied on property of his debtor.

### Catholic creditor

In Scotch law, one whose debt is secured on all or on several distinct parts of the debtor's property. The contracted term (designating one who is not so secured) is "secondary creditor."

### Certificate creditor

A creditor of a municipal corporation who receives a certificate of indebtedness for the amount of his claim, there being no funds on hand to pay him. *Johnson v. New Orleans*, 46 La. Ann. 714, 15 So. 100.

### Confidential creditor

A term sometimes applied to creditors of a failing debtor who furnished him with the means of obtaining credit to which his real circumstan-

ces did not entitle him, thus involving loss to other creditors not in his confidence. *Gay v. Strickland*, 112 Ala. 567, 20 So. 921.

### Creditor at large

One who has not established his debt by the recovery of a judgment or has not otherwise secured a lien on any of the debtor's property. *U. S. v. Ingate*, C.C.Ala., 48 F. 254; *Wolcott v. Ashenfelter*, 5 N.M. 442, 23 P. 780, 8 L.R.A. 691.

### Domestic creditor

One who resides in the same state or country in which the debtor has his domicile or his property.

### Double creditor

See Double Creditor.

### Execution creditor

One who, having recovered a judgment against the debtor for his debt or claim, has also caused an execution to be issued thereon. *Chalmers & Williams v. Surprise*, 70 Ind.App. 646, 123 N.E. 841, 844.

### Executor creditor

In Scotch law. A creditor of a decedent who obtains a grant of administration on the estate, at least to the extent of so much of it as will be sufficient to discharge his debt, when the executor named in the will has declined to serve, as also those other persons who would be preferentially entitled to administer.

### Existing creditors

See Existing Creditors.

### Foreign creditor

One who resides in a state or country foreign to that where the debtor has his domicile or his property.

### General creditor

A creditor at large (*supra*), or one who has no lien or security for the payment of his debt or claim. *Wolcott v. Ashenfelter*, 5 N.M. 442, 23 P. 780, 8 L.R.A. 691.

### Joint creditors

Persons jointly entitled to require satisfaction of the same debt or demand.

### Judgment creditor

See Judgment Creditor.

### Junior creditor

One whose claim or demand accrued at a date later than that of a claim or demand held by another creditor, who is called correlatively the "senior" creditor.

### Petitioning creditors

As used in Bankruptcy Act, § 64b, 11 U.S.C.A. § 104, authorizing one reasonable attorney's fee.

All creditors petitioning for adjudication, or seeking relief consistent with original petition by supplemental or intervening petition, in view of section 59f, 11 U.S.C.A. § 95. In re Marcuse & Co., C.C.A.Ill., 11 F.2d 513, 516.

**Principal creditor**

One whose claim or demand very greatly exceeds the claims of all other creditors in amount is sometimes so called. See In re Sullivan's Estate, 25 Wash. 430, 65 P. 793.

**Secured creditor**

See Secured Creditor.

**Single creditor**

See Single Creditor.

**Subsequent creditor**

One whose claim or demand accrued or came into existence after a given fact or transaction, such as the recording of a deed or mortgage or the execution of a voluntary conveyance. McGhee v. Wells, 57 S.C. 280, 35 S.E. 529, 76 Am.St.Rep. 567.

**Warrant creditor**

A creditor of a municipal corporation to whom is given a municipal warrant for the amount of his claim, because there are no funds in hand to pay it. Johnson v. New Orleans, 46 La. Ann. 714, 15 So. 100.

**CREDITOR BENEFICIARY.** A third person to whom performance of promise comes in satisfaction of legal duty. Breaux v. Banker, Tex.Civ. App., 107 S.W.2d 382, 389; Vail v. Reuben H. Donnelley Corporation, 56 Ohio App. 219, 10 N.E.2d 239, 241.

Company transporting material for school building under contract with subcontractor. J. T. Jackson Lumber Co. v. Union Transfer & Storage Co., 246 Ky. 653, 55 S.W.2d 670. Person entitled to enforce contract under which he is entitled to benefit. Hartman Ranch Co. v. Associated Oil Co., 10 Cal.2d 232, 73 P.2d 1163, 1169. Situation in which relationship between promisee and beneficiary is that of debtor and creditor. McCulloch v. Canadian Pac. Ry. Co., D.C.Minn., 53 F.Supp. 534, 542.

The lessor has a right of action for breach of parent lease as a "creditor beneficiary" against a sublessee or an assignee of the lease who has agreed with the original lessee to assume the parent lease. Hartman Ranch Co. v. Associated Oil Co., 10 Cal.2d 232, 73 P.2d 1163.

**CREDITORS' BILL OR SUIT.**

A suit by judgment creditor in equity for purpose of reaching property which cannot be reached by execution at law. B. L. E. Realty Corporation v. Mary Williams Co., 101 Fla. 254, 134 So. 47, 49; Ex parte Roddey, 171 S.C. 489, 172 S.E. 866, 868, 92 A.L.R. 1430; Hamburger Apparel Co. v. Werner, 17 Wash.2d 310, 135 P.2d 311, 315; City of Newark v. Jos. Hollander, Inc., 136 N.J. Eq. 539, 42 A.2d 872, 875. A proceeding to enforce the security of a judgment creditor against the property or interests of his debtor. This action proceeds upon the theory that the judgment is in the nature of a lien, such as may be en-

forced in equity. Hudson v. Wood, C.C.Ky., 119 F. 775; Fink v. Patterson, C.C.Va., 21 F. 602; W. G. Press & Co. v. Fahy, 313 Ill. 262, 145 N.E. 103, 104; San Bernardino County Sav. Bank v. Denman, 186 Cal. 710, 200 P. 606, 603; Harkin v. Brundage, 276 U.S. 36, 48 S.Ct. 268, 72 L.Ed. 457.

Strictly, it is a bill by which a creditor seeks to satisfy his debt out of some equitable estate of the defendant, which is not liable to levy and sale under an execution at law. But there is another sort of a creditors' bill, very nearly allied to the former, by means of which a party seeks to remove a fraudulent conveyance out of the way of his execution. But a naked bill to set aside a fraudulent deed, which seeks no discovery of any property, chose in action, or other thing alleged to belong to the defendant, and which ought to be subjected to the payment of the judgment, is not a creditors' bill. Newman v. Willetts, 52 Ill. 98; Yates v. Council, 137 Miss. 381, 102 So. 176, 177.

A "class action" is one in which one or more members of a numerous class, having a common interest, may sue in behalf of themselves and all other members of the class and such actions are sometimes called "creditors' suits" and "stockholders' suits". Farmers Co-op. Oil Co. v. Socony-Vacuum Oil Co., D.C.Iowa, 43 F.Supp. 735, 737.

In English Practice, a bill in equity, filed by one or more creditors, for an account of the assets of a decedent, and a legal settlement and distribution of his estate among themselves and such other creditors as may come in under the decree.

**CREDITORUM APPELLATIONE NON HI TANTUM ACCIPIUNTUR QUI PECUNIAM CREDIDERUNT, SED OMNES QUIBUS EX QUALIBET CAUSA DEBETUR.** Under the head of "creditors" are included, not alone those who have lent money, but all to whom from any cause a debt is owing. Dig. 50, 16, 11.

**CREDITRIX.** A female creditor.

**CREDITS.** A term of universal application to obligations due and to become due. Colbert v. Superior Confection Co., 154 Okl. 28, 6 P.2d 791, 793.

A term used in taxation statutes to designate certain forms of personal property. It includes every claim and demand for money and every sum of money receivable at stated periods, due or to become due, but not unaccrued rents to issue out of land. State v. Royal Mineral Ass'n, 132 Minn. 232, 156 N.W. 128, 130, Ann.Cas.1918A, 145. Legacies matured by the lapse of one year from the date of testator's death were included in term "credits". City of Newark v. Lehman's Estate, Tax App., 18 N.J.Misc. 510, 14 A.2d 792, 794. Shares of corporate stock were included. Holmes v. Borgen, 200 Minn. 97, 273 N.W. 623, 626.

**Mutual Credits**

In bankrupt law. Credits which must, from their nature, terminate in debts; as where a debt is due from one party, and credit given by him to the other for a sum of money payable at a future day, and which will then become a debt; or where there is a debt on one side, and a delivery of property with directions to turn it into money on the other. 8 Taunt. 499; 2 Smith, Lead. Cas. 179. By this phrase, in the rule under which courts of equity allow set-off in cases of mutual credit, we are to understand a knowledge on both sides of an existing debt due to one party, and

## CREED

a credit by the other party, founded on and trusting to such debt, as a means of discharging it. *King v. King*, 9 N.J.Eq. 44. Credits given by two persons mutually; *i. e.*, each giving credit to the other. It is a more extensive phrase than "mutual debts." Thus, the sum credited by one may be due at once, that by the other payable *in futuro*; yet the credits are mutual, though the transaction would not come within the meaning of "mutual debts." 1 Atk. 230; *Atkinson v. Elliott*, 7 Term.R. 378.

**CREED.** The word "creed" has been defined as "confession or articles of faith," "formal declaration of religious belief," "any formula or confession of religious faith," and "a system of religious belief." *Cummings v. Weinfeld*, 177 Misc. 129, 30 N.Y.S.2d 36, 38.

**CREEK.** In maritime law. Such little inlets of the sea, whether within the precinct or extent of a port or without, as are narrow passages, and have shore on each side of them. *Call.Sew.* 56. A small stream less than a river. *Baker v. City of Boston*, 12 Pick. 184, 22 Am.Dec. 421. The term imports a recess, cove, bay, or inlet in the shore of a river, and not a separate or independent stream; though it is sometimes used in the latter meaning. *Schermerhorn v. Railroad Co.*, 38 N.Y. 103.

**CREMATION.** The act or practice of reducing a corpse to ashes by means of fire. *Act Pa.* 1891, June 8; P.L. 212, 35 P.S. §§ 1121-1123; L.R. 12 Q.B.D. 247; L.R. 20 Ch.D. 659. See 43 Alb.L.J. 140. See *Dead Body*.

**CREMENTUM COMITATŪS.** The increase of a county. The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.

**CREPARE OCULUM.** In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it.

**CREPUSCULUM.** Twilight. In the law of burglary, this term means the presence of sufficient light to discern the face of a man; such light as exists immediately before the rising of the sun or directly after its setting. 4 Bla.Com. 224; Co. 3d Inst. 63; 1 Russell, Cr. 820; 3 Greenl.Ev. § 75.

**CRESCENTE MALITIÁ CRESCERE DEBET ET PCENA.** 2 Inst. 479. Vice increasing, punishment ought also to increase.

**CREST.** A term used in heraldry; it signifies the devices set over a coat of arms.

**CRETINISM.** In medical jurisprudence. A form of imperfect or arrested mental development, which may amount to idiocy, with physical degeneracy or deformity or lack of development; endemic in Switzerland and some other parts of Europe, but the term is applied to similar states occurring elsewhere.

**CRETINUS.** In old records. A sudden stream or torrent; a rising or inundation.

**CRETIO.** Lat. In the civil law. A certain number of days allowed an heir to deliberate whether he would take the inheritance or not. Calvin.

**CREW.** Usually referred to and is primarily thought of as those who are on board and aiding in the navigation. *Gulf Oil Corporation v. McManigal*, D.C.W.Va., 49 F.Supp. 75, 78; *Norton v. Warner Co., Pa.*, 321 U.S. 565, 64 S.Ct. 747, 751, 88 L.Ed. 931; *Berwind-White Coal Mining Co. v. Rothensies*, C.C.A.Pa., 137 F.2d 60, 62. "Crew" does not have an absolutely unvarying legal significance or any well-defined factual significance. *Schantz v. American Dredging Co.*, C.C.A.Pa., 138 F.2d 534, 537. The aggregate of seamen who man a ship or vessel, including the master and officers; or it may mean the ship's company, exclusive of the master, or exclusive of the master and all other officers. See *U. S. v. Winn*, 3 Sumn. 209, 28 Fed.Cas. 733; *The Buena Ventura*, D.C.N.Y., 243 F. 797, 799; *The Herdis*, D.C.Md., 22 F.2d 304, 306.

**CREW LIST.** In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of congress, and sometimes by treaties. Rev.St.U.S. §§ 4374, 4375, 46 U.S.C.A. §§ 322, 323. It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. *Jac. Sea Laws*, 66, 69, note.

**CRIER.** An officer of a court, who makes proclamations. His principal duties are to announce the opening of the court and its adjournment and the fact that certain special matters are about to be transacted, to announce the admission of persons to the bar, to call the names of jurors, witnesses, and parties, to announce that a witness has been sworn, to proclaim silence when so directed, and generally to make such proclamations of a public nature as the judges order.

**CRIEZ LA PEEZ.** Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared directed the serjeant or countor in attendance to recite or *read aloud* the concord or agreement between the parties, as to the lands intended to be conveyed. 2 Reeve, Eng.Law, 224, 225.

**CRIM. CON.** An abbreviation for "criminal conversation," of very frequent use, denoting adultery. *Rash v. Pratt*, 111 A. 225, 228, 1 W.W.Harr., Del., 18; *Hargraves v. Ballou*, 47 R.I. 186, 131 A. 643, 645.

The term in its general and comprehensive sense, is synonymous with "adultery"; but in its more limited and technical signification it may be defined as adultery in the aspect of a tort. *Turner v. Heavrin*, 182 Ky. 65, 206 S.W. 23, 4 A.L.R. 562.

**CRIME.** A positive or negative act in violation of penal law; an offense against the State. *Wilkins v. U. S.*, C.C.A.Pa., 96 F. 837, 37 C.C.A. 588; *People v. Williams*, 24 Mich. 163, 9 Am.Rep. 119.

"Crime" and "misdemeanor," properly speaking, are synonymous terms; though in common usage "crime" is made to denote such offenses as are of a deeper and more atrocious dye. 4 Bl.Comm. 5; People v. Schiaffino, 73 Cal.App. 357, 238 P. 725; Guetling v. State, 199 Ind. 630, 158 N.E. 593, 594; McIntyre v. Commonwealth, 154 Ky. 149, 156 S.W. 1058, 1059; Commonwealth v. Smith, 266 Pa. 111, 109 A. 786, 788, 9 A.L.R. 922; Ex parte Brady, 16 Ohio St. 512, 157 N.E. 69, 70; An act committed or omitted in violation of a public law. City of Mobile v. McCown Oil Co., 226 Ala. 688, 48 So. 402, 405. Crimes are those wrongs which the government notices as injurious to the public, and punishes in what is called a "criminal proceeding," in its own name. 1 Bish.Crim.Law, § 43; In re Jacoby, 74 Ohio App. 147, 57 N.E.2d 932, 934, 935. A crime may be defined to be any act done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the offender shall make satisfaction to the public. Bell. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit in this state. Pen.Code Cal. § 15. "Crime" is strictly a violation of law either human or divine; in present usage the term is commonly applied to grave offenses against the laws of the state. Van Riper v. Constitutional Government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100. A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. Code Ga. 1882, § 4292, Pen.Code 1910, § 31.

**Synonyms**

According to Blackstone, the word "crime" denotes such offenses as are of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are called "misdemeanors." But the better use appears to be to make *crime* a term of broad and general import, including both felonies and misdemeanors, and hence covering all infractions of the criminal law. In this sense it is not a technical phrase, strictly speaking, (as "felony" and "misdemeanor" are,) but a convenient general term. In this sense, also, "offense" or "public offense" should be used as synonymous with it.

The distinction between a *crime* and a *tort* or civil injury is that the former is a breach and violation of the public right and of duties due to the whole community considered as such, and in its social and aggregate capacity; whereas the latter is an infringement or privation of the civil rights of individuals merely. Brown.

A crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation, as regards the community at large. 4 Steph.Comm. 4.

**Varieties of Crimes**

**Capital crime.** See Capital, *adj.*

**Common law crimes**

Such crimes as are punishable by the force of the common law, as distinguished from crimes created by statute. Wilkins v. U. S., C.C.A.Pa., 96 F. 837, 37 C.C.A. 588; In re Greene, C.C.Ohio, 52 F. 111. These decisions (and many others) hold that there are no common-law crimes against the United States.

**Constructive crime**

See Constructive Crime.

**Continuous crime**

One consisting of a continuous series of acts, which endures after the period of consummation, as, the offense of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitations begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act. U. S. v. Owen, D.C.Or., 32 F. 537.

**Crime against nature**

The offense of buggery or sodomy. State v. Vicknair, 52 La. Ann. 1921, 28 So. 273; Ausman v. Veal, 10 Ind. 355, 71 Am. Dec. 331. The strict common-law meaning has been greatly enlarged by statute. Borden v. State, 36 Okl. Cr. 69, 252 P. 446, 447; State v. Murry, 136 La. 253, 66 So. 963, 964; State v. Long, 133 La. 580, 63 So. 180; Frazier v. Grob, 194 Mo. App. 405, 183 S.W. 1083, 1084; State v. Griffin, 175 N.C. 767, 94 S.E. 678, 679. See Bestiality; Sodomy.

At common law the term "crime against nature" embraced both sodomy and "bestiality", defined as a connection between a human being and a brute of the opposite sex. State v. Poole, 59 Ariz. 44, 122 P.2d 415, 416. Within the statute it is the perverted act of uniting the mouth of one participant with the sexual organ of the other, with a view of gratifying the sexual desire, and a mere kiss or lick of the private organ, even though lewdly done, is not a "copulation" within the statute. People v. Angler, 44 Cal. App. 2d 417, 112 P.2d 659, 660.

**Crime against the other (husband or wife)**

As used in 22 Okl. St. Ann. 702, providing that neither husband nor wife shall be a witness against the other except in a prosecution for a "crime committed against the other," the phrase denotes a public offense by husband or wife that is a direct violation of the rights of the other. Hunter v. State, 10 Okl. Cr. 119, 134 P. 1134, 1136, L.R.A. 1915A, 564. It does not make the wife a competent witness in a prosecution against the husband for incest. Lacey v. State, 27 Okl. Cr. 42, 224 P. 994, 995.

Murder by wife of husband's child, O'Loughlin v. People, 90 Colo. 368, 10 P.2d 543, 546. Rape against stepdaughter. State v. Goff, 64 S.D. 80, 264 N.W. 665, 666.

**Crimes mala in se**

"Crimes mala in se" embrace acts immoral or wrong in themselves, such as burglary, larceny,

## CRIME

arson, rape, murder, and breaches of peace. *Coleman v. State ex rel. Carver*, 119 Fla. 653, 161 So. 89, 90.

### Crimes mala prohibita

"Crimes mala prohibita" embrace things prohibited by statute as infringing on others' rights, though no moral turpitude may attach, and constituting crimes only because they are so prohibited. *Coleman v. State ex rel. Carver*, 119 Fla. 653, 161 So. 89, 90.

### High crimes

High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet, owing to some technical circumstance, do not fall within the definition of "felony." *State v. Knapp*, 6 Conn. 417, 16 Am.Dec. 68. They are the more serious or aggravated misdemeanors; those more nearly allied and equal in guilt to felony, but which do not fall within its definition. *Firmara v. Gardner*, 86 Conn. 434, 85 A. 670, 672.

### Infamous crime

A crime which entails infamy upon one who has committed it. *Butler v. Wentworth*, 84 Me. 25, 24 A. 456, 17 L.R.A. 764. The term "infamous"—*i. e.*, without fame or good report—was applied at common law to certain crimes, upon the conviction of which a person became incompetent to testify as a witness, upon the theory that a person would not commit so heinous a crime unless he was so depraved as to be unworthy of credit. These crimes are treason, felony, and the *crimen falsi*. *Abbott*. A crime punishable by imprisonment in the state prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the fifth amendment of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." *Mackin v. U. S.*, 117 U.S. 348, 6 S.Ct. 777, 29 L. Ed. 909; *Brede v. Powers*, 263 U.S. 4, 44 S.Ct. 8, 68 L.Ed. 132. It is not the character of the crime but the nature of the punishment which renders the crime "infamous." *Weeks v. United States*, C.C.A.N.Y., 216 F. 292, 298, L.R.A. 1915B, 651. But see *Drazen v. New Haven Taxicab Co.*, 95 Conn. 500, 111 A. 861, 864. Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed. *United States v. Moreland*, 258 U.S. 433, 42 S.Ct. 368, 370, 66 L.Ed. 700; *De Jianne v. U. S.*, C.C.A.N.J., 282 F. 737, 740; *Le Clair v. White*, 117 Me. 335, 104 A. 516, 517. Under the constitution of Rhode Island, a crime, to be "infamous," must come within the "crimen falsi," such as forgery, perjury, subornation of perjury, offenses affecting the public administration of justice, or such as would affect civil or political rights, disqualifying or rendering a person incompetent to be a witness or juror. *State v. Bussay*, 38 R.I. 454, 96 A. 337, 339. By the Revised Statutes of New York the term "infamous crime," when used in any statute, is directed to be construed as in-

cluding every offense punishable with death or by imprisonment in a state prison, and no other.

### Quasi crimes

This term embraces all offenses not crimes or misdemeanors, but that are in the nature of crimes,—a class of offenses against the public which have not been declared crimes, but wrongs against the general or local public which it is proper should be repressed or punished by forfeitures and penalties. This would embrace all *qui tam* actions and forfeitures imposed for the neglect or violation of a public duty. A *quasi* crime would not embrace an indictable offense, whatever might be its grade, but simply forfeitures for a wrong done to the public, whether voluntary or involuntary, where a penalty is given, whether recoverable by criminal or civil process. *Wiggins v. Chicago*, 68 Ill. 375. Also, offenses for which some person other than the actual perpetrator is responsible, the perpetrator being presumed to act by command of the responsible party. Sometimes, injuries which have been unintentionally caused. Torts. *McCaleb v. Fox Film Corporation*, C.C.A.La., 299 F. 48, 50.

### Statutory crimes

Those created by statutes, as distinguished from such as are known to, or cognizable by, the common law.

**CRIMEN.** Lat. Crime. Also an accusation or charge of crime.

**Crimen furti.** The crime or offense of theft.

**Crimen incendii.** The crime of burning, which included not only the modern crime of arson, but also the burning of a man, a beast, or other chattel. *Britt. c. 9; Crabb, Eng.Law*, 308.

**Crimen innominatum.** The nameless crime; the crime against nature; sodomy or buggery.

**Crimen raptus.** The crime of rape.

**Crimen roberiae.** The offense of robbery.

**Flagrans crimen; Locus criminis; Particeps criminis.** See those titles.

**CRIMEN FALSI.** The term involves the element of falsehood, and includes everything which has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud. *Commonwealth v. Chambers*, 110 Pa. Super. 61, 167 A. 645, 646; *Commonwealth v. Jones*, 334 Pa. 321, 5 A.2d 804, 805. A crime less than felony that by its nature tends to cast doubt on the veracity of one who commits it. *Commonwealth v. Gold*, 155 Pa.Super. 364, 38 A.2d 486, 489. This phrase is also used as a general designation of a class of offenses, including all such as involve deceit or falsification; *e. g.*, forgery, counterfeiting, using false weights or measures, perjury, etc. Includes forgery, perjury, subornation of perjury, and offenses affecting the public administration of justice. *Matzenbaugh v. Peo-*



ple, 194 Ill. 108, 62 N.E. 546, 88 Am.St.Rep. 134; Johnston v. Riley, 13 Ga. 97.

At common law. Any crime which rendered the perpetrator incompetent to be a witness, such as forgery, perjury, subornation of perjury and other crimes affecting the administration of justice. Drazen v. New Haven Taxicab Co., 95 Conn. 500, 111 A. 861, 862; Maxey v. United States, C.C.A.Ark., 207 F. 327, 331; Webb v. State, 29 Ohio St. 351, 358.

In the civil law, the crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; and by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. Dig. 48, 10; Halifax, Civil Law, p. 3, c. 12, nn. 56-59.

In Scotch law. It has been defined: "A fraudulent imitation or suppression of truth, to the prejudice of another." Ersk.Inst. 4, 4, 66.

**CRIMEN FALSI DICITUR, CUM QUIS ILLICITUS, CUI NON FUERIT AD HÆC DATA AUCTORITAS, DE SIGILLO REGIS, RAPTO VEL INVENTO, BREVIA, CARTASVE CONSIGNAVERIT.** Fleta, lib. 1, c. 23. The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

**CRIMEN LÆSÆ MAJESTATIS.** In criminal law. The crime of *lese-majesty*, or injuring majesty or royalty; high treason. The term was used by the older English law writers to denote any crime affecting the king's person or dignity.

It is borrowed from the civil law, in which it signified the undertaking of any enterprise against the emperor or the republic. Inst. 4, 18, 1.

**CRIMEN LÆSÆ MAJESTATIS OMNIA ALIA CRIMINA EXCEDIT QUOAD PŒNAM.** 3 Inst. 110. The crime of treason exceeds all other crimes in its punishment.

**CRIMEN OMNIA EX SE NATA VITIAT.** Crime vitiatates everything which springs from it. Henry v. Bank of Salina, 5 Hill, N.Y., 523, 531.

**CRIMEN TRAHIT PERSONAM.** The crime carries the person, (*i. e.*, the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender.) People v. Adams, 3 Denio, N.Y. 190, 210, 45 Am.Dec. 468.

**CRIMINA MORTE EXTINGUUNTUR.** Crimes are extinguished by death.

**CRIMINAL, n.** One who has committed a criminal offense; one who has been legally convicted of a crime; one adjudged guilty of crime. Mol-neux v. Collins, 177 N.Y. 395, 69 N.E. 727, 65 L.R.A. 104. Synonymous with word "crook." Weiner v. Leviton, 230 App.Div. 312, 244 N.Y.S. 176, 178.

**CRIMINAL, adj.** That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Charleston v. Beller, 5 W.Va. 44, 30 S.E. 152; Van Riper v. Constitu-

tional Government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100. The word is defined as of the nature of or involving a crime; more generally, of the nature of a grave offense; wicked. Van Riper v. Constitutional Government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100.

**Criminal abortion**

See Abortion.

**Criminal act**

A term which is equivalent to crime; or is sometimes used with a slight softening or glossing of the meaning, or as importing a possible question of the legal guilt of the deed. The intentional violation of statute designed to protect human life is criminal act. State v. Agnew, 202 N.C. 755, 164 S.E. 578, 579.

**Criminal action**

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a "criminal action." Pen.Code Cal. § 683. A criminal action is (1) an action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof; (2) an action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime, against his person or property. Code N.C. 1883, § 129, C.S. § 395.

**Criminal assault and battery**

An accused may be guilty of a "criminal assault and battery" if he intentionally does an act which by reason of its wanton and grossly negligent character exposes another to personal injury and in fact causes injury. State v. Linville, 150 Kan. 617, 95 P.2d 332, 334.

**Criminal case**

An action, suit, or cause instituted to punish an infraction of the criminal laws. State v. Smalls, 11 S.C. 279; People v. Iron Co., 201 Ill. 236, 66 N.E. 349; Wilburn v. State, 140 Ga. 138, 78 S.E. 819, 820; Hankamer v. Templin, 143 Tex. 572, 187 S.W.2d 549, 550. The phrase has various meanings according to context and purpose of constitutional provision or statute. Ex parte Tahbel, 46 Cal. App. 755, 189 P. 804, 806; Childs v. City of Birmingham, 19 Ala.App. 71, 94 So. 790; Barnett v. Atlanta, 109 Ga. 166, 34 S.E. 322.

**Criminal charge**

An accusation of crime, formulated in a written complaint, information, or indictment, and taking shape in a prosecution. U. S. v. Patterson, 150 U.S. 65, 14 S.Ct. 20, 37 L.Ed. 999; Eason v. State, 11 Ark. 482; People v. Ross, 235 Mich. 433, 209 N.W. 663, 666.

**Criminal contempt proceeding**

"Criminal contempt proceedings" are brought to preserve the power and vindicate the dignity and integrity of the court and to punish for disobedience of its orders. O'Malley v. United States, C.C.A.Mo., 128 F.2d 676, 683.

## CRIMINAL

### Criminal conversation

Defilement of the marriage bed, sexual intercourse of an outsider with husband or wife, or a breaking down of the covenant of fidelity. *Young v. Young*, 236 Ala. 627, 184 So. 187, 190, 191. Adultery, considered in its aspect of a civil injury to the husband entitling him to damages; the tort of debauching or seducing of a wife. Often abbreviated to *crim. con.*

### Criminal court

One where criminal cases are tried and determined, not one where civil cases are tried, or persons charged with criminal offenses are held for action by proper authority. *Hobart v. First Criminal Judicial Dist. of Court of Bergen County*, 10 N.J.Misc. 723, 160 A. 674, 675.

### Criminal gross negligence

"Gross negligence" is culpable or criminal when accompanied by acts of commission or omission of a wanton or willful nature, showing a reckless or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which make it not improbable that injury will be occasioned, and the offender knows or is charged with knowledge of the probable result of his acts; "culpable" meaning deserving of blame or censure. *Bell v. Commonwealth*, 170 Va. 597, 195 S.E. 675, 681.

### Criminal information

A criminal suit brought, without interposition of a grand jury, by the proper officer of the king or state. *Cole, Cr.Inf.*; 4 *Bla.Com.* 398.

### Criminal insanity

Want of mental capacity and moral freedom to do or abstain from doing particular act. *State v. Schafer*, 156 Wash. 240, 286 P. 833, 838.

### Criminal instrumentality rule

Where the wrong is accomplished by a crime, the crime and not the negligent act of the party which made it possible is the "proximate cause". *Foutch v. Alexandria Bank & Trust Co.*, 177 Tenn. 348, 149 S.W.2d 76, 85.

### Criminal intent

The intent to commit a crime; malice, as evidenced by a criminal act; an intent to deprive or defraud the true owner of his property. *People v. Borden's Condensed Milk Co.*, 165 App.Div. 711, 151 N.Y.S. 547, 549; *State v. Howard*, 162 La. 719, 111 So. 72, 76.

### Criminal malversation

A broad category of corrupt official practices. *Jimenez v. Aristeguieta*, C.A.Fla., 311 F.2d 547, 562.

### Criminal Motive

"Criminal motive" is the inducement, existing in the minds of persons, causing them to intend, and afterward to commit, crime. *State v. Richardson*, 197 Wash. 157, 84 P.2d 699, 703.

### Criminal Procedure

The method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable to fine or imprisonment or other punishment. 4 *Amer. & Eng. Enc. Law*, 730.

### Criminal Proceeding

One instituted and conducted for the purpose either of preventing the commission of crime, or for fixing the guilt of a crime already committed and punishing the offender; as distinguished from a "civil" proceeding, which is for the redress of a private injury. *Mossey v. United States*, C.C.A. N.Y., 266 F. 18, 22, 11 A.L.R. 1261. Strictly, a "criminal proceeding" means some step taken before a court against some person or persons charged with some violation of the criminal law. *McGoldrick v. Downs*, 184 Misc. 168, 53 N.Y.S.2d 333, 336.

### Criminal Process

Process which issues to compel a person to answer for a crime or misdemeanor. *Mowlan v. State*, 197 Ind. 517, 151 N.E. 416, 417. Also process issued to aid in the detection or suppression of crime, such as search warrants—the primary purpose of the search being to obtain evidence for use in a criminal prosecution. *Sugar Valley Land Co. v. Johnson*, 17 Ala.App. 409, 85 So. 871, 874.

### Criminal Prosecution

An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime. *Harger v. Thomas*, 44 Pa. 128, 84 Am.Dec. 422; *Ex parte Pepper*, 185 Ala. 284, 64 So. 112, 113; *State v. District Court of Fifth Judicial Dist. in and for Madison County*, 53 Mont. 350, 165 P. 294, 296; *McGoldrick v. Downs*, 184 Misc. 168, 53 N.Y.S.2d 333, 336. A prosecution in a court of justice, in name of the Government, against one or more individuals accused of crime. *United States v. Safeway Stores, Tex.*, C.C.A.Kan., 140 F.2d 834, 839.

As to criminal "Conspiracy," "Contempt," "Information," "Jurisdiction," "Negligence," "Operation," see those titles.

**CRIMINAL JURISDICTION.** That which exists for the trial and punishment of criminal offenses; the authority by which judicial officers take cognizance of and decide criminal cases. *Ellison v.*

State, 125 Ind. 492, 24 N.E. 739; *In re City of Buffalo*, 139 N.Y. 422, 34 N.E. 1103.

#### Criminal law

That branch or division of law which treats of crimes and their punishments. In the plural—"criminal laws"—the term may denote the laws which define and prohibit the various species of crimes and establish their punishments. *U. S. v. Reisinger*, 128 U.S. 398, 9 S.Ct. 99, 32 L.Ed. 480; *Washington v. Dowling*, 92 Fla. 601, 109 So. 588, 591.

**CRIMINAL LAW AMENDMENT ACT.** This act was passed in 1871, 34 & 35 Vict. c. 32, to prevent and punish any violence, threats, or molestation, on the part either of master or workmen, in the various relations arising between them. 4 Steph. Comm. 241.

**CRIMINAL LAW CONSOLIDATION ACT.** The statutes 24 & 25 Vict. cc. 94-100, passed in 1861, for the consolidation of the criminal law of England and Ireland. 4 Steph. Comm. 297. These important statutes amount to a codification of the modern criminal law of England.

**CRIMINAL LETTERS.** In Scotch law. A process used as the commencement of a criminal proceeding, in the nature of a summons issued by the lord advocate or his deputy. It resembles a criminal information at common law.

**CRIMINAL LIBEL.** A libel which is punishable criminally; one which tends to excite a breach of the peace. 3 Greenl. Ev. § 164; *Walker v. Wickens*, 49 Kan. 42, 30 P. 181; *Kennerly v. Hennessy*, 68 Fla. 138, 66 So. 729, 19 A.L.R. 1468. The malicious defamation of a person made public by any printing or writing tending to provoke him to wrath and to deprive him of the benefits of public confidence and social intercourse.

**CRIMINALIST.** One versed in criminal law, one addicted to criminality, and, also, a psychiatrist dealing with criminality. *People v. Taylor*, 312 P.2d 731, 734, 152 C.A.2d 29; *Douglas v. State*, 163 So.2d 477, 486, 42 Ala.App. 314.

**CRIMINALITER.** Lat. Criminally. This term is used, in distinction or opposition to the word "*civiliter*," civilly, to distinguish a criminal liability or prosecution from a civil one.

**CRIMINATE.** To charge one with crime; to furnish ground for a criminal prosecution; to expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to *criminate* him. *Stewart v. Johnson*, 18 N.J.Law, 87; *Kendrick v. Comm.*, 78 Va. 490.

**CRIMINOLOGY.** The science which treats of crimes and their prevention and punishment.

**CRIMP.** One who decoys and plunders sailors under cover of harboring them. Wharton.

**CRIPPLING.** The word "crippling" is equivalent of words "physical disability" and is defined as to

deprive of use of limbs, particularly of leg or foot, to deprive of strength, activity or capability for service or use and to disable. *People v. Lockwood*, 308 Mich. 618, 14 N.W.2d 517, 518; *Baker v. Chicago, B. & Q. R. Co.*, 327 Mo. 986, 39 S.W.2d 535, 545.

**CRITICISM.** Permitted "criticism" as distinguished from "defamation" deals only with such things as invite public comment, and does not follow a public man into his private life, and pry into his domestic concerns. *Devany v. Shulman*, 184 Misc. 613, 53 N.Y.S.2d 401, 403.

**CRO, CROO.** In old Scotch law. A weregild. A composition, satisfaction, or assyhtment for the slaughter of a man.

**CROCIA.** The *crozier*, or pastoral staff.

**CROCIARIUS.** A cross-bearer, who went before the prelate. Wharton.

**CROCKARDS, CROCARDS.** A foreign coin of base metal, prohibited by statute 27 Edw. I. St. 3, from being brought into the realm. 4 Bl. Comm. 98; *Crabb, Eng. Law*, 176.

**CROFT.** A little close adjoining a dwelling-house, and inclosed for pasture and tillage or any particular use. *Jacob*. A small place fenced off in which to keep farm-cattle. *Spelman*. The word is now entirely obsolete.

**CROISES.** Pilgrims; so called as wearing the sign of the *cross* on their upper garments. *Britt*. c. 122. The knights of the order of St. John of Jerusalem, created for the defense of the pilgrims. *Cowell*; *Blount*.

**CROITEIR.** A crofter; one holding a croft.

**CROOK.** A person given to crooked or fraudulent practices, a swindler, sharper, thief, forger, or the like. *Rubenstein v. Lee*, 56 Ga.App. 49, 192 S.E. 85, 87; *Sinclair Refining Co. v. Fuller*, 190 Ark. 426, 79 S.W.2d 736, 739. Term "crook" has been defined as a professional rogue; a criminal; or one consorting with criminals; a person recognized by the authorities as belonging to the criminal class; swindler; sharp; cheat. *Gaare v. Melbostad*, 186 Minn. 96, 242 N.W. 466, 467.

**CROOKED.** Deviating from rectitude or uprightness; not straightforward; dishonest; wrong; perverse. A "crook" is a dishonest person; one who is crooked in conduct; a tricky or underhand schemer; a thief or swindler. *Villemin v. Brown*, 193 App.Div. 777, 184 N.Y.S. 570, 571; *Pandolfo v. Bank of Benson, C.C.A.Ariz.*, 273 F. 48, 51.

**CROP.** The products of the harvest; emblems. *Mutual Fire Insurance Co. v. Dehaven, Pa.*, 5 A. 65; *Verbeck v. Peters*, 170 Iowa, 610, 153 N.W. 215, 216. Such products of the soil as are annually planted, severed, and saved by manual labor, as cereals, vegetables, grass maturing for harvest or harvested, etc., but not grass on lands used for pasturage. *Moore v. Hope Natural Gas*

## CROP

Co., 76 W.Va. 649, 86 S.E. 564, 567. In its more general signification, means all products of the soil that are grown and raised annually and gathered during a single season. In this sense the term includes fructus industriales and fructus naturales. The word is also used, however, in a more restricted sense, as synonymous with fructus industriales or emblements. Etymology of word "crop" appears to be from the Saxon "cropp" or "cropp," which signified a cluster of ears of corn or grapes; another derivation is from the Welch "cropiad," which meant a fathering or taking hold of. It is from this derivation that the word has been held to mean only products after they have been severed from the soil. At times a distinction has been drawn between fructus industriales and fructus naturales. Kennedy v. Spalding, 143 Kan. 76, 53 P.2d 804, 806; Miethke v. Pierce County, 173 Wash. 381, 23 P.2d 405; Weddle v. Parrish, 135 Or. 345, 295 P. 454, 455.

In a broader sense, any product of the soil. Ellis, McKinnon & Brown v. Hopps, 30 Ga.App. 453, 118 S.E. 583; Buchanan v. Jencks, 38 R.I. 443, 96 A. 307, 309, 2 A.L.R. 986.

**CROPPER.** One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. Wood v. Garrison, 23 Ky.Law Rep. 295, 62 S.W. 728; Maltbie v. Olds, 88 Conn. 633, 92 A. 403, 405; Davis v. State, 84 Tex. Cr.R. 282, 206 S.W. 690; Empire Gas & Fuel Co. v. Denning, 128 Okl. 145, 261 P. 929, 930.

The difference between a tenant and a cropper is: A tenant has an estate in the land for the term, and, consequently, he has a right of property in the crops. Until division, the right of property and of possession in the whole is the tenant's. A cropper has no estate in the land; and, although he has in some sense the possession of the crop, it is the possession of a servant only, and is, in law, that of the landlord, who must divide off to the cropper his share. Harrison v. Ricks, 71 N.C. 7; O'Brien v. Webb, D.C.Cal., 279 F. 117, 120; Cook-Reynolds Co. v. Wilson, 67 Mont. 147, 214 P. 1104, 1105; Halsell v. First Nat. Bank, 109 Okl. 220, 235 P. 532, 533; Gibbons v. Huntsinger, 105 Mont. 562, 74 P.2d 443.

**CROSS.** A mark made by persons who are unable to write, to stand instead of a signature. A mark usually in the form of an X, by which voters are commonly required to express their selection. There are four principal forms of the cross: The St. Andrew's cross, which is made in the form of an X; the Latin cross, †, as used in the crucifixion; St. Anthony's cross, which is made in the form of a T; and the Greek cross, +, which is made by the intersection at right angles of lines at their center point. Hunt v. Campbell, 19 Ariz. 254, 169 P. 596, 610.

As an adjective, the word is applied to various demands and proceedings which are connected in subject-matter, but opposite or contradictory in purpose or object.

As a verb it means to pass or extend from one side to the other, as to cross a stream. People v. Hawkins, 51 Cal.App.2d Supp. 781, 124 P.2d 691, 692.

As to cross "Appeal," "Bill," "Complaint," "Remainder," "Rules," see those titles.

**CROSS-ACTION.** An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, upon a cause of action growing out of the same transaction which is there in controversy, whether it be a contract or tort. An independent suit brought by defendant against plaintiff. National Stock Yards Nat. Bank v. Valentine, Tex.Civ.App., 39 S.W.2d 907, 908.

**CROSS-CLAIM.** A "cross-claim" is one brought by a defendant against a plaintiff in the same action or against a codefendant or both concerning matters in question in the original petition, and its purposes are to discover facts in aid of defense, to bring in new matter in aid of defense, to obtain some affirmative relief concerning matters in issue, to obtain full relief for all parties and a complete determination of all controversies arising out of matters alleged in original petition, and to have affirmative relief against either plaintiff or codefendant in the nature of an original petition. Farr v. Detroit Trust Co., C.C.A.Mich., 116 F.2d 807, 811.

**CROSS-DEMAND.** Where a person against whom a demand is made by another, in his turn makes a demand against that other, these mutual demands are called "cross-demands." A *set-off* is a familiar example. Musselman v. Galligher, 32 Iowa, 383.

**CROSS-ERRORS.** Errors being assigned by the respondent in a writ of error, the errors assigned on both sides are called "cross-errors."

**CROSS-EXAMINATION.** In practice. The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who produced him, upon his evidence given in chief, to test its truth, to further develop it, or for other purposes.

**CROSS-LAY.** The winding of the outer strands of a rope in a reverse direction to the inner strands, the "lay" of a strand of rope being the length of rope within which such strand makes one complete turn. Macomber & Whyte Rope Co. v. Hazard Mfg. Co., C.C.A.N.Y., 211 F. 976, 977.

**CROSS-SALE.** Where a floor broker, holding orders from different customers to buy and sell on the same terms, cries out the transaction and makes the sale and purchase to himself at the price shown by the last sale shown on the exchange, the transaction is called a "cross-sale or trade," and is illegal under rules of exchange, requiring two brokers to every purchase or sale. Cohen v. Rothschild, 182 App.Div. 408, 169 N.Y.S. 659, 664.

**CROSSED CHECK.** See Check.

**CROSSING.** A portion of a street over which pedestrians may lawfully cross from one side to the other. Under Laws N.J.1915, P.L. p. 285, § 1, defining crossings to be all duly indicated crossings, marked by pavement or otherwise, at intersection of streets, the most direct route across the street from curb to curb is a "crossing," where

no paved crossing is there necessary. *Ferris v. McArdle*, 92 N.J.Law, 580, 106 A. 460, 461.

With reference to railroads, that portion of the right of way covered by intersection with a street or highway. *International-Great Northern R. Co. v. Mallard*, Tex.Civ.App., 262 S.W. 789, 791. In a broader sense, the term includes embankments constructed as necessary approaches to a railroad track, *St. Louis, I. M. & S. Ry. Co. v. Smith*, 118 Ark. 72, 175 S.W. 415, 416, and approaches or embankments reasonably necessary to enable crossings or bridges to be used, *Payne v. Stockton*, 147 Ark. 598, 229 S.W. 44, 47. For "Farm Crossing", see that title.

**CROWD.** "Crowd" is indefinite, since difference in time and place may shape its meaning, but there is always implied in the word numbers with reference to the hour and location. *People*, on *Complaint of Liroff, v. Phillips*, 245 N.Y. 401, 157 N.E. 508, 509.

**CROWN.** The sovereign power in a monarchy, especially in relation to the punishment of crimes. "Felony is an offense of the crown." *Finch, Law*, b. 1, c. 16.

An ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign himself, or the rights, duties, and prerogatives belonging to him. Also a silver coin of the value of five shillings. *Wharton*.

The facings and backings made to be sold to dentists to be set by them with appropriate fastenings in the jaws of their patients, when so in place are commonly called "crowns" or "artificial crowns." *S. S. White Dental Mfg. Co. v. Dental Co. of America*, D.C.Pa., 263 F. 719, 720.

Ship's crown is convex arc of vessel's deck from side to side. *The Indien*, C.C.A.Cal., 71 F.2d 752, 757.

**CROWN CASES.** In English law. Criminal prosecutions on behalf of the crown, as representing the public; causes in the criminal courts.

**CROWN CASES RESERVED.** In English law. Questions of law arising in criminal trials at the assizes, (otherwise than by way of demurrer,) and not decided there, but reserved for the consideration of the court of criminal appeal.

**CROWN COURT.** In English law. The court in which the crown cases, or criminal business, of the assizes is transacted.

**CROWN DEBTS.** In English law. Debts due to the crown, which are put, by various statutes, upon a different footing from those due to a subject.

**CROWN LANDS.** The demesne lands of the crown. In England and Canada, lands belonging to the sovereign personally or to the government or nation, as distinguished from such as have passed into private ownership.

**CROWN LAW.** Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 Bl.Comm. 2.

**CROWN OFFICE.** The criminal side of the court of king's bench. The king's attorney in this court is called "master of the crown office." 4 Bl.Comm. 308.

**CROWN OFFICE IN CHANCERY.** One of the offices of the English high court of chancery, now transferred to the high court of justice. The principal official, the clerk of the crown, is an officer of parliament, and of the lord chancellor, in his non-judicial capacity, rather than an officer of the courts of law.

**CROWN PAPER.** A paper containing the list of criminal cases, which await the hearing or decision of the court, and particularly of the court of king's bench; and it then includes all cases arising from informations *quo warranto*, criminal informations, criminal cases brought up from inferior courts by writ of *certiorari*, and cases from the sessions. *Brown*.

**CROWN SIDE.** The criminal department of the court of king's bench; the civil department or branch being called the "plea side." 4 Bl.Comm. 265.

**CROWN SOLICITOR.** In England, the solicitor to the treasury acts, in state prosecutions, as solicitor for the crown in preparing the prosecution. In Ireland there are officers called "crown solicitors" attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown prosecutor (called the "procurator-fiscal," and being a subordinate of the lord-advocate) in every county, who prepares every criminal prosecution. *Wharton*.

**CROWNER.** In old Scotch law. Coroner; a coroner. "Crowner's quest," a coroner's inquest.

**CROY.** In old English law. Marsh land. *Blount*.

**CRUCE SIGNATI.** In old English law. Signed or marked with a cross. Pilgrims to the holy land, or crusaders; so called because they wore the sign of the cross upon their garments. *Spelman*.

**CRUDE.** A flexible term depending largely on context. In natural state; raw; unrefined; not artificially altered; unfinished. *U. S. v. Richard & Co.*, 8 Ct.Cust.App. 304, 305; *Nortmann-Duffke v. Federal Crushed Stone Co.*, 167 Minn. 333, 209 N.W. 17, 18; *Ishimitsu Co. v. U. S.*, 12 Ct.Cust.App. 477, 479.

**CRUEL AND UNUSUAL PUNISHMENT.** See Punishment.

**CRUELTY.** The intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity;

## CRUELTY

outrage. *Jacobs v. Jacobs*, 95 Conn. 57, 110 A. 455, 456.

Chiefly used in the law of divorce, in such phrases as "cruel and abusive treatment," "cruel and barbarous treatment," or "cruel and inhuman treatment," as to the meaning of which, and of "cruelty" in this sense, see *Rudnick v. Rudnick*, 288 Mass. 256, 192 N.E. 501; *Martin v. Martin*, 154 Pa.Super. 313, 35 A.2d 546, 548; *Price v. Price*, 181 Miss. 539, 179 So. 855, 857; *Campbell v. Campbell*, 129 Pa.Super. 106, 194 A. 760, 763; *Avdoyan v. Avdoyan*, 265 App.Div. 763, 40 N.Y.S.2d 665, 668; *Lowry v. Lowry*, 170 Ga. 349, 153 S.E. 11, 14, 70 A.L.R. 488.

For "Extreme and Repeated Cruelty," see that title.

*As between husband and wife.* Those acts which affect the life, the health, or even the comfort, of the party aggrieved and give a reasonable apprehension of bodily hurt, are called "cruelty." What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; *a fortiori*, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessities, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. *Evans v. Evans*, 1 Hagg.Const. 35; *Westmeath v. Westmeath*, 4 Eng.Ecc. 238, 311, 312.

Cruelty includes both willfulness and malicious temper of mind with which an act is done, as well as a high degree of pain inflicted. Acts merely accidental, though they inflict great pain, are not "cruel," in the sense of the word as used in statutes against cruelty. *Comm. v. McClellan*, 101 Mass. 34.

### Cruelty to Animals

The infliction of physical pain, suffering, or death upon an animal, when not necessary for purposes of training or discipline or (in the case of death) to procure food or to release the animal from incurable suffering, but done wantonly, for mere sport, for the indulgence of a cruel and vindictive temper, or with reckless indifference to its pain. *State v. Porter*, 112 N.C. 887, 16 S.E. 915; *State v. Bosworth*, 54 Conn. 1, 4 A. 248; *McKinne v. State*, 81 Ga. 164, 9 S.E. 1091; *Waters v. People*, 23 Colo. 33, 46 P. 112, 33 L.R.A. 836.

### Legal Cruelty

See Legal Cruelty.

**CRUISE.** A voyage undertaken for a given purpose; a voyage for the purpose of making captures *jure belli*. *The Brutus*, 2 Gall. 538, Fed. Cas.No.2,060.

A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail in any particular track at a certain season of the year. The region in which these cruises are performed is usually termed the "rendezvous," or "cruising latitude." *Bouvier*.

A report of a timber surveyor showing the character and amount of timber in a stand. *Jones v. United States*, C.C.A.Or., 265 F. 235, 239.

**CRUSH.** To break by means of pressure. *Yagunchok v. Rutledge*, 219 Mich. 82, 188 N.W. 412, 413.

It has been defined to mean to compress or bruise between two hard bodies; to squeeze or force by pressure so as to destroy the natural condition, shape, or integrity of the parts, or to force together into a mass. *Atlantic Oil Producing Co. v. Malone*, 152 Okl. 68, 3 P.2d 874, 875.

**CRY.** To call out aloud; to proclaim; to publish; to sell at auction. "To cry a tract of land." *Carr v. Gooch*, 1 Wash., Va., 335 (260).

A clamor raised in the pursuit of an escaping felon. 4 Bl.Comm. 293. See Hue and Cry.

**CRY DE PAIS, or CRI DE PAIS.** The hue and cry raised by the people in ancient times, where a felony had been committed and the constable was absent.

**CRYER.** An auctioneer. *Carr v. Gooch*, 1 Wash., Va., 337, (262.) One who calls out aloud; one who publishes or proclaims. See Crier.

**CRYPTA.** A chapel or oratory underground, or under a church or cathedral. *Du Cange*.

**CUCKING-STOOL.** An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking-stool*, because the judgment was that, when the woman was placed therein, she should be plunged in the water for her punishment. It was also variously called a "trebucket," "tumbrel," or "castigatory." 3 Inst. 219; 4 Bl.Comm. 169; *Brown. James v. Comm.*, 12 Serg. & R., Pa., 220.

**CUCKOLD.** A man whose wife is unfaithful; the husband of an adulteress. It is explained that the word alludes to the habit of the female cuckold, which lays her eggs in the nests of other birds to be hatched by them. To make a cuckold of a man is to seduce his wife. *Hall v. Huffman*, 159 Ky. 72, 166 S.W. 770.

**CUAILLETTE.** A term of French maritime law. See A Cueillette.

**CUI ANTE DIVORTIUM** (L. Lat. The full phrase was, *Cui ipsa ante divortium contradicere non potuit*, whom she before the divorce could not gainsay). A writ which anciently lay in favor of a woman who had been divorced from her husband, to recover lands and tenements which she had in fee-simple, fee-tail, or for life, from him to whom her husband had aliened them during marriage, when she could not gainsay it; *Fitzh.N.B.* 240; 3 Bla.Com. 183, n.; *Stearns, Real Act.* 143; *Booth, Real Act.* 188. Abolished in 1833.

**CUI BONO.** For whose good; for whose use or benefit. "*Cui bono* is ever of great weight in all agreements." *Parker, C. J.*, 10 Mod. 135. Sometimes translated, for what good, for what useful purpose.

**CUI IN VITA** (L. Lat. The full phrase was, *Cui in vita sua ipsa contradicere non potuit*, whom in

his lifetime she could not gainsay). A writ of entry which lay for a widow against a person to whom her husband had in his lifetime aliened her lands. Fitzh.N.B. 193. It was a method of establishing the fact of death, being a trial with witnesses, but without a jury. The object of the writ was to avoid a judgment obtained against the husband by confession or default. It is obsolete in England by force of 32 Hen. VIII, c. 28, § 6. See 6 Co. 8, 9. As to its use in Pennsylvania, see 3 Binn.Appx.; Rep.Comm. on Penn.Civ.Code, 1835, 90. Abolished in England, 1833. Blackstone is said to have shown little knowledge of its history; Thayer, Evidence.

**CUI JURISDICTIO DATA EST, EA QUOQUE CONCESSA ESSE VIDENTUR, SINE QUIBUS JURISDICTIO EXPLICARI NON POTEST.** To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. Dig. 2, 1, 2. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 Kent, Comm. 339.

**CUI JUS EST DONANDI, EIDEM ET VENDENDI ET CONCEDENDI JUS EST.** He who has the right of giving has also the right of selling and granting. Dig. 50, 17, 163.

**CUILIBET IN ARTE SUA PERITO EST CRE-  
DENDUM.** Any person skilled in his peculiar art or profession is to be believed, [*i. e.*, when he speaks of matters connected with such art.] Co. Litt. 125*a*. Credence should be given to one skilled in his peculiar profession. Broom.Max. 932; 1 Bla.Com. 75; Phill.Ev.Cowen & H. notes, 759; 1 Hagg.Ecc. 727; 11 Cl. & F. 85.

**CUILIBET LICET JURI PRO SE INTRODUCTO RENUNCIARE.** Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection.

**CUI LICET QUOD MAJUS, NON DEBET QUOD MINUS EST NON LICERE.** He who is allowed to do the greater ought not to be prohibited from doing the less. He who has authority to do the more important act ought not to be debarred from doing what is of less importance. 4 Coke 23.

**CUICUNQUE ALIQUIS QUID CONCEDIT CON-  
CEDERE VIDETUR ET ID, SINE QUO RES IPSA ESSE NON POTUIT.** Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect. 11 Co. 52; Broom, Max. 479; Hob. 234; Vaugh. 109; 11 Exch. 775; Shep.Touch. 89; Co.Litt. 56 *a*.

**CUI PATER EST POPULUS NON HABET ILLE PATREM.** He to whom the people is father has not a father. Co.Litt. 123.

**CUIQUE IN SUA ARTE CREDENDUM EST.** Everyone is to be believed in his own art. Dick-  
inson v. Barber, 9 Mass. 227, 6 Am.Dec. 58.

**CUJUS EST COMMODUM EJUS DEBET ESSE INCOMMODOUM.** Whose is the advantage, his also should be the disadvantage.

**CUJUS EST DARE, EJUS EST DISPONERE.** Wing.Max. 53. Whose it is to give, his it is to dispose; or, as Broom says, "the bestower of a gift has a right to regulate its disposal." Broom, Max. 459, 461, 463, 464.

**CUJUS EST DIVISIO, ALTERIUS EST ELECTIO.** Whichever [of two parties] has the division, [of an estate,] the choice [of the shares] is the other's. Co.Litt. 166*b*. In partition between coparceners, where the division is made by the eldest, the rule in English law is that she shall choose her share last. Id.; 2 Bl.Comm. 189; 1 Steph. Comm. 323.

**CUJUS EST DOMINIUM EJUS EST PERICULUM.** The risk lies upon the owner of the subject. Tray.Lat.Max. 114.

**CUJUS EST INSTITUERE, EJUS EST ABROGARE.** Whose right it is to institute, his right it is to abrogate. Broom, Max. 878, note.

**CUJUS EST SOLUM EJUS EST USQUE AD CÆLUM.** Whose is the soil, his it is up to the sky. Co.Litt. 4*a*. He who owns the soil, or surface of the ground, owns, or has an exclusive right to, everything which is upon or above it to an indefinite height. 9 Coke 54; Shep.Touch. 90; 2 Bl. Comm. 18; 3 Bl.Comm. 217; Broom.Max. 395.

**CUJUS EST SOLUM, EJUS EST USQUE AD CÆLUM ET AD INFEROS.** To whomsoever the soil belongs, he owns also to the sky and to the depths. The owner of a piece of land owns everything above and below it to an indefinite extent. Co.Litt. 4; Shell Oil Co. v. Manley Oil Corporation, D.C.Ill., 37 F.Supp. 289, 292.

**CUJUS JURIS (*i. e.*, JURISDICTIONIS) EST PRINCIPALE, EJUSDEM JURIS ERIT ACCESSORIUM.** 2 Inst. 493. An accessory matter is subject to the same jurisdiction as its principal.

**CUJUS PER ERROREM DATI REPETITIO EST, EJUS CONSULTO DATI DONATIO EST.** He who gives a thing by mistake has a right to recover it back; but, if he gives designedly, it is a gift. Dig. 50, 17, 53.

**CUJUSQUE REI POTISSIMA PARS EST PRINCIPIMUM.** The chiefest part of everything is the beginning. Dig. 1, 2, 1; 10 Coke, 49*a*.

**CUL DE SAC.** (Fr. the bottom of a sack.) A blind alley; a street which is open at one end only. Bartlett v. Bangor, 67 Me. 467; Talbott v. Railroad Co., 31 Grat., Va., 691; Hickok v. Plattsburg, 41 Barb., N.Y., 135; Beckham v. State, 64 Cal.App.2d 487, 149 P.2d 296, 300.

**CULAGIUM.** In old records. The laying up a ship in a dock, in order to be repaired. Cowell; Blount.

**CULPA.** Lat. A term of the civil law, meaning fault, neglect, or negligence. There are three degrees of *culpa*,—*lata culpa*, gross fault or neglect; *levis culpa*, ordinary fault or neglect; *levissima culpa*, slight fault or neglect,—and the definitions



## CULPA

of these degrees are precisely the same as those in our law. Story, Bailm. § 18. This term is to be distinguished from *dolus*, which means fraud, guile, or deceit.

**CULPA CARET QUI SCIT SED PROHIBERE NON POTEST.** He is clear of blame who knows, but cannot prevent. Dig. 50, 17, 50.

**CULPA EST IMMISCERE SE REL AD SE NON PERTINENTI.** 2 Inst. 208. It is a fault for any one to meddle in a matter not pertaining to him.

**CULPA LATA DOLO ÆQUIPARATUR.** Gross negligence is held equivalent to intentional wrong.

**CULPA TENET [TENEAT] SUOS AUCTORES.** Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. Ersk.Inst. 4, 1, 14.

**CULPABILIS.** Lat. In old English law. Guilty. *Culpabilis de intrusione*,—guilty of intrusion. Fleta, lib. 4, c. 30, § 11. *Non culpabilis*, (abbreviated to *non cul.*) In criminal procedure, the plea of "not guilty." See Culprit.

**CULPABLE.** Blamable; censurable; involving the breach of a legal duty or the commission of a fault. The term is not necessarily equivalent to "criminal," for, in present use, and notwithstanding its derivation, it implies that the act or conduct spoken of is reprehensible or wrong but not that it involves malice or a guilty purpose. "Culpable" in fact connotes fault rather than guilt. Railway Co. v. Clayberg, 107 Ill. 651; Cain v. State, 55 Ga. App. 376, 190 S.E. 371, 374.

As to culpable "Homicide," "Ignorance," "Neglect," and "Negligence," "Wantonness," see those titles.

It also means that which is deserving of moral blame. Mercury Motor Transport v. State ex rel. Motor Vehicle Com'r, 197 Miss. 387, 21 So.2d 25, 28.

**CULPÆ PÆNA PAR ESTO. PÆNA AD MENSURAM DELICTI STATUENDA EST.** Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offense.

**CULPRIT.** A person who is indicted for a criminal offense, but not yet convicted. It is not, however, a technical term of the law; and in its vernacular usage it seems to imply only a light degree of censure or moral reprobation.

Blackstone believes it an abbreviation of the old forms of arraignment, whereby, on the prisoner's pleading not guilty, the clerk would respond, "*culpabilis, prit*," *i. e.*, he is guilty and the crown is ready. It was (he says) the *viva voce* replication, by the clerk, on behalf of the crown, to the prisoner's plea of *non culpabilis*; *prit* being a technical word, anciently in use in the formula of joining issue. 4 Bl.Comm. 339.

But a more plausible explanation is that given by Donaldson, (cited Whart.Lex.) as follows: The clerk asks the prisoner, "Are you guilty, or

not guilty?" Prisoner "Not guilty." Clerk, "*Qu'il paroît*, [may it prove so.] How will you be tried?" Prisoner, "By God and my country." These words being hurried over, came to sound, "culprit, how will you be tried?" The ordinary derivation is from *culpa*.

**CULRACH.** In old Scotch law. A species of pledge or cautioner, (Scottice *back borgh*,) used in cases of the replevin of persons from one man's court to another's. Skene.

**CULTIVATE.** The word "cultivate" means to till, prepare for crops, manure, plow, dress, sow and reap, manage and improve in husbandry. Miller v. Richey, Tex.Civ.App., 173 S.W.2d 490, 493.

**CULTIVATED.** A field on which a crop of wheat is growing is a cultivated field, although not a stroke of labor may have been done in it since the seed was put in the ground, and it is a cultivated field after the crop is removed. It is, strictly, a cultivated piece of ground. Combs v. Rockingham County Com'rs, 170 N.C. 87, 86 S.E. 963, 964; Angus Cattle Co. v. McLeod, 98 Neb. 108, 152 N.W. 322, 323.

**CULTIVATOR.** A cropper, which see. Pearson v. Lafferty, 197 Mo.App. 123, 193 S.W. 40, 41.

**CULTURA.** A parcel of arable land. Blount.

**CULVERTAGE.** In old English law. A base kind of slavery. The confiscation or forfeiture which takes place when a lord seizes his tenant's estate. Blount; Du Cange.

**CUM ACTIO FUERIT MERE CRIMINALIS, INSTITUI POTERIT AB INITIO CRIMINALITER VEL CIVILITER.** When an action is merely criminal, it can be instituted from the beginning either criminally or civilly. Bract. 102.

**CUM ADSUNT TESTIMONIA RERUM, QUID OPUS EST VERBIS?** When the proofs of facts are present, what need is there of words? 2 Bulst. 53.

**CUM ALIQUIS RENUNCIAVERIT SOCIETATI, SOLVITUR SOCIETAS.** When any partner renounces the partnership, the partnership is dissolved. Tray. Lat. Max. 118.

**CUM CONFITENTE SPONTE MITIUS EST AGENDUM.** 4 Inst. 66. One confessing willingly should be dealt with more leniently.

**CUM COPULA.** Lat. With copulation, *i. e.*, sexual intercourse. Used in speaking of the validity of a marriage contracted "per verba de futuro cum copula," that is, with words referring to the future (a future intention to have the marriage solemnized) and consummated by sexual connection.

**CUM DE LUCRO DUORUM QUÆRITUR, MELIOR EST CAUSA POSSIDENTIS.** When the question is as to the gain of two persons, the cause of him who is in possession is the better. Dig. 50, 17, 126.

**CUM DUO INTER SE PUGNANTIA REPERIUNTUR IN TESTAMENTO, ULTIMUM RATUM EST.** Where two things repugnant to each other are found in a will, the last shall stand. Co. Litt. 112b; Shep. Touch. 451; Broom, Max. 583.

**CUM DUO JURA CONCURRUNT IN UNA PERSONA ÆQUUM EST AC SI ESSENT IN DUOBUS.** When two rights meet in one person, it is the same as if they were in two persons.

**CUM GRANO SALIS.** (With a grain of salt.) With allowance for exaggeration.

**CUM IN CORPORE DISSENTITUR, APPARET NULLAM ESSE ACCEPTIONEM.** When there is a disagreement in the substance, it appears that there is no acceptance. Gardner v. Lane, 12 Allen, Mass., 44.

**CUM IN TESTAMENTO AMBIGUE AUT ETIAM PERPERAM SCRIPTUM EST BENIGNE INTERPRETARI ET SECUNDUM ID QUOD CREDIBILE EST COGITATUM CREDENDUM EST.** Dig. 34, 5, 24. Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally, and in accordance with the testator's probable meaning. Broom, Max. 568.

**CUM LEGITIMÆ NUPTIÆ FACTÆ SUNT, PATREM LIBERI SEQUUNTUR.** Children born under a legitimate marriage follow the condition of the father.

**CUM ONERE.** With the burden; subject to an incumbrance or charge. What is taken *cum onere* is taken subject to an existing burden or charge.

**CUM PAR DELICTUM EST DUORUM, SEMPER ONERATUR PETITOR ET MELIOR HABETUR POSSESSORIS CAUSA.** Dig. 50, 17, 154. When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.

**CUM PERA ET LOCULO.** With satchel and purse. A phrase in old Scotch law.

**CUM PERTINENTIIS.** With the appurtenances. Bract. fol. 73b.

**CUM PRIVILEGIO.** The expression of the monopoly of Oxford, Cambridge, and the royal printers to publish the Bible.

**CUM QUOD AGO NON VALET UT AGO, VALEAT QUANTUM VALERE POTEST.** 4 Kent, Comm. 493. When that which I do is of no effect as I do it, it shall have as much effect as it can; *i. e.*, in some other way.

**CUM TESTAMENTO ANNEXO.** L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. If the executor has died, an administrator *de bonis non cum testamento annexo* (of the goods not [already] admin-

istered upon with the will annexed) is appointed. Often abbreviated *d. b. n. c. t. a.* 2 Bl. Comm. 503, 504.

**CUMULATIVE.** Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other. *People v. Superior Court*, 10 Wend., N.Y., 285; *Regina v. Eastern Archipelago Co.*, 18 Eng. Law & Eq. 183.

As to cumulative "Dividend," "Legacy," "Punishment" and "Sentences," see those titles.

**CUMULATIVE EVIDENCE.** Additional or corroborative evidence to the same point. That which goes to prove what has already been established by other evidence. *Glidden v. Dunlap*, 28 Me. 383; *Parker v. Hardy*, 24 Pick., Mass., 248; *Waller v. Graves*, 20 Conn. 310; *Roe v. Kalb*, 37 Ga. 459; *Purcell Envelope Co. v. United States*, 48 Ct.Cl. 66, 73.

All evidence material to the issue, after any such evidence has been given, is in a certain sense cumulative; that is, is added to what has been given before. It tends to sustain the issue. But cumulative evidence, in legal phrase, means evidence from the same or a new witness, simply repeating, in substance and effect, or adding to, what has been before testified to. *Parshall v. Klinck*, 43 Barb., N.Y., 212. Evidence is not cumulative merely because it tends to establish the same ultimate or *principally controverted* fact. Cumulative evidence is additional evidence of the same kind to the same point. *Able v. Frazier*, 43 Iowa, 177; *Harlan v. Texas Fuel & Supply Co.*, Tex. Civ. App., 160 S.W. 1142, 1146.

#### Cumulative Offense

One which can be committed only by a repetition of acts of the same kind but committed on different days. The offense of being a "common seller" of intoxicating liquors is an example. *Wells v. Com.*, 12 Gray., Mass., 328.

#### Cumulative Remedy

A remedy created by statute in addition to one which still remains in force. *Railway Co. v. Chicago*, 148 Ill. 141, 35 N.E. 881; *State v. Barboglio*, 63 Utah, 432, 226 P. 904, 907; *Phillip Levy & Co. v. Davis*, 115 Va. 814, 80 S.E. 791, 794; *Wulff-Hansen & Co. v. Silvers*, Cal.App., 120 P.2d 677, 680.

#### Cumulative Voting

A system of voting, by which the elector, having a number of votes equal to the number of officers to be chosen, is allowed to concentrate the whole number of his votes upon one person, or to distribute them as he may see fit. For example, if ten directors of a corporation are to be elected, then, under this system, the voter may cast ten votes for one person, or five votes for each of two persons, etc. It is intended to secure representation of a minority. *Bridgers v. Staton*, 150 N.C. 216, 63 S.E. 892; *Chicago Macaroni Mfg. Co. v. Boggiano*, 202 Ill. 312, 67 N.E. 17; *Attorney General v. McVichie*, 138 Mich. 387, 101 N.W. 552.

**CUNADES.** In Spanish law. Affinity; alliance; relation by marriage. *Las Partidas*, pt. 4, tit. 6, 1, 5.

## CUNEATOR

**CUNEATOR.** A coiner. Du Cange. *Cuneare*, to coin. *Cuneus*, the die with which to coin. *Cuneata*, coined. Du Cange; Spelman.

**CUNNILINGUS.** An act of sex perversion committed with the mouth and the female sexual organ. State v. Murry, 136 La. 253, 66 So. 963, 965.

**CUNTEY-CUNTEY.** In old English law. A kind of trial, as appears from Bract. lib. 4, tract 3, ca. 18, and tract 4, ca. 2, where it seems to mean, one by the ordinary jury.

**CUR.** A common abbreviation of *curia*.

**CURA.** Lat. Care; charge; oversight; guardianship.

In the civil law a species of guardianship which commenced at the age of puberty (when the guardianship called "tutela" expired,) and continued to the completion of the twenty-fifth year. Inst. 1, 23, pr.; Id. 1, 25, pr.; Halifax, Civil Law, b. 1, c. 9.

**CURAGULOS.** One who takes care of a thing.

**CURATE.** In ecclesiastical law. Properly, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure*. An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence or as his assistant, as the case may be. 1 Bl. Comm. 393; 3 Steph. Comm. 88; Brande.

Perpetual Curacy, the office of a curate in a parish where there is no spiritual rector or vicar, but where a clerk (curate) is appointed to officiate there by the impropriator. 2 Burn.Ecc.Law, 55. The church or benefice filled by a curate under these circumstances is also so called.

**CURATEUR.** In French law. A person charged with supervising the administration of the affairs of an emancipated minor, of giving him advice, and assisting him in the important acts of such administration. Duverger.

**CURATIO.** In the civil law. The power or duty of managing the property of him who, either on account of infancy or some defect of mind or body, cannot manage his own affairs. The duty of a curator or guardian. Calvin.

**CURATIVE.** Intended to cure (that is, to obviate the ordinary legal effects or consequences of) defects, errors, omissions or irregularities. Meigs v. Roberts, 162 N.Y. 371, 56 N.E. 838, 76 Am.St. Rep. 322.

The word is defined as relating to, or employed in, the cure of diseases; tending to cure; a remedy. State v. Stoddard, 215 Iowa, 534, 245 N.W. 273, 275, 86 A.L.R. 616.

Applied particularly to statutes, a "curative act" being a retrospective law passed in order to validate legal proceedings, the acts of public officers, or private deeds or contracts, which would otherwise be void for defects or irregularities or for want of conformity to existing legal requirements. Meigs v. Roberts, 162 N.Y. 371, 56 N.E. 838, 76 Am.St.Rep. 322; one intended to give legal effect to some past act or transaction which is ineffective because of neglect to comply with some requirement of law. Anderson v. Lehmkuhl, 119 Neb. 451, 229 N.W. 773, 777; Carle v. Gehl, 193 Ark. 1061, 104 S.W.2d 445, 447; also one enacted to cure past irregularities not jurisdictional. Dun-

kum v. Maceck Bldg. Corporation, 256 N.Y. 275, 176 N.E. 392, 396. Applied to evidence curative admissibility is the doctrine that an opponent may reply with similar evidence whenever it is needed for removing an unfair prejudice which might otherwise have ensued. Biener v. St. Louis Public Service Co., Mo.App., 160 S.W.2d 780, 786.

**CURATOR.** In the Civil Law. A person who is appointed to take care of anything for another. A guardian. One appointed to take care of the estate of a minor above a certain age, a lunatic, a spendthrift, or other person not regarded by the law as competent to administer it for himself. The title was also applied to a variety of public officers in Roman administrative law. Sproule v. Davies, 69 App.Div. 502, 75 N.Y.S. 229; Le Blanc v. Jackson, Tex.Civ.App., 161 S.W. 60, 66; Daniels v. Metropolitan Life Ins. Co., 135 Pa.Super. 450, 5 A.2d 608, 611.

### In Scotch Law

The term means a guardian.

### In Louisiana

A person appointed to take care of the estate of an absentee.

### In Missouri

The term "curator" has been adopted from the civil law, and it is applied to the guardian of the estate of the ward as distinguished from the guardian of his person. Duncan v. Crook, 49 Mo. 117.

### Curator ad hoc

In the civil law. A guardian for this purpose; a special guardian.

### Curator ad litem

Guardian for the suit. In English law, the corresponding phrase is "guardian *ad litem*."

### Curator bonis

In the civil law. A guardian or trustee appointed to take care of *property* in certain cases; as for the benefit of creditors. Dig. 42, 7. In Scotch law. The term is applied to guardians for minors, lunatics, etc.

### Curatores viarum

Surveyors of the highways.

**CURATORSHIP.** The office of a curator. Curatorship differs from tutorship, (*q. v.*) in this; that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and secondly, the property. 1 Lec. El. Dr. Civ. Rom. 241.

**CURATRIX.** A woman who has been appointed to the office of curator; a female guardian. Cross' Curatrix v. Cross' Legatees, 4 Grat., Va., 257.

**CURATUS NON HABET TITULUM.** A curate has no title, [to tithes.] 3 Bulst. 310.

**CURE.** The act of healing; restoration to health from disease, or to soundness after injury. State

v. Gibson, 199 Iowa 177, 201 N.W. 590; State v. Stoddard, 215 Iowa, 534, 245 N.W. 273, 275, 86 A.L.R. 616. Under rule that a vessel and her owner must provide maintenance, and cure for seaman injured or falling ill while in service, "cure" is care, including nursing and medical attention during such period as the duty continues. Calmar S. S. Corporation v. Taylor, Pa., 303 U.S. 525, 58 S. Ct. 651, 653, 82 L.Ed. 993.

**CURE BY VERDICT.** The rectification or rendering nugatory of a defect in the pleadings by the rendition of a verdict; the court will presume, after a verdict, that the particular thing omitted or defectively stated in the pleadings was duly proved at the trial. State v. Keena, 63 Conn. 329, 28 A. 522; Treanor v. Houghton, 103 Cal. 53, 36 P. 1081.

**CURE OF SOULS.** In ecclesiastical law. The ecclesiastical or spiritual charge of a parish, including the usual and regular duties of a minister in charge. State v. Bray, 35 N.C. 290.

**CURFEW.** An institution supposed to have been introduced into England by order of William the Conqueror, which consisted in the ringing of a bell or bells at eight o'clock at night, at which signal the people were required to extinguish all lights in their dwellings, and to put out or rake up their fires, and retire to rest, and all companies to disperse. The word is probably derived from the French *couvre feu*, to cover the fire. The curfew is spoken of in 1 Social England 373, as having been ordained by William I, in order to prevent nightly gatherings of the people of England. But the custom is evidently older than the Norman; for we find an order of King Alfred that the inhabitants of Oxford should at the ringing of that bell cover up their fires and go to bed. And there is evidence that the same practice prevailed at this period in France, Normandy, Spain, and probably in most of the other countries of Europe. Henry, Hist. of Britain, vol. 3, 567. It was doubtless intended as a precaution against fires, which were very frequent and destructive when most houses were built of wood. It appears to have met with so much opposition that in 1103 we find Henry I, repealing the enactment of his father on the subject; and Blackstone says that, though it is mentioned a century afterwards, it is rather spoken of as a time of night than as a still subsisting custom. Shakespeare frequently refers to it in the same sense.

**CURIA.** In old European law. A court. The palace, household, or retinue of a sovereign. A judicial tribunal or court held in the sovereign's palace. A court of justice. The civil power, as distinguished from the ecclesiastical. A manor; a nobleman's house; the hall of a manor. A piece of ground attached to a house; a yard or courtyard. Spelman. A lord's court held in his manor. The tenants who did suit and service at the lord's court. A manse. Cowell.

#### In Roman Law

A division of the Roman people, said to have been made by Romulus. They were divided into

three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. Spelman. The place or building in which each *curia* assembled to offer sacred rites. The place of meeting of the Roman senate; the senate house. The senate house of a province; the place where the *decuriones* assembled. Cod. 10, 31, 2. See Decurio.

**CURIA ADMIRALITATIS.** The court of admiralty.

**CURIA ADVISARI VULT.** L. Lat. The court will advise; the court will consider. A phrase frequently found in the reports, signifying the resolution of the court to suspend judgment in a cause, after the argument, until they have deliberated upon the question, as where there is a new or difficult point involved. It is commonly abbreviated to *cur. adv. vult.*, or *c. a. v.*

**CURIA BARONIS, OR BARONUM.** In old English law. A court-baron. Fleta, lib. 2, c. 53.

**CURIA CANCELLARIÆ OFFICINA JUSTITIÆ.** 2 Inst. 552. The court of chancery is the workshop of justice.

**CURIA CHRISTIANITATIS.** The ecclesiastical court.

**CURIA CLAUDENDA.** The name of a writ to compel another to make a fence or wall, which he was bound to make, between his land and the plaintiff's. Reg. Orig. 155. Now obsolete.

**CURIA COMITATUS.** The county court (*q. v.*)

**CURIA CURSUS AQUÆ.** A court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend bridge, etc. 2 Geo. II, c. 26.

**CURIA DOMINI.** In old English law. The lord's court, house, or hall, where all the tenants met at the time of keeping court. Cowell.

**CURIA LEGITIME AFFIRMATA.** A phrase used in old Scotch records to show that the court was opened in due and lawful manner.

**CURIA MAGNA.** In old English law. The great court; one of the ancient names of parliament.

**CURIA MAJORIS.** In old English law. The mayor's court. Calth. 144.

**CURIA MILITUM.** A court so called, anciently held at Carisbrook Castle, in the Isle of Wight. Cowell.

**CURIA PALATII.** The palace court. It was abolished by 12 & 13 Vict. c. 101.

**CURIA PARLIAMENTI SUIS PROPRIIS LEGIBUS SUBSISTIT.** 4 Inst. 50. The court of parliament is governed by its own laws.

**CURIA PEDIS PULVERIZATI.** In old English law. The court of *piepoudre* or *piepouders*. 3 Bl. Comm. 32. See Court of Piepoudre.

## CURIA

**CURIA PENTICIARUM.** A court held by the sheriff of Chester, in a place there called the "*Pent-dice*" or "*Pentice*," probably it was so called from being originally held under a pent-house, or open shed covered with boards. Blount.

**CURIA PERSONÆ.** In old records. A parsonage-house, or manse. Cowell.

**CURIA REGIS.** The king's court. A term applied to the *aula regis*, the *bancus*, or *communis bancus*, and the *iter* or *eyre*, as being courts of the king, but especially to the *aula regis*, (which title see.)

**CURIALITY.** In Scotch law. Curtesy. Also the privileges, prerogatives, or, perhaps, retinue, of a court.

**CURING TITLE.** "Clearing", "curing", "straightening out", or "removing cloud from" title denotes acts or proceedings necessary to render title marketable. Johnston v. Cox, 114 Fla. 243, 154 So. 206.

**CURIOSA ET CAPTIOSA INTERPRETATIO IN LEGE REPROBATUR.** A curious [overnice or subtle] and captious interpretation is reprobated in law. 1 Balst. 6.

**CURNOCK.** In old English law. A measure containing four bushels or half a quarter of corn. Cowell; Blount.

**CURRENCY.** Coined money and such banknotes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange. Griswold v. Hepburn, 2 Duv., Ky., 33; Insurance Co. v. Kupfer, 28 Ill. 332, 81 Am.Dec. 284. Certificates of deposit are "Currency." State ex rel. Cole v. Trimble, 307 Mo. 57, 269 S.W. 959, 961; Millikan v. Security Trust Co., 187 Ind. 307, 118 N.E. 568, 570. Gold certificate held "currency". Nortz v. U. S., Ct.Cl., 294 U.S. 317, 55 S.Ct. 428, 79 L.Ed. 907, 907 A.L.R. 1346.

The term "money" is synonymous with "currency," and imports any currency, token, bank notes, or other circulating medium in general use as the representative of value. People v. Miller, 292 Ill.App. 643, 11 N.E.2d 827.

**CURRENT.** Running; now in transit; whatever is at present in course of passage; as "the current month." Wharton v. Morris, 1 Dall. 124, 1 L.Ed. 65; Miller v. White, Tex.Civ.App., 264 S.W. 176, 178; Richardson v. Board of Education of City of Ashland, 208 Ky. 464, 271 S.W. 549, 550; American Fruit Growers v. United States, C.C.A. Cal., 105 F.2d 722, 726.

A continuous movement in the same direction, as a fluid or stream. Buckeye Incubator Co. v. Blum, D.C.Ohio, 17 F.2d 456, 458.

Passing in time or belonging to the time actually passing, now passing, present in its course, as the current month, and as applied to current obligations it denotes the obligations then passing or present in its progress, the service rendered and the compensation therefor measured by the time of the occurrence of the event. Pecos Mer-

cantile Co. v. Texlite, Inc., Tex.Civ.App., 65 S.W.2d 811, 812.

The word "current," when used as an adjective, has many meanings, and definition depends largely on word which it modifies, or subject-matter with which it is associated. Commissioner of Internal Revenue v. Keller, C.C.A., 59 F.2d 499, 501.

**CURRENT ACCOUNT.** An open, running, or unsettled account between two parties. Tucker v. Quimby, 37 Iowa 19; Franklin v. Camp, 1 N.J.Law, 196; Wilson v. Calvert, 18 Ala. 274; Leland v. Johnson, 227 Iowa 520, 288 N.W. 595, 597; Miller v. Boyce, 219 Iowa 534, 258 N.W. 764.

**CURRENT CATALOGUES.** Under contract to sell automobiles as shown in current catalogues, "current catalogues" means such catalogues as should from time to time be issued, and not merely the catalogues in existence on execution of the contract. Imperial Motorcar Co. v. Skinner, 16 Ala. App. 443, 78 So. 641, 642.

**CURRENT DEBT FUND RULE.** The "current debt fund rule" is that creditors who have supplied labor, materials, or equipment essential to operation of railroad before adjudication of insolvency will be entitled to lien on properties prior to lien of pre-existing mortgages, if current operating revenues have been diverted to payment of principal or interest on mortgages, or to enhancement of mortgage security before current operating expenses have been met. Village of Stillwater v. Hudson Valley Ry. Co., 255 N.Y. 144, 309, 174 N.E. 306.

**CURRENT EXPENSES.** Ordinary, regular, and continuing expenditures for the maintenance of property, the carrying on of an office, municipal government, etc. State v. Board of Education, 68 N.J.Law, 496, 53 A. 236; Babcock v. Goodrich, 47 Cal. 510; St. Louis-San Francisco Ry. Co. v. Forbess, 111 Okl. 48, 237 P. 596, 597.

In connection with municipal finances, the usual, ordinary, running, and incidental expenses of a municipality. Atchison, T. & S. F. Ry. Co. v. City of Topeka, 95 Kan. 747, 149 P. 697. The term is equivalent to "running expenses," meaning any continuing regular expenditures in connection with the business. Meridian Line Drainage Dist. v. Wiss, 258 Ill. 600, 101 N.E. 941, 942.

**CURRENT FUNDS.** This phrase means gold or silver, or something equivalent thereto, and convertible at pleasure into coined money. Bull v. Bank, 123 U.S. 105, 8 S.Ct. 62, 31 L.Ed. 97; Henderson v. Farmers' Sav. Bank of Harper, 199 Iowa 496, 202 N.W. 259, 261.

**CURRENT LIABILITIES.** The phrase "current liability" carries with it the idea of a liability that is presently enforceable. Warren Co. v. Commissioner of Internal Revenue, C.C.A.Ga., 135 F.2d 679, 684, 685.

**CURRENT MAINTENANCE.** "Current maintenance" is defined as the expense occasioned in keeping the physical property in the condition required for continued use during its service life. Lindheimer v. Illinois Bell Telephone Co., Ill., 292 U.S. 151, 54 S.Ct. 658, 78 L.Ed. 1182.

**CURRENT MONEY.** The currency of the country; whatever is intended to and does actually circulate as currency; every species of coin or currency. *Miller v. McKinney*, 5 Lea, Tenn., 96. In this phrase the adjective "current" is not synonymous with "convertible." It is employed to describe money which passes from hand to hand, from person to person, and circulates through the community, and is generally received. Money is current which is received as money in the common business transactions, and is the common medium in barter and trade. *Ferrell v. State*, 68 Tex.Cr.R. 487, 152 S.W. 901, 905; *Kupfer v. Marc*, 28 Ill. 388; *Conwell v. Pumphrey*, 9 Ind. 135, 68 Am.Dec. 611.

**CURRENT OBLIGATIONS.** The word "current" means passing in time or belonging to the time actually passing, now passing, present in its course, as the current month, and as applied to current obligations it denotes the obligations then passing or present in its progress, the service rendered and the compensation therefor measured by the time of the occurrence of the event. *Pecos Mercantile Co. v. Textlite, Inc.*, Tex.Civ.App., 65 S.W.2d 811, 812.

**CURRENT PRICE.** This term means the same as "market value," "market price," "going price," the price that runs or flows with the market. *Hoff v. Lodi Canning Co.*, 51 Cal.App. 299, 196 P. 779, 780; *Ford v. Norton*, 32 N.M. 518, 260 P. 411, 414, 55 A.L.R. 261; *Cases of Champagne*, 23 Fed. Cas. 1168.

**CURRENT RATE OF WAGES.** Minimum, maximum, and intermediate amounts, indeterminately varying from time to time and dependent on the class and kind of work done, the efficiency of the workman, etc. *Connally v. General Const. Co.*, 269 U.S. 385, 46 S.Ct. 126, 128, 70 L.Ed. 322.

**"CURRENT REVENUES"**. Defined as including taxes for ensuing year and all liquid assets, such as delinquent taxes, licenses, fines, and other revenues which, in judgment of authorities, are collectible. *Athens Nat. Bank v. Ridgebury Tp.*, 303 Pa. 479, 154 A. 791, 792.

**CURRENT VALUE.** The current value of imported commodities is their common market price at the place of exportation, without reference to the price actually paid by the importer. *Tappan v. U. S.*, 23 Fed.Cas. 690.

**CURRENT WAGES.** Such as are paid periodically, or from time to time as the services are rendered or the work is performed; more particularly, wages for the current period, hence not including such as are past-due. *Sydnor v. Galveston*, Tex.App., 15 S.W. 202; *Bell v. Indian Live Stock Co.*, Tex., 11 S.W. 346, 3 L.R.A. 642; *Bruton v. Tearle*, 7 Cal.2d 48, 59 P.2d 953, 957, 106 A.L.R. 580.

**CURRENT YEAR.** The year now running. *Doe v. Dobell*, 1 Adol. & El. 806; *Clark v. Lancaster County*, 69 Neb. 717, 96 N.W. 593. Ordinarily, a calendar year in which the event under discussion

took place; *Buffalo County v. Bowker*, 197 N.W. 620, 622, 111 Neb. 762; *Clark v. Tennessee Chemical Company*, 167 Ga. 248, 145 S.E. 73, 75; *Empire Petroleum Co. v. Southern Pipe Line Co.*, 174 Ark. 33, 294 S.W. 5, 6; unless the context shows a different intention; *Miller v. White*, Tex.Civ.App., 264 S.W. 176, 178; *People v. Central Illinois Public Service Co.*, 324 Ill. 85, 154 N.E. 438, 439.

**CURRICULUM.** The year; of the course of a year; the set of studies for a particular period, appointed by a university.

**CURRIT QUATUOR PEDIBUS.** L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuoer pedibus*." 1 W.Bl. 145.

**CURRIT TEMPUS CONTRA DESIDES ET SUI JURIS CONTEMPTORES.** Time runs against the slothful and those who neglect their rights. Bract. fols. 100b, 101.

**CURSING.** Malediction; imprecation; execration; profane words intended to convey hate and to invoke harm; swearing. *Johnson v. State*, 15 Ala.App. 194, 72 So. 766.

**CURSITOR BARON.** An officer of the court of exchequer, who is appointed by patent under the great seal to be one of the barons of the exchequer. The office was abolished by St. 19 & 20 Vict. c. 86.

**CURSITORS.** Clerks in the chancery office, whose duties consisted in drawing up those writs which were of course, *de cursu*, whence their name. They were abolished by St. 5 & 6 Wm. IV, c. 82. *Spence, Eq.Jur.* 238; 4 Inst. 82.

**CURSO.** In old records. A ridge. *Cursones terræ*, ridges of land. Cowell.

**CUSOR.** An inferior officer of the papal court.

**CURSORY EXAMINATION.** An inspection for defects visible or ascertainable by ordinary examination. *Coll v. Lehigh Valley R. Co.*, 3 N.J.Misc. 869, 130 A. 225, 226.

**CURSUS CURLÆ EST LEX CURLÆ.** 3 Bulst. 53. The practice of the court is the law of the court.

**CURTAIL.** "Curtail" means to cut off the end or any part of; hence to shorten, abridge; diminish; lessen, reduce; and has no such meaning as abolish. *State v. Edwards*, 207 La. 506, 21 So.2d 624, 625.

**CURTESY.** The estate to which by common law a man is entitled, on the death of his wife, in the lands or tenements of which she was seised in possession in fee-simple or in tail during her coverture, provided they have had lawful issue born alive which might have been capable of inheriting the estate. It is a freehold estate for the term of his natural life. 1 Washb.Real Prop. 127; 2 Bl. Comm. 126; Co.Litt. 30a; *Dozier v. Toalson*, 180 Mo. 546, 79 S.W. 420, 103 Am.St.Rep. 586;

## CURTESY

Templeton v. Twitty, 88 Tenn. 595, 14 S.W. 435; Decker v. Decker, 205 Ky. 69, 265 S.W. 483, 485.

### Initiate and consummate

Curtesy initiate is the interest which a husband has in his wife's estate after the birth of issue capable of inheriting, and before the death of the wife; after her death, it becomes an estate "by the curtesy consummate." Wait v. Wait, 4 Barb., N.Y. 205; Churchill v. Hudson, C.C.Mo., 34 F. 14; Pattison v. Baker, 148 Tenn. 399, 255 S.W. 710, 29 A.L.R. 1334; Bucci v. Popovich, 93 N.J. Eq. 121, 115 A. 95, 96; Hopper v. Gurtman, 126 N.J. 263, 18 A.2d 245, 246, 250, 133 A.L.R. 621.

**CURTEYN.** The name of King Edward the Confessor's sword. It is said that the point of it was broken, as an emblem of mercy. (Mat. Par. in Hen. III.) Wharton.

**CURTILAGE.** The inclosed space of ground and buildings immediately surrounding a dwelling-house. 1 Chit.Gen.Pr. 175; United States v. Vlahos, D.C.Or., 19 F.Supp. 166, 169.

In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon which is usually inclosed within the *general fence* immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house, but it may be large enough for cattle to be levant and couchant therein. 1 Chit.Gen.Pr. 175.

The curtilage of a dwelling-house is a space, necessary and convenient and habitually used for the family purposes, and the carrying on of domestic employments. It includes the garden, if there be one, and it need not be separated from other lands by fence. State v. Shaw, 31 Me. 523; Derrickson v. Edwards, 29 N.J.Law, 474, 80 Am. Dec. 220; Bare v. Commonwealth, 122 Va. 783, 94 S.E. 168, 172; State v. Lee, 120 Or. 643, 253 P. 533, 534.

A piece of ground commonly used with the dwelling house. Fugate v. Commonwealth, 294 Ky. 410, 171 S.W.2d 1020, 1021. A small piece of land, not necessarily inclosed, around the dwelling house, and generally includes the buildings used for domestic purposes in the conduct of family affairs. Bruner v. State, 47 Okl.Cr. 241, 288 P. 369, 370; a courtyard or the space of ground adjoining the dwelling house necessary and convenient and habitually used for family purposes and the carrying on of domestic employments. Jones v. Commonwealth, 239 Ky. 110, 38 S.W.2d 971, 973. A piece of ground within the common inclosure belonging to a dwelling house, and enjoyed with it, for its more convenient occupation. Italian-American Building & Loan Ass'n of Passaic County v. Russo, 132 N.J.Eq. 319, 28 A.2d 196, 198; People v. Gedney, 10 Hun., N.Y., 154. In Michigan it has been extended to include more than an inclosure near the house. People v. Taylor, 2 Mich. 250.

**CURTILES TERRÆ.** In old English law. Court lands. Cowell. See Court Lands.

**CURTILLIUM.** A curtilage; the area or space within the inclosure of a dwellinghouse. Spelman.

**CURTIS.** A garden; a space about a house; a house, or manor; a court, or palace; a court of justice; a nobleman's residence. Spelman.

**CUSSEDNESS.** "Wantonness" is a synonym for what is popularly known as "cussedness," and "cussedness" is a disposition to perversity. Universal Concrete Pipe Co. v. Bassett, 130 Ohio St. 567, 200 N.E. 843, 845.

**CUSSORE.** A term used in Hindostan for the discount or allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted. Enc.Lond.

**CUSTA, CUSTAGIUM, CUSTANTIA.** Costs.

**CUSTODE ADMITTENDO, CUSTODE AMOVENDO.** Writs for the admitting and removing of guardians.

### CUSTODES.

#### In Roman Law

Guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given. Tayl.Civil Law, 193.

#### In Old English Law

Keepers; guardians; conservators.

**CUSTODES LIBERTATIS ANGLIÆ AUCTORITATE PARLIAMENTI.** The style in which writs and all judicial processes were made out during the great revolution, from the execution of King Charles I. till Oliver Cromwell was declared protector.

**CUSTODES PACIS.** Guardians of the peace. 1 Bl.Comm. 349.

**CUSTODIA LEGIS.** In the custody of the law. Stockwell v. Robinson, 9 Houst., Del., 313, 32 A. 528; Troll v. City of St. Louis, 257 Mo. 626, 168 S.W. 167, 178; Hopping v. Hopping, 233 Iowa 993, 10 N.W.2d 87, 152 A.L.R. 436.

**CUSTODIAM LEASE.** In English law. A grant from the crown under the exchequer seal, by which the custody of lands, etc., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof. Wharton.

**CUSTODY.** The care and keeping of anything; as when an article is said to be "in the custody of the court." People v. Burr, 41 How.Prac., N.Y., 296; Emmerson v. State, 33 Tex.Cr.R. 89, 25 S.W. 290; Roe v. Irwin, 32 Ga. 39. Also the detainer of a man's person by virtue of lawful process or authority; actual imprisonment. In a sentence that the defendant "be in custody until," etc., this term imports actual imprisonment. Smith v. Com., 59 Pa. 320; Turner v. Wilson, 49 Ind. 581; Ex parte Powers, D.C.Ky., 129 F. 985. Detention; charge; control; possession. The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Jones v. State, 26 Ga.App. 635, 107 S.E. 166; J. O. Nessen Lumber Co. v. Ray H. Bennett Lumber Co., 223 Mich. 349, 193 N.W. 789, 790; State ex rel. Bricker v. Griffith, Ohio App., 36 N.E.2d 489, 491; Willoughby v. State, 87 Tex.Cr.R. 40, 219 S.W. 468, 470; Carpenter v. Lord, 88 Or. 128,



171 P. 577, 579, L.R.A.1918D, 674; Little v. State, 100 Tex.Cr.R. 167, 272 S.W. 456, 457; Randazzo v. U. S., C.C.A.Mo., 300 F. 794, 797.

The word is defined as the care and possession of a thing, and means the keeping, guarding, care, watch, inspection, preservation or security of a thing, and carries with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected; charge; immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Southern Carbon Co. v. State, 171 Misc. 566, 13 N.Y.S.2d 7, 9.

"Custody" of property means such a relation towards it as would constitute possession if the person having custody had it on his own account. State v. Columbus State Bank, 124 Neb. 231, 246 N.W. 235, 238. "Custody" means a keeping, guardianship, the state of being held in keeping or under guard, restraint of liberty, imprisonment, and "fetter" is a synonym. Browder v. Cook, D.C.Idaho, 59 F.Supp. 225, 231.

**CUSTODY OF THE LAW.** Property is in the custody of the law when it has been lawfully taken by authority of legal process, and remains in the possession of a public officer (as, a sheriff) or an officer of a court (as, a receiver) empowered by law to hold it. Gilman v. Williams, 7 Wis. 334, 76 Am.Dec. 219; McFarland Carriage Co. v. Solanes, C.C.La., 108 F. 532; Allan v. Hargadine-McKittick Dry Goods Co., 325 Mo. 400, 28 S.W.2d 670, 673.

**CUSTOM.** A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates. Adams v. Insurance Co., 95 Pa. 355, 40 Am.Rep. 662; King v. Shelton, Tex.Civ. App., 252 S.W. 194, 195; Conahan v. Fisher, 233 Mass. 234, 124 N.E. 13, 15; Lawrence v. Portland Ry., Light & Power Co., 91 Or. 559, 179 P. 485, 486; U. S. Shipping Board Emergency Fleet Corporation v. Levensaler, 53 App.D.C. 322, 290 F. 297, 300.

A "custom" is a practice or course of acting. Goslin v. Kurn, 351 Mo. 395, 173 S.W.2d 79, 86.

Ordinary or usual way of doing a thing, habit; practice. Adelman v. Altman, 209 Mo.App. 583, 240 S.W. 272, 276; Kent v. Town of Patterson, 141 N.Y.S. 932, 933, 80 Misc. Rep. 560; Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 161; Carter v. Sioux City Service Co., 160 Iowa 78, 141 N.W. 26, 29.

It results from a long series of actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Louisville & N. R. Co. v. Reverman, 243 Ky. 702, 49 S.W.2d 558, 560.

A law not written, established by long usage, and the consent of our ancestors. Termes de la Ley; Cowell; Bract.fol. 2. Portuguese Beneficial Ass'n v. Xavier, 59 R.I. 265, 195 A. 231, 233. If it be universal, it is common law; if particular to this or that place, it is then properly *custom*. 3 Salk. 112.

Customs result from a long series of actions constantly repeated, which have, by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Civil Code La. art. 3.

It differs from prescription, which is personal and is annexed to the person of the owner of a particular estate; while the other is local, and relates to a particular district. An instance of the latter occurs where the question is upon the manner of conducting a particular branch of trade at a certain place; of the former, where a certain person and

his ancestors, or those whose estates he has, have been entitled to a certain advantage or privilege, as to have common of pasture in a certain close, or the like. The distinction has been thus expressed: "While prescription is the making of a right, custom is the making of a law." Lawson, Usages & Cust. 15, note 2.

**Classification**

Customs are general, local or particular. *General* customs are such as prevail throughout a country and become the law of that country, and their existence is to be determined by the court. Bodfish v. Fox, 23 Me. 95, 39 Am.Dec. 611. Or as applied to usages of trade and business, a general custom is one that is followed in all cases by all persons in the same business in the same territory, and which has been so long established that persons sought to be charged thereby, and all others living in the vicinity, may be presumed to have known of it and to have acted upon it as they had occasion. Sturges v. Buckley, 32 Conn. 267; Railroad Co. v. Harrington, 192 Ill. 9, 61 N.E. 622. *Local* customs are such as prevail only in some particular district or locality, or in some city, county, or town. Clough v. Wing, 2 Ariz. 371, 17 P. 457. *Particular* customs are nearly the same, being such as affect only the inhabitants of some particular district. 1 Bl.Comm. 74.

**Custom of Merchants**

A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which, under the name of the "*lex mercatoria*," or "law merchant," has been ingrafted into and made a part of, the common law. 1 Bl. Comm. 75; 1 Steph.Comm. 54; 2 Burrows, 1226, 1228.

**Custom of York**

A custom of intestacy in the province of York similar to that of London. Abolished by 19 & 20 Vict. c. 94.

**Customs and Services**

Annexed to the tenure of lands are those which the tenants thereof owe unto their lords, and which, if withheld, the lord might anciently have resorted to "a writ of customs and services" to compel them. Cowell. But at the present day he would merely proceed to eject the tenant as upon a forfeiture, or claim damages for the subtraction. Brown.

**Customs of London**

Certain particular customs, peculiar to that city, with regard to trade, apprentices, widows, orphans and a variety of other matters; contrary to the general law of the land, but confirmed by act of parliament. 1 Bl.Comm. 75.

**Special Custom**

A particular or local custom; one which, in respect to the sphere of its observance, does not extend throughout the entire state or country, but is confined to some particular district or locality. 1 Bl.Comm. 67; Bodfish v. Fox, 23 Me. 95, 39 Am. Dec. 611.

## CUSTOM

**CUSTOM DUTIES.** Taxes on the importation and exportation of commodities; the tariff or tax assessed upon merchandise, imported from, or exported to a foreign country. *United States v. Sischo*, D.C.Wash., 262 F. 1001, 1005.

**CUSTOM-HOUSE.** In administrative law. The house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc.

**CUSTOM-HOUSE BROKER.** One whose occupation it is, as an agent, to arrange entries and other custom-house papers, or transact business, at any port of entry, relating to the importation or exportation of goods, wares, or merchandise. 14 St. at Large, 117. A person authorized by the commissioners of customs to act for parties, at their option, in the entry or clearance of ships and the transaction of general business. *Whar-ton*; *State v. William J. Oberle, Inc.*, La.App., 140 So. 239, 240.

**CUSTOMARILY.** Means usually, habitually, according to the customs, general practice or usual order of things, regularly. *Fuller Brush Co. v. Industrial Commission of Utah*, 99 Utah 97, 104 P.2d 201, 203, 129 A.L.R. 511.

**CUSTOMARY.** According to custom or usage; founded on, or growing out of, or dependent on, a custom (*q. v.*); ordinary; usual; common. *Kent v. Town of Patterson*, 80 Misc.Rep. 560, 141 N.Y.S. 932, 933; *Montgomery v. O'Donnell*, 178 Iowa 588, 159 N.W. 1025, 1026; *Woods v. Postal Telegraph-Cable Co.*, 205 Ala. 236, 87 So. 681, 686, 27 A.L.R. 834.

**CUSTOMARY COURT-BARON.** See Court-Baron.

**CUSTOMARY DISPATCH.** In charter party. Due diligence according to lawful, reasonable and well-known custom of port or ports involved. Context and conditions existing or contemplated will, of course, affect the meaning of the phrase. *Wasson v. Stetson, Cutler & Co.*, D.C.Mass., 214 F. 329, 333; *Taisho Kaiun Kabushiki Kaisha v. Gano Moore Co.*, D.C.Del., 14 F.2d 985, 986.

**CUSTOMARY ESTATES.** Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl.Comm. 149.

**CUSTOMARY FREEHOLD.** In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 Steph. Comm. 212, 213, and note.

**CUSTOMARY INTERPRETATION.** See Interpretation.

**CUSTOMARY SERVICES.** Such as are due by ancient custom or prescription only.

**CUSTOMARY TENANTS.** Tenants holding by custom of the manor.

**CUSTOME SERRA PRISE STRICTE.** Custom shall be taken [is to be construed] strictly. *Jenk. Cent.* 83.

**CUSTOMER.** One who regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business house. *Aiken Mills v. United States*, D.C.S.C., 53 F.Supp. 524, 526; *Arkwright Corporation v. United States*, D.C.Mass., 53 F.Supp. 359, 361. Ordinarily, one who has had repeated business dealings with another. *Lyons v. Otter Tail Power Co.*, 70 N.D. 681, 297 N.W. 691, 693; *Gallopin v. Continental Casualty Co.*, 290 Ill. App. 8, 7 N.E.2d 771, 774. A buyer, purchaser, or patron. *Nichols v. Ocean Accident & Guarantee Corporation*, 70 Ga.App. 169, 27 S.E.2d 764, 766.

**CUSTOMERS' GOODS.** The words "customers' goods," as used in statement of claim on fire policy referring to merchandise destroyed as "customers' goods," in their ordinary sense, mean goods belonging to insured's customers in his custody as a bailee for the purpose of his trade. *Sagransky v. Tokio Marine & Fire Ins. Co.*, 92 Pa.Super. 500, 502.

**CUSTOMER'S MAN.** One who has duty to greet customers of broker, when they appear in office on business, to assist them in placing their orders, and generally to see that their wants are taken care of. *Fenner & Beane v. Lincoln*, Tex.Civ.App., 101 S.W.2d 305, 308; an employee of a brokerage house who solicits from the investing public orders for the purchase and sale of commodities and securities to be executed upon various commodities and securities exchanges in the United States. *Gould v. Witter*, 10 Wash.2d 553, 117 P. 2d 210, 211. The term includes all employees who are regularly engaged in the solicitation of marginal business or the handling of customers' accounts, or who advise with customers about the purchase and sale of securities. *Clothier v. Beane*, 187 Okl. 693, 105 P.2d 752, 756.

**CUSTOMS.** This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. *Story*, Const. § 949; *Pollock v. Trust Co.*, 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108; *Marriott v. Brune*, 9 How. 632, 13 L. Ed. 282.

The duties, toll, tribute, or tariff payable upon merchandise exported or imported. These are called "customs" from having been paid from time immemorial. Expressed in law Latin by *custuma*, as distinguished from *consuetudines*, which are usages merely. 1 Bl. Comm. 314.

**CUSTOMS CONSOLIDATION ACT.** The statute 16 & 17 Vict. c. 107, which has been frequently amended. See 2 Steph. Comm. 563.

**CUSTOMS COURT.** By virtue of Act May 28, 1926, c. 411, § 1, 44 Stat. 669, 19 U.S.C.A. § 405a, the "United States Customs Court" became the title of what had theretofore been known as the "Board of General Appraisers." Ex parte Bake-

lite Corporation, 279 U.S. 438, 49 S.Ct. 411, 73 L. Ed. 789. Its decisions are appealable to the "Court of Customs and Patent Appeals" (*q. v.*) in all cases as to the construction of the law and facts respecting the classification of merchandise and the rate of duty imposed thereon, and the fees and charges connected therewith, and all appealable questions as to the court's jurisdiction, and as to the laws and regulations governing the collection of the customs revenues.

**CUSTOS.** Lat. A custodian, guard, keeper, or warden; a magistrate.

**CUSTOS BREVIUM.** The keeper of the writs. A principal clerk belonging to the courts of queen's bench and common pleas, whose office it was to keep the writs returnable into those courts. The office was abolished by 1 Wm. IV, c. 5.

**CUSTOS FERARUM.** A gamekeeper. Townsh. Pl. 265.

**CUSTOS HORREI REGII.** Protector of the royal granary. 2 Bl. Comm. 394.

**CUSTOS MARIS.** In old English law. Warden of the sea. The title of a high naval officer among the Saxons and after the Conquest, corresponding with *admiral*.

**CUSTOS MORUM.** The guardian of morals. The court of queen's bench has been so styled. 4 Steph. Comm. 377.

**CUSTOS PLACITORUM CORONÆ.** In old English law. Keeper of the pleas of the crown. Bract. fol. 14b. Cowell supposes this office to have been the same with the *custos rotulorum*. But it seems rather to have been another name for "coroner." Crabb, Eng. Law, 150; Bract. fol. 136b.

**CUSTOS ROTULORUM.** Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the quorum in the county where appointed and is the principal civil officer in the county. 1 Bl. Comm. 349; 4 Bl. Comm. 272.

**CUSTOS SPIRITUALIUM.** In English ecclesiastical law. Keeper of the spiritualities. He who exercises the spiritual jurisdiction of a diocese during the vacancy of the see. Cowell.

**CUSTOS STATUM HÆREDIS IN CUSTODIA EXISTENTIS MELIOREM, NON DETERIOREM, FACERE POTEST.** 7 Coke, 7. A guardian can make the estate of an existing heir under his guardianship better, not worse.

**CUSTOS TEMPORALIUM.** In English ecclesiastical law. The person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.

**CUSTOS TERRÆ.** In old English law. Guardian, warden, or keeper of the land.

**CUSTUMA ANTIQUA SIVE MAGNA.** (Lat. Ancient or great duties.) The duties on wool, sheepskin, or wool-pelts and leather exported were so called, and were payable by every merchant, stranger as well as native, with the exception that merchant strangers paid one-half as much again as natives. 1 Bl. Comm. 314.

**CUSTUMA PARVA ET NOVA.** (Small and new customs.) Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the "aliens duty," and was first granted in 31 Edw. I. 1 Bl. Comm. 314; 4 Inst. 29.

**CUT.** A wound made with a sharp instrument. *State v. Patza*, 3 La. Ann. 512; *State v. Cody*, 18 Or. 506, 23 Pac. 891; *State v. Mairs*, 1 N.J. Law, 453; the term is not limited to severance by use of a sharp instrument, but also means to fell, and in industry, to reduce by or as by removing a part. *Waselinko v. Volpe Coal Co.*, 152 Pa. Super. 156, 31 A.2d 444, 445.

#### In Mining

A surface opening in the ground intersecting a vein. *McLaughlin v. Bardsen*, 50 Mont. 177, 145 P. 954, 955.

**CUT-OVER LAND.** Land which has been logged; from which desired timber has been removed. *Carlisle-Pennell Lumber Co. v. Joe Creek Shingle Co.*, 131 Wash. 501, 230 P. 425; *Tennessee Mining & Mfg. Co. v. New River Lumber Co.*, C.C.A. Tenn., 5 F.2d 559, 560.

**CUT SHELL.** One in which the part containing the shot is nearly severed from the part containing powder, so as to be projected in a unit, and inflict a more dangerous wound than if the shot were scattered. *White v. State*, 195 Ala. 681, 71 So. 452, 454.

**CUTCHERRY.** In Hindu law. Corrupted from *Kachari*. A court; a hall; an office; the place where any public business is transacted.

**CUTH, COUTH.** Sax. Known, knowing. *Uncuth*, unknown. See *Couthutlaugh*; *Uncuth*.

**CUTHRED.** A knowing or skillful counsellor.

**CUTLER.** Either a man who makes edged tools or one who grinds them. *American Stainless Steel Co. v. Ludlum Steel Co.*, C.C.A. N.Y., 290 F. 103, 106.

**CUTPURSE.** One who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom. Wharton.

**CUTTER OF THE TALLIES.** In old English law. An officer in the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc.

**CUTWAL, KATWAL.** The chief officer of police or superintendent of markets in a large town or city in India.

## CWT

**CWT.** A hundred-weight; one hundred and twelve pounds. *Helm v. Bryant*, 11 B. Mon. (Ky.) 64.

**CY.** In law French. Here. (*Cy-apres*, hereafter; *cy-devant*, heretofore.) Also as, so.

**CYCLE.** A measure of time; a space in which the same revolutions begin again; a periodical space of time. Enc. Lond. In electrical nomenclature is two successive reversals of directions of electromotive force or current or full period of alternative current. *Chicago Pneumatic Tool Co. v. Black & Decker Mfg. Co.*, Cust. & Pat.App., 39 F. 2d 684, 685.

**CYCLONE.** "A violent storm, often of vast extent, characterized by high winds rotating about a calm center of low atmospheric pressure. Popularly, any violent and destructive windstorm." *Tupper v. Massachusetts Bonding & Insurance Co.*, 156 Minn. 65, 194 N.W. 99, 100; *Cedergren v. Massachusetts Bonding & Insurance Co.*, C.C.A. Minn., 292 F. 5, 6; the term includes the hurricane, typhoon, bagino, and other tropical storms. *Federal Life Ins. Co. v. Hall*, 90 Colo. 581, 11 P. 2d 215, 216.

**CYNE-BOT, or CYNE-GILD.** The portion belonging to the nation of the mulct for slaying the king, the other portion or *were* being due to his family. Blount.

**CYNEBOTE.** A mulct anciently paid by one who killed another, to the kindred of the deceased. Spelman.

**CYPHONISM.** That kind of punishment used by the ancients, and still used by the Chinese, called by Staunton the "wooden collar," by which the neck of the malefactor is bent or weighed down. Enc. Lond.

**CY-PRES.** As near as [possible]. The rule of *cy-pres* is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be*, when it would be impossible or illegal to give it literal effect. Thus, where a testator attempts to create a perpetuity, the court will endeavor, instead of making the devise entirely void, to explain the will in such a way as to carry out the testator's general intention as far as the rule against perpetuities will allow. So in the case of bequests to charitable uses; and particularly where the language used is so vague or uncertain that the testator's design must be sought by construction. *Beekman v. Bonsor*, 23 N.Y. 308, 80 Am.Dec. 269; *Doyle v. Whalen*, 87 Me. 414, 32 A. 1022, 31 L. R.A. 118; *Philadelphia v. Girard*, 45 Pa. 23, 84 Am. Dec. 470; *People v. Braucher*, 258 Ill. 604, 101 N. E. 944, 946, 47 L.R.A., N.S., 1015; *Tincher v. Arnold*, C.C.A.Ill., 147 F. 665; *Crane v. Morristown School Foundations*, 120 N.J.Eq. 583, 187 A. 632, 635.

**CYRCE.** In Saxon law. A church.

**CYRICBRYCE.** A breaking into a church. Blount.

**CYRICSCEAT.** (From *cyric*, church, and *sceat*, a tribute). In Saxon law. A tribute or payment due to the church. Cowell.

**CYROGRAPHARIUS.** In old English law. A cyrographer; an officer of the *bancus*, or court of common bench. Fleta, lib. 2, c. 36.

**CYROGRAPHUM.** A chirograph, (which see.)

**CZAR.** (Also written *zar*, *tsar*, *tzar*, etc.) The title of the former emperors of Russia, derived from the old Slavonic *cesar*, king or emperor, which, although long held to be derived from the Roman title *Caesar*, is almost certainly of Tartar origin. 8 Encyc. Americana, 378. The Slavonic word ultimately represents the Latin *Caesar*, but came, according to Miklosich, through the medium of a Germanic language in which the word had the general sense "emperor." 2 New English Dict. (Oxford, 1893), page 1308.

In the beginning of the 10th century the Bulgarian prince Symeon assumed this title, which remained attached to the Bulgarian crown. In 1346 it was adopted by Stephen Duschan, king of Serbia. Among the Russians the Byzantine emperors were so called, as were also the khans of the Mongols that ruled in Russia. Ivan III, grand prince of Moscow, held the title, and Ivan IV, the Terrible, in 1547, caused himself to be crowned as czar. In 1721 the Senate and clergy conferred on Peter I, in the name of the nation, the title Emperor of Russia, for which in Russia the Latin word *imperator* is used. 8 Encyc. Americana, 378. Peter the Great introduced the title *imperator*, "emperor," and the official style then became "Emperor of all the Russias, Tsar of Poland, and Grand Duke of Finland"; but the Russian popular appellation continued to be *tsar* (the preferable modern spelling). 2 New English Dict. 1308. The last tsar was Nicholas II, who abdicated on March 15, 1917, and was later executed.

**CZAREVITCH.** (Also spelled *czarewich*, *tsarevitch*, and, after the Polish, *czarowitz*, *czarowitch*, etc. 2 New English Dict. 1308.) A son of the Russian czar and czarina. Originally a title. Webster, Dict. The word was used as a title during the time of Peter I and his son, Alexis, after whose death imperial princes were called grand dukes. 6 New Internatl. Encyc. 420.

**CZAREVNA, TSAREVNA.** A daughter of the Russian czar. Originally a title. Webster, Dict. As a title, however, the word has been superseded, since the time of Paul I (1754-1801), by that of grand duchess. 6 New Internatl. Encyc. 420; 2 New English Dict. 1308. See *Czarevitch*; *Cesarevna*.

**CZARINA.** The title of former empresses of Russia.

**CZARITZA, TSARITSA.** The Russian title for which *czarina* is in ordinary English use. 2 New English Dist. 1308.