

M

M'NAGHTEN RULE. The right-wrong test of criminal responsibility. The rule states essentially that if accused was possessed of sufficient understanding when he committed criminal act to know what he was doing and to know that it was wrong, he is responsible therefor, but if he did not know the nature and quality of the act or did not know what he was doing but did not know that it was wrong, he is not responsible. *Hixon v. State*, Fla.App., 165 So.2d 436, 439; *Spurlock v. State*, 368 S.W.2d 299, 301, 212 Tenn. 132; *Dunn v. State*, 174 A.2d 185, 188, 226 Md. 463.

McNABB DOCTRINE. Evidence obtained during an illegal detention; that is, one in which the prisoner has not been promptly taken before a committing magistrate as required by law, is inadmissible in a criminal trial. *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819; *Mullican v. U. S.*, C.A.Tex., 252 F.2d 398.

M. This letter, used as a Roman numeral, stands for one thousand.

It was also, in old English law, a brand or stigma impressed upon the brawn of the thumb of a person convicted of manslaughter and admitted to the benefit of clergy.

This letter was sometimes put on the face of treasury notes of the United States, and signifies that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest. *U. S. v. Hardyman*, 13 Pet. 176, 10 L.Ed. 113.

M. D. An abbreviation for "Middle District," in reference to the division of the United States into judicial districts. Also an abbreviation for "Doctor of Medicine."

M. F. B. M. An abbreviation meaning 1,000 feet board measure. *T. L. James & Co. v. Galveston County, Tex.*, C.C.A.Tex., 74 F.2d 313.

M. R. An abbreviation for "Master of the Rolls."

M. T. An abbreviation for "Michaelmas Term."

MACE. A large staff, made of the precious metals, and highly ornamented.

It is used as an emblem of authority, and carried before certain public functionaries by a mace-bearer. In many legislative bodies, the mace is employed as a visible symbol of the dignity and collective authority of the house. In the house of lords and house of commons of the British parliament, it is laid upon the table when the house is in session. In the United States house of representatives, it is borne upright by the sergeant-at-arms on extraordinary occasions, as when it is necessary to quell a disturbance or bring refractory members to order.

MACE-BEARER. In English law. One who carries the mace before certain functionaries. In Scotland, an officer attending the court of session, and usually called a "macer."

MACE-GREFF. In old English law. One who buys stolen goods, particularly food, knowing it to have been stolen.

MACE-PROOF. Secure against arrest.

MACEDONIAN DECREE. In Roman law. This was the *Senatus-consultum Macedonianum*, a de-

creed of the Roman senate, first given under Claudius, and renewed under Vespasian by which it was declared that no action should be maintained to recover a loan of money made to a child who was under the *patria potestas*.

It was intended to strike at the practice of usurers in making loans, on unconscionable terms, to family heirs who would mortgage their future expectations from the paternal estate. The law is said to have derived its name from that of a notorious usurer. See *Mackeld.Rom. Law*, § 432; *Inst.* 4, 7, 1; *Dig.* 14, 6.

MACER. A mace-bearer; an officer attending the court of session in Scotland.

MACHECOLLARE. To make a warlike device over a gate or other passage like to a grate, through which scalding water or ponderous or offensive things may be cast upon the assailants. *Co. Litt.* 5a.

MACHINATION. The act of planning or contriving a scheme for executing some purpose, particularly an evil purpose; an artful design formed with deliberation.

MACHINE. Combination of inanimate mechanism for utilizing or applying power, *Northern New York Trust Co. v. Bano*, 273 N.Y.S. 694, 151 Misc. 684.

Also means construction or contrivance of mechanical sort, *Monroe Calculating Mach. Co. v. Department of Labor and Industries*, 11 Wash.2d 636, 120 P.2d 466, 471; contrivance composed of cooperating elements which act under the law imposed upon them to regulate or modify the relations between force, motion and weight; Contrivance used to regulate or augment force or motion; a complex structure, consisting of a combination, or peculiar modification, of mechanical powers to perform some function. *Simon, Buhler & Baumann v. U. S.*, 8 Ct.Cust.App. 273, 277; device consisting of two or more resistant, relatively constrained parts, which, by certain predetermined intermotion, may serve to transmit and modify force and motion so as to produce some given effect or to do some desired kind of work, *Blankenship v. Cox*, 204 Ark. 427, 162 S.W.2d 918, 923. Device or combination of devices by means of which energy can be utilized for useful operation to be performed. *Nestle-Le Mur Co. v. Eugene, Limited*, C.C.A.Ohio, 55 F.2d 854, 857; mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result. *Corning v. Burden*, 15 How. 252, 267, 14 L.Ed. 683.

For "Dangerous Machine" and "Perfect Machine," see those titles.

MACHINERY. Complex combination of mechanical parts, *Blankenship v. Cox*, 204 Ark. 427, 162 S.W.2d 918, 923.

A more comprehensive term than "machine"; including the appurtenances necessary to the working of a machine. *Shaleen v. Central Coal & Coke Co.*, 127 Ark. 397, 192 S.W. 225, 227. Parts of a machine considered collectively. *Haddad v. Commercial Motor Truck Co.*, 146 La. 897, 84 So. 197, 198, 9 A.L.R. 1380.

Machines, in general, or collectively; also, the working parts of a machine, engine or instrument; as the machine-

MACHOLUM

ry of a watch. *Monroe Calculating Mach. Co. v. Department of Labor and Industries*, 11 Wash.2d 636, 120 P.2d 466, 471.

MACHOLUM. In old English law. A barn or granary open at the top; a rick or stack of corn. Spelman.

MACTATOR. L. Lat. In old European law. A murderer.

MACULARE. In old European law. To wound. Spelman.

MAD PARLIAMENT. Henry III, in 1258, at the desire of the Great Council in Parliament, consented to the appointment of a committee of twenty-four, of whom twelve were appointed by the Barons and twelve by the King, in a parliament which was stigmatized as the "Mad Parliament." Unlimited power was given to it to carry out all necessary reforms. It drew up the Provisions of Oxford.

MAD POINT. A term used to designate the idea or subject to which is confined the derangement of the mental faculties of one suffering from monomania. *Owing's Case*, 1 Bland (Md.) 388, 17 Am. Dec. 311. See *Insanity*.

MADE. Filed. *St. Louis Law Printing Co. v. Aufderheide*, 226 Mo.App. 680, 45 S.W.2d 543, 545; *Peavy v. Peavy*, 145 S.E. 55, 56, 167 Ga. 219. Produced artificially. *United States v. Anderson*, D.C. Cal., 45 F.Supp. 943, 946. To require or compel, *Dickinson v. Mingea*, 191 Ark. 946, 88 S.W.2d 807, 809.

MADE KNOWN. Where a writ of *scire facias* has been actually served upon a defendant, the proper return is that its contents have been "made known" to him.

A crime is "made known" to an officer when facts which come to knowledge of the officer are such as to indicate to him that it is his official duty to act or to see that an investigation of the alleged crime is instituted within his jurisdiction. *State v. Young*, 194 La. 1061, 195 So. 539, 540.

MADMAN. An insane person, particularly one suffering from mania in any of its forms.

Said to be inapplicable to idiots (*Com. v. Haskell*, 2 Brewst. [Pa.] 497); *Bensberg v. Washington University*, 251 Mo. 641, 158 S.W. 330, 336, but it is not a technical term either of medicine or the law, and is incapable of being applied with scientific precision. See *Insanity*.

MADNESS. See *Insanity*.

MADRAS REGULATIONS. Certain regulations prescribed for the government of the Madras presidency. *Mozley & Whiteley*.

MÆC-BURGH. In Saxon law. Kindred; family.

MÆG. A kinsman. 2 Poll. & Maitl. 241.

MÆGBOTE. In Saxon law. A recompense or satisfaction for the slaying or murder of a kinsman. Spelman.

MÆRE. Famous; great; noted; as *Ælmere*, all famous. *Gibs, Camd.*

MÆREMUM. Timber; wood suitable for building purposes.

MAGIC. In English statutes. Witch-craft and sorcery.

MAGIS. Lat. More; more fully; more in number; rather.

MAGIS DE BONO QUAM DE MALO LEX INTENDIT. Co. Litt. 78*b*. The law favors a good rather than a bad construction.

Where the words used in an agreement are susceptible of two meanings, the one agreeable to, the other against, the law, the former is adopted. Thus, a bond conditioned "to assign all offices" will be construed to apply to such offices only as are assignable. *Chit.Cont.* 78.

MAGIS DIGNUM TRAHIT AD SE MINUS DIGNUM. The more worthy draws to itself the less worthy. *Yearb.* 20 Hen. VI. 2, arg.

MAGISTER. Lat.

Civil law. A title of several offices under the Roman Empire.

English law. A master or ruler; a person who has attained to some eminent degree in science. *Cowell*.

MAGISTER AD FACULTATES. In English ecclesiastical law. The title of an officer who grants dispensations; as to marry, to eat flesh on days prohibited, and the like. *Bac. Abr.* "Ecclesiastical Courts," A, 5.

MAGISTER BONORUM VENDENDORUM. In Roman law, a person appointed by judicial authority to inventory, collect, and sell the property of an absent or absconding debtor for the benefit of his creditors.

He was generally one of the creditors, and his functions corresponded generally to those of a receiver or an assignee for the benefit of creditors under modern practice. See *Mackeld.Rom. Law* § 521.

MAGISTER CANCELLARIÆ. In old English law. Master of the chancery; master in chancery. These officers were said to be called "*magistri*," because they were priests. *Latch.* 133.

MAGISTER EQUITUM. Master of the horse. A title of office under the Roman Empire.

MAGISTER LIBELLORUM. Master of requests. A title of office under the Roman Empire.

MAGISTER LITIS. Master of the suit; the person who controls the suit or its prosecution, or has the right so to do.

MAGISTER NAVIS. In the civil law. The master of a ship or vessel. He to whom the care of the whole vessel is committed. *Dig.* 14, 1, 1, 1, 5.

MAGISTER PALATHI. Master of the palace or of the offices. An officer under the Roman Empire bearing some resemblance to the modern lord chamberlain. *Tayl. Civil Law*, 37.

MAGISTER RERUM USUS. Use is the master of things. Co. Litt. 229*b*. Usage is a principal guide in practice.

MAGISTER RERUM USUS; MAGISTRA RERUM EXPERIENTIA. Use is the master of things; experience is the mistress of things. Co. Litt. 69, 229; Wing. Max. 752.

MAGISTER SOCIETATIS. In the civil law. The master or manager of a partnership; a managing partner or general agent; a manager specially chosen by a firm to administer the affairs of the partnership. Story Partn. § 95.

MAGISTERIAL. Relating or pertaining to the character, office, powers, or duties of a magistrate or of the magistracy.

MAGISTERIAL PRECINCT. In some American states, a local subdivision of a county, defining the territorial jurisdiction of justices of the peace and constables, Breckinridge Co. v. McCracken, C.C.A.Ky., 61 F. 194, 9 C.C.A. 442; also called magisterial district. State v. Mingo County Court, 97 W.Va. 615, 125 S.E. 576, 577.

MAGISTRACY. This term may have a more or less extensive signification according to the use and connection in which it occurs. In its widest sense it includes the whole body of public functionaries, whether their offices be legislative, judicial, executive, or administrative. In a more restricted (and more usual) meaning, it denotes the class of officers who are charged with the application and execution of the laws. In a still more confined use, it designates the body of judicial officers of the lowest rank, and more especially those who have jurisdiction for the trial and punishment of petty misdemeanors or the preliminary steps of a criminal prosecution, such as police judges and justices of the peace. The term also denotes the office of a magistrate. Golden v. Golden, 41 N.M. 356, 68 P.2d 928, 930.

MAGISTRALIA BREVIA. In old English practice. Magisterial writs; writs adapted to special cases, and so called from being framed by the *masters* or principal clerks of the chancery. Bract. fol. 413b; Crabb, Com. Law, 547, 548.

MAGISTRATE. Person clothed with power as a public civil officer. State ex rel. Miller v. McLeod, 142 Fla. 254, 194 So. 628, 630.

A public officer belonging to the civil organization of the state, and invested with powers and functions which may be either judicial, legislative, or executive. But the term is commonly used in a narrower sense, designating, in England, a person intrusted with the commission of the peace, and, in America, one of the class of inferior judicial officers, such as justices of the peace and police justices. Martin v. State, 32 Ark. 124; Ex parte White, 15 Nev. 146, 37 Am.Rep. 466; State v. Allen, 83 Fla. 655, 92 So. 155, 156; Merritt v. Merritt, 193 Iowa 899, 188 N.W. 32, 34.

A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Pen. Code Cal. § 807.

The word "magistrate" does not necessarily imply an officer exercising any judicial functions, and might very well be held to embrace notaries and commissioners of deeds. Schultz v. Merchants' Ins. Co., 57 Mo. 336.

For "Chief Magistrate," "Committing Magistrate," "Police Magistrate" and "Stipendiary Magistrates," see those titles.

MAGISTRATE'S COURT. In American law. Courts in the state of South Carolina, having exclusive jurisdiction in matters of contract of and under twenty dollars.

A local court in the city of Philadelphia, possessing the criminal jurisdiction of a police court and civil jurisdiction in actions involving not more than one hundred dollars. It is not a court of record. See Const.Pa. art. 4, § 12.

MAGISTRATUS. Lat. In the civil law. A magistrate. Calvin.

A judicial officer who had the power of hearing and determining causes, but whose office properly was to inquire into matters of law, as distinguished from fact. Hallifax, Civil Law, b. 3, c. 8.

MAGNA ASSISA. In old English law. The grand assize. Glanv. lib. 2, cc. 11, 12.

MAGNA ASSISA ELIGENDA. An ancient writ to summon four lawful knights before the justices of assize, there to choose twelve others, with themselves to constitute the *grand assize* or great jury, to try the matter of right. The trial by grand assize was instituted by Henry II. in parliament, as an alternative to the duel in a writ of right. Abolished by 3 & 4 Wm. IV. c. 27. Wharton.

MAGNA AVERIA. In old pleading. Great beasts, as horses, oxen, etc. Cro. Jac. 580.

MAGNA CENTUM. The great hundred, or six score. Wharton.

MAGNA CHARTA. The great charter.

The name of a charter (or constitutional enactment) granted by King John of England to the barons, at Runnymede, on June 15, 1215, and afterwards, with some alterations, confirmed in parliament by Henry III. and Edward I. This charter is justly regarded as the foundation of English constitutional liberty. Among its thirty-eight chapters are found provisions for regulating the administration of justice, defining the temporal and ecclesiastical jurisdictions, securing the personal liberty of the subject and his rights of property, and the limits of taxation, and for preserving the liberties and privileges of the church. *Magna Charta* is so called, partly to distinguish it from the *Charta de Foresta*, which was granted about the same time, and partly by reason of its own transcendent importance.

MAGNA CHARTA ET CHARTA DE FORESTA SONT APPELÈS LES "DEUX GRANDES CHARTERS." 2 Inst. 570. *Magna Charta* and the Charter of the Forest are called the "two great charters."

MAGNA COMPONERE PARVIS. To compare great things with small things.

MAGNA CULPA. Great fault; gross negligence.

MAGNA NEGLIGENTIA. In the civil law. Great or gross negligence.

MAGNA NEGLIGENTIA CULPA EST; MAGNA CULPA DOLUS EST. Gross negligence is fault; gross fault is fraud. Dig. 50, 16, 226.

MAGNA PRECARIA. In old English law. A great or general reape-day. Cowell; Blount.

MAGNA SERJEANTIA. In old English law. Grand serjeanty. Fleta, lib. 2, c. 4, § 1.

MAGNUM

MAGNUM CAPE. In old Practice. Great or grand *cape*. 1 Reeve, Eng. Law, 418. See Grand Cape.

MAGNUM CONCILIUM. In old English law. The great council; the general council of the realm; afterwards called "parliament." 1 Bl. Comm. 148; 1 Reeve, Eng. Law, 62; Spelman.

The king's great council of barons and prelates. Spelman; Crabb, Com. Law 228.

MAGNUS ROTULUS STATUTORUM. The great statute roll. The first of the English statute rolls, beginning with *Magna Charta*, and ending with Edward III. Hale, Com. Law, 16, 17.

MAHA-GEN. In Hindu law. A banker or any great shop-keeper.

MAHAL. In Hindu law. Any land or public fund producing a revenue to the government of Hindostan. "*Mahalaat*" is the plural.

MAHLBRIEF. In maritime law. The German name for the contract for the building of a vessel.

This contract contains a specification of the kind of vessel intended, her dimensions, the time within which she is to be completed, the price and times of payment, etc., with reservation generally that the contractor or his agent (usually the master of a vessel) may reject uncontract-worthy materials, and oblige the builder to supply others. Jac. Sea Laws 2-8.

MAIDEN. A young unmarried woman. In an indictment for adultery, not necessarily a virgin. State v. Shedrick, 69 Vt. 428, 38 A. 75.

In Scotch law. An instrument formerly used in beheading criminals. It resembled the French guillotine, of which it is said to have been the prototype. Wharton.

MAIDEN ASSIZE. In English law. Originally an assize at which no person was condemned to die. Now a session of a criminal court at which there are no prisoners to be tried.

MAIDEN RENTS. In old English law. A fine paid to lords of some manors, on the marriage of tenants, originally given in consideration of the lord's relinquishing his customary right of lying the first night with the bride of a tenant. Cowell.

MAIGNAGIUM. A brasier's shop, or, perhaps, a house. Cowell.

MAIHEM. See Mayhem; Maim.

MAIHEMATUS. Maimed or wounded.

MAIHEMIUM. In old English law. Mayhem (*q. v.*).

MAIHEMIUM EST HOMICIDIUM INCHOATUM. 3 Inst. 118. Mayhem is incipient homicide.

MAIHEMIUM EST INTER CRIMINA MAJORA MINIMUM, ET INTER MINORA MAXIMUM. Co.Litt. 127. Mayhem is the least of great crimes, and the greatest of small.

MAIHEMIUM EST MEMBRI MUTILATIO, ET DICHI POTERIT, UBI ALIQUIS IN ALIQUA PARTE SUI CORPORIS EFFECTUS SIT INUTILIS AD PUGNANDUM. Co.Litt. 126. Mayhem is the

mutilation of a member, and can be said to take place when a man is injured in any part of his body so as to be useless in fight.

MAIL. As applied to the post-office, the carriage of letters, whether applied to the bag into which they are put, the coach or vehicle by means of which they are transported, or any other means employed for their carriage and delivery by public authority. Wynen v. Schappert, 6 Daly (N.Y.) 560. It may also denote the letters or other matter so carried.

The term "mail," as used in Rev. St. U. S. § 5469, 18 U.S.C.A. §§ 1702, 1708, relative to robbing the mails, may mean either the whole body of matter transported by the postal agents, or any letter or package forming a component part of it. U. S. v. Inabnet, D.C.S.C., 41 F. 130.

Mail also denotes armor, as in the phrase a "coat of mail."

Scotch law. Rent; a rent or tribute. A tenant who pays a rent is called a "mail-payer," "maller," or "mail-man." Skene.

MAIL MATTER. This term includes letters, packets, etc., received for transmission, and to be transmitted by post to the person to whom such matter is directed. U. S. v. Huggett, C.C.Ohio, 40 F. 641; U. S. v. Rapp, C.C.Ga., 30 F. 820.

Mail and mail matter are used interchangeably in statute, and both stamps and money can be mail matter. Kelly v. Johnston, C.C.A.Cal., 128 F.2d 793, 794.

MAILABLE. Suitable or admissible for transmission by the mail; belonging to the classes of articles which, by the laws and postal regulations, may be sent by post.

MAILE. In old English law. A kind of ancient money, or silver half-pence; a small rent.

MAILED. Mailing with appropriate address on envelope. Societa Principessa Iolanda Margherita Di Savoia (Fondata Dai Bonitesi) v. Broderick, 260 N.Y. 260, 183 N.E. 382, 383.

This word, as applied to a letter, means that the letter was properly prepared for transmission by the postal department, and that it was put in the custody of the officer charged with the duty of forwarding the mail. Pier v. Heinrichshoffen, 67 Mo. 163, 29 Am.Rep. 501, and testimony that a letter was "mailed" to the addressee implies that it was properly addressed, stamped, and deposited in a proper place for the receipt of mail. Dawson Farmer's Elevator Co. v. Opp, 57 N.D. 598, 223 N.W. 350, 353. Model Mill Co. v. Webb, 164 N.C. 87, 80 S.E. 232, 233. But some courts limit this implication. See W. T. Rawleigh Medical Co. v. Burney, 25 Ga.App. 20, 102 S.E. 358; Feder Silberberg Co. v. McNell, 18 N.M. 44, 133 P. 975, 49 L.R.A., N.S., 458.

MAILS AND DUTIES. In Scotch law. The rents of an estate. Bell.

MAIM. As now used signifies to cripple or mutilate in any way, to inflict upon a person any injury which deprives him of the use of any limb or member of the body, or renders him lame or defective in bodily vigor; to inflict bodily injury; to seriously wound or disfigure; disable. See Shackelford v. Com., 183 Va. 423, 32 S.E.2d 682, 684; State v. Thomas, 157 Kan. 526, 142 P.2d 692, 693; State v. Deso, 1 A.2d 710, 715; Phillips v. State, 140 Tex.Cr.R. 84, 143 S.W.2d 591, 592.

At common law, to deprive a person of a member or part of the body, the loss of which renders him less capable

of fighting; or of defending himself; to commit mayhem (q. v.). State v. Johnson, 58 Ohio St. 417, 51 N.E. 40, 65 Am.St.Rep. 769.

To "main" an animal permanent injury must have been inflicted. State v. Benson, 91 Mont. 21, 5 P.2d 223, 224; Williams v. State, 51 Ga.App. 53, 179 S.E. 600.

MAIN. L. Fr. A hand. More commonly written "meyn."

Principal, chief, most important in size, extent, or utility.

First or chief in size, rank, importance, strength, extent; principal, chief, leading. Oregon, C. & E. Ry. Co. v. Blackmer, 154 Or. 388, 59 P.2d 694, 696.

Utilities, chief or primary conductors, Jersey Central Power & Light Co. v. State Board of Tax Appeals, 131 N.J.L. 565, 37 A.2d 111, 112, 113; main or principal conduits, Jersey Central Power & Light Co. v. State Board of Tax Appeals, 130 N.J.L. 364, 33 A.2d 355, 356.

MAIN CHANNEL. The main channel of a river is that bed over which the principal volume of water flows. See St. Louis, etc., Packet Co. v. Keokuk & H. Bridge Co., C.C.Iowa, 31 F. 757; Cessill v. State, 40 Ark. 504; Dunlieth & D. Bridge Co. v. Dubuque County, 55 Iowa 558, 8 N.W. 443. See, also, Thalweg.

MAIN LINE. Line which would develop sufficient traffic to necessitate operation of more than one train in same or opposite direction at any one time within division terminals. Oregon, C. & E. Ry. Co. v. Blackmer, 154 Or. 388, 59 P.2d 694, 696; principal line, Union Pac. R. Co. v. Anderson, 167 Or. 687, 120 P.2d 578, 588.

MAIN SEA. See Sea.

MAIN SEWER. That portion of sewers which serves as outlet for laterals. Boswell v. Chambliss, 189 Okl. 112, 113 P.2d 832, 834.

MAIN STAIRWAY in tenement houses means staircase designated as main stairway by building commissioner. Steele v. Lifland, 265 Mass. 233, 163 N.E. 898.

MAINAD. In old English law. A false oath; perjury. Cowell. Probably from Sax. "manath" or "mainath" a false or deceitful oath.

MAIN-A-MAIN. Immediately. Kelham.

MAINE-PORT. A small tribute, commonly of loaves of bread, which in some places the parishioners paid to the rector in lieu of small tithes. Cowell.

MAINLY. Principally, chiefly, in the main. McGill v. Baumgart, 233 Wis. 86, 288 N.W. 799, 802.

MAINOUB. In criminal law. An article stolen, when found in the hands of the thief.

A thief caught with the stolen goods in his possession is said to be taken "with the mainour," that is, with the property in *manu*, in his hands. 4 Bl.Comm. 307.

The word seems to have corresponded with the Saxon "handhabend," (q. v.). In modern law it has sometimes been written as an English word "manner," and the expression "taken in the manner" occurs in the books. Crabb, Eng. Law, 154.

MAINOVRE, or MAINEUVRE. A trespass committed by hand. See 7 Rich. II. c. 4.

MAINPERNABLE. Capable of being bailed; bailable; admissible to bail on giving surety by mainpernors.

MAINPERNOR. In old practice. A surety for the appearance of a person under arrest, who is delivered out of custody into the hands of his bail.

MAINPRISE. The delivery of a person into the custody of *mainpernors* (q. v.). Also the name of a writ (now obsolete) commanding the sheriff to take the security of mainpernors and set the party at liberty.

"Mainpernors" differ from "bail" in that a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. Bail are only sureties that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3 Bl. Comm. 128. Other distinctions are made in the old books. See Cowell.

MAIN-RENT. Vassalage.

MAINSWORN. Forsworn, by making false oath with *hand (main)* on book. Used in the north of England. Brownl. 4; Hob. 125.

MAINTAIN, as its structure indicates, signifies literally to hold by the hand.

It is variously defined as acts of repairs and other acts to prevent a decline, lapse or cessation from existing state or condition; bear the expense of; carry on; commence; continue; furnish means for subsistence or existence of; hold; hold or keep in an existing state or condition; hold or preserve in any particular state or condition; keep; keep from change; keep from falling, declining, or ceasing; keep in existence or continuance; keep in force; keep in good order; keep in proper condition; keep in repair; keep up; preserve; preserve from lapse, decline, failure, or cessation; provide for; rebuild; repair; replace; supply with means of support; supply with what is needed; support; sustain; uphold. Negatively stated, it is defined as not to lose or surrender; not to suffer or fall or decline. Tennessee Electric Power Co. v. White County, C.C.A.Tenn., 52 F.2d 1065, 1066; Maryland Casualty Co. v. City of Seattle, 11 Wash.2d 69, 118 P.2d 416, 418; State ex rel. Rose Bros. Lumber & Supply Co. v. Clousing, 198 Minn. 35, 268 N.W. 844; City of New York v. Long Island R. Co., 289 N.Y.S. 217, 219, 248 App.Div. 820; Owens v. Greenville News-Piedmont, D.C.S.C., 43 F.Supp. 785, 789; In re Klein, D.C.Minn., 9 F.Supp. 57, 58; Ponsler v. Union Traction Co. of Indiana, 76 Ind.App. 616, 132 N.E. 708, 709.

To "maintain" a suit is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect. George Moore Ice Cream Co. v. Rose, Ga., 53 S.Ct. 620, 289 U.S. 373, 77 L.Ed. 1265. To maintain an action or suit may mean to commence or institute it; the term imports the existence of a cause of action. Boutiller v. The Milwaukee, 8 Minn. 105, (Gil. 80, 81). Maintain, however, is applied to actions already brought, but not yet reduced to judgment, Bruenn v. North Yakima School Dist. No. 7, Yakima County, 101 Wash. 374, 172 P. 569, 571; Smallwood v. Gallardo, 48 S.Ct. 23, 275 U.S. 56, 72 L.Ed. 152. In this connection it means to continue or preserve in or with; to carry on. In re Charles Nelson Co., D.C.Cal., 294 F. 926, 928; Roullard v. Gray, 38 Cal. App. 79, 175 P. 479, 480.

The words "maintains" and "maintaining" in statutes denouncing maintenance of a liquor nuisance denote continuous or recurrent acts approaching permanence. Keeth v. State, 193 Ind. 549, 139 N.E. 589, 590; the term "maintaining government" means providing money to enable government to perform duties which it is required by law to perform. Winebrenner v. Salmon, 155 Md. 563, 142 A. 723, 725.

To "maintain an airport" is to keep it in state of efficiency for the furnishing of those facilities and the rendition of

MAINTAINED

those services which air transportation and communication demand. *Concordia-Arrow Flying Service Corporation v. City of Concordia*, 131 Kan. 247, 289 P. 955, 957.

MAINTAINED. Carried on, kept possession of, *F. W. Woolworth Co. v. Erickson*, 221 Ala. 5, 127 So. 534, 536. To hold possession of; to keep effectively; commenced. *Ricciardi v. Lazzara Baking Corporation*, D.C.N.J., 32 F.Supp. 956, 958.

In pleading. A technical word indispensable in an indictment for maintenance. 1 Wils. 325.

MAINTAINOR. In criminal law. One that maintains or seconds a cause depending in suit between others, either by disbursing money or making friends for either party towards his help. Blount. One who is guilty of *maintenance* (*q. v.*).

MAINTENANCE. Act of maintaining, keeping up, supporting; livelihood; means of sustenance. *Federal Land Bank of St. Louis v. Miller*, 184 Ark. 415, 42 S.W.2d 564, 566.

The upkeep, or preserving the condition of property to be operated. *Orleans Parish School Board v. Murphy*, 156 La. 925, 101 So. 268, 269.

Sustenance; support; assistance; aid. The furnishing by one person to another, for his support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child, or husband and wife. *State ex rel. Blume v. State Board of Education of Montana*, 97 Mont. 371, 34 P.2d 515, 519. The supplying of the necessities of life. *Federal Land Bank of St. Louis v. Miller*, 184 Ark. 415, 42 S.W.2d 564, 566.

Criminal law. An unauthorized and officious interference in a suit in which the offender has no interest, to assist one of the parties to it, against the other, with money or advice to prosecute or defend the action. *Hawk.F.C. 393; Wickham v. Conklin*, 8 Johns. (N.Y.) 220.

Roads. "Maintenance" of public roads and highways includes all necessary powers to provide and keep up a system of highways. *Handy v. Johnson*, D.C.Tex., 51 F.2d 809, 813.

Sick or injured seaman. "Maintenance" to which such seaman is entitled means food and lodging. *Fegan v. Lykes Bros. S. S. Co.*, La.App., 195 So. 392, 398; *Socony Vacuum Oil Co. v. Premeaux*, Tex.Civ.App., 187 S.W.2d 690, 695.

Suits. A layman's furnishing money to permit a lawyer to provide, in part, costs and expenses in carrying on litigation for a third party, *Kane v. Sesac, Inc.*, D.C.N.Y., 54 F.Supp. 853, 859; aid a party, with money or otherwise, to prosecute or defend his suit without expectation of personal profit, *Sampliner v. Motion Picture Patents Co.*, C.C.A., 255 F. 242, 247; *Whisman v. Wells*, 206 Ky. 59, 266 S.W. 897, 899; contract must tend or be intended to stir up litigation, multiply contentions, unsettle peace and quiet of a community or set one neighbor against another or give one litigant advantage over another, *Fordson Coal Co. v. Garrard*, 277 Ky. 218, 125 S.W.2d 977, 981, 121 A.L.R. 841; maintaining, supporting, or promoting the litigation of another, *Draper v. Zebec, Ind.*, 219 Ind. 362, 37 N.E.2d 952, 956; *Whelchel v. Stennett*, 192 Miss. 241, 5 So.2d 418, 420. Malicious or officious intermeddling with a suit that does not belong to one, by assisting either party with money or otherwise to prosecute or defend, *Markarian v. Bartis*, 89 N.H. 370, 199 A. 573, 575; *Merrell v. Stuart*, 220 N.C. 326, 17 S.E.2d 458, 460; *Bayard v. McLane*, 3 Har. (Del.) 208; something done which tends to obstruct court of justice or is against good policy in tending to promote unnecessary litigation and is performed under a bad motive, *Fordson Coal Co. v. Garrard*, 277 Ky. 218, 125 S.W.2d 977, 981, 121 A.L.R. 841; unlawful taking in hand or upholding of quarrels or sides to the disturbance or hindrance of common right. *Fordson Coal Co. v. Garrard*, 277 Ky. 218, 125 S.W.2d 977, 981, 121 A.L.R. 841; *Richardson v. Rowland*, 40 Conn. 570.

MAINTENANCE ASSESSMENT. One for purpose of keeping an improvement in working order. *University Nat. Co. v. Grays Harbor County*, 12 Wash.2d 549, 122 P.2d 501, 502.

MAIOR. An old form of "mayor."

MAIRE. In French law. A mayor.

In old Scotch law. An officer to whom process was directed. Otherwise called "mair of fie" (fee), and classed with the "serjand." Skene.

MAIRIE. In French law. The government building of each commune. It contains the record office of all civil acts and the list of voters; and it is there that political and municipal elections take place. *Arg.Fr.Merc.Law*, 566.

MAISON DE DIEU. Fr. A hospital; an almshouse; a monastery. *St. 39 Eliz. c. 5*. Literally, "house of God."

MAISTER. An old form of "master."

MAISURA. A house, mansion, or farm. *Cowell*.

MAÎTRE. Fr. In French maritime law. Master; the master or captain of a vessel. *Ord.Mar. liv. 2, tit. 1, art. 1*.

MAJESTAS. Lat. In Roman law. The majesty, sovereign authority, or supreme prerogative of the state or prince.

Also a shorter form of the expression "*crimen majestatis*," or "*crimen læsæ majestatis*," an offense against sovereignty, or against the safety or organic life of the Roman people; i. e., high treason.

MAJESTY. Royal dignity. A term used of kings and emperors as a title of honor.

MAJOR. A minor emancipated by marriage. *Rice v. Kansas City Southern Ry. Co.*, La.App., 194 So. 444, 447. A person of full age; one who is no longer a minor; one who has attained the management of his own concerns and the enjoyment of his civic rights.

Greater or larger. *Zenith Radio Distributing Corporation v. Mateer*, 311 Ill.App. 263, 35 N.E.2d 815, 816.

Military law. The officer next in rank above a captain.

MAJOR AND MINOR FAULT RULE. Vessel guilty of gross fault has burden of showing that other vessel committed a plain fault. *General Seafoods Corporation v. J. S. Packard Dredging Co.*, C.C.A.Mass., 120 F.2d 117, 119, 120. Where fault on part of one vessel is established by uncontradicted testimony and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to management of other vessel and any reasonable doubt with regard to propriety of conduct of such other vessel should be resolved in its favor. *Intagliata v. Shipowners & Merchants T. Boat Co.*, 26 Cal.2d 365, 159 P.2d 1, 10; *General Seafoods Corporation v. J. S. Packard Dredging Co.*, C.C.A.Mass., 120 F.2d 117, 119, 120.

MAJOR ANNUS. The greater year; the bissextile year, consisting of 366 days. Bract. fol. 359b.

MAJOR CONTINET IN SE MINUS. The greater includes the less. 19 Vin.Abr. 379.

MAJOR GENERAL. In military law. An officer next in rank above a brigadier general, and next below a lieutenant general, and who usually commands a division or an army corps.

MAJOR HEREDITAS VENIT UNICUIQUE NOSTRUM A JURE ET LEGIBUS QUAM A PARENTIBUS. 2 Inst. 56. A greater inheritance comes to every one of us from right and the laws than from parents.

MAJOR NUMERUS IN SE CONTINET MINOREM. Bract. fol. 16. The greater number contains in itself the less.

MAJORA REGALIA. The king's dignity, power, and royal prerogative, as opposed to his revenue, which is comprised in the *minora* regalia. 2 Steph. Comm. 475; 1 Bl.Comm. 240.

MAJORE PCENA AFFECTUS QUAM LEGIBUS STATUTA EST, NON EST INFAMIS. One affected with a greater punishment than is provided by law is not infamous. 4 Inst. 66.

MAJORES.

Old English law. Greater persons; persons of higher condition or estate.

Roman law and genealogical tables. The male ascendants beyond the sixth degree.

MAJORI SUMMÆ MINOR INEST. In the greater sum the less is included. 2 Kent, Comm. 618; Story, Ag. § 172.

MAJORITY. Full age; the age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights. The opposite of minority. Also the *status* of a person who is a major in age.

The greater number.

The number greater than half of any total. Application of McGovern, 44 N.Y.S.2d 132, 137, 180 Misc. 508.

Elections. Majority signifies the greater number of votes. In re Todd, 208 Ind. 168, 193 N.E. 865.

When there are only two candidates, he who receives the greater number of the votes cast is said to have a majority; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a *plurality*, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined.

It relates to voters voting at election, not those qualified and not voting. Hevelone v. City of Beatrice, 120 Neb. 648, 234 N.W. 791, 795.

Military affairs. Majority denotes the rank and commission of a major.

MAJORITY OF QUALIFIED ELECTORS. Refers to those who actually vote on election day. Harris v. Baden, 154 Fla. 373, 17 So.2d 608, 609.

MAJORITY OF STOCKHOLDERS. A majority in interest of the stockholders, and not a majority in number only. Bank of Los Banos v. Jordan, 139 P. 691, 167 Cal. 327. "Majority of stockholders" means majority per capita when the right to vote is per capita, and a majority of stock when each share of stock is entitled to a vote, each particular case being determined by provisions of charter regulating voting. Simon Borg & Co. v. New Orleans City R. Co., D.C.La., 244 F. 617, 619.

MAJORITY RULE. Rule by the choice of the majority of those who actually vote, irrespective of whether a majority of those entitled participate. N. L. R. B. v. Standard Lime & Stone Co., C.C.A.4, 149 F.2d 435, 437.

MAJORITY VOTE. Where question is required to be submitted at certain regular election and is made to depend on "majority of votes" cast at "such election," a majority of all votes cast at election is meant, and not merely majority of votes cast on that particular question. In re Todd, 208 Ind. 168, 193 N.E. 865.

Where legislative body provides that proposition shall be submitted to voters and those in favor of proposition shall cast affirmative vote, while those opposed shall cast negative vote, and that "majority of votes" given shall be requisite to adoption of measure, only votes to be counted in determining whether measure was adopted are those given on particular question involved. In re Todd, 208 Ind. 168, 193 N.E. 865.

MAJUS DIGNUM TRAHIT AD SE MINUS DIGNUM. The more worthy draws to itself the less worthy. Co.Litt. 43, 355b; Bract. fol. 175; Noy, Max. p. 6, max. 18.

MAJUS EST DELICTUM SEIPSUM OCCIDERE QUAM ALIUM. It is a greater crime to kill one's self than another. Bart.Max. 108. See Suicide.

MAJUS JUS. In old practice, greater right or more right. A plea in the old real actions. 1 Reeve, Eng.Law, 476. *Majus jus merum*, more mere right. Bract. fol. 31.

A writ proceeding in some customary manors to try a right to land. Cow.

MAJUS LATIUM. See Jus Latium.

MAKE. To cause to exist. United States v. Giles, Tex., 57 S.Ct. 340, 344, 300 U.S. 41, 81 L.Ed. 493. To form, fashion, or produce; to do, perform, or execute; as to make an issue, to make oath, to make a presentment.

To do in form of law; to perform with due formalities; to execute in legal form; as to make answer, to make a return or report. Ex parte Lockhart, 72 Mont. 136, 232 P. 183, 185.

To execute as one's act or obligation; to prepare and sign; to issue; to sign, execute, and deliver; as to make a conveyance, to make a note. Heinbach v. Heinbach, 274 Mo. 301, 202 S.W. 1123, 1130; Spaulding v. First Nat. Bank, 205 N.Y.S. 492, 493, 210 App.Div. 216.

MAKE

To conclude, determine upon, agree to, or execute; as to make a contract. *MacIntyre v. McLean*, 162 Ga. 280, 133 S.E. 471, 475. *Tourtrott v. West Bangor & Hermon Mut. Fire Ins. Co.*, 126 Me. 118, 136 A. 481, 482.

To cause to happen by one's neglect or omission; as to make default.

To make acquisition of; to procure; to collect; as to make the money on an execution or to make a loan. *Fidelity Trust Co. v. Fowler*, Tex.Civ.App., 217 S.W. 953, 954.

To have authority or influence; to support or sustain; as in the phrase, "This precedent makes for the plaintiff."

MAKE AN ASSIGNMENT. To transfer one's property to an assignee for the benefit of one's creditors.

MAKE AN AWARD. To form and publish a judgment on the facts. *Hoff v. Taylor*, 5 N.J.Law, 833.

MAKE A CONTRACT. To agree upon, and conclude or adopt, a contract. In case of a written contract, to reduce it to writing, execute it in due form, and deliver it as binding.

MAKE DEFAULT. To fail or be wanting in some legal duty; particularly to omit the entering of an appearance when duly summoned in an action at law or other judicial proceeding, to neglect to obey the command of a subpoena, etc.

MAKE ONE'S FAITH. A Scotch phrase, equivalent to the old English phrase, "to make one's law."

MAKER. One who makes, frames, or ordains; as a "law-maker." One who makes or executes; as the maker of a promissory note. See *Aud v. Magruder*, 10 Cal. 290; *Sawyers v. Campbell*, 107 Iowa 397, 78 N.W. 56.

Accommodation maker. See Accommodation.

MAKING LAW. In old practice, the formality of denying a plaintiff's charge under oath, in open court, with compurgators. One of the ancient methods of trial, frequently, though inaccurately, termed "waging law," or "wager of law." 3 Bl. Comm. 341.

MAL. A prefix meaning bad, wrong, fraudulent; as maladministration, malpractice, malversation, etc.

MAL GREE. L. Fr. Against the will; without the consent. Hence the single word "*malgre*," and more modern "*maugre*," (q. v.).

MAL-TOLTE. Fr. In old French law, a term said to have arisen from the usurious gains of the Jews and Lombards in their management of the public revenue. *Steph.Lect.* 372.

MALA. Lat. Bad; evil; wrongful.

MALA FIDES. Bad faith. The opposite of *bona fides* (q. v.). *Malâ fide*, in bad faith. *Malæ fidei*

possessor, a possessor in bad faith. *Mackeld.Rom. Law*, § 297.

MALA GRAMMATICA NON VITIAT CHARTAM. SED IN EXPOSITIONE INSTRUMENTORUM MALA GRAMMATICA QUOAD FIERI POSSIT EVITANDA EST. Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided. 6 Coke, 39; *Broom*, Max. 686.

MALA IN SE. Wrongs in themselves; acts morally wrong; offenses against conscience. 1 Bl. Comm. 57, 58; 4 Bl. Comm. 8; *Com. v. Adams*, 114 Mass. 323, 19 Am.Rep. 362; *Turner v. Merchants' Bank*, 126 Ala. 397, 28 So. 469.

MALA PRAXIS. Malpractice; unskillful management or treatment. Particularly applied to the neglect or unskillful management of a physician, surgeon, or apothecary. 3 Bl. Comm. 122.

MALA PROHIBITA. Prohibited wrongs or offenses; acts which are made offenses by positive laws, and prohibited as such. 1 Bl. Comm. 57, 58; 4 Bl. Comm. 8.

MALADMINISTRATION. This term is used, in the law-books, interchangeably with *misadministration*, and both words mean "wrong administration." *Minkler v. State*, 14 Neb. 183, 15 N.W. 331.

MALANDRINUS. In old English law, a thief or pirate. *Wals.* 338.

MALARY. In Hindu law, judicial; belonging to a judge or magistrate.

MALBERGE. A hill where the people assembled at a court, like the English assizes; which by the Scotch and Irish were called "parley hills." *Du Cange*.

MALCONDUCT. Ill conduct, especially dishonest conduct, maladministration, or, as applied to officers, official misconduct. *Sausbier v. Wheeler*, 299 N.Y.S. 466, 473, 252 App.Div. 267.

MALCONNA. In Hindu law, a treasury or storehouse.

MALE. Of the masculine sex; of the sex that begets young.

MALE CREDITUS. In old English law, unfavorably thought of; in bad repute or credit. *Bract. fols.* 116, 154.

**MALEDICTA EST EXPOSITIO QUÆ CORRUM-
PIT TEXTUM.** That is a cursed interpretation which corrupts the text. 4 Coke, 35a; *Broom*, Max. 622.

MALEDICTION. A curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights. *Cowell*.

MALEFACTION. A crime; an offense.

MALEFACTOR. He who is guilty, or has been convicted, of some crime or offense.

MALEFICIA NON DEBENT REMANERE IMPUNITA; ET IMPUNITAS CONTINUUM AFFECTUM TRIBUT DELINQUENTI. 4 Coke, 45. Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.

MALEFICIA PROPOSITIS DISTINGUUNTUR. Jenk.Cent. 290. Evil deeds are distinguished from evil purposes, or *by* their purposes.

MALEFICIUM. In the civil law, waste; damage; tort; injury. Dig. 5, 18, 1.

MALESON, or MALISON. A curse.

MALESWORN, or MALSWORN. Forsworn. Cowell.

MALFEASANCE. Evil doing; ill conduct; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. State ex rel. Knabb v. Frater, 198 Wash. 675, 89 P.2d 1046, 1048.

It differs from "misfeasance" and "non-feasance" (which titles see.) See 1 Chit.Pr. 9; 1 Chit. Pl. 134; Dudley v. Flemingsburg, 72 S.W. 327, 115 Ky. 5, 60 L.R.A. 575, 103 Am.St.Rep. 253.

MALFETRIA. In Spanish law, offense. White, New Recop. b. 2, tit. 19, c. 1, § 1.

MALICE. The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent. Luikart v. Miller, Mo., 48 S.W.2d 867, 871. Cottle v. Johnson, 179 N.C. 426, 102 S.E. 769, 770.

A conscious violation of the law (or the prompting of the mind to commit it) which operates to the prejudice of another person. Seaboard Air Line Ry. Co. v. Glenn, 213 Ala. 284, 104 So. 548, 549. A condition of the mind showing a heart regardless of social duty and fatally bent on mischief. Cockrell v. State, 135 Tex.Cr.R. 218, 117 S.W. 2d 1105, 1109, 1110.

In murder, that condition of mind which prompts one to take the life of another without just cause or provocation. State v. Smith, 26 N.M. 482, 194 P. 869, 870; State v. Moynihan, 93 N.J.L. 253, 106 A. 817, 818; a willful or corrupt intention of the mind. Pembroke v. State, 117 Neb. 759, 222 N.W. 956. It includes not only anger, hatred and revenge, but also every other unlawful and unjustifiable motive. State v. Scherr, 243 Wis. 65, 9 N.W.2d 117, 119.

"Malice," in its common acceptation, means ill will towards some person. In its legal sense, it applies to a wrongful act done intentionally, without legal justification or excuse. Dunn v. Hall, 1 Ind. 344.

It includes intent and will. State v. Robbins, 66 Me. 328.

"Malice" in law is not necessarily personal hate or ill will, but it is that state of mind which is reckless of law and of the legal rights of the citizen. Evers-Jordan Furniture Co. v. Hartzog, 237 Ala. 407, 187 So. 491, 493.

"Malice," in legal sense, characterizes all acts done with an evil disposition, a wrong and unlawful motive or pur-

pose, or the willful doing of an injurious act without a lawful excuse. Giguere v. Rosselot, 110 Vt. 173, 3 A.2d 538, 542.

In libel and slander, as to privileged communications, "malice" involves an evil intent or motive arising from spite or ill will; personal hatred or ill will; or culpable recklessness or a willful and wanton disregard of the rights and interests of the person defamed. McDonald v. Brown, 23 R.I. 546, 51 A. 213, 58 L.R.A. 768, 91 Am.St.Rep. 659; Cherry v. Des Moines Leader, 86 N.W. 323, 114 Iowa 298, 54 L.R.A. 855, 89 Am.St.Rep. 365.

In a libel case it consists in intentionally publishing, without justifiable cause, any written or printed matter which is injurious to the character of another. Becker v. Brinkop, 230 Mo.App. 871, 78 S.W.2d 538, 541. And in a legal sense, as an ingredient of actions for slander or libel, it signifies nothing more than a wrongful act done intentionally, without just cause or excuse. Ambruster v. National Bank of Westfield, 116 N.J.L. 122, 182 A. 613, 614.

In the law of malicious prosecution, it means that the prosecution was instituted primarily because of a purpose other than that of bringing an offender to justice. Brown v. Kisner, 192 Miss. 746, 6 So.2d 611, 617.

Actual malice. Express malice, or malice in fact. Gee v. Culver, 13 Or. 598, 11 P. 302; Eteepain Co-op. Soc. v. Lillback, C.C.A.Mass., 18 F.2d 912, 917.

Constructive malice. Implied malice; malice inferred from acts; malice imputed by law; malice which is not shown by direct proof of an intention to do injury, (express malice,) but which is inferentially established by the necessarily injurious results of the acts shown to have been committed. State v. Harrigan, 31 Atl. 1052, 9 Houst. (Del.) 369; Caldwell v. Raymond, 2 Abb.Prac. (N.Y.) 196.

Express malice. Actual malice; malice in fact; ill will or wrongful motive; a deliberate intention to commit an injury, evidenced by external circumstances. Sparf v. U. S., 15 S.Ct. 273, 156 U.S. 51, 39 L.Ed. 343; Weir v. McEwan, 94 N.J.L. 92, 109 A. 355, 356; People v. Scalisi, 324 Ill. 131, 154 N.E. 715, 722.

General malice. General malice is wickedness, a disposition to do wrong, a "black and diabolical heart, regardless of social duty and fatally bent on mischief." Neal v. Nelson, 117 N.C. 393, 23 S.E. 428, 53 Am.St.Rep. 590.

Implied malice. Malice inferred by legal reasoning and necessary deduction from the *res geste* or the conduct of the party. Malice inferred from any deliberate cruel act committed by one person against another, however sudden. Whart.Hom. 38. What is called "general malice" is often thus inferred. Sparf v. U. S., 15 S.Ct. 273, 156 U.S. 51, 39 L.Ed. 343.

Legal malice. See Legal Malice.

Particular malice. Malice directed against a particular individual; ill will; a grudge; a desire to be revenged on a particular person. Brooks v. Jones, 33 N.C. 261; State v. Long, 117 N.C. 791, 23 S.E. 431.

MALICE

Preconceived malice. Malice prepense or aforethought. See *State v. Reidell*, 9 *Houst.* (Del.) 470, 14 A. 550.

Premeditated malice. An intention to kill unlawfully, deliberately formed in the mind as the result of a determination meditated upon and fixed before the act. *State v. Gin Pon*, 16 *Wash.* 425, 47 P. 961; *State v. Rutten*, 13 *Wash.* 211, 43 P. 30.

Special malice. Particular or personal malice; that is, hatred, ill will, or a vindictive disposition against a particular individual.

Universal malice. By this term is not meant a malicious purpose to take the life of all persons, but it is that depravity of the human heart which determines to take life upon slight or insufficient provocation, without knowing or caring who may be the victim. *Mitchell v. State*, 60 Ala. 30.

MALICE AFORETHOUGHT. A predetermination to commit an act without legal justification or excuse. *Harrison v. Commonwealth*, 279 Ky. 510, 131 S.W.2d 454, 455. A malicious design to injure. *State v. Thomas*, 157 Kan. 526, 142 P.2d 692, 693.

In the definition of "murder," malice aforethought exists where the person doing the act which causes death has an intention to cause death or grievous bodily harm to any person, (whether the person is actually killed or not) or to commit any felony whatever, or has the knowledge that the act will probably cause the death of or grievous bodily harm to some person, although he does not desire it, or even wishes that it may not be caused. *Steph. Crim. Dig.* 144; 1 *Russ. Crimes*. 641. The words "malice aforethought" long ago acquired in law a settled meaning, somewhat different from the popular one. In their legal sense they do not import an actual intention to kill the deceased. The idea is not spite or malevolence to the deceased in particular, but evil design in general, the dictate of a wicked, depraved, and malignant heart; not premeditated personal hatred or revenge towards the person killed, but that kind of unlawful purpose which, if persevered in, must produce mischief. *State v. Pike*, 49 N.H. 399, 6 Am. Rep. 533.

MALICE IN FACT. Express or actual malice. *Railway Co. v. Behee*, 2 *Tex. Civ. App.* 107, 21 S.W. 384, *Hotchkiss v. Porter*, 30 *Conn.* 414.

It implies desire or intent to injure, while "malice in law," or "implied malice," means wrongful act done intentionally, without just cause or excuse, and jury may infer it as a deduction from want of probable cause. *Gliberman v. Fine*, 248 *Mich.* 8, 226 N.W. 669, 670.

MALICE IN LAW. The intentional doing of a wrongful act without just cause or excuse. *Lyons v. St. Joseph Belt Ry. Co.*, *Mo. App.*, 84 S.W.2d 933, 944. Implied, inferred, or legal malice. *Smith v. Rodecap*, 5 *Ind. App.* 78, 31 N.E. 479; *Bacon v. Railroad Co.*, 66 *Mich.* 166, 33 N.W. 181.

As distinguished from malice in fact, it is presumed from tortious acts, deliberately done without just cause, excuse, or justification, which are reasonably calculated to injure another or others. *Betts v. Jones*, 208 N.C. 410, 181 S.E. 334.

MALICE PREPENSE. Malice aforethought; deliberate, predetermined malice. 2 *Rolle*, 461.

MALICIOUS. Characterized by, or involving, malice; having, or done with, wicked or mischievous intentions or motives; wrongful and done inten-

tionally without just cause or excuse. *People v. Knapp*, 274 N.Y.S. 85, 152 *Misc.* 368.

In its broad sense it does not necessarily mean ill will or hatred. In a legal sense, any act done willfully and purposely to the prejudice and injury of another, which is unlawful, is, as against that person, "malicious." *Pollard v. Phelps*, 56 *Ga. App.* 408, 193 S.E. 102, 108.

MALICIOUS ABANDONMENT. In criminal law, the desertion of a wife or husband without just cause.

MALICIOUS ABUSE OF LEGAL PROCESS. Willfully misapplying court process to obtain object not intended by law. *Atlanta Finance Co. v. Cain*, 42 *Ga. App.* 819, 157 S.E. 337.

The willful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ; the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured; not including cases where the process was procured maliciously but not abused or misused after its issuance. *King v. Yarbray*, 136 *Ga.* 212 (1), 71 S.E. 131.

MALICIOUS ACCUSATION. Procuring accusation or prosecution of another from improper motive and without probable cause. *McKenzie v. State*, 113 *Neb.* 576, 204 N.W. 60, 63.

MALICIOUS ACT. A wrongful act intentionally done without legal justification or excuse; an unlawful act done willfully or purposely to injure another. *La Plante v. Johnson*, 297 N.Y.S. 318, 321, 163 *Misc.* 96.

MALICIOUS ARREST. An arrest made willfully and without probable cause, but in the course of a regular proceeding.

MALICIOUS INJURY. An injury committed against a person at the prompting of malice or hatred towards him, or done spitefully or wantonly. *State v. Huegin*, 110 *Wis.* 189, 85 N.W. 1046, 62 *L.R.A.* 700; *Wing v. Wing*, 66 *Me.* 62, 22 *Am. Rep.* 548.

The willful doing of an act with knowledge it is liable to injure another and regardless of consequences. *In re Kalk*, D.C.N.Y., 270 F. 627, 629.

Injury involving element of fraud, violence, wantonness and willfulness, or criminality. *Braxton v. Matthews*, 199 N.C. 484, 154 S.E. 735.

An injury that is intentional, wrongful and without just cause or excuse, even in the absence of hatred, spite or ill will. *Panchula v. Kaya*, 59 *Ohio App.* 556, 18 N.E.2d 1003, 1005.

MALICIOUS KILLING. Any intentional killing without a legal justification or excuse and not within the realm of voluntary manslaughter. *State v. Cope*, 78 *Ohio App.* 429, 67 N.E.2d 912, 920.

MALICIOUS MISCHIEF. Willful destruction of personal property, from actual ill will or resentment towards its owner or possessor. *People v. Petheram*, 31 N.W. 188, 64 *Mich.* 252; *First Nat. Bank v. Burkett*, 101 *Ill.* 394, 40 *Am. Rep.* 209; *State v. Waltz*, 158 *Iowa* 191, 139 N.W. 458, 459. Though only a trespass at the common law, it is now, by several statutes, made severely penal. *Jacob*.

MALICIOUS MOTIVE. Any motive for instituting a prosecution, other than a desire to bring an offender to justice. *Louder v. Jacobs*, 119 Colo. 511, 205 P.2d 236, 238.

MALICIOUS PROSECUTION. One begun in malice without probable cause to believe the charges can be sustained. *Eustace v. Dechter*, 28 Cal.App. 2d 706, 83 P.2d 523, 525. Instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted. For this injury an action on the case lies, called the "action of malicious prosecution." *Hicks v. Brantley*, 29 S.E. 459, 102 Ga. 264; *Eggett v. Allen*, 96 N.W. 803, 119 Wis. 625.

MALICIOUS TRESPASS. The act of one who maliciously or mischievously injures or causes to be injured any property of another or any public property. *State v. McKee*, 109 Ind. 497, 10 N.E. 405; *Hannel v. State*, 4 Ind.App. 485, 30 N.E. 1118.

MALICIOUS USE OF PROCESS. Exists where plaintiff proceeds maliciously and without probable cause to execute object which law intends process to subserve. *Davison-Paxon Co. v. Walker*, 45 Ga.App. 395, 165 S.E. 160, 163.

MALICIOUSLY. Imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and may consist in direct intention to injure, or in reckless disregard of another's rights. *Briggs v. Coykendall*, 57 N.D. 785, 224 N.W. 202, 205.

MALICIOUSNESS. "Maliciousness" does not necessarily mean actual malice or ill will, but intentional doing of a wrongful act without legal or social justification. *Dorrington v. Manning*, 135 Pa.Super. 194, 4 A.2d 886, 890.

MALIGNARE. To malign or slander; also to maim.

MALINGER. To feign sickness or any physical disablement or mental lapse or derangement, especially for the purpose of escaping the performance of a task, duty, or work.

MALITIA. Lat. Actual evil design; express malice.

MALITIA EST ACIDA; EST MALI ANIMI AFFECTUS. Malice is sour; it is the quality of a bad mind. 2 Bulst. 49.

MALITIA PRÆCOGITATA. Malice aforethought.

MALITIA SUPPLET ÆTATEM. Malice supplies [the want of] age. *Dyer*, 104b; *Broom Max*. 316.

MALITIIS HOMINUM EST OBIANDUM. The wicked or malicious designs of men must be thwarted. 4 Coke, 15b.

MALLEABLE. Capable of being drawn out and extended by beating; capable of extension by hammering; reducible to laminated form by beating. *Farris v. Magone*, C.C.N.Y., 46 F. 845.

MALLUM. In old European law, a court of the higher kind in which the more important business

of the county was dispatched by the count or earl. *Spelman*. A public national assembly.

MALO ANIMO. Lat. With an evil mind; with a bad purpose or wrongful intention; with malice.

MALO GRATO. Lat. In spite; unwillingly.

MALO SENSU. Lat. In an evil sense or meaning; with an evil signification.

MALPRACTICE. Any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. *Gregory v. McInnis*, 140 S.C. 52, 134 S.E. 527, 529.

As applied to physicians and surgeons, this term means, generally, professional misconduct towards a patient which is considered reprehensible either because immoral in itself or because contrary to law or expressly forbidden by law.

In a more specific sense, it means bad, wrong, or injudicious treatment of a patient, professionally and in respect to the particular disease or injury, resulting in injury, unnecessary suffering, or death to the patient, and proceeding from ignorance, carelessness, want of proper professional skill, disregard of established rules or principles, neglect, or a malicious or criminal intent. *Rodgers v. Kline*, 56 Miss. 816, 31 Am.Rep. 389; *Hibbard v. Thompson*, 109 Mass. 288; *Napier v. Greenzweig*, C.C.A.N.Y., 256 F. 196, 197.

The term is occasionally applied to lawyers, and then means generally any evil practice in a professional capacity, but rather with reference to the court and its practice and process than to the client. In *re Baum*, 8 N.Y.S. 771, 55 Hun, 611; *Cowley v. O'Connell*, 54 N.E. 558, 174 Mass. 253.

MALT. A substance produced from barley or other grain by a process of steeping in water until germination begins and then drying in a kiln, thus converting the starch into saccharine matter. *Hollender v. Magone*, C.C.N.Y., 38 F. 915; *U. S. v. Cohn*, 52 S.W. 38, 2 Ind.T. 474.

MALT BEVERAGES. Consists of beer, ale, porter, and the like, and do not include distilled alcoholic beverages, or fermented juices from grapes, fruits, and berries. *McCaffrey v. State*, 183 Ga. 827, 189 S.E. 825, 826.

MALT LIQUOR. A general term including all alcoholic beverages prepared essentially by the fermentation of an infusion of malt (as distinguished from such liquors as are produced by the process of distillation), and particularly such beverages as are made from malt and hops, like beer, ale, and porter. *Allred v. State*, 89 Ala. 112, 8 So. 56; *State v. Gill*, 89 Minn. 502, 95 N.W. 449; *Claunch v. State*, 82 Tex.Cr. 355, 199 S.W. 483, 484.

MALT MULNA. A quern or malt-mill.

MALT-SHOT, or MALT-SCOT. A certain payment for making malt. *Somner*.

MALT-TAX. An excise duty upon malt in England. 1 Bl.Comm. 313; 2 Steph.Comm. 581.

MALTOTE. In French history, an oppressive tax levied in 1292 and later. *Cassell's New Fr. Dict.*

MALTREATMENT. In reference to the treatment of his patient by a surgeon, this term signifies improper or unskillful treatment; it may result

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either from ignorance, neglect, or willfulness; but the word does not necessarily imply that the conduct of the surgeon, in his treatment of the patient, is either willfully or grossly careless. *Com. v. Hackett*, 2 Allen (Mass.) 142.

MALUM, *n.* Lat. In Roman law, a mast; the mast of a ship. Dig. 50, 17, 242, pr. Held to be part of the ship. *Id.*

MALUM, *adj.* Lat. Wrong; evil; wicked; reprehensible.

MALUM IN SE. A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law. *Story*, Ag. § 346. *State v. Sheoudy*, 45 N.M. 516, 118 P.2d 280, 287.

An act is said to be *malum in se* when it is inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state. Such are most or all of the offenses cognizable at common law, (without the denouncement of a statute;) as murder, larceny, etc.

MALUM NON HABET EFFICIENTEM, SED DEFICIENTEM, CAUSAM. 3 Inst.Proem. Evil has not an efficient, but a deficient, cause.

MALUM NON PRÆSUMITUR. Wickedness is not presumed. *Branch*, Princ.; 4 *Coke*, 72a.

MALUM PROHIBITUM. A wrong prohibited; a thing which is wrong because prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law. Contrasted with *malum in se*. *Story*, Ag. § 346; *People v. Pavlic*, 227 Mich. 562, 199 N.W. 373, 374, 35 A.L.R. 741.

MALUM QUO COMMUNIS EIO PEJUS. The more common an evil is, the worse it is. *Branch*, Princ.

MALUS USUS ABOLENDUS EST. A bad or invalid custom is [ought] to be abolished. *Litt.* § 212; *Co.Litt.* 141; 1 *Bl.Comm.* 76; *Broom*, Max. 921.

MALVEILLES. In old English law, ill will; crimes and misdemeanors; malicious practices. *Cowell*.

MALVEIS PROCURORS. L. Fr. Such as used to pack juries, by the nomination of either party in a cause, or other practice. *Cowell*.

MALVEISA. A warlike engine to batter and beat down walls.

MALVERSATION. In French law, this word is applied to all grave and punishable faults committed in the exercise of a charge or commission, (office,) such as corruption, exaction, concussion, larceny. *Merl. Répert.*

MAN. A human being. A person of the male sex. A male of the human species above the age of puberty.

In its most extended sense the term includes not only the adult male sex of the human species, but women and children.

In feudal law, a vassal; a tenant or feudatory. The Anglo-Saxon relation of *lord and man* was originally purely personal, and founded on mutual contract. 1 *Spence*, Ch. 37.

MAN OF STRAW. See Men of Straw.

MANACLES. Chain for the hands; shackles.

MANAGE. To control and direct, to administer, to take charge of. *Fluet v. McCabe* (1938), 299 Mass. 173, 12 N.E.2d 89, 93. To conduct; to carry on the concerns of a business or establishment. Generally applied to affairs that are somewhat complicated and that involve skill and judgment. *Com. v. Johnson*, 144 Pa. 377, 22 A. 703.

MANAGEMENT. Government, control, superintendence, physical or manual handling or guidance; act of managing by direction or regulation, or administration, as management of family, or of household, or of servants, or of great enterprises, or of great affairs. *Branch v. Veterans' Administration*, 189 Ark. 662, 74 S.W.2d 800, 804. Discretionary power of direction; *J. T. Camp Transfer Co. v. Davenport*, 15 Ala.App. 507, 74 So. 156, 159; *Browne v. City of New York*, 210 N.Y.S. 786, 795, 125 Misc. 1.

MANAGER. One who has charge of corporation and control of its business or branch establishment, and who is vested with a certain amount of discretion and independent judgment. *Braniff v. McPherrin*, 177 Okl. 292, 58 P.2d 871, 872. A person chosen or appointed to manage, direct, or administer the affairs of another person or of a corporation or company. *Com. v. Johnson*, 144 Pa. 377, 22 A. 703. Also one of the persons appointed on the part of the house of representatives to prosecute impeachments before the senate.

MANAGERS OF A CONFERENCE. Members of the houses of parliament appointed to represent each house at a conference between the two houses. It is an ancient rule that the number of commons named for a conference should be double those of the lords. *May*, Parl.Pr. c. 16.

MANAGING AGENT. See Agent.

MANAGING OWNER OF SHIP. The managing owner of a ship is one of several co-owners, to whom the others, or those of them who join in the adventure, have delegated the management of the ship. He has authority to do all things usual and necessary in the management of the ship and the delivery of the cargo, to enable her to prosecute her voyage and earn freight, with the right to appoint an agent for the purpose. 6 *Q.B.Div.* 93; *Sweet*.

MANAGIUM. A mansion-house or dwelling-place. *Cowell*.

MANAS MEDIÆ. Men of a mean condition, or of the lowest degree.

MANBOTE. In Saxon law, a compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of the *were*.

MANCA, MANCUS, or MANCUSA. A square piece of gold coin, commonly valued at thirty pence. Cowell.

MANCEPS. Lat. In Roman law, a purchaser; one who took the article sold in his hand; a formality observed in certain sales. Calvin. A farmer of the public taxes.

MANCHE-PRESENT. A bribe; a present from the donor's own hand.

MANCIPARE. Lat. In Roman law, to sell, alienate, or make over to another; to sell with certain formalities; to sell a person; one of the forms observed in the process of emancipation.

MANCIPATE. To enslave; to bind; to tie.

MANCIPATIO. Lat. In Roman law, a certain ceremony or formal process anciently required to be performed, to perfect the sale or conveyance of *res Mancipi*, (land, houses, slaves, horses, or cattle.)

The parties were present, (vendor and vendee,) with five witnesses and a person called "*libripens*," who held a balance or scales. A set form of words was repeated on either side, indicative of transfer of ownership, and certain prescribed gestures made, and the vendee then struck the scales with a piece of copper, thereby symbolizing the payment, or weighing out, of the stipulated price.

The ceremony of *mancipatio* was used, in later times, in one of the forms of making a will. The testator acted as vendor, and the heir (or *familiae emptor*) as purchaser, the latter symbolically buying the whole estate or succession, of the former. The ceremony was also used by a father in making a fictitious sale of his son, which sale, when three times repeated, effectuated the emancipation of the son.

MANCIPI RES. Lat. In Roman law, certain classes of things which could not be alienated or transferred except by means of a certain formal ceremony of conveyance called "*mancipatio*" (*q. v.*). These included land, houses, slaves, horses, and cattle. All other things were called "*res nec Mancipi*."

The distinction was abolished by Justinian. The distinction corresponded as nearly as may be to the early distinction of English law into real and personal property; *res Mancipi* being objects of a military or agricultural character, and *res nec Mancipi* being all other subjects of property. Like personal estate, *res nec Mancipi* were not originally either valuable in *se* or valued. Brown.

MANCIPIUM. Lat. In Roman law, the momentary condition in which a *filius*, etc., might be when in course of emancipation from the *potestas*, and before that emancipation was absolutely complete. The condition was not like the *dominica potestas* over slaves, but slaves are frequently called "*mancipia*" in the non-legal Roman authors. Brown.

To form a clear conception of the true import of the word in the Roman jurisprudence, it is necessary to advert to the four distinct powers which were exercised by the *pater familias*, viz.; the *manus*, or martial power; the *mancipium*, resulting from the *mancipatio*, or *alienatio per æs et libram*, of a freeman; the *dominica potestas*, the

power of the master over his slaves, and the *patria potestas*, the paternal power. When the *pater familias* sold his son, *venum dare, Mancipare*, the paternal power was succeeded by the *mancipium*, or the power acquired by the purchaser over the person whom he held in *mancipio*, and whose condition was assimilated to that of a slave. What is most remarkable is, that on the emancipation from the *mancipium* he fell back into the paternal power, which was not entirely exhausted until he had been sold three times by the *pater familias*. *Si pater filium ter venum dat, filius a patre liber esto*. Gaius speaks of the *mancipatio* as *imaginarie quædam venditio*, because in his times it was only resorted to for the purpose of adoption or emancipation. See 1 Ortolan 112; Morey, Rom.L. 23, 32; Sohm, Inst.R.L. 124, 390.

MANCIPLE. A clerk of the kitchen, or caterer, especially in colleges. Cowell.

MANCOMUNAL. In Spanish law, an obligation is said to be *mancomunial* when one person assumes the contract or debt of another, and makes himself liable to pay or fulfill it. Schm.Civil Law, 120.

MANCUS. See Manca.

MANDAMIENTO. In Spanish law, commission; authority or power of attorney. A contract of good faith, by which one person commits to the gratuitous charge of another his affairs, and the latter accepts the charge. White, New Recop. b. 2, tit. 12, c. 1.

MANDAMUS. Lat. We command. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. *Lahiff v. St. Joseph, etc., Soc.*, 76 Conn. 648, 57 A. 692, 65 L.R.A. 92, 100 Am.St.Rep. 1012.

The action of *mandamus* is one, brought in a court of competent jurisdiction, to obtain an order of such court commanding an inferior tribunal, board, corporation, or person to do or not to do an act the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. Where discretion is left to the inferior tribunal or person, the *mandamus*, can only compel it to act, but cannot control such discretion. Rev.Code Iowa, 1880, § 3373 (Code 1931, § 12440).

Writ of "*mandamus*" is summary writ issued from court of competent jurisdiction to command performance of specific duty which relator is entitled to have performed. *People v. Nelson*, 346 Ill. 247, 178 N.E. 485, 487.

It is legal, not equitable, remedy, and, when issued, is an inflexible peremptory command to do a particular thing. *State ex rel. Onion v. Supreme Temple Pythian Sisters*, 227 Mo.App. 557, 54 S.W.2d 468, 469.

The writ of *mandamus* is either *peremptory* or *alternative*, according as it requires the defendant absolutely to obey its behest, or gives him an opportunity to show cause to the contrary. It is the usual practice to issue the alternative writ first. This commands the defendant to do the particular act, or else to appear and show cause against it at a day named. If he neglects to obey the writ, and either makes default in his appearance or fails to show good cause against the application, the peremptory *mandamus* issues, which commands him absolutely and without qualification to do the act.

MANDANS. Lat. In the civil law, the employing party in a contract of mandate. One who gives

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a thing in charge to another; one who requires, requests, or employs another to do some act for him. Inst. 3, 27, 1, et seq.

MANDANT. In French and Scotch law, the employing party in the contract of *mandatum*, or mandate. Story, Bailm. § 138.

MANDATA LICITA RECIPIUNT STRICTAM INTERPRETATIONEM, SED ILLICITA LATAM EX EXTENSAM. Lawful commands receive a strict interpretation, but unlawful commands a broad and extended one. Bac.Max. reg. 16.

MANDATAIRE. Fr. In French law, a person employed by another to do some act for him; a mandatary.

MANDATARIUS TERMINOS SIBI POSITOS TRANSGREDI NON POTEST. A mandatary cannot exceed the limits assigned him. Jenk.Cent. 53.

MANDATARY. He to whom a mandate, charge, or commandment is given; also, he that obtains a benefice by *mandamus*. Briggs v. Spaulding, 11 S.Ct. 924, 141 U.S. 132, 35 L.Ed. 662.

MANDATE. A command, order, or direction, written or oral, which court is authorized to give and person is bound to obey. Silverman v. Seneca Realty Co., 276 N.Y.S. 466, 154 Misc. 35. A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree. Seaman v. Clarke, 69 N.Y.S. 1002, 60 App.Div. 416; Horton v. State, 63 Neb. 34, 88 N.W. 146.

A precept or order issued upon the decision of an appeal or writ of error, directing action to be taken, or disposition to be made of case, by inferior court. Egbert v. St. Louis & S. F. R. Co., 50 Okl. 623, 151 P. 228, 230.

In some of the state jurisdictions, the name "mandate" has been substituted for "*mandamus*" as the formal title of that writ. Chrisman v. Superior Court in and for Fresno County, 63 Cal. App. 477, 219 P. 85, 86; Davies v. Board of Com'rs of Nez Perce County, 26 Idaho, 450, 143 P. 945, 946.

A bailment of property in regard to which the bailee engages to do some act without reward. Story, Bailm. § 137; Maddock v. Riggs, 106 Kan. 808, 190 P. 12, 16, 12 A.L.R. 216.

Mandates and deposits closely resemble each other; the distinction being that in mandates the care and service are the principal, and the custody the accessory, while in deposits the custody is the principal thing, and the care and service are merely accessory. Story, Bailm. § 140.

A contract by which a lawful business is committed to the management of another, and by him undertaken to be performed gratuitously. The mandatary is bound to the exercise of slight diligence, and is responsible for gross neglect. Richardson v. Futrell, 42 Miss. 525; Williams v. Conger, 8 S.Ct. 933, 125 U.S. 397, 31 L.Ed. 778. A mandate, procuration, or letter of attorney is an act by which one person gives power to another to transact for him and in his name one or several affairs.

The mandate may take place in five different manners,—for the interest of the person granting it only; for the joint interest of both parties; for the interest of a third person; for the interest of a third person and that of the party granting it; and, finally, for the interest of the mandatary and a third person. Civ.Code La. arts. 2985, 2986.

The word may also denote a request or direction. Thus, a check is a *mandate* by the drawer to his banker to pay the amount to the transferee or holder of the check. 1 Q.B.Div. 33.

Civil Law. The instructions which the emperor addressed to a public functionary, and which were rules for his conduct. These mandates resembled those of the proconsuls, the *mandata jurisdictionis*, and were ordinarily binding on the legates or lieutenants of the emperor in the imperial provinces and there they had the authority of the principal edicts. Sav.Dr.Rom. c. 3, § 24, no. 4.

MANDATO. In Spanish law, the contract of mandate. Escriche.

MANDATO, PANES DE. Loaves of bread given to the poor upon Maundy Thursday.

MANDATOR. The person employing another to perform a mandate.

MANDATORY, adj. Containing a command; preceptive; imperative; peremptory.

A "mandatory" provision in the statute is one the omission to follow which renders the proceedings to which it relates void, while a "directory" provision is one the observance of which is not necessary to validity of the proceeding. Siedschlag v. May, 363 Ill. 538, 2 N.E.2d 836, 838. So the mandatory part of a writ is that which commands the person to do the act specified. State v. Barnell, 109 Ohio St. 246, 142 N.E. 611, 613; Williams v. Sherwood, 51 N.D. 520, 200 N.W. 782, 784.

It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory, Kavanaugh v. Fash, C.C.A.Okl., 74 F.2d 435, 437; otherwise, when it relates to form and manner; and where an act is incident, or after jurisdiction acquired, it is directory merely, Davis v. Smith, 58 N.H. 17.

"Mandatory" statutory provision is one which must be observed, as distinguished from "directory" provision, which leaves it optional with department or officer to which addressed to obey it or not. State ex rel. Dworken v. Court of Common Pleas of Cuyahoga County, 131 Ohio St. 23, 1 N.E.2d 138, 139.

MANDATORY, n. One to whom a mandate is given; one who undertakes without compensation to perform certain duties. Swords v. Simineo, 216 P. 806, 809, 68 Mont. 164; Smith v. State, 199 Ind. 217, 156 N.E. 513, 515.

MANDATORY INJUNCTION. See Injunction.

MANDATUM. Lat. In the civil law, the contract of mandate (*q. v.*).

MANDATUM NISI GRATUITUM NULLUM EST. Unless a mandate is gratuitous, it is not a mandate. Dig. 17. 1. 1. 4; Inst. 3, 27; 1 Bouv.Inst. n. 1070.

MANDAVI BALLIVO. (I have commanded or made my mandate to the bailiff.) In English practice, the return made by a sheriff, where the bailiff of a liberty has the execution of a writ, that he has commanded the bailiff to execute it. 1 Tidd, Pr. 309; 2 Tidd, Pr. 1025.

MANENTES. Tenants. Obsolete. Cowell.

MANERA. In Spanish law, manner or mode. Las Partidas, pt. 4, tit. 4, l. 2.

MANERIUM. In old English law, a manor.

MANERIUM DICITUR A MANENDO, SECUNDUM EXCELLENTIAM, SEDES MAGNA, FIXA, ET STABILIS. Co.Litt. 58. A manor is so called from *manendo*, according to its excellence, a seat, great, fixed, and firm.

MANGONARE. In old English law, to buy in a market.

MANGONELLUS. A warlike instrument for casting stones against the walls of a castle. Cowell.

MANIA A POTU. Insanity resulting as a secondary effect produced by excessive and protracted indulgence in intoxicating liquors in which the patient becomes a madman fully deprived of reason while the fit is upon him. State v. Wallace, 170 Or. 60, 131 P.2d 222, 233.

MANHOOD. In feudal law, a term denoting the ceremony of doing homage by the vassal to his lord. The formula used was, "*Devenio vester homo,*" I become your man. 2 Bl.Comm. 54.

To arrive at manhood means to arrive at twenty-one years of age. Felton v. Billups, 21 N.C. 585.

MANIA. See Insanity.

MANIFEST. Evident to the senses, especially to the sight, obvious to the understanding, evident to the mind, not obscure or hidden, and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, evident, and self-evident. London Guarantee & Accident Co. v. Coffeen, 96 Colo. 375, 42 P.2d 998, 1001.

In evidence, that which is clear and requires no proof; that which is notorious.

In maritime law. A sea-letter; a written document required to be carried by merchant vessels, containing an account of the cargo, with other particulars, for the facility of the customs officers. The Sylvia II, D.C.Mass., 28 F.2d 215, 216.

MANIFEST LAW. See Lex manifesta, s. v. Lex.

MANIFESTA PROBATIONE NON INDIGENT. 7 Coke, 40. Things manifest do not require proof.

MANIFESTO. A formal written declaration, promulgated by a prince, or by the executive authority of a state or nation, proclaiming its reasons and motives for declaring a war, or for any other important international action.

MANIPULUS. In canon law, a handkerchief, which the priest always had in his left hand. Blount.

MANKIND. The race or species of human beings. In law, females, as well as males, may be included under this term. Fortesc. 91.

MANNER. A way, mode, method of doing anything, or mode of proceeding in any case or situation. Ducre v. Milner, La.App., 146 So. 734, 736.

A word of large signification, but cannot exceed the subject to which it belongs. The incident cannot be extended beyond its principal. Wells v. Bain, 75 Pa. 39, 54, 15 Am. Rep. 563.

Also a thing stolen, in the hand of the thief; a corruption of "*mainour*" (q. v.).

MANNER AND FORM; MODO ET FORMA. Formal words introduced at the conclusion of a traverse.

Their object is to put the party whose pleading is traversed not only to the proof that the matter of fact denied is, in its general effect, true as alleged, but also that the manner and form in which the fact or facts are set forth are also capable of proof. Brown.

MANNING. A day's work of a man. Cowell. A summoning to court. Spelman.

MANNIRE. To cite any person to appear in court and stand in judgment there. It is different from *bannire*; for, though both of them are citations, this is by the adverse party, and that is by the judge. Du Cange.

MANNOPUS. In old English law, goods taken in the hands of an apprehended thief. The same as "*mainour*," (q. v.).

MANNUS. A horse. Cowell.

MANOR. A house, dwelling, seat, or residence.

In English law, the manor was originally a tract of land granted out by the king to a lord or other great person, in fee. It was otherwise called a "barony" or "lordship," and appendant to it was the right to hold a court, called the "court-baron." The lands comprised in the manor were divided into *terre tenementales* (tenemental lands or bocland) and *terre dominicales*, or demesne lands. The former were given by the lord of the manor to his followers or retainers in freehold. The latter were such as he reserved for his own use; but of these part were held by tenants in copyhold, i. e., those holding by a copy of the record in the lord's court; and part, under the name of the "lord's waste," served for public roads and commons of pasture for the lord and tenants. The tenants, considered in their relation to the court-baron and to each other, were called "*pares curiæ*." The word also signified the franchise of having a manor, with jurisdiction for a court-baron and the right to the rents and services of copyholders.

In American law, a manor is a tract held of a proprietor by a fee-farm rent in money or in kind, and descending to the oldest son of the proprietor, who in New York is called a "patroon." People v. Van Rensselaer, 9 N.Y. 291.

Reputed Manor. Whenever the demesne lands and the services become absolutely separated, the manor ceases to be a manor in reality, although it may (and usually does) continue to be a manor in reputation, and is then called a "reputed manor," and it is also sometimes called a "seigniori in gross." Brown.

MANORIAL EXTENT. A survey of a manor made by a jury of tenants, often of unfree men sworn to sit for the particulars of each tenancy, and containing the smallest details as to the nature of the service due. These manorial extents "were made in the interest of the lords, who were anxious that all due services should be done; but they imply that other and greater services are not due, that the customary tenants, even though

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they be unfree men, owe these services for their tenements, no less and no more. Statements that the tenants are not bound to do services of a particular kind are not very uncommon"; 1 Poll. & Maitl. 343. The "extents" of manors are descriptions which give the numbers and names of the tenants, the size of their holdings, the legal kind of their tenure and the kind and amount of their service; Maitland, Material for Hist. E. L. in 2 Sel. Essays in Anglo-Amer. Leg. Hist. 87.

MANQUELLER. In Saxon law, a murderer.

MANRENT. In Scotch law, the service of a man or vassal. A bond of manrent was an instrument by which a person, in order to secure the protection of some powerful lord, bound himself to such lord for the performance of certain services.

MANSE. In old English law, a habitation or dwelling, generally with land attached. Spelman.

A residence or dwelling-house for the parish priest; a parsonage or vicarage house. Cowell. Still used in Scotch law in this sense.

MANSER. A bastard. Cowell.

MANSIO. In Anglo-Saxon times the amount of land which would support a man and his family, called by various names: Mansio, familia, hide. 2 Holdsw. Hist. E.L. 54.

MANSION. A dwelling-house or place of residence, including its appurtenant outbuildings. 2 East, P.C. 492; Thompson v. People, 3 Parker, Cr. R. (N.Y.) 214; Armour v. State, 3 Humph. (Tenn.) 385.

In old English law, residence; dwelling.

MANSION-HOUSE. In the law of burglary, etc., any species of dwelling-house. 3 Inst. 64.

MANSLAUGHTER. The unlawful killing of another without malice, either express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. 1 Hale, P.C. 466; 4 Bl. Comm. 191.

The unlawful killing of a human creature without any deliberation, which may be involuntary, in the commission of a lawful act without due caution and circumspection. Wallace v. U. S., 16 S. Ct. 859, 162 U.S. 466, 40 L.Ed. 1039; High v. State, 10 S.W. 238, 26 Tex.App. 545, 8 Am.St.Rep. 488; U. S. v. Lewis, C.C.Tex., 111 F. 632.

The distinction between "manslaughter" and "murder" consists in the following: In the former, though the act which occasions the death be unlawful or likely to be attended with bodily mischief, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter. 1 East, P.C. 218; Comm. v. Webster, 5 Cush., Mass., 304, 52 Am.Dec. 711. No time for premeditation. 1 Hale, P.C. 437; 1 Russ. Crimes, 485; 1 Bish.Crim.Law, 678; People v. Crenshaw, 298 Ill. 412, 131 N.E. 576, 577, 15 A.L.R. 671.

There are various degrees of manslaughter recognized by different states, viz.: First degree: Roohano v. State, 167 Wis. 500, 167 N.W. 741, 742. Second degree: State v. Staples, 126 Minn. 396, 148 N.W. 283. Third degree: State v. Prince, 258 Mo. 315, 167 S.W. 535, 538. Fourth degree: State v. Schwenk, 101 Kan. 408, 167 P. 743, 744.

Voluntary manslaughter. Manslaughter committed voluntarily upon a sudden heat of the passions; as if, upon a sudden quarrel, two persons fight, and one of them kills the other. 4 Bl. Comm. 190, 191; State v. Disalvo, 121 A. 661, 663, 2 W.W. Harr. (Del.) 232; Wiley v. State, 19 Ariz. 346, 170 P. 869, 873, L.R.A.1918D, 373. It is the unlawful taking of human life under circumstances falling short of willful or deliberate intent to kill and approaching too near thereto to be justifiable homicide. State v. McVay, 47 R.I. 292, 132 A. 436, 438, 44 A.L.R. 572.

Involuntary manslaughter. It exists where a person in committing an unlawful act not felonious or tending to great bodily harm, or in committing a lawful act without proper caution or requisite skill, unguardedly or undesignedly kills another. State v. Disalvo, 2 W.W.Harr. (Del.) 232, 121 A. 661, 663; State v. McVay, 47 R.I. 292, 132 A. 436, 437, 44 A.L.R. 572.

The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is the distinguishing feature between voluntary and involuntary homicide. State v. Weisengoff, 85 W.Va. 271, 101 S.E. 450, 455; State v. Pond, 125 Me. 453, 134 A. 572, 573.

MANSO, or MANSUM. In old English law, a mansion or house. Spelman.

MANSTEALING. A word sometimes used synonymously with "kidnapping," (q. v.).

MANSUETAE NATURA. Tamed and domesticated animals. Andrews v. Smith, 324 Pa. 455, 188 A. 146, 148.

MANSUETUS. Lat. Tame; as though accustomed to come to the hand. 2 Bl. Comm. 391.

MANSUM CAPITALE. The manor-house or lord's court. Paroch.Antiq. 150.

MANTEA. In old records, a long robe or mantle.

MANTHEOFF. In Saxon law, a horse-stealer.

MANTICULATE. To pick pockets.

MANTLE CHILDREN. See Pallio Cooperire.

MAN-TRAPS. Engines to catch trespassers, now unlawful unless set in a dwelling-house for defense between sunset and sunrise. 24 & 25 Vict. c. 100, § 31.

MANU BREVI. Lat. With a short hand. A term used in the civil law, signifying shortly; directly; by the shortest course; without circuitry.

MANU FORTI. Lat. With strong hand. A term used in old writs of trespass. *Manu forti et cum multitudine gentium*, with strong hand and multitude of people. Reg. Orig. 183.

MANU LONGA. Lat. With a long hand. A term used in the civil law, signifying indirectly or circuitously. Calvin.

MANU OPERA. Lat. Cattle or implements of husbandry; also stolen goods taken from a thief caught in the fact. Cowell.

MANUAL. Of, or pertaining to, the hand or hands; done, made, or operated by or used with the hand or hands; or as manual labor. *McErlain v. Taylor*, 207 Ind. 240, 192 N.E. 260, 262, 94 A.L.R. 1284. Performed by the hand; used or employed by the hand; held in the hand.

MANUAL DELIVERY. Delivery of personal property sold, donated, mortgaged, etc., by passing it into the "hand" of the purchaser or transferee, that is, by an actual and corporeal change of possession.

MANUAL GIFT. The manual gift, that is, the giving of corporeal movable effects, accompanied by a real delivery, is not subject to any formality. Civil Code La. art. 1539.

MANUAL LABOR. Work done with the hand. *State v. Ash*, 53 Ariz. 197, 87 P.2d 270, 272. Labor performed by hand or by the exercise of physical force, with or without the aid of tools and of horses or other beasts of burden, but depending for its effectiveness chiefly upon personal muscular exertion rather than upon skill, intelligence or adroitness. *Lew Jim v. U. S.*, C.C.A.Cal., 66 F. 954, 14 C.C.A. 281; *Martin v. Wakefield*, 42 Minn. 176, 43 N.W. 966, 6 L.R.A. 362.

MANUAL RATES. The Oklahoma Inspection Bureau is a private enterprise maintained by the insurance companies and its function is to compile the general basis schedule which sets out the rates for the risks insured. These rates are commonly referred to as "manual rates." *Commercial Standard Ins. Co. v. Remer*, C.C.A.Okl., 119 F. 2d 66, 67.

MANUALIA BENEFICIA. The daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence. Cowell.

MANUALIS OBEDIENTIA. Sworn obedience or submission upon oath. Cowell.

MANUCAPTIO. In old English practice, a writ which lay for a man taken on suspicion of felony, and the like, who could not be admitted to bail by the sheriff, or others having power to let to mainprise. *Fitzh.Nat.Brev.* 249.

MANUCAPTORS. Same as mainperners (*q. v.*).

MANUFACTORY. A physical plant, or a place or building where manufacturing is carried on. (Plant wherein electric power was generated.) *Duke Power Co. v. Bell*, 156 S.C. 299, 152 S.E. 865, 868. What in common understanding is known as a "factory." *Halpin v. Insurance Co.*, 23 N.E. 989, 120 N.Y. 73, 8 L.R.A. 79; *In re I. Rheinstrom & Sons Co.*, D.C.Ky., 207 F. 119, 134.

MANUFACTURE, v. From Latin words *manus* and *factura*, literally, put together by hand. Now it means the process of making products by hand or machinery. *United States v. Anderson*, D.C. Cal., 45 F.Supp. 943, 946.

The primary meaning of this word is "making with the hand," but this definition is too narrow for its present use.

Meaning of word "manufacture," which is defined as the making of goods or wares by manual labor or by machinery, especially on a large scale, has expanded as workmanship and art have advanced, so that now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery, are now commonly designated as "manufactured." *Mayor and City Council of Baltimore v. Price*, 168 Md. 174, 177 A. 160, 163.

Ordinarily does not include building or construction of outdoor structures. *Morrison-Knudson Co. v. State Board of Equalization*, 58 Wyo. 500, 135 P.2d 927, 931, 932.

MANUFACTURE, n. The process or operation of making wares or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by art. *Jones Bros. Co. v. Underkoffler*, D.C.Pa., 16 F.Supp. 729, 730. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labor or machine. *Cain's Coffee Co. v. City of Muskogee*, 171 Okl. 635, 44 P.2d 50, 52.

In patent law, any useful product made directly by human labor, or by the aid of machinery directed and controlled by human power, and either from raw materials, or from materials worked up into a new form. Also the process by which such products are made or fashioned. *Turner v. Quincy Market Cold Storage & Warehouse Co.*, C.C.A.Mass., 225 F. 41; *International Mausoleum Co. v. Sievert*, C.C.A.Ohio, 213 F. 225, 227; *Riter-Conley Mfg. Co. v. Alken*, C.C.A.Pa., 203 F. 699, 702.

An instrument created by the exercise of mechanical forces and designed for the production of mechanical effects, but not capable, when set in motion, of attaining, by its own operation, to any predetermined results. It receives its rule of action from the external source which furnishes its motive power.

A manufacture requires the constant guidance and control of some separate intelligent agent; a machine operates under the direction of that intelligence with which it was endowed by its inventor when he imposed on it its structural law. The parts of a machine, considered separately from the machine itself, all kinds of tools and fabrics, and every other vendible substance, which is neither a complete machine nor produced by the mere union of ingredients, is included under the title "manufacture." *Rob.Pat.* § 182.

Domestic manufactures. Generally, manufactures within a state's jurisdiction. *Com. v. Giltian*, 64 Pa. 100.

MANUFACTURER. One who by labor, art, or skill transforms raw material into some kind of a finished product or article of trade. *Henry v. Markesan State Bank*, C.C.A.Minn., 68 F.2d 554, 557.

MANUFACTURERS LIABILITY DOCTRINE. The foundation for the liability is knowledge of the danger attending use of manufactured or assembled product and negligence in failing to give appropriate warning, or negligence in failing to discover and appreciate the danger, and the probable consequences that injury will proximately result from the use of such product for the purposes for which it was intended. *Crane Co. v. Davies*, 242 Ala. 570, 8 So.2d 196, 199.

MANUFACTURING CORPORATION. A corporation engaged in the production of some article, thing, or object, by skill or labor, out of raw ma-

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terial, or from matter which has already been subjected to artificial forces, or to which something has been added to change its natural condition. *People v. Knickerbocker Ice Co.*, 99 N.Y. 181, 1 N.E. 669. The term does not include a mining corporation. *Byers v. Franklin Coal Co.*, 106 Mass. 135. But includes a corporation engaged in generation and distribution of electricity. *Curry v. Alabama Power Co.*, 8 So.2d 521, 526, 243 Ala. 53.

MANUFACTURING ESTABLISHMENT. Any place where machinery is used for manufacturing purposes. *Lilley v. Eberhardt*, Mo., 37 S.W.2d 599, 601.

MANUMISSION. The act of liberating a slave from bondage and giving him freedom. In a wider sense, releasing or delivering one person from the power or control of another. See *Fenwick v. Chapman*, 9 Pet. 472, 9 L.Ed. 193; *State v. Prall*, 1 N.J.Law, 4.

MANUMITTERE IDEM EST QUOD EXTRA MANUM VEL POTESTATEM PONERE. Co.Litt. 137. To manumit is the same as to place beyond hand and power.

MANUNG, or MONUNG. In old English law, the district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz., to exact (*aman-ian*) all fines.

MANUPES. In old English law, a foot of full and legal measure.

MANUPRETIIUM. Lat. In Roman law, the hire or wages of labor; compensation for labor or services performed. See *Mackeld.Rom.Law*, § 413.

MANURABLE. In old English law, capable of being had or held in hand; capable of manual occupation; capable of being cultivated; capable of being touched; tangible; corporeal. *Hale, Anal.* § 24.

MANURE. In old English law, to occupy; to use or cultivate; to have in manual occupation; to bestow manual labor upon. *Cowell*.

MANUS. Lat. A hand.

In the civil law, this word signified power, control, authority, the right of physical coercion, and was often used as synonymous with "*potestas*."

In old English law, it signified an oath or the person taking an oath; a compurgator.

MANUS MORTUA. A dead hand; mortmain. *Spelman*.

MANUSCRIPT. A writing; a paper written with the hand; a writing that has not been printed. *Parton v. Prang*, 18 Fed.Cas. 1275; *Leon Loan & Abstract Co. v. Equalization Board*, 86 Iowa 127, 53 N.W. 94, 17 L.R.A. 199, 41 Am.St.Rep. 486.

MANUTENENTIA. The old writ of maintenance. *Reg.Orig.* 182.

MANWORTH. In old English law, the price or value of a man's life or head. *Cowell*.

MANY. The word "many" is defined as consisting of a great number, numerous, not few. Many is a word of very indefinite meaning, and, though it is defined to be numerous and multitudinous, it is also recognized as synonymous with "several", "sundry", "various" and "divers". *Goslin v. Kurn*, 351 Mo. 395, 173 S.W.2d 79, 87.

MANZIE. In old Scotch law, mayhem; mutilation of the body of a person. *Skene*.

MAP. A representation of the earth's surface, or of some portion of it, showing the relative position of the parts represented, usually on a flat surface. *Webster*. "A map is but a transcript of the region which it portrays, narrowed in compass so as to facilitate an understanding of the original." *Banker v. Caldwell*, 3 Minn. 103 (Gil. 55).

MAR. To make defective; to do serious injury to; to damage greatly; to impair, spoil, ruin; to do physical injury to, especially by cutting off or defacing a part; to mutilate; mangle, disfigure; deface. *Maxwell v. City of Buhl*, 236 P. 122, 123, 40 Idaho 644; *Borden v. Hirsh*, 249 Mass. 205, 143 N.E. 912, 914, 33 A.L.R. 526.

MARA. In old records, a mere or moor; a lake, pool, or pond; a bog or marsh that cannot be drained. *Cowell*; *Blount*; *Spelman*.

MARAJUANA PLANT. The plant scientifically known as *cannabis indica* or *cannabis americana*, though there possibly may be some slight and unimportant botanical difference between the two, but apparently none in its effect upon the human system. See *Mariguana*.

MARATHON. Modern meaning is any race or physical endurance contest. *Sportatorium, Inc. v. State*, Tex.Civ.App., 104 S.W.2d 912, 916.

MARAUDER. "A marauder is defined in the law to be 'one who, while employed in the army as a soldier, commits larceny or robbery in the neighborhood of the camp, or while wandering away from the army.' But in the modern and metaphorical sense of the word, as now sometimes used in common speech, it seems to be applied to a class of persons who are not a part of any regular army, and are not answerable to any military discipline, but who are mere lawless banditti, engaged in plundering, robbery, murder, and all conceivable crimes." *Curry v. Collins*, 37 Mo. 328.

MARC-BANCO. The name of a piece of money formerly coined at Hamburg. Its value was thirty-five cents.

MARCA. A mark; a coin of the value of 13s. 4d. *Spelman*.

MARCATUS. The rent of a mark by the year anciently reserved in leases, etc.

MARCH. In Scotch law, a boundary line or border. *Bell*. The word is also used in composition; as *march-dike*, *march-stone*.

MARCHANDISES AVARIEES. In French mercantile law. Damaged goods.

MARCHERS. In old English law, noblemen who lived on the marches of Wales or Scotland, and who, according to Camden, had their private laws, as if they had been petty kings; which were abolished by the statute 27 Hen. VIII. c. 26. Called also "lords marchers." Cowell.

MARCHES. An old English term for boundaries or frontiers, particularly the boundaries and limits between England and Wales, or between England and Scotland, or the borders of the dominions of the crown, or the boundaries of properties in Scotland. Mozley & Whitley.

MARCHES, COURT OF. An abolished tribunal in Wales, where pleas of debt or damages, not above the value of £50, were tried and determined. Cro.Car. 384.

MARCHETA.

In old Scotch law, a custom for the lord of a fee to lie the first night with the bride of his tenant. Abolished by Malcolm III. Spelman; 2 Bl. Comm. 83. A fine paid by the tenant for the remission of such right, originally a mark or half a mark of silver. Spelman.

In old English law, a fine paid for leave to marry, or to bestow a daughter in marriage. Cowell.

MARCHIONESS. A dignity in a woman answerable to that of marquis in a man, conferred either by creation or by marriage with a marquis. Wharton.

MARE. Lat. The sea.

MARE CLAUSUM. The sea closed; that is, not open or free. The title of Selden's great work, intended as an answer to the *Mare Liberum* of Grotius; in which he undertakes to prove the sea to be capable of private dominion. 1 Kent, Comm. 27.

MARE LIBERUM. The sea free. The title of a work written by Grotius against the Portuguese claim to an exclusive trade to the Indies, through the South Atlantic and Indian oceans; showing that the sea was not capable of private dominion. 1 Kent, Comm. 27.

MARESCALLUS. In old English law, a marshal; a master of the stables; an officer of the exchequer; a military officer of high rank, having powers and duties similar to those of a constable. Du Cange. See Marshal.

MARESCHAL. L. Fr. Marshal; a high officer of the royal household, Britt. fol. 1b.

MARETTUM. Marshy ground overflowed by the sea or great rivers. Co.Litt. 5.

MARGIN. The edge or border; the edge of a body of water where it meets the land. As applied to a boundary line of land, the "margin" of a river, creek, or other watercourse means the center of the stream. Varick v. Smith, 9 Paige, N.Y.,

551. But in the case of a lake, bay, or natural pond, the "margin" means the line where land and water meet. Fowler v. Vreeland, 44 N.J.Eq. 263, 14 A. 116; Lembeck v. Andrews, 47 Ohio St. 336, 24 N.E. 686, 8 L.R.A. 578.

A sum of money, or its equivalent, placed in the hands of a stockbroker by the principal or person on whose account a purchase or sale is to be made, as a security to the former against losses to which he may be exposed by subsequent fluctuations in the market value of the stock. Sheehy v. Shinn, 103 Cal. 325, 37 P. 393; Memphis Brokerage Ass'n v. Cullen, 11 Lea, Tenn., 77.

MARGINAL NOTE. In Scotch law, a note inserted on the margin of a deed, embodying either some clause which was omitted in transcribing or some change in the agreement of the parties. Bell.

An abstract of a reported case, a summary of the facts, or brief statement of the principle decided, which is prefixed to the report of the case, sometimes in the margin, is also spoken of by this name.

MARGINAL STREET. Dock or wharf used in conjunction with and in furtherance of commerce and navigation. In re Triborough Bridge Approach, City of New York, 159 Misc. 617, 288 N.Y.S. 697, 711, 716.

MARGIN OF PROFIT. Difference between purchase price and selling price of merchandise. Kelley v. Baisch, 59 Idaho 798, 87 P.2d 468, 469.

MARIGUANA, MARIHUANA, MARIJUANA. "Mariguana" is an annual herb, cannabis sativa, having angular rough stem and deeply lobed leaves. The bast fibres of cannabis are the hemp of commerce. A drug prepared from "cannabis sativa," designated in technical dictionaries as "cannabis" and commonly known as marijuana, marihuana, marajuana, maraguana, or marihuana, in Southern and Western states. State v. Navaro, 83 Utah 6, 26 P.2d 955; People v. Savage, 148 P.2d 654, 64 Cal.App.2d 314. For the history of cannabis, see Simpson v. State, 176 So. 515, 129 Fla. 127.

"Marihuana" is referred to by Brundage's Toxicology as a drug, the use of which results in a "sense of exhilaration; pleasurable intoxication; peculiar prolongation of time; sense of double consciousness followed by drowsiness; anæsthesia; loss of power, particularly of the lower extremities; pupils dilated; pulse rapid; respiration slow; may cause increased sexual desires; catalepsy; sometimes convulsions." It is known most generally in the United States by the Mexican name, "Marihuana," because it was introduced into this country by Mexicans. State v. Navaro, 83 Utah 6, 26 P.2d 955.

"Marihuana" is the Mexican term for cannabis indica. The plant or drug known as cannabis indica, or marihuana, has as its parent the plant known as cannabis sativa. It is popularly known in India as cannabis indica; in America, as cannabis americana; in Mexico, as cannabis mexicana, or marihuana. It is all the same drug, and is known in different countries by different names. It is scientifically known as cannabis sativa, and is popularly called cannabis americana, cannabis indica, or cannabis mexicana, in accordance with the geographical origin of the particular plant. In the East, it is known as charras, as gunga, as hasheesh, as bhang, or siddi, and goes by a variety of names in the countries of Continental Europe. In America,

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particularly in the South and Southwestern portions of the United States, it is called marihuana. It is popularly known among the criminal element as "muggles," or "mooter," and addicts are commonly termed "muggle heads." State v. Navaro, 83 Utah 6, 26 P.2d 955.

MARINARIUS. An ancient word which signified a mariner or seaman. In England, *marinarius capitaneus* was the admiral or warden of the ports.

MARINE. Naval; relating or pertaining to the sea; transacted at sea; doing duty or service on the sea.

This is also a general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating, and fighting ships. It comprehends also the government of naval armaments, and the state of all the persons employed therein, whether civil or military. Also one of the marines. Wharton. Doughten v. Vandever, 5 Del.Ch. 73.

MARINE BELT. That portion of the main or open sea, adjacent to the shores of a given country, over which the jurisdiction of its municipal laws and local authorities extends; defined by international law as extending out three miles from the shore. The Alexander, D.C.Alaska, 60 F. 918.

MARINE CARRIER. By statutes of several states this term is applied to carriers plying upon the ocean, arms of the sea, the Great Lakes, and other navigable waters within the jurisdiction of the United States. Civ.Code Cal. § 2087; Rev. Codes N.D.1899, § 4176, Comp.Laws 1913, § 6187.

MARINE CONTRACT. One relating to maritime affairs, shipping, navigation, marine insurance, affreightment, maritime loans, or other business to be done upon the sea or in connection with navigation.

MARINE CORPS. A body of soldiers enlisted and equipped for service on board vessels of war; also the naval forces of the nation. U. S. v. Dunn, 120 U.S. 249, 7 S.Ct. 507, 30 L.Ed. 667.

MARINE COURT IN THE CITY OF NEW YORK. Formerly, a local court of New York City, originally created as a tribunal for the settlement of causes between seamen. It was the predecessor of the present city court of the city of New York. 15 C.J. 1003. The history of this court may be found in McAdam, Mar.Ct.Pr., 2d Ed. 1872.

MARINE INSURANCE. See Insurance.

MARINE INTEREST. Interest, allowed to be stipulated for at an extraordinary rate, for the use and risk of money loaned on *respondentia* and bottomry bonds.

MARINE LEAGUE. A measure of distance commonly employed at sea, being equal to one-twentieth part of a degree of latitude, or three geographical or nautical miles. Rockland, etc., S. Co. v. Fessenden, 79 Me. 140, 8 A. 552.

MARINE RISK. The perils of the sea; the perils necessarily incident to navigation.

MARINE SOCIETY. In English law, a charitable institution for the purpose of apprenticing boys to the naval service, etc., incorporated by 12 Geo. III. c. 67.

MARINER. A seaman or sailor; one engaged in navigating vessels upon the sea; every person employed aboard ships or vessels. Pacific Mail S. S. Co. v. Schmidt, C.C.A.Cal., 214 F. 513, 518.

MARINES. A body of infantry soldiers, trained to serve on board of vessels of war when in commission and to fight in naval engagements. See Marine Corps.

MARIS ET FŒMINÆ CONJUNCTIO EST DE JURE NATURÆ. 7 Coke, 13. The connection of male and female is by the law of nature.

MARISCHAL. An officer in Scotland, who, with the lord high constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the court, wherever it might happen to be. Wharton.

MARISCUS. A marshy or fenny ground. Co. Litt. 5a.

MARITAGIO AMISSO PER DEFALTAM. An obsolete writ for the tenant in frank-marriage to recover lands, etc., of which he was deforced.

MARITAGIUM. The portion which is given with a daughter in marriage. Also the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.

MARITAGIUM EST AUT LIBERUM AUT SERVITIO OBLIGATUM; LIBERUM MARITAGIUM DICITUR UBI DONATOR VULT QUOD TERRA SIC DATA QUIETA SIT ET LIBERA AB OMNI SECULARI SERVITIO. Co.Litt. 21. A marriage portion is either free or bound to service; it is called "frank-marriage" when the giver wills that land thus given be exempt from all secular service.

MARITAGIUM HABERE. To have the free disposal of an heiress in marriage.

MARITAL. Relating to, or connected with, the *status* of marriage; pertaining to a husband; incident to a husband.

MARITAL COERCION. Coercion of the wife by the husband.

MARITAL FOURTH. A gift or bounty bestowed by law in favor of surviving spouse left in penurious circumstances. Maddox v. Butcher, 203 La. 299, 14 So.2d 4, 8.

MARITAL PORTION. In Louisiana, the name given to that part of a deceased husband's estate to which the widow is entitled. Abercrombie v. Caffray, 3 Mart.N.S., La., 1.

MARITAL RIGHTS AND DUTIES. Those arising from marriage contract and constituting its object, and therefore embracing what the parties agree to perform towards each other and to society. Alexander v. Alexander, 107 Conn. 101, 139

A. 685, 688. Rights of husband and wife to a specified share of other's personal estate upon death of other. In re Dean's Estate, 350 Mo. 494, 166 S.W.2d 529, 534, 535.

MARITIMA ANGLIÆ. In old English law, the emolument or revenue coming to the king from the sea, which the sheriffs anciently collected, but which was afterwards granted to the admiral. Spelman.

MARITIMA INCREMENTA. In old English law, marine increases. Lands gained from the sea. Hale, de Jure Mar. pt. 1, c. 4.

MARITIME. Pertaining to the sea or ocean or the navigation thereof; or to commerce conducted by navigation of the sea or (in America) of the great lakes and rivers.

It is nearly equivalent to "marine" in many connections and uses; in others, the two words are used as quite distinct.

MARITIME BELT. That part of the sea which, in contradistinction to the open sea, is under the sway of the riparian states. Louisiana v. Mississippi, 202 U.S. 1, 26 S.Ct. 408, 571, 50 L.Ed. 913.

MARITIME CAUSE. A cause of action originating on the high seas, or growing out of a maritime contract. 1 Kent, Comm. 367, *et seq.*

MARITIME CONTRACT. A contract relating to business of navigation. Massman Const. Co. v. Bassett, D.C.Mo., 30 F.Supp. 813, 815. A contract whose subject-matter has relation to the navigation of the seas or to trade or commerce to be conducted by navigation or to be done upon the sea or in ports. Edwards v. Elliott, 21 Wall. 553, 22 L.Ed. 487; Doolittle v. Knobloch, D.C.S.C., 39 F. 40; Holt v. Cummings, 102 Pa. 215, 48 Am.Rep. 199; Rounds v. Cloverport Foundry & Machine Co., 159 Ky. 414, 167 S.W. 384, 387, Ann.Cas.1915D, 40.

MARITIME COURT. A court exercising jurisdiction in maritime causes; one which possesses the powers and jurisdiction of a court of admiralty.

MARITIME INTEREST. An expression equivalent to marine interest (*q. v.*).

MARITIME JURISDICTION. Jurisdiction in maritime causes; such jurisdiction as belongs to a court of admiralty on the instance side.

MARITIME LAW. The traditional body of rules, precepts, and practices known as the "maritime law". O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 63 S.Ct. 488, 490, 87 L.Ed. 596. That system of law which particularly relates to commerce and navigation, to business transacted at sea or relating to navigation, to ships and shipping, to seamen, to the transportation of persons and property by sea, and to marine affairs generally. The law relating to harbors, ships, and seamen, divided into a variety of departments, such as those about harbors, property of ships, duties and rights of masters and seamen, contracts of affreightment, average, salvage, etc. Wharton;

The Lottawanna, 21 Wall. 572, 22 L.Ed. 654; The Unadilla, D.C.Ill., 73 F. 351.

MARITIME LIEN. A privileged claim on a vessel for some service rendered to it to facilitate its use in navigation, or an injury caused by it in navigable waters, to be carried into effect by legal process, in the admiralty court. The Westmoor, D.C.Or., 27 F.2d 886, 887.

It attaches to the vessel and freight, and is to be enforced by an action *in rem*. Paxson v. Cunningham, C.C.A.1, 63 F. 134, 11 C.C.A. 111.

The word "lien" is used in maritime law not in the strict legal sense in which we understand it in courts of common law, in which case there could be no lien where there was no possession, actual or constructive, but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession. 22 Eng.Law & Eq. 62. A distinction is sometimes made, however, between qualified maritime liens, which depend upon possession, and absolute maritime liens, which do not require nor depend upon possession. Cutler v. Rae, 7 How. 729, 12 L.Ed. 890; 21 Am.Law Reg. 1. A "maritime lien" is a special property right in a ship given to a creditor by law as security for a debt or claim subsisting from the moment the debt arises with right to have the ship sold and debt paid out of proceeds. The Poznan, C.C.A.N.Y., 9 F.2d 838, 842. Such a lien is a proprietary interest or right of property in the vessel itself, and not a cause of action or demand for personal judgment against the owner. The Theodore Roosevelt, D.C.Ohio, 291 F. 453, 461; The River Queen, D.C.Va., 8 F.2d 426, 427.

MARITIME LOAN. A contract or agreement by which one, who is the lender, lends to another, who is the borrower, a certain sum of money, upon condition that if the thing upon which the loan has been made should be lost by any peril of the sea, or *vis major*, the lender shall not be repaid unless what remains shall be equal to the sum borrowed; and if the thing arrive in safety, or in case it shall not have been injured but by its own defects or the fault of the master or mariners, the borrower shall be bound to return the sum borrowed, together with a certain sum agreed upon as the price of the hazard incurred. Emerig. Mar. Loans, c. 1, s. 2. The Draco, 7 Fed.Cas. 1,042.

MARITIME PROFIT. A term used by French writers to signify any profit derived from a maritime loan.

MARITIME SERVICE. In admiralty law, a service rendered upon the high seas or a navigable river, and which has some relation to commerce or navigation,—some connection with a vessel employed in trade, with her equipment, her preservation, or the preservation of her cargo or crew. Thackarey v. The Farmer, 23 F.Cas. 877; The Atlantic, D.C.S.C., 53 F. 609; Newham v. Chile Exploration Co., 133 N.E. 120, 232 N.Y. 37, 25 A.L.R. 1018.

MARITIME STATE, in English law, consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by act of parliament.

MARITIME TORT. Civil wrongs committed on navigable waters. Berwind-White Coal Mining Co. v. City of New York, C.C.A.N.Y., 135 F.2d 443, 446. The term is never applied to a tort committed upon

MARITUS:

land, though relating to maritime matters. The Plymouth, 3 Wall. 33, 18 L.Ed. 125; Holmes v. Oregon & C. Ry. Co., D.C.Or., 5 F. 77; Butler v. Robins Dry Dock & Repair Co., 147 N.E. 235, 236, 240 N.Y. 23; Kuhlman v. W. & A. Fletcher Co., C.C.A.N.J., 20 F.2d 465, 466.

MARITUS. Lat. A husband; a married man. Calvin.

MARK. A character, usually in the form of a cross, made as a substitute for his signature by a person who cannot write, in executing a conveyance or other legal document.

It is commonly made as follows: A third person writes the name of the marksman, leaving a blank space between the Christian name and surname; in this space the latter traces the mark, or crossed lines, and above the mark is written "his," (or "her,") and below it, "mark."

The sign, writing, or ticket put upon manufactured goods to distinguish them from others, appearing thus in the compound, "trade-mark."

A token, evidence, or proof; as in the phrase "a mark of fraud."

A weight used in several parts of Europe, and for several commodities, especially gold and silver. When gold and silver are sold by the *mark*, it is divided into twenty-four carats.

A money of accounts in England, and in some other countries a coin. The English mark is two-thirds of a pound sterling, or 13s. 4d.; and the Scotch mark is of equal value in Scotch money of account. Enc.Amer.

The word is sometimes used as another form of "*marque*," a license of reprisals.

In early Teutonic and English law, a species of village community, being the lowest unit in the political system; one of the forms of the *gens* or clan, variously known as the "*mark*," "*gemeinde*," "*commune*," or "*parish*." Also the land held in common by such a community. The union of several such village communities and their *marks*, or common lands, forms the next higher political union, the hundred. Freem. Compar. Politics, 116, 117.

Demi-mark. Half a mark; a sum of money which was anciently required to be tendered in a writ of right, the effect of such tender being to put the demandant, in the first instance, upon proof of the seisin as stated in his count; that is, to prove that the seisin was in the king's reign there stated. Rosc. Real Act. 216.

High and low water-mark. See Water-Mark.

Mark banco. See Marc-Banco.

MARKEPENNY. A penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets. Wharton.

MARKET. Place of commercial activity in which articles are bought and sold. Zemel v. Commercial Warehouses, 132 N.J.L. 341, 40 A.2d 642, 643. The region in which any commodity can be sold; the geographical or economic extent of commercial de-

mand. State v. Auclair, 110 Vt. 147, 4 A.2d 107, 116. A public time and appointed place of buying and selling; also purchase and sale. Caldwell v. Alton, 33 Ill. 419, 75 Am.Dec. 282; Strickland v. Pennsylvania R. Co., 154 Pa. 348, 26 A. 431, 21 L.R. A. 224; State v. Burkett, 119 Md. 609, 87 A. 514, 518, Ann.Cas.1914D, 345. It differs from the *forum*, or market of antiquity, which was a public market-place on one side only, or during one part of the day only, the other sides being occupied by temples, theaters, courts of justice, and other public buildings. Wharton.

The liberty, privilege, or franchise by which a town holds a market, which can only be by royal grant or immemorial usage. In re Certain Lands on North Shore of Harlem River in City of New York, 127 Misc.Rep. 710, 217 N.Y.S. 544, 557.

By the term "market" is also understood the demand there is for any particular article; as, "the cotton market in Europe is dull."

Clerk of the Market. See Clerk of the Market.

Public market. A market which is not only open to the resort of the general public as purchasers, but also available to all who wish to offer their wares for sale, stalls, stands, or places being allotted to those who apply, to the limits of the capacity of the market, on payment of fixed rents or fees. American Live Stock Commission Co. v. Chicago Live Stock Exchange, 143 Ill. 210, 32 N.E. 274, 18 L.R.A. 190; State v. Fernandez, 39 La. Ann. 538, 2 So. 233.

MARKET GELD. The toll of a market.

MARKET OVERT. In English law, an open and public market. The market-place or spot of ground set apart by custom for the sale of particular goods is, in the country, the only market *overt*; but in London every shop in which goods are exposed publicly to sale is market *overt*, for such things only as the owner professes to trade in. 2 Bl.Comm. 449; Godb. 131; 5 Coke, 83. Fawcett v. Osborn, 32 Ill. 426, 83 Am.Dec. 278.

MARKET PRICE. The price at which a seller is ready and willing to sell and a buyer ready and willing to buy in the ordinary course of trade. Bourjois, Inc., v. McGowan, D.C.N.Y., 12 F.Supp. 787, 790. The price actually given in current market dealings, and actual price at which given commodity is currently sold, or has recently been sold in open market, that is, not at forced sale, but in the usual and ordinary course of trade and competition between sellers and buyers equally free to bargain, as established by records of late sales. Wall v. United Gas Public Service Co., 178 La. 908, 152 So. 561, 563.

The actual price at which the given commodity is currently sold, or has recently been sold, in the open market, that is, not at a forced sale, but in the usual and ordinary course of trade and competition, between sellers and buyers equally free to bargain, as established by records of late sales. Lovejoy v. Michels, 88 Mich. 15, 49 N.W. 901, 13 L.R.A. 770; Sanford v. Peck, 63 Conn. 486, 27 A. 1057; McGarry v. Superior Portland Cement Co.,

95 Wash. 412, 163 P. 928, 929, Ann.Cas.1918A, 572. The term also means, when price at the place of exportation is in view, the price at which articles are sold and purchased, clear of every charge but such as is laid upon it at the time of sale. Goodwin v. United States, 2 Wash.C.C. 493, F.Cas.No.5,554.

For "Fair Market Price," see that title.

MARKET TOWNS. Those towns which are entitled to hold markets. 1 Steph.Comm., 7th Ed., 130.

MARKET VALUE. The price property would command in the market. State Highway Board v. Bridges, 60 Ga.App. 240, 3 S.E.2d 907, 910.

For "Fair and Reasonable Market Value" and "Fair Cash Market Value", see those titles.

The market value of an article or piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular article or piece of property. Winnipiseogee Lake, etc., Co. v. Gilford, 67 N.H. 514, 35 A. 945; Muser v. Magone, 155 U.S. 240, 15 S.Ct. 77, 39 L.Ed. 135; Little Rock Junction Ry. v. Woodruff, 49 Ark. 381, 5 S.W. 792, 4 Am.St.Rep. 51; William H. Lowe Estate Co. v. Lederer Realty Corporation, 35 R.I. 352, 86 A. 881, 883, Ann.Cas.1916A, 341.

Same meaning as "reasonable market value," or "fair market value." Sanders v. Pinney, 103 Wash. 162, 174 P. 471, 472; Hubbell v. City of Des Moines, 166 Iowa 581, 147 N.W. 908, 910, Ann.Cas.1916E, 592.

MARKET ZELD. Properly *market geld*. In old records. The toll of a market. Cowell.

MARKETABLE. Such things as may be sold in the market; those for which a buyer may be found; merchantable. Hinton v. Martin, 151 Ark. 343, 236 S.W. 267, 268; Pryor v. Fruit Distributors' Service Co., 73 Cal.App. 467, 238 P. 825, 827.

MARKETABLE TITLE. A "marketable title" to land is such a title as a court of equity, when asked to decree specific performance of the contract of sale, will compel the vendee to accept as sufficient. It is said to be not merely a defensible title, but a title which is free from plausible or reasonable objections. Austin v. Barnum, 52 Minn. 136, 53 N.W. 1132; Brokaw v. Duffy, 165 N.Y. 391, 59 N.E. 196; Wilson v. Korte, 91 Wash. 30, 157 P. 47, 48.

Such a title as is free from reasonable doubt in law and in fact; not merely a title valid in fact, but one which readily can be sold or mortgaged to a reasonably prudent purchaser or mortgagee; one acceptable to a reasonable purchaser, informed as to the facts and their legal meaning, willing to perform his contract, in the exercise of that prudence which business men usually bring to bear on such transactions; one under which a purchaser may have quiet and peaceful enjoyment of the property; one that is free from material defects, or grave doubts, and reasonably free from litigation. Myrick v. Austin, 141 Kan. 778, 44 P.2d 266, 268.

MARKSMAN. In practice and conveyancing. One who makes his mark; a person who cannot write,

and only makes his mark in executing instruments. Arch.N.Pr. 13; 2 Chit. 92.

MARKUSH DOCTRINE. The doctrine permits an applicant for a patent where there is no known subgeneric term which would include elements which applicant found useful and exclude those which are not, to employ a generic term limited to the elements found to be operative and recognizes as unobjectionable as to form, claims containing a coined subgeneric expression. In re Swenson, C.C.P.A., 132 F.2d 336.

MARLBIDGE, STATUTE OF. An English statute enacted in 1267 (52 Hen. III.) at Marlbridge, (now called "Marlborough,") where parliament was then sitting. It related to land tenures, and to procedure, and to unlawful and excessive distresses.

MARQUE AND REPRISAL, LETTERS OF. These words, "marque" and "reprisal," are frequently used as synonymous, but, taken in their strict etymological sense, the latter signifies a "taking in return;" the former, the passing the frontiers (*marches*) in order to such taking. Letters of marque and reprisal are grantable, by the law of nations, whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs; and the party to whom these letters are granted may then seize the bodies or the goods of the subjects of the state to which the offender belongs, until satisfaction be made, wherever they happen to be found. Reprisals are to be granted only in case of a clear and open denial of justice. At the present day, in consequence partly of treaties and partly of the practice of nations, the making of reprisals is confined to the seizure of commercial property on the high seas by public cruisers, or by private cruisers specially authorized thereto. Brown.

MARQUE, LAW OF. A sort of law of reprisal, which entitles him who has received any wrong from another and cannot get ordinary justice to take the shipping or goods of the wrong-doer, where he can find them within his own bounds or precincts, in satisfaction of the wrong. Cowell; Brown.

MARQUIS, or MARQUESS. In English law, one of the second order of nobility; next in order to a duke.

MARQUISATE. The seignior of a marquis.

MARRIAGE. Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the civil status, condition, or relation of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex. 1 Bish.Mar. & Div. § 3; Collins v. Hoag & Rollins, 121 Neb. 716, 238 N.W. 351, 355; Allen v. Allen, 73 Conn. 54, 46 A. 242, 49 L.R.A. 142.

MARRIAGE

A contract, according to the form prescribed by law, by which a man and woman, capable of entering into such contract, mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and wife. Shelf. Mar. & Div. 1; Seuss v. Schukat, 358 Ill. 27, 192 N.E. 668, 671, 95 A.L.R. 1461.

The word also signifies the act, ceremony, or formal proceeding by which persons take each other for husband and wife. Davis v. Davis, 119 Conn. 194, 175 A. 574, 575.

In old English law, marriage is used in the sense of "*maritagium*," (q. v.), or the feudal right enjoyed by the lord or guardian in chivalry of disposing of his ward in marriage.

Avail of marriage. See that title.

Consensual marriage. See that title.

Common-law marriage. See Common Law.

Fleet marriages. There were in the neighborhood of the Fleet prison about sixty marriage houses, some of which were public houses and others not. They were known by having a sign-board, with joined hands, in addition to the public house sign. At the doors of these houses persons called Pliers solicited the passers-by to come in and be married, and in these houses persons who were, or pretended to be, clergymen performed the marriage ceremony and made entries in registers that were kept at the respective houses. There is little doubt that many entries had false dates, that persons who were married personated others, and that women who wished to plead a plea of coverture or hide their shame were married to men who, for a trifling gratuity, married any woman who would pay them, though they had previously married others. Such marriages also took place in the neighborhood of the King's Bench prison, at the Savoy, in the Mint, in the Borough, and at the Mayfair Chapel.

It is said in 1 Peake N.P.C. 303, that a marriage in the Fleet was considered *at that time* good and legal. In 8 Carr. & P. 581 (34 E.C.L.R.), Patteson, J., said: "I shall not receive the Fleet Registry in evidence for any purpose whatever." They were refused in 1 Peake N.P.C. 303. A collection of over a thousand Fleet registers have been deposited in the Registry of the Bishop of London.

See Extracts from these registers and a historical note in 34 E.C.L.R. 534; Burns, Fleet Registers.

Jactitation of marriage. See Jactitation.

Manus marriage. A form of marriage in early Rome; it formed a relation called *manus* (hand) and brought the wife into the husband's power, placing her as to legal rights in the position of a daughter. Bryce, Marr. & Divorce, in 3 Sel. Essays in Anglo-Amer.L.H. 787.

Mixed marriage. A marriage between persons of different nationalities; or, more particularly, between persons of different racial origin; as between a white person and a negro or an Indian.

Morganatic marriage. The lawful and inseparable conjunction of a man, of noble or illustri-

ous birth, with a woman of inferior station, upon condition that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. But since these restrictions relate only to the rank of the parties and succession to property, without affecting the nature of a matrimonial engagement, it must be considered as a just marriage. The marriage ceremony was regularly performed; the union was indissoluble; the children legitimate. Wharton.

Plural marriage. In general, any bigamous or polygamous union, but particularly, a second or subsequent marriage of a man who already has one wife living under system of polygamy. See Freil v. Wood, 1 Utah 165.

Scotch marriage. A marriage contracted without any formal solemnization or religious ceremony, by the mere mutual agreement of the parties *per verba de præsenti* in the presence of witnesses, recognized as valid by the Scottish law.

MARRIAGE ACT, ROYAL. An act of 12 Geo. III, c. 1 (1772), by which members of the royal family are forbidden to marry without the king's consent, or except on certain onerous conditions.

MARRIAGE ARTICLES. Articles of agreement between parties contemplating marriage, intended as preliminary to a formal marriage settlement, to be drawn after marriage. Ath.Mar.Sett. 92.

MARRIAGE BROKERAGE. The act by which a third person, for a consideration, negotiates a marriage between a man and woman. The money paid for such services is also known by this name. Hellen v. Anderson, 83 Ill.App. 509; White v. Equitable Nuptial Ben. Union, 76 Ala. 251, 52 Am. Rep. 325.

MARRIAGE CEREMONY. The form, religious or civil, for the solemnization of a marriage.

MARRIAGE CERTIFICATE. An instrument which certifies a marriage, and is executed by the person officiating at the marriage; it is not intended to be signed by the parties. Spencer v. Spencer, 84 Misc.Rep. 264, 147 N.Y.S. 111, 113.

MARRIAGE CONSIDERATION. The consideration furnished by an intended marriage of two persons. It is the highest consideration known to the law.

MARRIAGE LICENSE. A license or permission granted by public authority to persons who intend to intermarry, usually addressed to the minister or magistrate who is to perform the ceremony, or, in general terms, to any one authorized to solemnize marriages. By statute in some jurisdictions, it is made an essential prerequisite to the lawful solemnization of the marriage.

MARRIAGE-NOTICE BOOK. A book kept, in England, by the registrar, in which applications for and issue of registrar's licenses to marry are recorded.

MARRIAGE PER VERBA DE PRAESENTIL. To constitute such a marriage, there must be an agreement to become husband and wife immediately from the time when the mutual consent is given. *Pitney v. Pitney*, 151 Kan. 848, 101 P.2d 933, 935.

MARRIAGE PORTION. Dowry; a sum of money or other property which is given to or settled on a woman on her marriage. *In re Croft*, 162 Mass. 22, 37 N.E. 784.

MARRIAGE PROMISE. Betrothal; engagement to intermarry with another. *Perry v. Orr*, 35 N. J.L. 296.

MARRIAGE SETTLEMENT. A written agreement in the nature of a conveyance, called a "settlement," which is made in contemplation of a proposed marriage and in consideration thereof, either by the parties about to intermarry, or one of them, or by a parent or relation on their behalf, by which the title to certain property is settled, *i. e.*, fixed or limited to a prescribed course of succession; the object being, usually, to provide for the wife and children. Thus, the estate might be limited to the husband and issue, or to the wife and issue, or to husband and wife for their joint lives, remainder to the survivor for life, remainder over to the issue, or otherwise. Such settlements may also be made after marriage, in which case they are called "postnuptial."

MARRIED WOMAN. A woman who has a husband living and not divorced; a *feme covert*.

MARSHAL. In old English law, the title borne by several officers of state and of the law, of whom the most important were the following: (1) The earl-marshal, who presided in the court of chivalry; (2) the marshal of the king's house, or knight-marshal, whose special authority was in the king's palace, to hear causes between members of the household, and punish faults committed within the verge; (3) the marshal of the king's bench prison, who had the custody of that jail; (4) the marshal of the exchequer, who had the custody of the king's debtors; (5) the marshal of the judge of assize, whose duty was to swear in the grand jury.

In American law, an officer pertaining to the organization of the federal judicial system, whose duties are similar to those of a sheriff. He is to execute the process of the United States courts within the district for which he is appointed, etc.

Also, in some of the states, this is the name of an officer of police, in a city or borough, having powers and duties corresponding generally to those of a constable or sheriff.

MARSHAL OF THE QUEEN'S BENCH. An officer who had the custody of the queen's bench prison. The St. 5 & 6 Vict. c. 22, abolished this office, and substituted an officer called "keeper of the queen's prison."

MARSHALING. Arranging, ranking, or disposing in order; particularly, in the case of a group or series of conflicting claims or interests, arrang-

ing them in such an order of sequence, or so directing the manner of their satisfaction, as shall secure justice to all persons concerned and the largest possible measure of satisfaction to each. See sub-titles *infra*.

MARSHALING ASSETS. In equity, the arranging or ranking of assets in the due order of administration. Such an arrangement of the different funds under administration as shall enable all the parties having equities therein to receive their due proportions, notwithstanding any intervening interests, liens, or other claims of particular persons to prior satisfaction out of a portion of these funds. *In re Van Zandt's Estate*, 142 Misc. 663, 255 N.Y.S. 359, 366. The arrangement or ranking of assets in a certain order towards the payment of debts. 1 Story, Eq.Jur. § 558; 4 Kent, Comm. 421. The arrangement of assets or claims so as to secure the proper application of the assets to the various claims; especially when there are two classes of assets, and some creditors can enforce their claims against both, and others against only one, and the creditors of the former class are compelled to exhaust the assets against which they alone have a claim before having recourse to other assets, thus providing for the settlement of as many claims as possible. *Pub.St.Mass.* p. 1292.

MARSHALING LIENS. The ranking or ordering of several estates or parcels of land, for the satisfaction of a judgment or mortgage to which they are all liable, though successively conveyed away by the debtor. The rule is that, where lands subject to the lien of a judgment or mortgage have been sold or incumbered by the owner at different times to different purchasers, the various tracts are liable to the satisfaction of the lien in the inverse order of their alienation or incumbrance, the land last sold being first chargeable. 1 Black, *Judgm.* § 440.

MARSHALING REMEDIES. The basis for "marshaling of remedies" is that where one creditor has security on two funds of common debtor and another creditor has security on only one of such funds, second creditor has right in equity to compel first creditor to resort to the other fund, if it is necessary for satisfaction of both creditors and will not prejudice rights or interests of party entitled to double fund, do injustice to debtor, or operate inequitably on other persons' interests. *Greenwich Trust Co. v. Tyson*, 129 Conn. 211, 27 A.2d 166, 174.

MARSHALING SECURITIES. An equitable practice, which consists in so ranking or arranging classes of creditors, with respect to the assets of the common debtor, as to provide for satisfaction of the greatest number of claims. The process is this: Where one class of creditors have liens or securities on *two* funds, while another class of creditors can resort to only *one* of those funds, equity will compel the doubly-secured creditors to first exhaust that fund which will leave the single security of the other creditors intact. See 1 Story, Eq.Jur. § 633; *Dilworth v. Federal Reserve Bank of St. Louis*, 170 Miss. 373, 154 So. 535, 540, 92 A. L.R. 1076.

MARSHALSEA

MARSHALSEA. In English law, a prison belonging to the king's bench. It has now been consolidated with others, under the name of the "King's Prison."

MARSHALSEA, COURT OF. 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.

MART. A place of public traffic or sale.

MARTE SUO DECURRERE. Lat. To run by its own force. A term applied in the civil law to a suit when it ran its course to the end without any impediment. Calvin.

MARTIAL LAW. Exists when military authorities carry on government or exercise various degrees of control over civilians or civilian authorities in domestic territory. *Ochikubo v. Bonesteel*, D.C.Cal., 60 F.Supp. 916, 928, 929, 930. A system of law, obtaining only in time of actual war and growing out of the exigencies thereof, arbitrary in its character, and depending only on the will of the commander of an army, which is established and administered in a place or district of hostile territory held in belligerent possession, or, sometimes, in places occupied or pervaded by insurgents or mobs, and which suspends all existing civil laws, as well as the civil authority and the ordinary administration of justice. In *re Ezeta*, D. C.Cal., 62 F. 972; *Com. v. Shortall*, 206 Pa. 165, 55 A. 952, 65 L.R.A. 193. See, also, Military Law.

"Martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is in truth and reality no law, but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance, and therefore it ought not to be permitted in time of peace, when the king's courts are open for all persons to receive justice according to the laws of the land." 1 Bl. Comm. 413.

Martial law is neither more nor less than the will of the general who commands the army. It overrides and suppresses all existing civil laws, civil officers, and civil authorities, by the arbitrary exercise of military power; and every citizen or subject—in other words, the entire population of the country, within the confines of its power—is subjected to the mere will or caprice of the commander. He holds the lives, liberty, and property of all in the palm of his hand. Martial law is regulated by no known or established system or code of laws, as it is over and above all of them. The commander is the legislator, judge, and executioner. In *re Egan*, 5 Blatchf. 321, F.Cas. No.4,303.

MARTINMAS. The feast of St. Martin of Tours, on the 11th of November; sometimes corrupted into "Martilmas" or "Martlemas." It is the third of the four cross quarter-days of the year. Whar-ton.

MARUS. In old Scotch law, a maire; an officer or executor of summons. Otherwise called "*præco regis*." Skene.

MASAGIUM. L. Lat. A message.

MASH. "Mash" means crushed malt, meal, rye, and the like steeped and mixed in hot water to form wort; a mixture of grain, meal, or the like, and hot water fed to animals; to subject crushed malt to action of hot water by heating and stirring to prepare extract known as wort; to convert into a mass; to reduce to soft pulpy state by heating or pressure; to bruise; to crush. *Whisnant v. State*, 39 Okl.Cr. 214, 264 P. 837, 839.

MASHGIACH. A qualified supervisor designated by rabbinical authority to supervise the receipt and handling of kosher meat. People on Complaint of Waller v. Jacob Branfman & Son, 147 Misc. 290, 263 N.Y.S. 629.

MASOCHISM. [From Leopold von Sacher-Masoch, a nineteenth-century Austrian novelist and historian.] A form of perversion in which sexual pleasure is heightened when one is beaten and maltreated at the hands of the other party; the opposite of sadism. *Stedman's Med.Dict.* (11th Ed.1930). Sexual perversion, in which a member of one sex takes delight in being dominated, even to the extent of violence or cruelty, by one of the other sex. *Dunglison's Med.Dict.* (1893), quoted in Murray's (Oxford) New English Dict.

MASON AND DIXON'S LINE. The boundary line between Pennsylvania on the north and Maryland on the south, celebrated before the extinction of slavery as the line of demarcation between the slave and the free states. It was run by Charles Mason and Jeremiah Dixon, commissioners in a dispute between the Penn Proprietors and Lord Baltimore. The line was carried 244 miles from the Delaware river where it was stopped by Indians. A resurvey was made in 1849, and in 1900 a new survey was authorized by the two states.

MASS PICKETING. The use of a large number of pickets. *Lilly Dache, Inc., v. Rose*, Sup., 28 N. Y.S.2d 303, 305.

MASS STRIKE. The striking or ceasing to work by concerted action of all working classes, thus paralyzing and bringing to an end government and its functions. *People v. Gitlow*, 234 N.Y. 132, 136 N.E. 317, 320.

MASSA. In civil law, a mass; an unwrought substance, such as gold or silver, before it is wrought into cups or other articles. Dig. 47, 2, 52, 14; *Fleta*, lib. 2, c. 60, §§ 17, 22.

MASSACHISM. See Masochism.

MASSACHUSETTS RULE. As regards sending out checks through banks for collection, the "Massachusetts rule" is that each bank that receives the item acts as an agent for the depositor; but in some other states, the "New York rule" prevails, under which only the bank first receiving the item is responsible to, or is the agent of, the depositor, the other banks being the agent of the bank, in the process of the collection. *People's Gin Co. v. Canal Bank & Trust Co.*, 168 Miss. 630, 144 So. 358, 860.

MASSACHUSETTS TRUST. A business organization wherein property is conveyed to trustees and managed for benefit of holders of certificates like corporate stock certificates. *Enochs & Flowers v. Roell*, 170 Miss. 44, 154 So. 299.

MASSES. Religious ceremonials or observances of the Roman Catholic Church.

MAST. To fatten with mast (acorns, etc.). 1 Leon. 186.

MAST-SELLING. In old English law, the practice of selling the goods of dead seamen at the mast. Held void. 7 Mod. 141.

MASTER. A principal who employs another to perform service in his affairs and who controls or has right to control physical conduct of other in performance of the service. *King v. Ransburg*, 111 Ind.App. 523, 39 N.E.2d 822, 829.

One having authority; one who rules, directs, instructs, or superintends; a head or chief; an instructor; an employer. Applied to several judicial officers. See *infra*.

In Scotland, the title of the eldest son of a viscount or baron. Cent. Dict.

Special master. A master in chancery appointed to act as the representative of the court in some particular act or transaction, as, to make a sale of property under a decree. *Guaranty Trust, etc., Co. v. Delta & Pine Land Co.*, C.C.A.Miss., 104 F. 5, 43 C.C.A. 396; *Pewabic Min. Co. v. Mason*, 145 U.S. 349, 12 S.Ct. 887, 36 L.Ed. 732.

Taxing masters. Officers of the English supreme court, who examine and allow or disallow items in bills of costs.

MASTER AND SERVANT. The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labor for an agreed period. Sweet.

It usually contemplates employer's right to prescribe end and direct means and methods of doing work. *Holleman v. Taylor*, 200 N.C. 618, 158 S.E. 88, 89.

MASTER AT COMMON LAW. The title of officers of the English superior courts of common law appointed to record the proceedings of the court to which they belong; to superintend the issue of writs and the formal proceedings in an action; to receive and account for the fees charged on legal proceedings, and moneys paid into court. There are five to each court. They are appointed under St. 7 Wm. IV. and 1 Vict. c. 30, passed in 1837. *Mozley & Whitley*.

MASTER IN CHANCERY. An officer of a court of chancery who acts as an assistant to the judge or chancellor. His office is to inquire into such matters as may be referred to him by the court, examine causes, take testimony, take accounts, compute damages, etc., reporting his findings to the court in such shape that a decree may be made; also to take oaths and affidavits and acknowledg-

ments of deeds. In modern practice, many of the functions of a master are performed by clerks, commissioners, auditors, and referees, and in some jurisdictions the office has been superseded. *Kimberly v. Arms*, 129 U.S. 512, 9 S.Ct. 355, 32 L.Ed. 764; *Schuchardt v. People*, 99 Ill. 501, 39 Am.Rep. 34.

MASTER IN LUNACY. In English law, the masters in lunacy are judicial officers appointed by the lord chancellor for the purpose of conducting inquiries into the state of mind of persons alleged to be lunatics. Such inquiries usually take place before a jury. 2 Steph.Comm. 511-513.

MASTER OF A SHIP. In maritime law, the commander of a merchant vessel, who has the chief charge of her government and navigation and the command of the crew, as well as the general care and control of the vessel and cargo, as the representative and confidential agent of the owner. He is commonly called the "captain." *Martin v. Farnsworth*, 33 N.Y.Super.Ct. 260; *Hubbell v. Denison*, 20 Wend., N.Y., 181.

MASTER OF THE CROWN OFFICE. The king's coroner and attorney in the criminal department of the court of king's bench, who prosecutes at the relation of some private person or common informer, the crown being the nominal prosecutor. St. 6 & 7 Vict. c. 20; *Wharton*.

MASTER OF THE FACULTIES. In English law, an officer under the archbishop, who grants licenses and dispensations, etc.

MASTER OF THE HORSE. In English law, the third great officer of the royal household, being next to the lord steward and lord chamberlain. He has the privilege of making use of any horses, footmen, or pages belonging to the royal stables.

MASTER OF THE MINT. In English law, an officer who receives bullion for coinage, and pays for it, and superintends everything belonging to the mint. He is usually called the "warden of the mint." It is provided by St. 33 Vict. c. 10, § 14, that the chancellor of the exchequer for the time being shall be the master of the mint.

MASTER OF THE ORDNANCE. In English law, a great officer, to whose care all the royal ordnance and artillery were committed.

MASTER OF THE ROLLS. In English law, an assistant judge of the court of chancery, who holds a separate court ranking next to that of the lord chancellor, and has the keeping of the rolls and grants which pass the great seal, and the records of the chancery.

He was originally appointed only for the superintendence of the writs and records appertaining to the common-law department of the court, and is still properly the chief of the masters in chancery. 3 Steph.Comm. 417. Under the act constituting the supreme court of judicature, the master of the rolls becomes a judge of the high court of justice and *ex officio* a member of the court of appeal. The same act, however, provides for the abolition of this office, under certain conditions, when the next vacancy occurs. See 36 & 37 Vict. c. 66, §§ 5, 31, 32.

MASTERS

MASTERS OF THE SUPREME COURT. In English law, officials deriving their title from Jud. (Officers') Act 1879, and being, or filling the places of, the sixteen masters of the common-law courts, the queen's coroner and attorney, the master of the crown office, the two record and writ clerks, and the three associates. Wharton.

MASTER OF THE TEMPLE. The chief ecclesiastical functionary of the Temple Church.

MASTER'S REPORT. The formal report or statement made by a master in chancery of his decision on any question referred to him, or of any facts or action he has been directed to ascertain or take.

MASURA. In old records, a decayed house; a wall; the ruins of a building; a certain quantity of land about four oxgangs.

MATE. The officer second in command on a merchant vessel. *Ely v. Peck*, 7 Conn. 242; *Millaudon v. Martin*, 6 Rob., La., 539.

MATELOTAGE. In French law, the hire of a ship or boat.

Seamanship; seaman's wages, pay.

MATER-FAMILIAS. Lat. In civil law, the mother or mistress of a family. A chaste woman, married or single. Calvin.

MATERIA. Lat. In Civil law, materials; as distinguished from *species*, or the *form* given by labor and skill. Dig. 41, 1, 7, 7-12; *Fleta lib. 3, c. 2, § 14*.

Materials (wood) for building, as distinguished from "*ignum*." Dig. 32, 55, pr.

In English law, matter; substance; subject-matter. 3 Bl.Comm. 322.

MATERIAL. Important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form.

Representation relating to matter which is so substantial and important as to influence party to whom made is "material." *McGuire v. Gunn*, 133 Kan. 422, 300 P. 654, 656. Any misrepresentation bringing about issuance of policy on reduced premium rate is "material." *Brooks Transp. Co. v. Merchants' Mut. Casualty Co.*, 6 W.W.Harr. 40, 171 A. 207.

MATERIAL ALLEGATION. An allegation is said to be material when it forms a substantive part of the case presented by the pleading. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient. *Lusk v. Perkins*, 48 Ark. 247, 2 S.W. 847; *Wheeler v. Hurley*, 49 Nev. 70, 236 P. 559, 560. A material alteration in any written instrument is one which changes its tenor, or its legal meaning and effect; one which causes it to speak a language different in effect from that which it originally spoke. *White v. Harris*, 69 S.C. 65, 48 S.E. 41, 104 Am.St.Rep. 791; *Foxworthy v. Colby*, 64 Neb. 216, 89 N.W. 800, 62 L.R.A. 393.

MATERIAL ALTERATION. Alteration of instrument is "material" if legal effect thereof is changed notwithstanding triviality of change or whether it may be beneficial or detrimental to party to be charged on contract. *Cook v. Parks*, 46 Ga.App. 749, 169 S.E. 208, 210.

MATERIAL EVIDENCE. Such as is relevant and goes to the substantial matters in dispute, or has a legitimate and effective influence or bearing on the decision of the case. *Porter v. Valentine*, 18 Misc. 213, 41 N.Y.S. 507; *Connecticut Fire Ins. Co. of Hartford, Conn., v. George*, 52 Okl. 432, 153 P. 116, 119. "Materiality," with reference to evidence does not have the same signification as "relevancy." *Pangburn v. State*, Tex.Cr.App., 56 S.W. 72, 73.

MATERIAL FACT. (In contracts.) One which constitutes substantially the consideration of the contract, or without which it would not have been made. *Lyons v. Stephens*, 45 Ga. 143.

(In pleading and practice.) One which is essential to the case, defense, application, etc., and without which it could not be supported. *Sandheger v. Hosey*, 26 W.Va. 223; *Davidson v. Hackett*, 49 Wis. 186, 5 N.W. 459; *Hansen v. Sandvik*, 128 Wash. 60, 222 P. 205, 207.

One which tends to establish any of issues raised. *Sherwood Bros. v. Yellow Cab Co. of Philadelphia*, 283 Pa. 488, 129 A. 563, 564. The "material facts" of an issue of fact are such as are necessary to determine the issue. *Woolman Const. Co. v. Sampson*, 219 Mich. 125, 188 N.W. 420, 422.

(In insurance.) A fact which, if communicated to the agent or insurer, would induce him either to decline the insurance altogether, or not accept it unless a higher premium is paid. *Berry v. Equitable Fire & Marine Ins. Co.*, Mo.App., 263 S.W. 884, 886; *Franklin Life Ins. Co. v. Dosssett*, Tex.Civ.App., 265 S.W. 259, 262. One which necessarily has some bearing on the subject-matter. *Wittels Loan & Mercantile Co. v. American Cent. Ins. Co.*, Mo. App., 273 S.W. 1084, 1086. A fact which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium; any fact the knowledge or ignorance of which would naturally influence the insurer in making or refusing the contract, or in estimating the degree and character of the risk, or in fixing the rate. *Boggs v. Insurance Co.*, 30 Mo. 68; *Clark v. Insurance Co.*, 40 N.H. 338, 77 Am.Dec. 721; *Murphy v. Insurance Co.*, 205 Pa. 444, 55 A. 19; *Penn Mut. L. Ins. Co. v. Mechanics' Sav. Bank*, 19 C.C.A. 286, 72 F. 413, 38 L.R.A. 33.

MATERIALMAN. A person who has furnished materials used in the construction or repair of a building, structure, or vessel. *Hihn-Hammond Lumber Co. v. Elsom*, 171 Cal. 570, 154 P. 12, 13, Ann.Cas.1917C, 798; *Royal Indemnity Co. v. Day & Maddock Co.*, 114 Ohio St. 58, 150 N.E. 426, 427, 44 A.L.R. 374.

MATERIALS. The substance or matter of which anything is made. *Mutual Lumber Co. v. Shepard*, Tex.Civ.App., 173 S.W.2d 494, 498. Matter furnished for the erection of a house, ship, or other structure which enters into and becomes a part thereof. *Moyer v. Pennsylvania Slate Co.*, 71 Pa. 293; *Standard Oil Co. v. Detroit Fidelity & Surety Co.*, 24 Ohio App. 237, 157 N.E. 418, 420; *Royal Indemnity Co. v. Day & Maddock Co.*, 114 Ohio St. 58, 150 N.E. 426, 427, 44 A.L.R. 374; *Fay v. Bankers' Surety Co.*, 125 Minn. 211, 146 N.W. 359, 360, Ann.Cas.1915C, 688.

MATERNA MATERNIS. Lat. A maxim of the French law, signifying that property of a decedent acquired by him through his mother descends to the relations on the mother's side.

MATERNAL. That which belongs to, or comes from, the mother; as maternal authority, maternal relation, maternal estate, maternal line.

MATERNAL LINE. A line of descent or relationship between two persons which is traced through the mother of the younger.

MATERNAL PROPERTY. That which comes from the mother of the party, and other ascendants of the maternal stock. Dom.Liv.Prél. t. 3, s. 2, no. 12.

MATERNITY. The character, relation, state, or condition of a mother.

MATERTERA. Lat. In civil law, a maternal aunt; a mother's sister. Inst. 3, 6, 1; Bract. fol. 68b.

MATERTERA MAGNA. A great aunt; a grandmother's sister, (*avivæ soror.*) Dig. 38, 10, 10, 15.

MATERTERA MAJOR. A greater aunt; a great-grandmother's sister, (*proavivæ soror.*;) a father's or mother's great-aunt, (*patris vel matris matertera magna.*) Dig. 38, 10, 10, 16.

MATERTERA MAXIMA. A greatest aunt; a great-great-grandmother's sister, (*abavivæ soror.*;) a father's or mother's greater aunt, (*patris vel matris matertera major.*) Dig. 38, 10, 10, 17.

MATHEMATICAL EVIDENCE. Demonstrative evidence; such as establishes its conclusions with absolute necessity and certainty. It is used in contradistinction to *moral* evidence.

MATIMA. A godmother.

MATRICIDE. The murder of a mother; or one who has slain his mother.

MATRICULA. In civil and old English law, a register of the admission of officers and persons entered into any body or society, whereof a list was made. Hence those who are admitted to a college or university are said to be "matriculated." Also a kind of almshouse, which had revenues appropriated to it, and was usually built near the church, whence the name was given to the church itself. Wharton.

MATRICULATE. To enroll; to enter in a register; specifically, to enter or admit to membership in a body or society, particularly in a college or university, by enrolling the name in a register; to go through the process of admission to membership, as by examination and enrollment, in a society or college. State v. Regents of University System of Georgia, 179 Ga. 210, 175 S.E. 567.

MATRIMONIA DEBENT ESSE LIBERA. Marriages ought to be free. A maxim of the civil law. 2 Kent, Comm. 102.

MATRIMONIAL. Of or pertaining to matrimony or the estate of marriage.

MATRIMONIAL ACTION. An action seeking a determination of the marital status of the parties and brought or defended in an endeavor to sustain or prevent the destruction of such marital status. Kraunz v. Kraunz, 183 Misc. 724, 51 N.Y.S. 2d 433, 436.

MATRIMONIAL CAUSES. In English ecclesiastical law, causes of action or injuries respecting the rights of marriage. One of the three divisions of causes or injuries cognizable by the ecclesiastical courts, comprising suits for jactitation of marriage, and for restitution of conjugal rights, divorces, and suits for alimony. 3 Bl.Comm. 92-94; 3 Steph.Comm. 712-714.

MATRIMONIAL COHABITATION. The living together of a man and woman ostensibly as husband and wife. Cox v. State, 117 Ala. 103, 23 So. 806, 41 L.R.A. 760. Also the living together of those who are legally husband and wife, the term carrying with it, in this sense, an implication of mutual rights and duties as to sharing the same habitation. Forster v. Forster, 1 Hagg.Consist. 144; U. S. v. Cannon, 4 Utah, 122, 7 P. 369.

MATRIMONIAL DOMICILE. Place where parties live together as husband and wife either actually or constructively. Ex parte Allan, 220 Ala. 482, 125 So. 612, 614.

MATRIMONIAL RES. The marriage state. Usen v. Usen, 136 Me. 480, 13 A.2d 738, 749, 128 A.L.R. 1449.

MATRIMONIUM. Lat. In Roman law, a legal marriage, contracted in strict accordance with the forms of the older Roman law, *i. e.*, either with the *farreum*, the *coemptio*, or by *usus*.

This was allowed only to Roman citizens and to those neighboring peoples to whom the right of *connubium* had been conceded. The effect of such a marriage was to bring the wife into the *manus*, or marital power, of the husband, and to create the *patria potestas* over the children.

MATRIMONIUM SUBSEQUENS TOLLIT PEC-CATUM PRÆCEDENS. Subsequent marriage cures preceding criminality.

MATRIMONY. Marriage, (*q. v.*;) in the sense of the relation or *status*, not of the ceremony.

MATRIX. In civil law, the protocol or first draft of a legal instrument, from which all copies must be taken. Downing v. Diaz, 80 Tex. 436, 16 S.W. 53.

MATRIX ECCLESIA. Lat. A mother church. This term was anciently applied to a cathedral, in relation to the other churches in the same see, or to a parochial church, in relation to the chapels or minor churches attached to it or depending on it. Blount.

MATRON. A married woman; an elderly woman. The female superintendent of an establishment or institution, such as a hospital, an orphan asylum, etc., is often so called. Fisher v. Gardner, 183 Mich. 660, 150 N.W. 358.

MATRONS

MATRONS, JURY OF. In common-law practice, a jury of twelve matrons or discreet women, impaneled upon a writ *de ventre inspiciendo*, or where a female prisoner, being under sentence of death, pleaded her pregnancy as a ground for staying execution. In the latter case, such jury inquired into the truth of the plea.

MATTER. Substantial facts forming basis of claim or defense; facts material to issue; substance as distinguished from form; transaction, event, occurrence; subject-matter of controversy; special proceeding. *Parker v. Bowen*, 98 Vt. 115, 126 A. 522, 523; *Bishop v. Shurly*, 237 Mich. 76, 211 N.W. 75, 78; *Rubin v. Sheldon*, 130 Misc. 588, 224 N.Y.S. 340, 341; *People v. Anderson*, 62 Cal.App. 222, 216 P. 401, 402; *Franklin Buggy Co. v. Carter*, 21 Ga.App. 576, 94 S.E. 820.

MATTER IN CONTROVERSY, or IN DISPUTE. Subject of litigation, matter on which action is brought and issue is joined and in relation to which, if issue be one of fact, testimony is taken. *Golden v. Sixth Judicial Dist. Ct. in and for Pershing County*, 57 Nev. 114, 58 P.2d 1042, 1044. Rights which plaintiffs assert and seek to have protected and enforced. *Gavica v. Donagh*, C.C.A.Or., 93 F.2d 173, 175.

MATTER IN DEED. Such matter as may be proved or established by a deed or specialty. Matter of fact, in contradistinction to matter of law. Co.Litt. 320; Steph.Pl. 197.

MATTER IN ISSUE. That matter on which plaintiff proceeds by his action, and which defendant controverts by his pleadings. *MacKenzie v. Union Guardian Trust Co.*, 262 Mich. 563, 247 N.W. 914. Not including facts offered in evidence to establish the matters in issue. *King v. Chase*, 15 N.H. 9, 41 Am.Dec. 675. That ultimate fact or state of facts in dispute upon which the verdict or finding is predicated. *Clark v. Arizona Mut. Savings & Loan Ass'n*, D.C.Ariz., 217 F. 640, 644. See 2 Black, Judgm. § 614, and cases cited.

MATTER IN LEY NE SERRA MISE IN BOUTCHE DEL JURORS. Jenk.Cent. 180. Matter of law shall not be put into the mouth of the jurors.

MATTER IN PAIS. Matter of fact that is not in writing; thus distinguished from matter in deed and matter of record; matter that must be proved by parol evidence.

MATTER OF COURSE. Anything done or taken in the course of routine or usual procedure, which is permissible and valid without being specially applied for and allowed.

MATTER OF FACT. That which is to be ascertained by the senses, or by the testimony of witnesses describing what they have perceived. Distinguished from matter of law and matter of opinion. *Moses v. United States*, C.C.A.Vt., 221 F. 863, 871.

MATTER OF FORM. See Form.

MATTER OF LAW. Whatever is to be ascertained or decided by the application of statutory rules

or the principles and determinations of the law, as distinguished from the investigation of particular facts, is called "matter of law."

MATTER OF RECORD. Any judicial matter or proceeding entered on the records of a court, and to be proved by the production of such record. It differs from matter in deed, which consists of facts which may be proved by specialty.

MATTER OF RECORD, ESTOPPEL BY. See Record, Estoppel By.

MATTER OF SUBSTANCE. That which goes to the merits. The opposite of matter of form.

MATTERS OF SUBSISTENCE FOR MAN. This phrase comprehends all articles or things, whether animal or vegetable, living or dead, which are used for food, and whether they are consumed in the form in which they are bought from the producer or are only consumed after undergoing a process of preparation, which is greater or less, according to the character of the article. *Sledd v. Com.*, 19 Grat., Va., 813.

MATURE; MATURED. A claim is "matured" for receivership purposes if it has become absolutely due without contingency, although not necessarily liquidated nor presently payable. In *re L. P. Hollander Co.*, 301 Mass. 278, 16 N.E.2d 35, 36.

MATURIORA SUNT VOTA MULIERUM QUAM VIRORUM. 6 Coke, 71. The desires of women are more mature than those of men; *i. e.*, women arrive at maturity earlier than men.

MATURITY. Termination of period a note or other obligation has to run. *Pacific States Savings & Loan Co. v. Hollywood Knickerbocker*, 11 Cal.App.2d 56, 52 P.2d 1014, 1017. In mercantile law, the time when a bill of exchange or promissory note becomes due. *Story, Bills*, § 329. *Gilbert v. Sprague*, 88 Ill.App. 508; *Wheless v. Williams*, 62 Miss. 371, 52 Am.Rep. 190.

MAUGRE. L. Fr. In spite of; against the will of. Litt. § 672.

MAUNDY THURSDAY. The day preceding Good Friday, on which princes gave alms.

See Mandato, Panes De.

MAXIM. "Maxims" are but attempted general statements of rules of law and are law only to extent of application in adjudicated cases. *Swetland v. Curtiss Airports Corporation*, D.C.Ohio, 41 F. 2d 929, 936. An established principle or proposition. A principle of law universally admitted, as being a correct statement of the law, or as agreeable to reason.

Coke defines a maxim to be "conclusion of reason," and says that it is so called "*quia maxima ejus dignitas et certissima auctoritas, et quod maxime omnibus probetur.*" Co.Litt. 11a. He says in another place: "A maxime is a proposition to be of all men confessed and granted without prooffe, argument, or discourse." Id. 67a.

The maxims of the law, in Latin, French, and English, will be found distributed through this book in their proper alphabetical order.

MAXIME PACI SUNT CONTRARIA VIS ET INJURIA. The greatest enemies to peace are force and wrong. Co.Litt. 161b.

MAXIMUM. The highest or greatest amount, quality, value, or degree. Moweaqua Coal Corporation v. Industrial Commission, 360 Ill. 194, 195 N.E. 607.

MAXIMUS ERRORIS POPULUS MAGISTER. Bacon. The people is the greatest master of error.

MAY. An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency. U. S. v. Lexington Mill & E. Co., 232 U.S. 399, 34 S.Ct. 337, 340, 58 L.Ed. 658, L.R.A. 1915B, 774; Carson v. Turrish, 140 Minn. 445, 168 N.W. 349, 352, L.R.A.1918F, 154. Regardless of the instrument, however, whether constitution, statute, deed, contract or whatnot, courts not infrequently construe "may" as "shall" or "must" to the end that justice may not be the slave of grammar. Minor v. Mechanics' Bank, 1 Pet. 46, 64, 7 L.Ed. 47; Appeal of Burnap, 94 Conn. 286, 108 A. 802, 804; Stapler v. El Dora Oil Co., 27 Cal.App. 516, 150 P. 643, 645.

MAYHEM. Unlawfully and violently depriving another of the use of such of his members as may render him the less able in fighting, either to defend himself, or to annoy his adversary. 4 Bl.Comm. 205. State v. Deso, 110 Vt. 1, 1 A.2d 710, 714.

Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. Pen.Code Cal. § 203.

MAYHEMAVIT. Maimed. This was a term of art which could not be supplied in pleading by any other word, as *mutilavit*, *truncavit*, etc. 3 Thom. Co. Litt. 548; Com. v. Newell, 7 Mass. 247.

MAYN. L. Fr. A hand; handwriting. Britt. c. 28.

MAYNOVER. L. Fr. A work of the hand; a thing produced by manual labor. Yearb. M. 4 Edw. III. 38.

MAYOR. The executive head of a municipal corporation; the governor or chief magistrate of a city. Waldo v. Wallace, 12 Ind. 577; People v. New York, 25 Wend., N.Y., 36.

MAYOR'S COURT. A court established in some cities, in which the mayor sits with the powers of a police judge or committing magistrate in respect to offenses committed within the city, and sometimes with civil jurisdiction in small causes, or other special statutory powers.

MAYOR'S COURT OF LONDON. An inferior court having jurisdiction in civil cases where the whole cause of action arises within the city of London.

MAYORALTY. The office or dignity of a mayor.

MAYORAZGO. In Spanish law, the right to the enjoyment of certain aggregate property, left with the condition thereon imposed that they are to pass in their integrity, perpetually, successively to the eldest son. Schm. Civil Law, 62.

MAYORESS. The wife of a mayor.

MEAD. Ground somewhat watery, not plowed, but covered with grass and flowers. Enc. Lond.

MEADOW. A tract of low or level land producing grass which is mown for hay. Webster.

A tract which lies above the shore, and is overflowed by spring and extraordinary tides only, and yields grasses which are good for hay. Church v. Meeker, 34 Conn. 429. State v. Crook, 132 N.C. 1053, 44 S.E. 32.

MEAL-RENT. A rent formerly paid in meal.

MEAN, or MESNE. A middle between two extremes, whether applied to persons, things, or time.

Average, having an intermediate value between two extremes or between the several successive values of variable quantity during one cycle of variation. Western & Southern Life Ins. Co. v. Huwe, C.C.A.Ohio, 116 F.2d 1008, 1009.

MEAN LOW TIDE. The average of all low tides both low and lower low over a fixed period of time. State v. Edwards, 188 Wash. 467, 62 P.2d 1094, 1095.

As applied to Puget Sound, the "Harmonic plane" is the zero adopted by the United States Coast and Geodetic Survey of the Department of Commerce upon which its tidal tables, charts, and maps are based. It is an arbitrary plane, and is the lowest plane of the tide in the Sound recognized by that department, being approximately two feet lower than mean lower low tide, and approximately four feet lower than mean low tide. State v. Scott, 89 Wash. 63, 154 P. 165, 168.

MEAN LOWER LOW TIDE. The average of lower low tides over a fixed period of time. State v. Edwards, 188 Wash. 467, 62 P.2d 1094, 1095.

MEAN RESERVE. The mean of the reserve at the beginning of the policy year, after the premium for such year is paid, and the terminal reserve at end of such policy year. Kentucky Home Life Ins. Co. v. Leisman, 268 Ky. 825, 105 S.W.2d 1046, 1047.

MEANDER. To meander means to follow a winding or flexuous course; and when it is said, in a description of land, "thence with the meander of the river," it must mean a meandered line,—a line which follows the sinuosities of the river,—or, in other words, that the river is the boundary between the points indicated. Turner v. Parker, 14 Or. 341, 12 P. 495; Schurmeier v. St. Paul & P. R. Co., 10 Minn. 100, Gil. 75, 88 Am.Dec. 59.

MEANDER

This term is used in some jurisdictions with the meaning of surveying and mapping a stream according to its meanderings, or windings and turnings. See *Jones v. Pettibone*, 2 Wis. 317.

MEANDER LINES. Lines run in surveying particular portions of the public lands which border on navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, and shows that the watercourse, and not the meander line as naturally run on the ground, is the boundary. *St. Paul & P. R. Co. v. Schurmeier*, 7 Wall. 286, 19 L.Ed. 74; *Niles v. Cedar Point Club*, 175 U.S. 300, 20 S.Ct. 124, 44 L.Ed. 171; *Producers' Oil Co. v. Hanszen*, 61 So. 754, 132 La. 691.

MEANING. That which is, or is intended to be, signified or denoted by act or language; significance; sense; import. Webster, Dict.

Secondary Meaning. While generic names, geographical names, and names composed of words which are merely descriptive are incapable of exclusive appropriation, words or names, which have a primary meaning of their own, such as words descriptive of the goods, service, or place where they are made, or the name of the maker, may nevertheless, by long use in connection with the business of the particular trade, come to be understood by the public as designating the goods, service, or business of a particular trader. This is what is known as the doctrine of "secondary meaning"; and is the origin of the law of unfair competition, as distinguished from technical trademarks or trade-names. *Saunders System Atlanta Co. v. Drive It Yourself Co.*, 158 Ga. 1, 123 S.E. 132, 135; *Richmond Remedies Co. v. Dr. Miles Medical Co.*, C.C.A.Mo., 16 F.2d 598, 602.

MEANS. That through which, or by the help of which, an end is attained; something tending to an object desired; intermediate agency or measure; necessary condition or co-agent; instrument. *Pope v. Business Men's Assur. Co. of America*, 235 Mo.App. 263, 131 S.W.2d 887, 892; Under insurance policy, equivalent to cause. *Pope v. Business Men's Assur. Co. of America*, 235 Mo.App. 263, 131 S.W.2d 887, 892.

Enactments and initiative and referendum measures. *State ex rel. Bylander v. Hoss*, 143 Or. 383, 22 P.2d 883.

Resources; available property; money or property, as an available instrumentality for effecting a purpose, furnishing a livelihood, paying a debt, or the like.

MEASURE. That by which extent or dimension is ascertained, either length, breadth, thickness, capacity, or amount. Webster. The rule by which anything is adjusted or proportioned.

MEASURE OF DAMAGES. The rule, or rather the system of rules, governing the adjustment or apportionment of damages as a compensation for injuries in actions at law.

MEASURE OF VALUE. In the ordinary sense of the word, "measure" would mean something by

comparison with which we may ascertain what is the value of anything. When we consider, further, that value itself is relative, and that two things are necessary to constitute it, independently of the third thing, which is to measure it, we may define a "measure of value" to be something by comparing with which any two other things we may infer their value in relation to one another. 2 Mill, Pol. Econ. 101.

MEASURER, or METER. An officer in the city of London, who measured woolen clothes, coals, etc.

MEASURING MONEY. In old English law, a duty which some persons exacted, by letters patent, for every piece of cloth made, besides alnage. Now abolished.

MEAT. Specifically, animal flesh, though in one sense, the word includes other foods. *Gardner v. State*, 183 Ind. 101, 108 N.E. 230. Food in general; anything eaten for nourishment, either by man or beast; especially, solid food; hence, the edible part of anything. Webster, Dict.

MECHANIC. A person skilled in the practical use of tools. *Warner Memorial University v. Ritenour*, Tex.Civ.App., 56 S.W.2d 236, 237. A workman employed in shaping and uniting materials, such as wood, metal, etc., into some kind of structure, machine, or other object, requiring the use of tools. *Story v. Walker*, 11 Lea, Tenn., 517, 47 Am.Rep. 305; In re *Osborn*, D.C.N.Y., 104 F. 781; *Baker v. Maxwell*, 183 Iowa 1192, 168 N.W. 160, 2 A.L.R. 814.

MECHANIC'S LIEN. A claim created by law for the purpose of securing priority of payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure, and as such attaches to the land as well as buildings and improvements erected thereon. In re *Louisville Daily News & Enquirer*, D.C.Ky., 20 F.Supp. 465, 466.

MECHANICAL. Having relation to, or produced or accomplished by, the use of mechanism or machinery. Used chiefly in patent law. Of, pertaining to, or concerned with, manual labor; engaged in manual labor; of the artisan class; of, pertaining to, or concerned with, machinery or mechanism; made or formed by a machine or with tools. *State v. Crounse*, 105 Neb. 672, 181 N.W. 562, 563, 16 A.L.R. 533.

MECHANICAL ARM. In the artificial limb trade. An arm provided with fingers which can be moved by some mechanical contrivance, together with mechanism for rotating the wrist, simulating, as nearly as possible the motion of the human wrist, hand, and fingers. *Carnes Artificial Limb Co. v. Dilworth Arm Co.*, D.C.Conn., 273 F. 838, 839.

MECHANICAL EQUIVALENT. If two devices do the same work in substantially the same way, and accomplish substantially the same result, they are "mechanical equivalents." *Wire Tie Machinery Co. v. Pacific Box Corporation*, C.C.A.Cal., 107 F.2d 54, 56. A device which may be substituted or

adopted, instead of another, by any person skilled in the particular art from his knowledge of the art, and which is competent to perform the same functions or produce the same result, without introducing an original idea or changing the general idea of means. *Smith v. Marshall*, 22 F.Cas. 595; *Alaska Packers' Ass'n v. Letson*, C.C.Wash., 119 F. 611. The test of equivalency is whether the substituted element operates in substantially the same way to produce substantially the same result. *Palmer v. Mach. Co.*, C.C.N.Y., 186 F. 496.

MECHANICAL MOVEMENT. A mechanism transmitting power or motion from a driving part to a part to be driven; a combination and arrangement of mechanical parts intended for the translation or transformation of motion. *Campbell Printing Press Co. v. Miehle Printing Press Co.*, 42 C.C.A. 235, 102 F. 159.

MECHANICAL PROCESS. See *Process*.

MECHANICAL SKILL. As distinguished from invention or inventive capacity, this term means such skill, intelligence, ingenuity, or constructive ability in the adaptation of means to ends as would be possessed and exhibited by an ordinarily clever mechanic in the practice of his particular art or trade. *Hollister v. Benedict & B. Mfg. Co.*, 113 U.S. 59, 5 S.Ct. 717, 28 L.Ed. 901; *Johnson Co. v. Pennsylvania Steel Co.*, C.C.Pa., 67 F. 942.

MEDERIA. In old records, a house or place where metheglin, or mead, was made.

MEDFEE. In old English law, a bribe or reward; a compensation given in exchange, where the things exchanged were not of equal value. *Cowell*.

MEDIA ANNATA. In Spanish law, half-yearly profits of land. *McMullen v. Hodge*, 5 Tex. 34, 79.

MEDIA CONCLUDENDI. The steps of an argument. Thus "a judgment is conclusive as to all the *media concludendi*." *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039. The theory or basis of facts upon which a legal conclusion is reached, per *Holmes, C. J.*, in *Hoseason v. Keegen*, 178 Mass. 250, 59 N.E. 627. Grounds for asserting the right known when the suit was brought. *Mendez v. Baetjer*, C.C.A.Puerto Rico, 106 F.2d 163, 166.

MEDIA NOX. In old English law, midnight. *Ad mediam noctem*, at midnight. *Fleta*, lib. 5, c. 5, § 31.

MEDÆ ET INFIRMÆ MANUS HOMINES. Men of a middle and base condition. *Blount*.

MEDIANUS HOMO. A man of middle fortune.

MEDIATE DATUM. A fact from whose existence may be rationally inferred the existence of ultimate facts. *The Evergreens v. Nunan*, C.C.A. 2, 141 F.2d 927, 928.

MEDIATE DESCENT. See *Descent*.

MEDIATE POWERS. Those incident to primary powers given by a principal to his agent.

For example, the general authority given to collect, receive, and pay debts due by or to the principal is a primary power. In order to accomplish this, it is frequently required to settle accounts, adjust disputed claims, resist those which are unjust, and answer and defend suits. These subordinate powers are sometimes called "mediate powers." (*Story*, Ag. § 58.

MEDIATE TESTIMONY. Secondary evidence (*q. v.*).

MEDIATION. Intervention; interposition; the act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute. In international law and diplomacy, the word denotes the friendly interference of a state in the controversies of others, for the purpose, by its influence and by adjusting their difficulties, of keeping the peace in the family of nations.

MEDIATOR. One who interposes between parties at variance for purpose of reconciling them. *People v. Lindsey*, 86 Colo. 458, 283 P. 539, 544.

MEDIATORS OF QUESTIONS. In English law, six persons authorized by statute, (27 Edw. III. St. 2, c. 24,) who, upon any question arising among merchants relating to unmerchandise wool, or undue packing, etc., might, before the mayor and officers of the staple upon their oath certify and settle the same; to whose determination therein the parties concerned were to submit. *Cowell*.

MEDICAL. Pertaining, relating, or belonging to the study and practice of medicine, or the science and art of the investigation, prevention, cure, and alleviation of disease.

MEDICAL EVIDENCE. Evidence furnished by medical men, testifying in their professional capacity as experts, or by standard treatises on medicine or surgery.

MEDICAL JURISPRUDENCE. The science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice. Otherwise called "forensic medicine," (*q. v.*). A sort of mixed science, which may be considered as common ground to the practitioners both of law and physics. 1 *Steph.Comm.* 8.

MEDICAL SERVICES. Include all services rendered to deceased because of illness, upon advice of his physician, which were reasonably necessary for his care and comfort and proper treatment by his physicians. *Park View Hospital Ass'n v. Peoples Bank & Trust Co.*, 211 N.C. 244, 189 S.E. 766, 769.

MEDICINE. The science and art dealing with the prevention, cure and alleviation of diseases; in a narrower sense that part of the science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician. *Burke v. Kansas State Osteopathic Ass'n*, C.C.A.Kan., 111 F.2d 250, 253. The term is not limited to substances supposed to

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possess curative or remedial properties. *People v. Kabana*, 321 Ill.App. 158, 52 N.E.2d 320.

Forensic Medicine. Another name for medical jurisprudence. See Forensic Medicine.

Schools of Medicine. See Osteopathy; Psychotherapy.

MEDICINE-CHEST. A box containing an assortment of medicines, required by statute to be carried by all vessels above a certain tonnage.

MEDICO-LEGAL. Relating to the law concerning medical questions.

MEDIETAS LINGUÆ. In old practice, moiety of tongue; half-tongue. Applied to a jury impaneled in a cause consisting the one half of natives, and the other half of foreigners. See *De Medietate Linguae*.

MEDIO ACQUIETANDO. A judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him. *Reg. Jur.* 129.

MEDITATIO FUGÆ. In Scotch law, contemplation of flight; intention to abscond. 2 *Kames*, Eq. 14, 15.

MEDITERRANEAN PASSPORT. A pass issued by the admiralty of Great Britain under various treaties with the Barbary States in the eighteenth century. They were granted to British built ships and were respected by the Barbary pirates. See 2 *Halleck*, Int. L., *Baker's* ed. 100. They were also issued by the United States. The term is still retained in R. S. § 4191, 46 U.S.C.A. § 62.

MEDIUM TEMPUS. In old English law, meantime; mesne profits. *Cowell*.

MEDLETUM. In old English law, a mixing together; a medley or *mêlée*; an affray or sudden encounter. An offense suddenly committed in an affray. The English word "medley" is preserved in the term "chance-medley." An intermeddling, without violence, in any matter of business. *Spelman*.

MEDLEY. An affray; a sudden or casual fighting; a hand to hand battle; a *mêlée*. See *Chance-Medley*; *Chaud-Medley*.

MEDSCEAT. In old English law, a bribe; hush money.

MEDSYPP. A harvest supper or entertainment given to laborers at harvest-home. *Cowell*.

MEETING. A coming together of persons; an assembly. Particularly, in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest. *People v. Mintz*, 106 Cal.App. 725, 290 P. 93, 100.

Called meeting. In the law of corporations, a meeting not held at a time specially appointed for it by the charter or by-laws, but assembled in pursuance of a "call" or summons proceeding from

some officer, committee or group of stockholders, or other persons having authority in that behalf.

Family meeting. See *Family*.

General meeting. A meeting of all the stockholders of a corporation, all the creditors of a bankrupt, etc. In *re Bonnafe*, 23 N.Y. 177; *Mutual F. Ins. Co. v. Farquhar*, 86 Md. 668, 39 A. 527.

Regular meeting. In the law of public and private corporations, a meeting (of directors, trustees, stockholders, etc.) held at the time and place appointed for it by statute, by-law, charter or other positive direction. *State v. Wilkesville Tp.*, 20 Ohio St. 293.

Special meeting. In the law of corporations. A meeting called for special purposes; one limited to particular business; a meeting for those purposes of which the parties have had special notice. *Mutual F. Ins. Co. v. Farquhar*, 86 Md. 668, 39 A. 527; *Warren v. Mower*, 11 Vt. 385.

Stated meeting. A meeting held at a stated or duly appointed time and place; a regular meeting, (*q. v.*).

Town meeting. See *Town*.

MEETING OF MINDS. The "meeting of the minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which from all the circumstances should be known. *McClintock v. Skelly Oil Co.*, 232 Mo.App. 1204, 114 S.W.2d 181, 189.

MEGALOMANIA. See *Insanity*.

MEGBOTE. In Saxon law, a recompense for the murder of a relation.

MEIGNE, or MAISNADER. In old English law, a family.

MEILICKE SYSTEM. Consists of computing fractions on the basis of a 30-day month, and does not charge interest for the 31st day of any month. *Swistak v. Personal Finance Co.*, 175 Misc. 791, 24 N.Y.S.2d 80, 81.

MEINDRE AGE. L. Fr. Minority; lesser age. *Kelham*.

MEINY, MEINE, or MEINIE. In old English law, a household; staff or suite of attendants; a retinue; particularly, the royal household.

MEJORADO. In Spanish law, preferred; advanced. *White*, New Recop. l. 3, tit. 10, c. 1, § 4.

MELANCHOLIA. In medical jurisprudence, a kind of mental unsoundness characterized by extreme depression of spirits, ill-grounded fears, delusions, and brooding over one particular subject or train of ideas. *Webster*. See *Insanity*.

MELDFEOR. In Saxon law, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the "promoter's [*i. e.*, informer's] fee." Wharton.

MELIOR. Lat. Better; the better. *Melior res*, the better (best) thing or chattel. Bract. fol. 60.

MELIOR EST CAUSA POSSIDENTIS. The cause of the possessor is preferable. Dig. 50. 17. 126. 2.

MELIOR EST CONDITIO DEFENDENTIS. The condition of the party in possession is the better one, *i. e.*, where the right of the parties is equal. Broom, Max. 715, 719.

MELIOR EST CONDITIO POSSIDENTIS, ET REI QUAM ACTORIS. The condition of the possessor is the better, and the condition of the defendant is better than that of the plaintiff. 4 Inst. 180; Broom, Max. 714, 719.

MELIOR EST CONDITIO POSSIDENTIS UBI NEUTER JUS HABET. Jenk. Cent. 118. The condition of the possessor is the better where neither of the two has a right.

MELIOR EST JUSTITIA VERE PRÆVENIENS QUAM SEVERE PUNIENS. That justice which absolutely prevents [a crime] is better than that which severely punishes it. 3 Inst. Epil.

MELIORATIONS. In Scotch law, improvements of an estate, other than mere repairs; betterments. 1 Bell, Comm. 73. Occasionally used in English and American law in the sense of valuable and lasting improvements or betterments. See *Green v. Biddle*, 8 Wheat. 84, 5 L.Ed. 547.

MELIOREM CONDITIONEM ECCLESIE SUÆ FACERE POTEST PRÆLATUS, DETERIOREM NEQUAQUAM. Co. Litt. 101. A bishop can make the condition of his own church better, but by no means worse.

MELIOREM CONDITIONEM SUAM FACERE POTEST MINOR, DETERIOREM NEQUAQUAM. Co. Litt. 337. A minor can make his own condition better, but by no means worse.

MELIUS EST IN TEMPORE OCCURRERE, QUAM POST CAUSAM VULNERATUM REMEDIUM QUÆRERE. 2 Inst. 299. It is better to meet a thing in time than after an injury inflicted to seek a remedy.

MELIUS EST JUS DEFICIENS QUAM JUS INCERTUM. Law that is deficient is better than law that is uncertain. Lofft, 395.

MELIUS EST OMNIA MALA PATI QUAM MALO CONSENTIRE. 3 Inst. 23. It is better to suffer every ill than to consent to ill.

MELIUS EST PETERE FONTES QUAM SECTARI RIVULOS. It is better to go to the fountain head than to follow little streamlets.

MELIUS EST RECURRERE QUAM MALE CURRERE. It is better to run back than to run badly; it is better to retrace one's steps than to proceed improperly. 4 Inst. 176.

MELIUS INQUIRENDUM. To be better inquired into.

In old English law, the name of a writ commanding a further inquiry respecting a matter; as, after an imperfect inquisition in proceedings in outlawry, to have a new inquest as to the value of lands.

MEMBER. One of the persons constituting a family, *Grant v. Louisiana Sawmill Co.*, 6 La.App. 673, 675; a partnership, association, corporation, guild, etc. In re Sixth Ward Building & Loan Ass'n of Newark, 134 N.J.Eq. 98, 34 A.2d 292, 294.

One of the persons constituting a court, a legislative assembly, etc. In re Heafy, 247 App.Div. 277, 285 N.Y.S. 188, 193.

A part or organ of the animal body; especially a limb or other separate part. *California Casualty Indemnity Exchange v. Industrial Accident Commission*, Cal.App., 82 P.2d 1115, 1116.

MEMBER OF CONGRESS. A member of the senate or house of representatives of the United States. In popular usage, particularly the latter.

MEMBER OF PARLIAMENT. One having the right to sit in either house of the British parliament.

MEMBERS. In English law, places where a custom-house has been kept of old time, with officers or deputies in attendance; and they are lawful places of exportation or importation. 1 Chit. Com. Law, 726.

MEMBERSHIP CORPORATION. One organized for purposes other than that of pecuniary gain. In re William McKinley Lodge No. 840, F. & A. M., D.C.N.Y., 4 F.Supp. 280, 282.

MEMBRANA. Lat.

In Civil law, parchment. Dig. 32, 52.

In old English law, a skin of parchment. The ancient rolls usually consist of several of these skins, and the word "*membrana*" is used, in citations to them, in the same way as "page" or "folio," to distinguish the particular skin referred to.

MEMBRUM. A slip or small piece of land.

MÉMOIRE. In French law, a document in the form of a petition, by which appeals to the court of cassation are initiated.

MEMORANDUM. Lat. To be remembered; be it remembered. A formal word with which the body of a record in the court of king's bench anciently commenced. Townsh. Pl. 486; 2 Tidd, Pr. 719.

Also an informal note or instrument embodying something that the parties desire to fix in memory by the aid of written evidence, or that is to serve as the basis of a future formal contract

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or deed. *Plott v. Kittelson*, 58 N.D. 881, 228 N.W. 217, 221.

This word is used in the statute of frauds as the designation of the written agreement, or note or evidence thereof, which must exist in order to bind the parties in the cases provided. The memorandum must be such as to disclose the parties, the nature and substance of the contract, the consideration and promise, and be signed by the party to be bound or his authorized agent. See 2 Kent, Comm. 510; *Des Brisay v. Foss*, 264 Mass. 102, 162 N.E. 4, 6.

The whole clause is now, in practice, termed, from this initial word, the "memorandum," and its use is supposed to have originated from the circumstance that proceedings "by bill" (in which alone it has been employed) were formerly considered as the by-business of the court. Gilb. Com.Pl. 47, 48.

MEMORANDUM ARTICLES. In the law of marine insurance, this phrase designates the articles of merchandise which are usually mentioned in the memorandum clause, (*q. v.*) and for which the underwriter's liability is thereby limited. See *Waln v. Thompson*, 9 Serg. & R., Pa., 120, 11 Am. Dec. 675.

MEMORANDUM CHECK. See Check.

MEMORANDUM CLAUSE. In a policy of marine insurance the memorandum clause is a clause inserted to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature, and for minor damages. It begins as follows: "N. B. Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded,"—meaning that the underwriters are not to be liable for damage to these articles caused by seawater or the like. *Maude & P. Shipp*. 371; *Sweet*.

MEMORANDUM IN ERROR. A document alleging error in fact, accompanied by an affidavit of such matter of fact.

MEMORANDUM OF ALTERATION. Formerly, in England, where a patent was granted for two inventions, one of which was not new or not useful, the whole patent was bad, and the same rule applied when a material part of a patent for a single invention had either of those defects. To remedy this the statute 5 & 6 Wm. IV. c. 83, empowers a patentee (with the fiat of the attorney general) to enter a disclaimer (*q. v.*) or a memorandum of an alteration in the title or specification of the patent, not being of such a nature as to extend the exclusive right granted by the patent, and thereupon the memorandum is deemed to be part of the letters patent or the specification. *Sweet*.

MEMORANDUM OF ASSOCIATION. A document to be subscribed by seven or more persons associated for a lawful purpose, by subscribing which, and otherwise complying with the requisitions of the companies' acts in respect of registration, they may form themselves into an incorporated company, with or without limited liability. 3 Steph. Comm. 20.

MEMORANDUM SALE. See Sale.

MEMORIAL. A document presented to a legislative body, or to the executive, by one or more individuals, containing a petition or a representation of facts.

In English law, that which contains the particulars of a deed, etc., and is the instrument registered, as in the case of an annuity which must be registered. *Wharton*.

In practice, a short note, abstract, memorandum, or rough draft of the orders of the court, from which the records thereof may at any time be fully made up. *State v. Shaw*, 73 Vt. 149, 50 A. 863.

MEMORITER. Lat. From memory; by or from recollection. Thus, *memoriter* proof of a written instrument is such as is furnished by the recollection of a witness who had seen and known it.

MEMORIZATION. Committing anything to memory. Used to describe the act of one who listens to a public representation of a play or drama, and then, from his recollection of its scenes, incidents, or language, reproduces it, substantially or in part, in derogation of the rights of the author. 5 Term R. 245; 14 A.L.R., N.S. 207.

MEMORY. The word as used in Blackstone and other ancient authorities, appeared to be synonymous with "mind", whereas the word "memory" in modern times is used in a more restricted sense of recollection of past events rather than the general state of one's mental power. *United States v. Boylen*, D.C.Or., 41 F.Supp. 724, 725.

Mental capacity; the mental power to review and recognize the successive states of consciousness in their consecutive order.

This word, as used in jurisprudence to denote one of the psychological elements necessary in the making of a valid will or contract or the commission of a crime, implies the mental power to conduct a consecutive train of thought, or an orderly planning of affairs, by recalling correctly the past states of the mind and past events, and arranging them in their due order of sequence and in their logical relations with the events and mental states of the present.

The phrase "sound and disposing mind and memory" means not merely distinct recollection of the items of one's property and the persons among whom it may be given, but entire power of mind to dispose of property by will. *Abbott*.

The reputation and name, good or bad, which a man leaves at his death.

Legal memory. An ancient usage, custom, supposed grant (as a foundation for prescription) and the like, are said to be immemorial when they are really or fictitiously of such an ancient date that "the memory of man runneth not to the contrary," or, in other words, "beyond legal memory." And legal memory or "time out of mind," according to the rule of the common law, commenced from the reign of Richard I., A. D. 1189. But under the statute of limitation of 32 Hen. VIII. this was reduced to 60 years, and again by that of 2 & 3 Wm. IV. c. 71, to 20 years. In the American states, by statute, the time of legal memory is generally fixed at a period corresponding to that prescribed for actions for the recovery of real

property, usually about 20 years. See 2 Bl.Comm. 31; Miller v. Garlock, 8 Barb., N.Y. 153.

MEN OF STRAW. Men who used in former days to ply about courts of law, so called from their manner of making known their occupation, (*i. e.*, by a straw in one of their shoes,) recognized by the name of "straw-shoes." An advocate or lawyer who wanted a convenient witness knew by these signs where to meet with one, and the colloquy between the parties was brief. "Don't you remember?" said the advocate; to which the ready answer was, "To be sure I do." "Then come into court and swear it." And straw-shoes went into court and swore. Athens abounded in straw-shoes. Quart. Rev. vol. 33, p. 344.

MENACE. A threat; the declaration or show of a disposition or determination to inflict an evil or injury upon another. Cumming v. State, 99 Ga. 662, 27 S.E. 177; Morrill v. Nightingale, 93 Cal. 452, 28 Pac. 1068, 27 Am.St.Rep. 207.

MENETUM. In old Scotch law, a stockhorn; a horn made of wood, "with circles and girds of the same." Skene.

MENIAL. A servant of the lowest order; more strictly, a domestic servant living under his master's roof. Boniface v. Scott, 3 Serg. & R., Pa. 354.

MENS. Lat. Mind; intention; meaning; understanding; will.

MENS LEGIS. The mind of the law; that is, the purpose, spirit, or intention of a law or the law generally.

MENS LEGISLATORIS. The intention of the law-maker.

MENS REA. A guilty mind; a guilty or wrongful purpose; a criminal intent.

Guilty knowledge and wilfulness. United States v. Greenbaum, C.C.A.N.J., 138 F.2d 437, 438.

MENS TESTATORIS IN TESTAMENTIS SPEC-TANDA EST. Jenk. Cent. 277. The intention of the testator is to be regarded in wills.

MENSA. Lat. Patrimony or goods and necessary things for livelihood. Jacob. A table; the table of a money-changer. Dig. 2, 14, 47.

MENSA ET THORO. From bed and board. See Divorce.

MENSALIA. Parsonages or spiritual livings united to the tables of religious houses, and called "mensal benefices" amongst the canonists. Cowell.

MENSIS. Lat. In the civil and old English law, a month. *Mensis vetitus*, the prohibited month; fence-month (*q. v.*).

MENSOR. In civil law, a measurer of land; a surveyor. Dig. 11, 6; Id. 50, 6, 6; Cod. 12, 28.

MENSULARIUS. In civil law, a money-changer or dealer in money. Dig. 2, 14, 47, 1.

MENSURA. In old English law, a measure.

MENSURA DOMINI REGIS. "The measure of our lord the king," being the weights and measures established under King Richard I. in his parliament at Westminster, 1197. 1 Bl.Comm. 275; Mozley & Whiteley.

MENTAL. Relating to or existing in the mind; intellectual, emotional, or psychic, as distinguished from bodily or physical.

MENTAL ALIENATION. A phrase sometimes used to describe insanity (*q. v.*).

MENTAL ANGUISH. When connected with a physical injury, this term includes both the resultant mental sensation of pain and also the accompanying feelings of distress, fright, and anxiety. Railway Co. v. Miller, 25 Tex.Civ.App. 460, 61 S.W. 978. In other connections, and as a ground for damages or an element of damages, it includes the mental suffering resulting from the excitation of the more poignant and painful emotions, such as grief, severe disappointment, indignation, wounded pride, shame, public humiliation, despair, etc. Western Union Telegraph Co. v. Taylor, 94 Fla. 841, 114 So. 529, 532; Western Union Telegraph Co. v. Chamberlain, Tex.Civ.App., 169 S.W. 370, 371.

MENTAL CAPACITY OR COMPETENCE. Contemplates the ability to understand the nature and effect of the act in which a person is engaged and the business he is transacting. Jones v. Traders & General Ins. Co., Tex.Civ.App., 144 S.W.2d 689, 694. Such a measure of intelligence, understanding, memory, and judgment (relative to the particular transaction) as will enable the person to understand the nature of his act. Davren v. White, 42 N.J.Eq. 569, 7 A. 682; Conley v. Nailor, 118 U.S. 127, 6 S.Ct. 1001, 30 L.Ed. 112.

MENTAL CRUELTY. A course of conduct on the part of one spouse toward the other spouse which can endanger the mental and physical health and efficiency of the other spouse to such an extent as to render continuance of the marital relation intolerable. Burns v. Burns, 153 Fla. 73, 13 So.2d 599, 602.

MENTAL DEFECT. As applied to the qualification of a juror, this term must be understood to embrace either such gross ignorance or imbecility as practically disqualifies any person from performing the duties of a juror. Caldwell v. State, 41 Tex. 94.

MENTAL INCAPACITY; MENTAL INCOMPETENCY. Established when there is found to exist an essential privation of reasoning faculties, or when a person is incapable of understanding and acting with discretion in the ordinary affairs of life. In re Blochowitz' Guardianship, 135 Neb. 163, 280 N.W. 438, 441.

MENTAL RESERVATION. A silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject. But the word has been applied to an exception existing in the mind of the one

MENTE

party only, and has been degraded to signify a dishonest excuse for evading or infringing a promise. Wharton.

MENTE CAPTUS. Persons who are habitually insane. *Clanton v. Shattuck*, 211 La. 750, 30 So.2d 823, 824.

MENTIBI. Lat. To lie; to assert a falsehood. Calvin; 3 Bulst. 260.

MENTITION. The act of lying; a falsehood.

MENU, LAWS OF. A collection or institute of the earliest laws of ancient India. The work is of very remote antiquity.

MER, or MERE. A fenny place. Cowell.

MERA NOCTIS. Midnight. Cowell.

MERANNUM. In old records, timbers; wood for building.

MERCABLE. Merchantable; to be sold or bought.

MERCANTANT. A foreign trader.

MERCANTILE. Of, pertaining to, or characteristic of, merchants, or the business of merchants; having to do with trade or commerce or the business of buying and selling merchandise; trading; commercial; conducted or acting on business principles. In *re Wanamaker's Estate*, 312 Pa. 362, 167 A. 592, 594.

MERCANTILE AGENCIES. Establishments which make a business of collecting information relating to the credit, character, responsibility and reputation of merchants, for the purpose of furnishing the information to subscribers. *Brookfield v. Kitchen*, 163 Mo. 546, 63 S.W. 825; *State v. Morgan*, 2 S.D. 32, 48 N.W. 314.

MERCANTILE LAW. An expression substantially equivalent to the law-merchant or commercial law. It designates the system of rules, customs, and usages generally recognized and adopted by merchants and traders, and which, either in its simplicity or as modified by common law or statutes, constitutes the law for the regulation of their transactions and the solution of their controversies.

MERCANTILE LAW AMENDMENT ACTS. The statutes 19 & 20 Vict. cc. 60, 97, passed mainly for the purpose of assimilating the mercantile law of England, Scotland, and Ireland.

MERCANTILE PAPER. Commercial paper; such negotiable paper (bills, notes, checks, etc.) as is made or transferred by and between merchants or traders, and is governed by the usages of the business world and the law-merchant.

MERCANTILE PARTNERSHIP. One which habitually buys and sells; one which buys for the purpose of afterwards selling. *Com. v. Natural Gas Co.*, 32 Pittsb.Leg.J., O.S. 310.

MERCAT. A market. An old form of the latter word common in Scotch law, formed from the Latin "*mercatum*."

MERCATIVE. Belonging to trade.

MERCATUM. Lat. A market. A contract of sale. Supplies for an army (*commeatus*).

MERCATURE. The practice of buying and selling.

MERCEDARY. A hirer; one that hires.

MERCEN-LAGE. The law of the Mercians. One of the three principal systems of laws which prevailed in England about the beginning of the eleventh century. It was observed in many of the midland counties, and those bordering on the principality of Wales. 1 Bl.Comm. 65.

"Upon the expulsion of these intruders [the Danish invaders], the English returned to their ancient law, retaining a few customs of their late visitants, which were termed *Dane Lage*, as the code compiled by Alfred was called *West-Saxon Lage*, and the laws of the kingdom of Mercia, which obtained in the countries next to Wales, were termed the *Mercen Lage*." 4 Bl. Comm. 412 (quoted from *Brown's Abr.*, p. 735 [Gavit's Ed., p. 939]).

MERCENARIUS. A hireling or servant. Jacob.

MERCES. Lat. In the civil law, reward of labor in money or other things. As distinguished from "*pensio*," it means the rent of farms, (*praedia rustici*.) Calvin.

MERCHANDISE. All commodities which merchants usually buy and sell, whether at wholesale or retail; wares and commodities such as are ordinarily the objects of trade and commerce. But the term is never understood as including real estate, and is rarely applied to provisions such as are purchased day by day, or to such other articles as are required for immediate consumption. *Passaic Mfg. Co. v. Hoffman*, 3 Daly, N.Y. 512; *Hein v. O'Connor*, Tex.App., 15 S.W. 414; *Elliott v. Swartwout*, 10 Pet. 137, 9 L.Ed. 373; *Smith v. Boyer*, 119 S.C. 176, 112 S.E. 71, 74, 41 A.L.R. 1466.

Stock of Merchandise. See *Stock*.

MERCHANDISE BROKER. 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.

MERCHANDISE MARKS ACT, 1862. The statute 25 & 26 Vict. c. 88, designed to prevent the fraudulent marking of merchandise and the fraudulent sale of merchandise falsely marked.

MERCHANT. One who is engaged in the purchase and sale of goods; a trafficker; a trader. *Fischbach Brewing Co. v. City of St. Louis*, 231 Mo.App. 793, 95 S.W.2d 335, 340.

A man who traffics or carries on trade with foreign countries, or who exports and imports goods and sells them by wholesale. Webster. Merchants of this description are commonly known by the name of "shipping merchants."

Commission merchant. See *Commission*.

Law merchant. See *Mercantile Law*.

Statute merchant. See *Statute*.

MERCHANT APPRAISER. See Appraiser.

MERCHANT SEAMAN. A sailor employed in a private vessel, as distinguished from one employed in the navy or public ships. *U. S. v. Sullivan*, C.C.Or., 43 F. 604; *The Ben Flint*, 3 F.Cas. 184.

MERCHANT SHIPPING ACTS. Certain English statutes, beginning with the St. 16 & 17 Vict. c. 131, whereby a general superintendence of merchant shipping is vested in the board of trade.

MERCHANTABILITY. Means that the article sold shall be of the general kind described and reasonably fit for the general purpose for which it shall have been sold, and where the article sold is ordinarily used in but one way, its fitness for use in that particular way is impliedly warranted unless there is evidence to the contrary. *D'Onofrio v. First Nat. Stores*, 68 R.I. 144, 26 A.2d 758, 760.

MERCHANTABLE. Salable and fit for the market; sound and undamaged; such as is generally sold in the market; vendible in the market, *Nettles v. Lichtman*, 228 Ala. 52, 152 So. 450, 453, 91 A.L.R. 1455; possessing an ordinary or medium quality of goodness, *Martin's Fork Coal Co. v. Harlan-Wallins Coal Corporation*, D.C.Ky., 14 F. Supp. 902, 907; of a quality such as will bring the ordinary market price. *Riggs v. Armstrong*, 23 W. Va. 773; *Wallace v. L. D. Clark & Sons*, 74 Okl. 208, 174 P. 557, 558, 21 A.L.R. 361. It may include reasonable fitness for general purpose for which article is manufactured and sold. *Outhwaite v. A. B. Knowlson Co.*, 259 Mich. 224, 242 N.W. 895, 896.

MERCHANTABLE TITLE. One that can be held without reasonable apprehension of being assailed and readily transferable in market. *Crow Creek Gravel & Sand Co. v. Dooley*, 182 Ark. 1009, 33 S. W.2d 369, 370.

MERCHANTMAN. A ship or vessel employed in foreign or domestic commerce or in the merchant service.

MERCHANTS' ACCOUNTS. Accounts between merchant and merchant, which must be current, mutual, and unsettled, consisting of debts and credits for merchandise. *Fox v. Fisk*, 6 How., Miss. 328.

MERCHANTS, STATUTE OF. The English statute 13 Edw. I. St. 3, repealed by 26 & 27 Vict. c. 125.

MERCHET. In feudal law, a fine or composition paid by inferior tenants to the lord for liberty to dispose of their daughters in marriage. Cowell. The same as *marcheta* (q. v.).

MERCIAMENT. An amerciament, penalty, or fine (q. v.).

MERCIAN LAW. One of the main bodies of customs (with the Dane law and the West Saxon law and perhaps an admixture of Norman laws and customs) which composed the law in the early Norman days. 1 Holdsw. Hist. E. L. 3. See Mercen-Lage.

MERCIMONIA. In old writs, wares. *Mercimonia et merchandizas*, wares and merchandises. Reg. Brev. Append. 10.

MERCIMONINATUS ANGLIÆ. In old records, the impost of England upon merchandise. Cowell.

MERCIS APPELLATIO AD RES MOBILES TANTUM PERTINET. The term "merchandise" belongs to movable things only. Dig. 50, 16, 66.

MERCIS APPELLATIONE HOMINES NON CONTINERI. Men are not included under the denomination of "merchandise." Dig. 50, 16, 207.

MERCNA LAGU. See Lagu; Mercen-Lage.

MERCY. In practice. The arbitrament of the king or judge in punishing offenses not directly censured by law. Jacob. So, "to be in mercy" signifies to be amerced or fined for bringing or defending an unjust suit, or to be liable to punishment in the discretion of the court.

In criminal law. The discretion of a judge, within the limits prescribed by positive law, to remit altogether the punishment to which a convicted person is liable, or to mitigate the severity of his sentence; as when a jury recommends the prisoner to the *mercy* of the court.

MERE. Sax. A marsh. Spelman.

MERE. L. Fr. Mother. *Æle, mere, fille*, grandmother, mother, daughter. Britt. c. 89. *En ventre sa mere*, in its mother's womb.

MERE LICENSEE. One who enters upon the land or property of another without objection, or by the mere permission, sufferance, or acquiescence of the owner or occupier. *Mann v. Des Moines Ry. Co.*, 232 Iowa 1049, 7 N.W.2d 45, 50.

MERE MOTION. The free and voluntary act of a party himself, done without the suggestion or influence of another person, is said to be done of his mere motion, *ex mero motu* (q. v.). Brown.

The phrase is used of an interference of the courts of law, who will, under some circumstances, of their own motion, object to an irregularity in the proceedings, though no objection has been taken to the informality by the plaintiff or defendant in the suit. 3 Chit. Gen. Pr. 430.

MERE RIGHT. The mere right of property in land; the *jus proprietatis*, without either possession or even the right of possession. 2 Bl. Comm. 197. The abstract right of property.

MERE-STONE. In old English law, a stone for bounding or dividing lands. Yearb. P. 18 Hen. VI. 5.

MERELY. Without including anything else; purely; only; solely; absolute; wholly. In re Plymouth Motor Corporation, Cust. & Pat. App., 46 F.2d 211, 212.

MERENNium. In old records, timber. Cowell.

MERETRICIOUS

MERETRICIOUS. Of the nature of unlawful sexual connection. The term is descriptive of the relation sustained by persons who contract a marriage that is void by reason of legal incapacity. 1 Bl. Comm. 436.

MERGER. The fusion or absorption of one thing or right into another; generally spoken of a case where one of the subjects is of less dignity or importance than the other. Here the less important ceases to have an independent existence. *Marfield v. Cincinnati, D. & T. Traction Co.*, 111 Ohio St. 139, 144 N.E. 689, 696, 40 A.L.R. 357.

Conglomerate merger. Merger of corporations which are neither competitors nor potential or actual customers or suppliers of each other. *U. S. v. General Dynamics Corp.*, D.C.N.Y., 258 F.Supp. 36, 56.

Contract law. Extinguishment of one contract by absorption into another. *Clark v. Compania Granadera de Cananera, S.A.*, 385 P.2d 691, 695, 94 Ariz. 391; *Whiddon v. General Mills, Inc.*, Tex. Civ.App., 347 S.W.2d 7, 10.

Corporations. The union of two or more corporations by the transfer of property of all to one of them, which continues in existence, the others being swallowed up or merged therein. *Metropolitan Edison Co. v. Commissioner of Internal Revenue*, C.C.A.3, 98 F.2d 807, 810, 811. It differs from a consolidation wherein all the corporations terminate their existence and become parties to a new one. *Murphy v. Niehus*, 50 Ohio App. 299, 198 N.E. 197.

Criminal Law. When a man commits a great crime which includes a lesser, or commits a felony which includes a tort against a private person, the latter is merged in the former. 1 East, P. C. 411.

Divorce law. Substitution of rights and duties under judgment or decree for those under property settlement agreement. *Roesberry v. Roesberry*, 401 P.2d 805, 807, 88 Idaho 514.

Horizontal merger. Merger of corporate competitors. *U. S. v. General Dynamics Corp.*, D.C. N.Y., 258 F.Supp. 36, 56; *U. S. v. Manufacturers Hanover Trust Co.*, D.C.N.Y., 240 F.Supp. 867, 930.

Real-Property Law. It is a general principle of law that where a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or, in the law phrase, is said to be *merged*, that is, sunk or drowned, in the greater. Thus, if there be tenant for years, and the reversion in fee-simple descends to or is purchased by him, the term of years is *merged* in the inheritance, and shall never exist any more. 2 Bl. Comm. 177; 1 Steph. Comm. 293; 4 Kent, Comm. 99. *Duncan v. Smith*, 31 N.J.L. 327.

Rights. This term, as applied to rights, is equivalent to "*confusio*" in the Roman law, and indicates that where the qualities of debtor and creditor become united in the same individual, there arises a confusion of rights which extinguishes both qualities; whence, also, merger is often called "extinguishment." Brown.

Rights of Action. In the law relating to rights of action, when a person takes or acquires a remedy or security of a higher nature, in legal estimation, than the one which he already possesses for the same right, then his remedies in respect of the minor right or security merge in those attaching to the higher one. *Leake*, Cont. 506; 10 C.B. 561. As where a claim is merged in the judgment recovered upon it. *Frost v. Thompson*, 219 Mass. 360, 106 N.E. 1009, 1010.

Vertical merger. Union with corporate customer or supplier. *U. S. v. General Dynamics Corp.*, D.C.N.Y., 258 F.Supp. 36, 56.

MERIDIES. In old English law, noon. *Fleta*, lib. 5, c. 5, § 31.

MERINO. A fine long staple wool, which commands the highest price. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, 42 S.Ct. 384, 385, 66 L.Ed. 729.

MERIT SYSTEM. A system of appointing employees to office in the civil service, and of promoting them for competency only; opposed, in the United States, to the spoils system. *Heck v. Hall*, 238 Ala. 274, 190 So. 280, 285.

MERITORIOUS. Possessing or characterized by "merit" in the legal sense of the word. See Merits.

MERITORIOUS CAUSE OF ACTION. This description is sometimes applied to a person with whom the ground of action, or the consideration, originated or from whom it moved. For example, where a cause of action accrues to a woman while sole, and is sued for, after her marriage, by her husband and herself jointly, she is called the "meritorious cause of action."

MERITORIOUS CONSIDERATION. One founded upon some moral obligation; a valuable consideration in the second degree.

MERITORIOUS DEFENSE. See Defense.

MERITS. The word "merit" as a legal term is to be regarded as referring to the strict legal rights of the parties. *Mink v. Keim*, 266 App.Div. 184, 41 N.Y.S.2d 769, 771.

MERO MOTU. See *Ex Mero Motu*; *Mere Motion*.

MERSCUM. A lake; also a marsh or fenland.

MERTLAGE. A church calendar or rubric. Cowell.

MERTON, STATUTE OF. An old English statute, relating to dower, legitimacy, wardships, procedure, inclosure of common, and usury. It was passed in 1235, (20 Hen. III.,) and was named from Merton, in Surrey, where parliament sat that year. See *Barring*. St. 41, 46.

MERUM. In old English law, mere; naked or abstract. *Merum jus*, mere right. *Bract*. fol. 31.

MERX. Lat. Merchandise; movable articles that are bought and sold; articles of trade.

MERX EST QUICQUID VENDI POTEST. Merchandise is whatever can be sold. Com. 355; 3 Wood. Lect. 263.

MESCREAUNTES. L. Fr. Apostates; unbelievers.

MESCROYANT. A term used in the ancient books to designate an infidel or unbeliever.

MESE. A house and its appurtenance. Cowell.

MESNALTY, or MESNALITY. A manor held under a superior lord. The estate of a mesne.

MESNE. Intermediate; intervening; the middle between two extremes, especially of rank or time.

An intermediate lord; a lord who stood between a tenant and the chief lord; a lord who was also a tenant. "Lord, *mesne*, and tenant; the tenant holdeth by four pence, and the mesne by twelve pence." Co. Litt 23a.

As to mesne "Conveyance," "Process," and "Profits," see those titles.

MESNE ASSIGNMENT. If A. grant a lease of land to B., and B. assign his interest to C., and C. in his turn assign his interest therein to D., in this case the assignments so made by B. and C. would be termed "mesne assignments;" that is, they would be assignments intervening between A.'s original grant and the vesting of D.'s interest in the land under the last assignment. Brown.

MESNE INCUMBRANCE. An intermediate charge, burden, or liability; an incumbrance which has been created or has attached to property between two given periods.

MESNE LORD. In old English law, a middle or intermediate lord; a lord who held of a superior lord. 2 Bl. Comm. 59. More commonly termed a "mesne" (*q. v.*).

MESNE, WRIT OF. An ancient and abolished writ, which lay when the lord paramount distrained on the tenant paravail. The latter had a writ of mesne against the mesne lord.

MESS BRIEF. In Danish sea law, one of a ship's papers; a certificate of admeasurement granted at the home port of a vessel by the government or by some other competent authority. Jac. Sea Laws, 51.

MESSAGE. Any notice, word, or communication, written or oral, sent from one person to another. Webster, Dict.

President's message. An annual communication from the president of the United States to congress, made at or near the beginning of each session, embodying his views on the state and exigencies of national affairs, suggestions and recommendations for legislation, and other matters. Const. U. S. art. 2, § 3.

Repeated message. Within the meaning of restricted liability clauses printed on the back of blank telegraph forms, one telegraphed back to the sending office for comparison; the object being to guard against mistakes in transmission. Dettis v. Western Union Telegraph Co., 141 Minn. 361, 170 N.W. 334, 338.

MESSAGE FROM THE CROWN. In English law, the method of communicating between the sovereign and the house of parliament. A written message under the royal sign-manual is brought by a member of the house, being a minister of the crown or one of the royal household. Verbal messages are also sometimes delivered. May, Parl. Pr. c. 17.

MESSARIUS. In old English law, a chief servant in husbandry; a bailiff.

MESSE THANE. One who said mass; a priest. Cowell.

MESSENGER. One who bears messages or errands; a ministerial officer employed by executive officers, legislative bodies, and courts of justice, whose service consists principally in carrying verbal or written communications or executing other orders. In Scotland there are officers attached to the courts, called "messengers at arms."

An officer attached to a bankruptcy court, whose duty consists, among other things, in seizing and taking possession of the bankrupt's estate during the proceedings in bankruptcy.

The messenger of the English court of chancery has the duty of attending on the great seal, either in person or by deputy, and must be ready to execute all such orders as he shall receive from the lord chancellor, lord keeper, or lords commissioners. Brown.

MESSIS SEMENTEM SEQUITUR. The crop belongs to [follows] the sower. A maxim in Scotch law. Where a person is in possession of land which he has reason to believe is his own, and sows that land, he will have a right to the crops, although before it is cut down it should be discovered that another has a preferable title to the land. Bell.

MESSUAGE. This term is now synonymous with "dwelling-house," but had once a more extended signification. Marmet Co. v. Archibald, 37 W.Va. 778, 17 S.E. 300; Grimes v. Wilson, 4 Blackf. Ind. 333. Dwelling-house with the adjacent buildings and curtilage. Hall v. Philadelphia Co., 72 W.Va. 573, 78 S.E. 755, 757.

Although the word "messuage" may, there is no necessity that it must, import more than the word "dwelling-house," with which word it is frequently put in apposition and used synonymously. 2 Bing. N.C. 617.

In Scotland, the principal dwelling-house within a barony. Bell.

MESTIZO. A mongrel or person of mixed blood; sometimes used as equivalent to "octoroon," that is, the child of a white person and a quadroon, sometimes as denoting a person one of whose parents was a Spaniard and the other an American Indian.

META. Lat. A goal, bound, or turning-point. In old English law, the term was used to denote a bound or boundary line of land; a landmark; a material object, as a tree or a pillar, marking the position or beginning of a boundary line.

METABOLISM. The sum total of all processes of the human body by which food is transformed into

METACHRONISM

chemicals which are absorbed into blood stream and lymphatic system for purpose of so nourishing body that it can continue to function. *United States v. 62 Packages, More or Less, of Marmola Prescription Tablets, C.C.A.Wis., 142 F.2d 107, 109.*

METACHRONISM. An error in computation of time.

METALLIC. "Consisting of or having the characters of a metal. * * * Having one or more properties resembling those of metals." *Trussell Mfg. Co. v. S. E. & M. Vernon, Inc., D.C.N.Y., 11 F.2d 289, 290, 291.*

METALLUM. Lat. In Roman law, metal; a mine. Labor in mines, as a punishment for crime. *Dig. 40, 5, 24, 5; Calvin.*

METAPHYSICS. The science of being; the science which deals with ultimate reality. *Vine-land Trust Co. v. Westendorf, 86 N.J.Eq. 343, 98 A. 314.*

METATUS. In old European law, a dwelling; a seat; a station; quarters; the place where one lives or stays. *Spelman.*

METAYER SYSTEM. A system of agricultural holdings, under which the land is divided, in small farms, among single families, the landlord generally supplying the stock which the agricultural system of the country is considered to require, and receiving, in lieu of rent and profit, a fixed proportion of the produce. This proportion, which is generally paid in kind, is usually one-half. *1 Mill, Pol. Econ. 296, 363; and 2 Smith, Wealth Nat. 3, c. ii.* The system prevails in some parts of France and Italy.

METECORN. A measure or portion of corn, given by a lord to customary tenants as a reward and encouragement for labor. *Cowell.*

METEGAVEL. A tribute or rent paid in victuals. *Cowell.*

METER. An instrument of measurement; as a coal-meter, a gas-meter, a land-meter.

Also see *Metre.*

METES AND BOUNDS. The boundary lines of land, with their terminal points and angles. *Lefler v. City of Dallas, Tex.Civ.App., 177 S.W.2d 231, 234.*

METEWAND, or METEYARD. A staff of a certain length wherewith measures are taken.

METHEL. Sax. Speech; discourse. *Mathlian,* to speak; to harangue. *Anc. Inst. Eng.*

METHOD. The mode of operating, or the means of attaining an object. In patent law, "Engine" and "method" mean the same thing, and may be the subject of a patent. Method, properly speaking, is only placing several things, or performing several operations, in the most convenient order, but it may signify a contrivance or device. *Fessen. Pat. 127; Hornblower v. Boulton, 8 Term R. 106.*

METHOMANIA. See *Insanity.*

METRE. The unit of measure in the "metric system" of weights and measures. It is a measure of length, being the ten-millionth part of the distance from the equator to the north pole, and equivalent to 39.37 inches. From this unit all the other denominations of measure, as well as of weight, are derived. The metric system was first adopted in France in 1795.

METRIC SYSTEM. A system of measures for length, surface, weight, and capacity, founded on the *metre* as a unit. It originated in France, has been established by law there and in some other countries, and is recommended for general use by other governments.

METROPOLIS. A mother city; one from which a colony was sent out. The capital of a province. *Calvin.*

METROPOLITAN. In English law, one of the titles of an archbishop. Derived from the circumstance that archbishops were consecrated at first in the metropolis of a province. *4 Inst. 94.*

In England, the word is frequently used to designate a statute, institution, governmental agency, etc., relating exclusively or especially to the city of London; *e. g.,* the metropolitan board of works, metropolitan buildings act, etc.

METROPOLITAN BOARD OF WORKS. A board constituted in 1855 by St. 18 & 19 Vict. c. 120, for the better sewerage, draining, paving, cleansing, lighting, and improving the metropolis (London.) The board is elected by vestries and district boards, who in their turn are elected by the ratepayers. *Wharton.*

METROPOLITAN POLICE DISTRICT. A region composed of New York city and some adjacent territory, which was, for police purposes, organized as one district, and provided with a police force common to the whole.

METTESHEP, or METTENSCHEP. In old records, an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.

METUS. Lat. Fear; terror. In a technical sense, a reasonable and well-grounded apprehension of some great evil, such as death or mayhem, and not arising out of mere timidity, but such as might fall upon a man of courage. Fear must be of this description in order to amount to duress avoiding a contract. See *Bract. lib. 2, c. 5; 1 Bl. Comm. 131; Calvin.*

MEUBLES. In French law, the movables of English law. Things are *meubles* from either of two causes: (1) From their own nature, *e. g.,* tables, chairs; or (2) from the determination of the law. *e. g.,* obligations.

MEUBLES MEUBLANS. In French law, the utensils and articles of ornament usual in a dwelling-house. *Brown.*

MEUM EST PROMITTERE, NON DIMITTERE. It is mine to promise, not to discharge. 2 Rolfe, 39.

MICHAELMAS. The feast of the Archangel Michael, celebrated in England on the 29th of September, and one of the usual quarter days.

MICHAELMAS HEAD COURT. A meeting of the heritors of Scotland, at which the roll of freeholders used to be revised. See Bell.

MICHAELMAS TERM. One of the four terms of the English courts of common law, beginning on the 2d day of November and ending on the 25th. 3 Steph. Comm. 562.

MICHE, or MICH. O. Eng. To practice crimes requiring concealment or secrecy; to pilfer articles secretly. *Micher*, one who practices secret crime. Webster.

MICHEL-GEMOT. One of the names of the general council immemorially held in England. The *Witenagemote*.

One of the great councils of king and noblemen in Saxon times. Jacob.

MICHEL-SYNOTH. Great council. One of the names of the general council of the kingdom in the times of the Saxons. 1 Bl. Comm. 147.

MICHERY. In old English law, theft; cheating.

MID-CHANNEL. In international law and by the usage of European nations, the terms "middle of the stream" and "mid-channel" of a navigable river are synonymous and interchangeably used. Hill City Compress Co. v. West Kentucky Coal Co., 155 Miss. 55, 122 So. 747, 748.

MIDDLE LINE OF MAIN CHANNEL. The equidistant point in the main channel of the river between the well-defined banks on either shore. Hearne v. State, 121 Ark. 460, 181 S.W. 291, 295.

MIDDLE OF THE RIVER. The phrases "middle of the river" and "middle of the main channel" are equivalent expressions, and both mean the main line of the channel or the middle thread of the current. Western Union Tel. Co. of Illinois v. Louisville & N. R. Co., 270 Ill. 399, 110 N.E. 583, 591, Ann.Cas.1917B, 670. See Thalweg.

Terms "middle of the Mississippi river," "middle of the main channel of the Mississippi river," and "center of the main channel of the Mississippi river," are synonymous and mean middle of broad and distinctly defined bed of main river, as distinguished from changing line of navigation, in determining location of boundaries between states. Hill City Compress Co. v. West Kentucky Coal Co., 155 Miss. 55, 122 So. 747, 748.

MIDDLE TERM. A phrase used in logic to denote the term which occurs in both of the premises in the syllogism, being the means of bringing together the two terms in the conclusion.

MIDDLE THREAD. The middle thread of a stream is an imaginary line drawn lengthwise through the middle of its current.

MIDDLEMAN. One who merely brings parties together in order to enable them to make their

own contracts. Crane v. Colonial Holding Corporation, Tex.Civ.App., 57 S.W.2d 316, 320.

An agent between two parties, an intermediary who performs the office of a broker or factor between seller and buyer, producer and consumer, land-owner and tenant, etc. Southack v. Lane, 65 N.Y.Supp. 629, 32 Misc.Rep. 141. Brokers are "middlemen" only where, without having undertaken to act as agents for either party, or to exercise their skill, knowledge, or influence, they merely bring the parties together to deal for themselves, and stand indifferent between them. Geddes v. Rhee, 126 Minn. 517, 148 N.W. 549, 550.

One who has been employed as an agent by a principal, and who has employed a subagent under him by authority of the principal, either express or implied.

A person who is employed both by the seller and purchaser of goods, or by the purchaser alone, to receive them into his possession, for the purpose of doing something in or about them.

In Ireland, a person who takes land in large tracts from the proprietors, and then rents it out to the peasantry in small portions at a greatly enhanced price. Wharton.

MIDDLESEX, BILL OF. See Bill.

MIDSHIPMAN. In ships of war, a kind of naval cadet, whose business is to second or transmit the orders of the superior officers and assist in the necessary business of the vessel, but understood to be in training for a commission. A *passed* midshipman is one who has passed an examination and is a candidate for promotion to the rank of lieutenant. See U. S. v. Cook, 128 U.S. 254, 9 S.Ct. 108, 32 L.Ed. 464.

MIDSUMMER-DAY. The summer solstice, which is about June Twenty-Second, and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A. D. 400. It is generally a quarter-day for the payment of rents, etc. Wharton.

MIDWAY. See Thalweg.

MIDWIFE. In medical jurisprudence, a woman who assists at childbirth; an *accoucheuse*.

MISES. In Spanish law, crops of grain. White, New Recop. b. 1, tit. 7, c. 5, § 2.

MIGHT, v. The preterit of the word "may". Equivalent to "had power" or "was possible" or "have the physical or moral opportunity to be contingently possible." In re Weidberg's Estate, 172 Misc. 524, 15 N.Y.S.2d 252, 257.

MIGRANS JURA AMITTAT AC PRIVILEGIA ET IMMUNITATES DOMICILII PRIORIS. One who emigrates will lose the rights, privileges, and immunities of his former domicile. Voet, Com. ad. Pand. tom. i. 347; 1 Kent, Comm. 76.

MILE. A measure of length or distance, containing 8 furlongs, or 1,760 yards, or 5,280 feet. This is the measure of an ordinary or statute mile; but the nautical or geographical mile contains 6,080 feet.

MILEAGE. Allowance for traveling expenses at certain rate per mile, Reed v. Gallet, 50 Idaho 638, 299 P. 337, 338. Especially to members of legislative bodies, witnesses, sheriffs, and bailiffs. Rich-

MILEAGE TAX

ardson v. State, 66 Ohio St. 108, 63 N.E. 593; State v. Clausen, 142 Wash. 450, 253 P. 805, 807.

MILEAGE TAX. License tax imposed upon intrastate business of transportation for compensation on public roads of state. State ex rel. Five Transp. Co. v. Lee, 132 Fla. 183, 181 So. 179, 181.

MILES. Lat. In civil law, a soldier.

In old English law, a knight, because military service was part of the feudal tenure. Also a tenant by military service, not a knight. 1 Bl. Comm. 404; Seld. Tit. Hon. 334.

MILESTONES. Stones set up to mark the miles on a road or railway.

MILITARE. To be knighted.

MILITARY. Pertaining to war or to the army; concerned with war. Also the whole body of soldiers; an army.

MILITARY BASE. See Base.

MILITARY BOUNTY LAND. See Bounty.

MILITARY CAUSES. In English law, causes of action or injuries cognizable in the court military, or court of chivalry. 3 Bl. Comm. 103.

MILITARY COMMISSIONS. Courts whose procedure and composition are modeled upon courts-martial, being the tribunals by which alleged violations of martial law are tried and determined. The membership of such commissions is commonly made up of civilians and army officers. They are probably not known outside of the United States, and were first used by General Scott during the Mexican war. 15 Amer. & Eng. Enc. Law, 473.

MILITARY COURTS. In England the court of chivalry and courts-martial, in America courts-martial and courts of inquiry, are called by this general name.

MILITARY FEUDS. See Feud.

MILITARY FORCES. Under Espionage Act June 15, 1917, included persons subject to be called into active service under Selective Service Act May 18, 1917. Anderson v. U. S., C.C.A.S.D., 264 F. 75, 76; White v. United States, C.C.A.Ohio, 263 F. 17, 19, but see contra, United States v. Hall, D.C.Mont., 248 F. 150, 152.

MILITARY GOVERNMENT. Exercised by military commander under direction of President in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels. Hammond v. Squier, D.C.Wash., 51 F.Supp. 227, 230.

MILITARY JURISDICTION. There are under the Constitution, three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a

third to be exercised in time of invasion or insurrection within the limits of the United States or during rebellion within the limits of states maintaining adherence to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under "military law" and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as "military government" superseding, as far as may be deemed expedient the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated "martial law", and is called into action by Congress, or temporarily when the action of Congress cannot be invited, and in the face of justifying or excusing peril, by the President in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights. United States v. Minoru Yasui, D.C. Or., 48 F.Supp. 40, 46, 47.

MILITARY LAW. A system of regulations for the government of an army. 1 Kent, Comm. 341, note. That branch of the laws which respects military discipline and the government of persons employed in the military service. De Hart, Mil. Law, 16. Johnson v. Jones, 44 Ill. 153, 92 Am.Dec. 159. Military is distinct from martial law, in that it applies only to persons in the military or naval service of the government; whereas, martial law, when once established, applies alike to citizens and soldiers and supersedes civil law. U. S. ex rel. Wessels v. McDonald, D.C.N.Y., 265 F. 754, 761; Bishop v. Vandercook, 228 Mich. 299, 200 N. W. 278, 280.

MILITARY OFFENSES. Those offenses which are cognizable by the courts military, as insubordination, sleeping on guard, desertion, etc.

MILITARY OFFICE. See Office.

MILITARY OFFICER. See Officer.

MILITARY SERVICE. Every branch of service in either the armies or navies of the United States. Maclean v. Brodigan, 41 Nev. 468, 172 P. 375, 377; In re Opinion to the Governor. 41 R.I. 118, 102 A. 913.

"Active military service" within exemption provision of life policy is service in garrison or at sea in time of peace or before an enemy in time of war. Redd v. American Cent. Life Ins. Co., 200 Mo.App. 383, 207 S.W. 74, 75; Rex Health & Accident Ins. Co. v. Pettiford, 74 Ind.App. 507, 129 N.E. 248.

MILITARY STATE. The soldiery of the kingdom of Great Britain.

MILITARY TENURES. The various tenures by knight-service, grand-serjeanty, cornage, etc., are frequently called "military tenures," from the nature of the services which they involved. 1 Steph. Comm. 204.

MILITARY TESTAMENT. See Testament.

MILITES. Lat. Knights; and, in Scotch law, freeholders.

MILITIA. The body of citizens in a state, enrolled for discipline as a military force, but not engaged in actual service except in emergencies, as distinguished from regular troops or a standing army. Ex parte McCants, 39 Ala. 112; Worth v. Craven County, 118 N.C. 112, 24 S.E. 778; Story v. Perkins, D.C.Ga., 243 F. 997, 999.

MILITIAMEN. Comprehends every temporary citizen-soldier who in time of war or emergency enters active military service of the country. Critchlow v. Monson, 102 Utah 378, 131 P.2d 794, 798.

MILK. In England milk means, commercially speaking, skimmed milk.

MILL. A complicated engine or machine for grinding and reducing to fine particles grain, fruit, or other substance, or for performing other operations by means of wheels and a circular motion; also the building containing such machinery. State v. Livermore, 44 N.H. 387; Lamborn v. Bell, 18 Colo. 346, 32 P. 989, 20 L.R.A. 241.

The word as used in Employers' Liability Act has been extended to include not only the building in which the business of manufacturing is carried on, but the dam, flume, and ways which the master provides for the use of those employes. Boody v. K. & C. Mfg. Co., 77 N.H. 208, 90 A. 859, 860, L.R.A.1916A, 10.

An American money of account, of the value of the tenth part of a cent.

MILL-HOLMS. Low meadows and other fields in the vicinity of mills, or watery places about mill-dams. Enc. Lond.

MILL OATS. A species of wild oats of volunteer growth with a dark brown or almost black kernel incased in hard cover with stiff beard, having low food value. Gibson v. State, 214 Ala. 38, 106 So. 231, 238.

MILL POWER. An expression designating a unit of water power. It is the descriptive term frequently used to rate water power for the purpose of renting it. It indicates the amount of power due to a stated quantity of water used on the particular fall. It is a term of practical convenience in defining the quantity and weight of water available for use by the lessee. The actual amount of horse power developed may vary with the efficiency of the water wheels and other appliances supplied by the lessee. Holyoke Water Power Co. v. Whiting & Co., 276 Mass. 528, 177 N.E. 568, 572.

MILL PRIVILEGE. The right of a riparian proprietor to erect a mill on his land and to use the power furnished by the stream for the purpose of operating the mill, with due regard to the rights of other owners above and below him on the stream. Hutchinson v. Chase, 39 Me. 511, 63 Am. Dec. 645; Rome Ry. & Light Co. v. Loeb, 141 Ga. 202, 80 S.E. 785, 787, Ann.Cas.1915C, 1023.

MILL RUN. The lumber that comes from the mill in the ordinary process of its operation. Pye v. Eagle Lake Lumber Co., 66 Cal.App. 584, 227 P. 193, 194.

MILL SITE. A parcel of land on or contiguous to a water-course, suitable for the erection and operation of a mill operated by the power furnished by the stream. Occum Co. v. Sprague Mfg. Co., 35 Conn. 512; Mandeville v. Comstock, 9 Mich. 537. Specifically, in American mining law, a parcel of land constituting a portion of the public domain, located and claimed by the owner of a mining claim under the laws of the United States (or purchased by him from the government and patented,) not exceeding five acres in extent, not including any mineral land, not contiguous to the vein or lode, and occupied and used for the purpose of a mill or for other uses directly connected with the operation of the mine; or a similar parcel of land located and actually used for the purpose of a mill or reduction plant, but not by the owner of an existing mine nor in connection with any particular mining claim. See U.S.Rev.St. § 2337, 30 U.S.C.A. § 42.

MILLBANK PRISON. Formerly called the "Penitentiary at Millbank." A prison at Westminster, for convicts under sentence of transportation, until the sentence or order shall be executed, or the convict be entitled to freedom, or be removed to some other place of confinement. Wharton.

MILLEATE, or MILL-LEAT. A trench to convey water to or from a mill. St. 7 Jac. I. c. 19.

MILLED MONEY. This term means merely coined money; and it is not necessary that it should be marked or rolled on the edges. Leach, 708.

MILLING IN TRANSIT. A special privilege allowable at certain designated points, whereby the carrier, having transported grain to a shipper's mill, agrees that the shipper may reship the meal without charge and for which extra compensation is usually exacted by interstate carriers under control of the Interstate Commerce Commission. Priebe v. Southern Ry. Co., 189 Ala. 427, 66 So. 573, 574.

MIL-REIS. The name of a piece of money in the coinage of Portugal, and the Azores and Madeira islands. Its value at the customhouse, according as it is coined in the first, second, or third of the places named, is \$1.12, or 83 1/3 cents, or \$1.

MINA. In old English law, a measure of corn or grain. Cowell; Spelman.

MINABLE COAL. Coal that can be profitably mined by judicious methods. Martin's Fork Coal Co. v. Harlan-Wallins Coal Corporation, D.C.Ky., 14 F.Supp. 902, 908.

MINAGE. A toll or duty paid for selling corn by the mina. Cowell.

MINARE. In old records, to mine or dig mines. *Minator*, a miner. Cowell.

MINATOR CARUCÆ. A plowman. Cowell.

MINATUR INNOCENTIBUS QUI PARCIT NO-CENTIBUS. 4 Coke, 45. He threatens the innocent who spares the guilty.

MIND

MIND. In its legal sense, "mind" means only the ability to will, to direct, to permit, or to assent. *McDermott v. Evening Journal Ass'n*, 43 N.J.L. 492, 39 Am.Rep. 606.

MIND AND MEMORY. A phrase applied to testators, denoting the possession of mental capacity to make a will. In other words, one ought to be capable of making his will, with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them. *Harrison v. Rowan*, 3 Wash. C.C. 585, F.Cas.No.6,141.

MINE. An excavation in the earth from which ores, coal, or other mineral substances are removed by digging or other mining methods, and in its broader sense it denotes the vein, lode, or deposit of minerals. *Atlas Milling Co. v. Jones*, C.C.A.Okl., 115 F.2d 61, 63. It may include open cut, strip, or hydraulic methods of mining. *Rudd v. Hayden*, 265 Ky. 495, 97 S.W.2d 35, 37.

MINE RUN COAL. Fine broken coal and dust obtained by removing lumps and using fine coal underneath. *Brodmeier v. Lamb*, 170 Minn. 143, 212 N.W. 187, 188.

MINER. One who mines; a digger for metals and other minerals. While men of scientific attainments, or of experience in the use of machinery, are to be found in this class, yet the word by which the class is designated imports neither learning nor skill. *Watson v. Lederer*, 11 Colo. 577, 19 P. 604, 1 L.R.A. 854; *Barton v. Wichita River Oil Co.*, Tex.Civ.App., 187 S.W. 1043, 1046.

MINER'S INCH. See Inch.

MINERAL, *adj.* Relating to minerals or the process and business of mining; bearing or producing valuable minerals.

MINERAL, *n.* Any valuable inert or lifeless substance formed or deposited in its present position through natural agencies alone, and which is found either in or upon the soil of the earth or in the rocks beneath the soil. *Barringer & Adams, Mines*, p. lxxvi.

Any natural constituent of the crust of the earth, inorganic or fossil, homogeneous in structure, having a definite chemical composition and known crystallization. See Webster; Cent.Dict.

The term includes all fossil bodies or matters dug out of mines or quarries, whence anything may be dug, such as beds of stone which may be quarried. *Earl of Rosse v. Wainman*, 14 Mees. & W. 872.

The word is not a definite term and is susceptible of limitations or extensions according to intention with which it is used. Standing alone it might by itself embrace the soil, hence include sand and gravel, or, under a strict definition, it might be limited to metallic substances. *Puget Mill Co. v. Duecy*, 1 Wash.2d 421, 96 P.2d 571, 573, 574.

MINERAL DEED. A realty conveyance involving a severance from fee of present title to minerals in place, either effecting such severance in first instance or conveying part of such mineral owner-

ship previously severed from the fee. *Hickey v. Dirks*, 156 Kan. 326, 133 P.2d 107, 109, 110.

MINERAL DISTRICT. A term occasionally used in acts of congress, designating in a general way those portions or regions of the country where valuable minerals are mostly found, or where the business of mining is chiefly carried on, but carrying no very precise meaning and not a known term of the law. See *U. S. v. Smith*, C.C.Or., 11 F. 490.

MINERAL LAND ENTRY. See Entry.

MINERAL LANDS. Lands containing deposits of valuable, useful, or precious minerals in such quantities as to justify expenditures in the effort to extract them, and which are more valuable for the minerals they contain than for agricultural or other uses. *Northern Pac. R. Co. v. Soderberg*, 188 U.S. 526, 23 S.Ct. 365, 47 L.Ed. 575; *Deffebach v. Hawke*, 115 U.S. 392, 6 S.Ct. 95, 29 L.Ed. 423.

Lands on which metals or minerals have been discovered in rock in place. *State v. Field*, 31 N.M. 120, 241 P. 1027, 1042. "Mineral lands" include not merely metalliferous lands, but all such as are chiefly valuable for their deposits of mineral character, which are useful in arts or valuable for purposes of manufacture. *Dunbar Lime Co. v. Utah-Idaho Sugar Co.*, C.C.A.Utah, 17 F.2d 351, 354; and embrace not only those which the lexicon defines as "mineral", but, in addition, such as are valuable for deposits of marble, slate, petroleum, asphaltum, and even guano. *United States v. Northern Pac. R. Co.*, 311 U.S. 317, 61 S.Ct. 264, 284, 85 L.Ed. 210.

MINERAL LEASE. An agreement permitting use of land to explore, and then, if mineral is discovered, giving right to take mineral either for definite term or so long as it can be produced in paying quantities upon reserved royalty. *Gordon v. Empire Gas & Fuel Co.*, C.C.A.Tex., 63 F.2d 487, 488.

MINERAL LODE. A mineral bed of rock with definite boundaries in a general mass of the mountain and also any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. *Duffield v. San Francisco Chemical Co.*, C.C.A.Idaho, 205 F. 480, 484.

MINERAL RIGHT. An interest in minerals in land. A right to take minerals or a right to receive a royalty. *Missouri Pac. R. Co. v. Strohacker*, 202 Ark. 645, 152 S.W.2d 557, 561; *Sheppard v. Stanlind Oil & Gas Co.*, Tex.Civ.App., 125 S.W. 2d 643, 648.

"Mineral rights" is a much broader term and is more inclusive than the term "oil and gas". *Federal Gas, Oil & Coal Co. v. Moore*, 290 Ky. 284, 161 S.W.2d 46, 49.

MINERAL ROYALTY. Income received from lessees of mineral land. *Logan Coal & Timber Ass'n v. Helvering*, C.C.A.3, 122 F.2d 848, 850. The term is distinguished from mineral interest. *Maddox v. Butchee*, 203 La. 299, 14 So.2d 4, 9.

MINERAL SERVITUDE. The right to exploit or develop. *Frost Lumber Industries v. Republic Production Co.*, C.C.A.La., 112 F.2d 462, 466.

MINERATOR. In old records, a miner.

MINIMA PCENA CORPORALIS EST MAJOR QUALIBET PECUNIARIA. The smallest corporal punishment is greater than any pecuniary one. 2 Inst. 220.

MINIME MUTANDA SUNT QUÆ CERTAM HABUERUNT INTERPRETATIONEM. Things which have had a certain interpretation [whose interpretation has been settled, as by common opinion] are not to be altered. Co. Litt. 365; Wing. Max. p. 748, max. 202.

MINIMENT. An old form of *muniment* (q. v.). Blount.

MINIMUM CHARGE. A "minimum charge" in connection with public utilities rate-fixing means the minimum monthly bill which will be rendered regardless of whether or not a customer has used sufficient of the commodity to make up that sum at the agreed rate. Ashtabula Gas Co. v. Public Utilities Commission, 102 Ohio St. 678, 133 N.E. 915, 916, 20 A.L.R. 217.

MINIMUM EST NIHILO PROXIMUM. The smallest is next to nothing.

MINIMUM WAGE. Such an amount as will maintain a normal standard of living, including the preservation of the health and efficiency of the worker.

The least wage on which an ordinary individual can be self-sustaining and obtain the ordinary requirements of life. Associated Industries of Oklahoma v. Industrial Welfare Commission, 185 Okl. 177, 90 P.2d 899, 913.

MINING. The process or business of extracting from the earth the precious or valuable metals, either in their native state or in their ores. In re Rollins Gold Min. Co., D.C.N.Y., 102 F. 985.

As ordinarily used, the term does not include the extraction from the earth of rock, marble, or slate, which is commonly described as "quarrying," although coal and salt are "mined;" nor does it include sinking wells or shafts for petroleum or natural gas, unless expressly so declared by statute, as is the case in Indiana. State v. Indiana, etc., Min. Co., 120 Ind. 575, 22 N.E. 778, 6 L.R.A. 579; Williams v. Citizens' Enterprise Co., 153 Ind. 496, 55 N.E. 425.

MINING CLAIM. A parcel of land, containing precious metal in its soil or rock, and appropriated by an individual, according to established rules, by the process of "location." St. Louis Smelting & Refining Co. v. Kemp, 104 U.S. 649, 26 L.Ed. 875; Northern Pac. R. Co. v. Sanders, C.C.A.Mont., 49 F. 135, 1 C.C.A. 192.

MINING COMPANIES. This designation was formerly applied in England to the associations formed in London in 1825 for working mines in Mexico and South America; but at present it comprises, both in England and America, all mining projects carried on by joint-stock associations or corporations. Rapalje & Lawrence.

MINING DISTRICT. A section of country usually designated by name and described or understood as being confined within certain natural boundaries, in which the precious metals (or their ores) are found in paying quantities, and which is worked therefor, under rules and regulations prescribed or agreed upon by the miners therein. U. S. v. Smith, C.C.Or., 11 F. 490.

MINING LEASE. A lease of a mine or mining claim or a portion thereof, to be worked by the lessee, usually under conditions as to the amount and character of work to be done, and reserving compensation to the lessor either in the form of a fixed rent or a royalty on the tonnage of ore mined, and which (as distinguished from a license) conveys to the lessee an interest or estate in the land, and (as distinguished from an ordinary lease) conveys not merely the temporary use and occupation of the land, but a portion of the land itself, that is, the ore in place and unsevered and to be extracted by the lessee. Austin v. Huntsville Min. Co., 72 Mo. 541, 37 Am.Rep. 446; Knight v. Indiana Coal Co., 47 Ind. 113, 17 Am.Rep. 692.

MINING LOCATION. The act of appropriating and claiming, according to certain established rules and local customs, a parcel of land of defined area, upon or in which one or more of the precious metals or their ores have been discovered, and which constitutes a portion of the public domain, with the declared intention to occupy and work it for mining purposes under the implied license of the United States. Also the parcel of land so occupied and appropriated. Poire v. Wells, 6 Colo. 412; St. Louis Smelting & Refining Co. v. Kemp, 104 U.S. 649, 26 L.Ed. 875; Golden Fleece, etc., Min. Co. v. Cable, etc., Min. Co., 12 Nev. 328.

MINING PARTNERSHIP. A special type of partnership different in many respects from ordinary or trading partnerships. Meister v. Farrow, 109 Mont. 1, 92 P.2d 753, 757, 758, 760, 761.

An association of several owners of a mine for co-operation in working the mine. Kahn v. Central Smelting Co., 102 U.S. 645, 26 L.Ed. 266; Skillman v. Lachman, 23 Cal. 203, 83 Am.Dec. 96; Kimberly v. Arms, 129 U.S. 512, 9 S.Ct. 355, 32 L.Ed. 764.

Generally, where the parties co-operate in developing a lease for oil and gas, each agreeing to pay his part of the expenses and to share in the profits or losses, a "mining partnership" exists. Continental Supply Co. v. Dickson Oil Co., 94 Okl. 660, 153 P.2d 1017, 1019.

MINING RENT. In practice, the term is used to designate consideration given for a mining lease, whether such lease creates a tenancy, conveys a fee, or grants an incorporeal right or a mere license. Miller v. Carr, 137 Fla. 114, 188 So. 103, 107.

MINISTER. Ecclesiastical law. A person ordained according to the usages of some church or associated body of Christians for the preaching of the gospel and filling the pastoral office.

Foreign minister. An ambassador, minister, or envoy from a foreign government. Cherokee Nation v. Georgia, 5 Pet. 56, 8 L.Ed. 25.

International law. An officer appointed by the government of one nation as a mediator or arbitrator between two other nations who are engaged in a controversy, with their consent, with a view to effecting an amicable adjustment of the dispute.

A general name given to the diplomatic representatives sent by one state to another, including ambassadors, envoys, and residents.

MINISTER

Practice. An officer of justice, charged with the execution of the law, and hence termed a "ministerial officer;" such as a sheriff, bailiff, coroner, sheriff's officer. Britt. c. 21.

An agent; one who acts not by any inherent authority, but under another.

Public law. One of the highest functionaries in the organization of civil government, standing next to the sovereign or executive head, acting as his immediate auxiliary, and being generally charged with the administration of one of the great bureaus or departments of the executive branch of government. Otherwise called a "cabinet minister," "secretary of state," or "secretary of a department."

Public minister. A general term comprehending all the higher classes of diplomatic representatives,—as ambassadors, envoys, residents,—but not including the commercial representatives, such as consuls.

MINISTERIAL. That which is done under the authority of a superior; opposed to *judicial*; that which involves obedience to instructions, but demands no special discretion, judgment, or skill. State Tax Commission of Utah v. Katsis, 90 Utah 406, 62 P.2d 120, 123, 107 A.L.R. 1477; Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51, 54, 105 A.L.R. 1115; First Nat. Bank v. Filer, 107 Fla. 526, 145 So. 204, 207, 87 A.L.R. 267.

MINISTERIAL ACT. One which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done. State Tax Commission of Utah v. Katsis, 90 Utah 406, 62 P.2d 120, 123, 107 A.L.R. 1477.

MINISTERIAL ACT OF MUNICIPAL CORPORATION. See Corporate Act of Municipal Corporation.

MINISTERIAL DUTY. One regarding which nothing is left to discretion—a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist. City of Tacoma v. Peterson, 165 Wash. 461, 5 P.2d 1022, 1024. Mott v. Hull, 51 Okl. 602, 152 P. 92, L.R.A.1916B, 1184. It arises when an individual has such a legal interest in its performance that neglect of performance becomes a wrong to such individual. Morton v. Comptroller General, 4 S.C. 473.

MINISTERIAL OFFICE. See Office.

MINISTERIAL OFFICER. One whose duties are purely ministerial, as distinguished from executive, legislative, or judicial functions, requiring obedience to the mandates of superiors and not involving the exercise of judgment or discretion. U. S. to Use of Kinney v. Bell, C.C.Pa., 127 F. 1002; State v. Loechner, 65 Neb. 814, 91 N.W. 874, 59 L.R.A. 915; Reid v. Hood, 2 Nott & McC., S.C., 169, 10 Am.Dec. 582.

MINISTERIAL POWER. See Power.

MINISTERIAL TRUST. See Trust.

MINISTERS PLENIPOTENTIARY. *Ministers plenipotentiary* possess full powers, and are of much greater distinction than simple ministers. These are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary; Vattel, liv. 4, c. 5, § 74; 1 Kent 48; Merlin, *Répert.*

MINISTRANT. The party cross-examining a witness was so called, under the old system of the ecclesiastical courts.

MINISTRI REGIS. Lat. In old English law, ministers of the king, applied to the judges of the realm, and to all those who hold ministerial offices in the government. 2 Inst. 208.

MINISTRY. The term as used in England is wider than Cabinet and includes all the holders of public office who come in and go out with the Prime Minister. In this respect it may be contrasted with the Permanent Civil Service, whose tenure is independent of public changes. The first English Ministry as now understood was formed after the general election of 1696. Macaulay, *Hist. Engl.*, ch. 24.

"Ecclesiastical functions," or "duties." Rector, etc., of St. George's Church in City of New York v. Morgan, 88 Misc. 702, 152 N.Y.S. 497, 498.

MINOR. An infant or person who is under the age of legal competence. One under twenty-one. A term derived from the civil law, which described a person under a certain age as *less than* so many years. *Minor viginti quinque annis*, one less than twenty-five years of age. Inst. 1, 14, 2; Audsley v. Hale, 303 Mo. 451, 261 S.W. 117, 123.

Also, less; of less consideration; lower; a person of inferior condition. Fleta, 2, 47, 13, 15; Calvin.

MINOR ÆTAS. Lat. Minority or infancy. Cro. Car. 516. Literally, lesser age.

MINOR ANTE TEMPUS AGERE NON POTEST IN CASU PROPRIETATIS NEC ETIAM CONVENIRE; DIFFERETUR USQUE ÆTATEM; SED NON CADIT BREVE. 2 Inst. 291. A minor before majority cannot act in a case of property, nor even agree; it should be deferred until majority; but the writ does not fail.

MINOR FACT. In the law of evidence, a relative, collateral, or subordinate fact; a circumstance. Wills, Circ.Ev. 27; Burrill, Circ.Ev. p. 121, note, 582.

MINOR JURARE NON POTEST. A minor cannot make oath. Co.Litt. 172b. An infant cannot be sworn on a jury. Litt. 289.

MINOR MINOREM CUSTODIRE NON DEBET, ALIOS ENIM PRÆSUMITUR MALE REGERE QUI SEIPSUM REGERE NESCIT. A minor ought not to be guardian to a minor, for he who

knows not how to govern himself is presumed to be unfit to govern others. Fleta, lib. 1, c. 10; Co.Litt. 88b.

MINOR NON TENETUR RESPONDERE DURANTE MINORI ÆTATE, NISI IN CAUSA DOTIS, PROPTER FAVOREM. 3 Bulst. 143. A minor is not bound to reply during his minority, except as a matter of favor in a cause of dower.

MINOR QUI INFRA ÆTATEM 12 ANNORUM FUERIT UITAGARI NON POTEST, NEC EXTRA LEGEM PONI, QUIA ANTE TALEM ÆTATEM, NON EST SUB LEGE ALIQUA, NEC IN DECENNA. Co.Litt. 128. A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because before such age he is not under any law, nor in a decennary.

MINOR SEPTEMDECIM ANNIS NON ADMITTITUR FORE EXECUTOREM. A person under seventeen years is not admitted to be an executor. 6 Coke, 67. A rule of ecclesiastical law.

MINORA REGALIA. In English law, the lesser prerogatives of the crown, including the rights of the revenue. 1 Bl.Comm. 241.

MINORITY. The state or condition of a minor; infancy.

The smaller number of votes of a deliberative assembly; opposed to majority, (which see.)

MINT. The place designated by law where bullion is coined into money under authority of the government.

Also a place of privilege, in Southwark, near the king's prison, where persons formerly sheltered themselves from justice under the pretext that it was an ancient palace of the crown. The privilege is now abolished. Wharton.

MINT-MARK. The masters and workers of the English mint, in the indentures made with them, agreed "to make a privy mark in the money they make, of gold and silver, so that they may know which moneys were of their own making." After every trial of the pix, having proved their moneys to be lawful, they were entitled to their *quietus* under the great seal, and to be discharged from all suits or actions. Wharton.

MINT-MASTER. One who manages the coinage.

MINTAGE. The charge or commission taken by the mint as a consideration for coining into money the bullion which is brought to it for that purpose; the same as "seigniorage."

Also that which is coined or stamped as money; the product of the mint.

MINUS. Lat. In the civil law, less; less than. The word had also, in some connections, the sense of "not at all." For example, a debt remaining wholly unpaid was described as "*minus solutum*."

MINUS LATIUM. See Jus Latium.

MINUS SOLVIT, QUI TARDIUS SOLVIT. He does not pay who pays too late. Dig. 50, 16, 12, 1.

MINUTE. In measures of time or circumference, a minute is the sixtieth part of an hour or degree.

MINUTE-BOOK. A book kept by the clerk or prothonotary of a court for entering memoranda of its proceedings.

MINUTE TITHES. Small tithes, usually belonging to the vicar; e. g. eggs, honey, wax, etc. 3 Burn, Eccl.Law 680; 6 & 7 Will. IV. c. 71, §§ 17, 18, 27.

MINUTES. Business law. Memoranda or notes of a transaction or proceeding. Thus, the record of the proceedings at a meeting of directors or shareholders of a company is called the "minutes."

Practice. A memorandum of what takes place in court, made by authority of the court. Moore v. State, 3 Heisk., Tenn., 509.

Scotch Practice. A pleading put into writing before the lord ordinary, as the ground of his judgment. Bell.

MINUTIO. Lat. In the civil law, a lessening; diminution or reduction. Dig. 4, 5, 1.

MIRANDA RULE. Prior to any custodial interrogation; that is, questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his freedom in any significant way, the person must be warned:

1. That he has a right to remain silent;
2. That any statement he does make may be used as evidence against him;
3. That he has a right to the presence of an attorney;
4. That if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.

Unless and until these warnings or a waiver of these rights are demonstrated at the trial, no evidence obtained in the interrogation may be used against the accused. *Miranda v. Arizona*, 384 U.S. 436, 444, 478, 479, 86 S.Ct. 1602, 1612, 1630, 16 L.Ed.2d 294.

MIRROR. The Mirror of Justice, or of the Justices, commonly spoken of as the "Mirror," is an ancient treatise on the laws of England, supposedly written during the reign of Edward II., and attributed to one Andrew Horne. But it has been thought that the germ of it was written before the Conquest and that Horne only made additions to it.

MIS. An inseparable particle used in composition, to mark an ill sense or depravation of the meaning; as "miscomputation" or "misaccounting," i. e., false reckoning.

MISA. In old English law, the mise or issue in a writ of right. Spelman.

In old records, a compact or agreement; a form of compromise. Cowell.

MISADVENTURE. A mischance or accident; a casualty caused by the act of one person inflicting injury upon another. Homicide "by misadventure" occurs where a man, doing a lawful act, without

MISALLEGE

any intention of hurt, unfortunately kills another. 4 Bl.Comm. 182; Williamson v. State, 2 Ohio Cir. Ct.R. 292.

MISALLEGE. To cite falsely as a proof or argument.

MISAPPLICATION. Improper, illegal, wrongful, or corrupt use or application of funds, property, etc. Jewett v. U. S., C.C.A.Mass., 100 F. 840, 41 C.C.A. 88; Kansas Flour Mills Co. v. American Surety Co. of New York, 98 Kan. 618, 158 P. 1118.

MISAPPROPRIATION. The act of misappropriating or turning to a wrong purpose; wrong appropriation; a term which does not necessarily mean speculation, although it may mean that. Bannon v. Knauss, 57 Ohio App. 288, 13 N.E.2d 733, 735.

MISBEHAVIOR. Ill conduct; improper or unlawful behavior. Smith v. Cutler, 10 Wend., N.Y., 590, 25 Am.Dec. 580; State v. Arnold, 100 Tenn. 307, 47 S.W. 221.

MISBRANDING. False or misleading labeling. People v. Rosenbloom, Cal., 119 Cal.App. 759, 2 P.2d 228, 231.

MISCARRIAGE. Medical jurisprudence. The expulsion of the *ovum* or embryo from the *uterus* within the first six weeks after conception. Between that time, and before the expiration of the sixth month, when the child may possibly live, it is termed "abortion." When the delivery takes place soon after the sixth month, it is denominated "premature labor." But the criminal act of destroying or bringing forth prematurely the *foetus* or unborn offspring of a pregnant woman, at any time before birth, is termed, in law, "procuring miscarriage." Chit.Med.Jur. 410. Smith v. State, 33 Me. 59, 54 Am.Dec. 607; People v. Rankin, 10 Cal.2d 198, 74 P.2d 71, 73.

The failure of a woman, from causes beyond her control to carry a fetus to maturity. Flory v. Supreme Tribe of Ben Hur, 98 Neb. 160, 152 N.W. 295.

Practice. As used in the statute of frauds, ("debt, default, or miscarriage of another,") this term means any species of unlawful conduct or wrongful act for which the doer could be held liable in a civil action. Gansey v. Orr, 173 Mo. 532, 73 S.W. 477.

MISCARRIAGE OF JUSTICE. Prejudice to substantial rights of a party. See the cases of State v. Cluff, 48 Utah, 102, 158 P. 701, 703; State v. Nell, 117 Wash. 142, 202 P. 7, 8.

MISCASTING. An error in auditing and numbering. It does not include any pretended miscasting or misvaluing. 4 Bouvier, Inst. n. 4128.

MISCEGENATION. Mixture of races; marriage between persons of different races; as between a white person and a Negro.

Living together in state of adultery or fornication, by white person and Negro, or descendant of

Negro. Jackson v. State, 23 Ala.App. 555, 129 So. 306.

MISCHARGE. An erroneous charge; a charge, given by a court to a jury, which involves errors for which the judgment may be reversed.

MISCHIEF. In legislative parlance, the word is often used to signify the evil or danger which a statute is intended to cure or avoid.

In the phrase "malicious mischief," (which see,) it imports a wanton or reckless injury to persons or property.

MISCOGNISANT. Ignorant; uninformed. The word is obsolete.

MISCONDUCT. A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Mandella v. Mariano, 61 R.I. 163, 200 A. 478, 479.

MISCONDUCT IN OFFICE. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Wysong v. Walden, 120 W.Va. 122, 196 S.E. 573, 575.

MISCONTINUANCE. In practice, an improper continuance; want of proper form in a continuance; the same with "discontinuance." Cowell.

MISCREANT. In old English law, an apostate; an unbeliever; one who totally renounced Christianity. 4 Bl.Comm. 44.

MISDATE. A false or erroneous date affixed to a paper or document.

MISDELIVERY. The delivery of property by a carrier or warehouseman to a person not authorized by the owner or person to whom the carrier or warehouseman is bound by his contract to deliver it. Cleveland, etc., R. Co. v. Potts, 33 Ind. App. 564, 71 N.E. 689; Forbes v. Boston & L. R. Co., 133 Mass. 156.

MISDEMEANANT. A person guilty of a misdemeanor; one sentenced to punishment upon conviction of a misdemeanor. See First-Class Misdemeanant.

MISDEMEANOR. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. People v. Harshbarger, 296 Ill.App. 397, 16 N.E.2d 247, 248.

An act committed or omitted in violation of a public law either forbidding or commanding it. State v. Magee Pub. Co., 29 N.M. 455, 224 P. 1028, 1031, 38 A.L.R. 142; State v. Jackson, 142 La. 540, 77 So. 196, 197, L.R.A.1918B, 1178.

In the English law, "misdemeanor" is generally used in contradistinction to "felony;" and misdemeanors comprehend all indictable offenses which do not amount to felony, as libels, conspiracies, attempts, and solicitations to com-

mit felonies, etc. *Brown. People v. Upson*, 79 Hun 87, 29 N.Y.Supp. 615; *In re Bergin*, 31 Wis. 386; *Walsh v. People*, 65 Ill. 65, 16 Am.Rep. 569.

Under modern statutes the distinction between felonies and misdemeanors is not whether the offense is infamous, but whether it is punishable by imprisonment in the penitentiary or capitally, in which case it is a "felony"; otherwise a "misdemeanor." *Jones v. Brinkley*, 174 N.C. 23, 93 S.E. 372, 373; *Lee Lewis, Inc., v. Dosch*, 193 Ky. 163, 235 S.W. 355, 356.

MISDESCRIPTION. An error or falsity in the description of the subject-matter of a contract which deceives one of the parties to his injury, or is misleading in a material or substantial point.

MISDIRECTION. In practice, an error made by a judge in instructing the jury upon the trial of a cause.

MISE. The issue in a writ of right. When the tenant in a writ of right pleads that his title is better than the demandant's, he is said to join the *mise* on the mere right.

Also expenses; costs; disbursements in an action.

MISE-MONEY. Money paid by way of contract or composition to purchase any liberty, etc. *Blount*.

MISERA EST SERVITUS, UBI JUS EST VAGUM AUT INCERTUM. It is a wretched state of slavery which subsists where the law is vague or uncertain. 4 Inst. 245; *Broom*, Max. 150.

MISERABLE DEPOSITUM. Lat. In the civil law, the name of an involuntary deposit, made under pressing necessity; as, for instance, shipwreck, fire, or other inevitable calamity. *Poth. Proc. Civile*, pt. 5, c. 1, § 1; *Code La. art. 2935*, *Civ. Code*, art. 2964.

MISERERE. The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy; whence it is also called the "psalm of mercy." *Wharton*.

MISERICORDIA. Lat. Mercy; a fine or amerce-ment; an arbitrary or discretionary amerce-ment.

MISERICORDIA COMMUNIS. In old English law, a fine set on a whole county or hundred.

MISFEASANCE. A misdeed or trespass. The improper performance of some act which a man may lawfully do. 3 *Steph.Comm.* 460. *Bell v. Josselyn*, 3 Gray, Mass. 309, 63 Am.Dec. 741.

"Nonfeasance" means the omission of an act which a person ought to do; "misfeasance" is the improper doing of an act which a person might lawfully do; and "malfeasance" is the doing of an act which a person ought not to do at all. *Proksch v. Bettendorf*, 218 Iowa 1376, 257 N.W. 383. But "misfeasance" is often used in the sense of "malfeasance." *Colte v. Lynes*, 33 Conn. 109; *Brooks v. Hornbeck*, *Tex.Civ.App.*, 274 S.W. 162, 163.

MISFEAZANCE. See *Misfeasance*.

MISFORTUNE. An adverse event, calamity, or evil fortune, arising by accident, (or without the

will or concurrence of him who suffers from it,) and not to be foreseen or guarded against by care or prudence. 20 Q.B.Div. 816. *Swetland v. Swetland*, 100 N.J.Eq. 196, 134 A. 822, 829. In its application to the law of homicide, this term always involves the further idea that the person causing the death is not at the time engaged in any unlawful act. 4 Bl.Comm. 182. *Gaunce v. State*, 22 Okl.Cr. 361, 211 P. 517, 518.

MISJOINDER. See *Joinder*.

MISKENNING. In Saxon and old English law, an unjust or irregular summoning to court; to speak unsteadily in court; to vary in one's plea. *Cowell*; *Blount*; *Spelman*.

MISLAY. To deposit in a place not afterwards recollected; to lose anything by forgetfulness of the place where it was laid. *Shehane v. State*, 13 *Tex.App.* 535.

MISLEADING. Delusive; calculated to lead astray or to lead into error. *Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co.*, 106 Wash. 72, 179 P. 120, 122. Instructions which are of such a nature as to be misunderstood by the jury, or to give them a wrong impression, are said to be "misleading."

MISNOMER. Mistake in name; giving incorrect name to person in accusation, indictment, pleading, deed or other instrument. *Culpepper v. State*, 173 Ga. 799, 161 S.E. 623.

MISPLEADING. Pleading incorrectly, or omitting anything in pleading which is essential to the support or defense of an action, is so called; as in the case of a plaintiff not merely stating his title in a defective manner, but setting forth a title which is essentially defective in itself; or if, to an action of debt, the defendant pleads "not guilty" instead of *nil debet*. *Brown. Lovett v. Pell*, 22 *Wend., N.Y.*, 376; *Chicago & A. R. Co. v. Murphy*, 198 Ill. 462, 64 N.E. 1011.

MISPRISION. A word used to describe a misdemeanor which does not possess a specific name. 3 Inst. 36; *United States v. Perlstein, C.C.A.N.J.*, 126 F.2d 789, 798. But more particularly and properly the term denotes either (1) a contempt against the sovereign, the government, or the courts of justice, including not only contempts of court, properly so called, but also all forms of seditious or disloyal conduct and leze-majesty; (2) maladministration of high public office, including peculation of the public funds; (3) neglect or light account made of a crime, that is, failure in the duty of a citizen to endeavor to prevent the commission of a crime, or, having knowledge of its commission, to reveal it to the proper authorities. 4 Bl.Comm. 119-126; *State v. Biddle*, 124 A. 804, 805, 2 W.W.Harr., Del. 401.

Negative misprision. The concealment of something which ought to be revealed; that is, misprision in the third of the specific meanings given above.

MISPRISION

Positive misprision. The commission of something which ought not to be done; that is, misprision in the first and second of the specific meanings given above.

Practice. A clerical error or mistake made in writing or keeping records. *State v. Ryan*, 146 Wash. 114, 261 P. 775, 776.

MISPRISION OF FELONY. The offense of concealing a felony committed by another, but without such previous concert with or subsequent assistance to the felon as would make the party concealing an accessory before or after the fact. 4 Steph.Comm. 260; 4 Bl.Comm. 121; *United States v. Perlstein*, C.C.A.N.J., 126 F.2d 789, 798.

MISPRISION OF TREASON. The bare knowledge and concealment of an act of treason or treasonable plot, that is, without any assent or participation therein, for if the latter elements be present the party becomes a principal. 4 Bl.Comm. 120; Pen.Code Cal. § 38.

MISREADING. Reading a deed or other instrument to an illiterate or blind man (who is a party to it) in a false or deceitful manner, so that he conceives a wrong idea of its tenor or contents. 5 Coke, 19; 6 East, 309; *Hallenbeck v. Dewitt*, 2 Johns., N.Y. 404.

MISRECITAL. The erroneous or incorrect recital of a matter of fact, either in an agreement, deed, or pleading.

MISREPRESENTATION. Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. *A. P. Landis, Inc., v. Mellinger*, 116 Pa.Super. 167, 175 A. 745, 746.

An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead. *Haigh v. White Way Laundry Co.*, 164 Iowa 143, 145 N.W. 473, 474, 50 L.R.A.N.S., 1091; *Zackwik v. Hanover Fire Ins. Co.*, Mo. App., 225 S.W. 135, 138.

In a limited sense, an intentional false statement respecting a matter of fact, made by one of the parties to a contract, which is material to the contract and influential in producing it. *Wise v. Fuller*, 29 N.J.Eq. 262; *Hicks v. Wynn*, 137 Va. 186, 119 S.E. 133, 135.

A "misrepresentation," which justifies the rescission of a contract, is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. *Rhodes v. Uhl*, 189 Iowa 408, 178 N.W. 394, 400.

Misrepresentation such as will amount to false pretense is not confined to mere oral misstatements of fact but includes distribution of printed matter, or a course of conduct, manifestly intended to deceive as to conditions actually existing. *Commonwealth v. Dougherty*, 84 Pa.Super. Ct. 319, 321.

False or fraudulent misrepresentation is a representation contrary to the fact, made by a person with a knowledge of its falsehood, and being the cause of the other party's entering into the contract. 6 Clark & F. 232.

Negligent misrepresentation is a false representation made by a person who has no reasonable grounds for believing it to be true, though he does not know that it is untrue, or even believes it to be true. L.R. 4 H.L. 79.

Innocent misrepresentation occurs where the person making the representation had reasonable grounds for believing it to be true. L.R. 2 Q.B. 580.

Insurance law. A statement of something as a fact which is untrue and material to the risk, and which assured states knowing it to be untrue and with intent to deceive, or which insured states positively as true, not knowing it to be true, and which has a tendency to mislead. *Lawson v. Southwestern Voluntary Ass'n*, 168 Va. 294, 191 S. E. 648, 649.

Material misrepresentation. In insurance law, one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance. *Sovereign Camp, W. O. W., v. Parker*, 36 Ga.App. 695, 138 S.E. 86, 87.

MISSA. Lat. The mass.

MISSÆ PRESBYTER. A priest in orders. Blount.

MISSAL. The mass-book.

MISSILIA. In Roman law, gifts or liberalities, which the prætors and consuls were in the habit of throwing among the people. Inst. 2, 1, 45.

MISSING SHIP. In maritime law, a vessel is so called when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. 2 Duer, Ins. 469.

MISSIONARIES. The term "missionaries," as used in the liquor trade, applies to men employed to visit saloons throughout the country and puff liquors of particular manufacture, so that salesmen of wholesalers and jobbers will find the way prepared for them. *Hiram Walker & Sons v. Corning & Co.*, D.C.Ill., 255 F. 129, 130.

MISSIONS. In church parlance, the establishment of churches and schools and relief depots through which are taught the principles of Christianity, the afflicted cared for, and the needy supplied. *Hitchcock v. Board of Home Missions*, 259 Ill. 288, 102 N.E. 741, 744, Ann.Cas.1915B, 1.

MISSIVES. In Scotch law, writings passed between parties as evidence of a transaction. Bell.

MISSTAICUS. In old records, a messenger.

MISSURA. The ceremonies used in a Roman Catholic church to recommend and dismiss a dying person.

MISTAKE. Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. Code Ga. § 3117, Civ. Code 1910, § 4570; 1 Story, Eq. Jur. § 110.

A mistake exists when a person, under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done or omitted. *Jeremy*, Eq. Jur. 358; *Ward v. Lyman*, 108 Vt. 464, 188 A. 892, 896. It may arise either from unconsciousness, ignorance, forgetfulness, imposi-

tion, or misplaced confidence. *Bisph. Eq. § 185; Salazar v. Steelman*, 22 Cal.App.2d 402, 71 P.2d 79, 82.

Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in (1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or (2) belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed. *Callan Court Co. v. Citizens & Southern Nat. Bank*, 184 Ga. 87, 190 S.E. 831, 854.

A *mistake of law* happens when a party, having full knowledge of the facts, comes to an erroneous conclusion as to their legal effect. It is a mistaken opinion or inference, arising from an imperfect or incorrect exercise of the judgment, upon facts, *Page v. Provines*, 179 Okl. 391, 66 P.2d 7, 10; and necessarily presupposes that the person forming it is in full possession of the facts. The facts precede the law, and the true and false opinion alike imply an acquaintance with them. The one is the result of a correct application of legal principles, which every man is presumed to know, and is called "law;" the other, the result of a faulty application, and is called a "mistake of law." *Hurd v. Hall*, 12 Wis. 124; *Barnett v. Douglas*, 102 Okl. 85, 226 P. 1035, 1037, 39 A.L.R. 188.

Mutual mistake is where the parties have a common intention, but it is induced by a common or mutual mistake. *Paine-Fishburn Granite Co. v. Reynoldson*, 115 Neb. 520, 213 N.W. 750, 751; *Northwest Thresher Co. v. McNinch*, 42 Okl. 155, 140 P. 1170, 1172. "Mutual" as used in the expression mutual mistake of fact expresses a thought of reciprocity and distinguishes it from a mistake which is a common mistake of both parties. There is something of the thought of a common mistake because it must affect both parties. Mistake of fact as ground for relief may be neither "mutual" nor common in the strict sense because it may be wholly the mistake of one of the parties, the other being wholly ignorant both of the fact upon the faith of which the other has mistakenly acted and that the other has acted upon such an understanding of the fact situation. *United States Fidelity & Guaranty Co. v. Heller*, D.C.Pa., 259 F. 885, 890; *Litteral v. Bevins*, 186 Ky. 514, 217 S.W. 369, 370.

MISTER. A title of courtesy. A trade, craft, occupation, employment, office. Webster.

MISTERY. A trade or calling. Cowell.

MISTRESS. The proper style of the wife of an esquire or a gentleman in England.

MISTRIAL. An erroneous, invalid, or nugatory trial; a trial of an action which cannot stand in law because of want of jurisdiction, or a wrong drawing of jurors, or disregard of some other fundamental requisite. *C. W. Hunt Co. v. Boston Elevated Ry. Co.*, 217 Mass. 319, 104 N.E. 728, 729; *Illinois Oil Co. v. Grandstaff*, 118 Okl. 101, 246 P. 832, 833.

MISUSER. An unlawful use of a right. Abuse of an office or franchise. 2 Bl.Comm. 153.

MITIGATING CIRCUMSTANCES. Such as do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability. *Heaton v. Wright*, 10 How.Prac., N.Y. 82. Those that affect basis for award of exemplary damages, or reduce actual damages by showing, not that they were never suffered, but that they have been partially extinguished. *McClelland v. Climax Hosiery Mills*, 252 N.Y. 347, 169 N.E. 605, 608. And in actions for libel and slander, circumstances bearing on de-

fendant's liability for exemplary damages by reducing moral culpability, or on liability for actual damages by showing partial extinguishment thereof. Civil Practice Act, §§ 262, 338. *Fleckenstein v. Friedman*, 266 N.Y. 19, 193 N.E. 537, 539.

MITIGATION. Alleviation; abatement or diminution of a penalty or punishment imposed by law.

Reduction, diminishing, or lessening amount of penalty or punishment. *People v. Fook*, 206 Cal. 64, 273 P. 779, 782.

MITIGATION OF DAMAGES. A reduction of the amount of damages, not by proof of facts which are a bar to a part of the plaintiff's cause of action, or a justification, nor yet of facts which constitute a cause of action in favor of the defendant, but rather facts which show that the plaintiff's conceded cause of action does not entitle him to so large an amount as the showing on his side would otherwise justify the jury in allowing him. 1 *Suth. Dam.* 226.

MITIOR SENSUS. Lat. The more favorable acceptance.

MITIUS IMPERANTI MELIUS PARETUR. The more mildly one commands, the better is he obeyed. 3 *Inst.* 24.

MITOYENNETÉ. In French law, the joint ownership of two neighbors in a wall, ditch, or hedge which separates their estates.

MITTENDO MANUSCRIPTUM PEDIS FINIS. An abolished judicial writ addressed to the treasurer and chamberlain of the exchequer to search for and transmit the foot of a fine acknowledged before justices in eyre into the common pleas. *Reg. Orig.* 14.

MITTER. L. Fr. To put, to send, or to pass; as, *mitter l'estate*, to pass the estate; *mitter le droit*, to pass a right. These words are used to distinguish different kinds of releases.

MITTER AVANT. L. Fr. In old practice, to put before; to present before a court; to produce in court.

MITTIMUS. Criminal practice. The name of a precept in writing, issuing from a court or magistrate, directed to the sheriff or other officer, commanding him to convey to the prison the person named therein, and to the jailer, commanding him to receive and safely keep such person until he shall be delivered by due course of law. *Pub. St. Mass.* 1882, p. 1293. *Connolly v. Anderson*, 112 *Mass.* 62; *Saunders v. U. S.*, D.C.Me., 73 F. 786. Transcript of minutes of conviction and sentence duly certified by court clerk. *United States ex rel. Chasteen v. Denmark*, C.C.A.Ill., 138 F.2d 289, 291.

Old English law. A writ enclosing a record sent to be tried in a county palatine; it derives its name from the Latin word *mittimus*, "we send." It is the jury process of these counties, and commands the proper officer of the county palatine to command the sheriff to summon the jury for the

MIXED

trial of the cause, and to return the record, etc. *Territory v. Hattick*, 2 Mart. O. S., La., 88.

MIXED. Formed by admixture or commingling; partaking of the nature, character, or legal attributes of two or more distinct kinds or classes.

As to mixed "Action," "Blood," "Contract," "Government," "Jury," "Larceny," "Marriage," "Nuisance," "Policy," "Presumption," "Property," "Tithes," and "War," see those titles.

MIXED ESTATE. Leasehold estates created by ground rent leases for 99 years renewable forever, both at common law and in Maryland, are sometimes called "mixed estates". *Jones v. Magruder*, D.C.Md., 42 F.Supp. 193, 198.

MIXED INSURANCE COMPANY. One which has, at least in part, the nature of both stock and mutual companies, and in which a certain portion of the profits is divided among the stockholders and distribution of other funds is made among the insured. *Ohio Farmers Indemnity Co. v. Commissioner of Internal Revenue*, C.C.A.6, 108 F.2d 665, 667; *Pink v. Town Taxi Co.*, 138 Me. 44, 21 A.2d 656, 658, 659.

MIXED LAWS. A name sometimes given to those which concern both persons and property.

MIXED QUESTION OF LAW AND FACT. A question depending for solution on questions of both law and fact, but is really a question of either law or fact to be decided by either judge or jury. *State v. Hayes*, 162 La. 917, 111 So. 327, 329.

MIXED QUESTIONS. This phrase may mean either those which arise from the conflict of foreign and domestic laws, or questions arising on a trial involving both law and fact. *Bennett v. Eddy*, 120 Mich. 300, 79 N.W. 481.

MIXED SUBJECTS OF PROPERTY. Such as fall within the definition of things real, but which are attended, nevertheless, with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *feræ naturæ*, charters and deeds, court rolls, and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armor, with pennons and other ensigns, and especially heirlooms. Wharton.

MIXED TRAIN. "Mixed train" is one carrying both passengers and freight. *State v. Chicago, St. P., M. & O. Ry. Co.*, 115 Neb. 306, 212 N.W. 535, 536; *Arizona Eastern R. Co. v. State*, 29 Ariz. 446, 242 P. 870, 871.

MIXED TRIBUNALS. A name given to an international jurisdiction introduced into Egypt in 1878, after negotiations with the various Christian Powers of Europe.

This tribunal made the administration of civil justice quite independent of the government of Egypt. They have

jurisdiction over cases between persons of different nationalities, whether native or European, but criminal charges against natives are heard in the native criminal courts and those against Europeans in the proper consular courts. There are three first instance courts, one at Alexandria with eighteen judges, of whom twelve are foreign, one at Cairo with nineteen judges, of whom thirteen are foreign, and one at Mansurah with nine judges, of whom six are foreign, and a Court of Appeal sitting at Alexandria, composed of fifteen judges. The jurisdiction cannot be invoked unless one party is a foreigner, but it is said to be not uncommon for Egyptian merchants to assign their claims to foreigners, so as to get them into these courts. *Ann.Bull. of Comp.Law Bureau*, 1911, p. 43. The judges are subjects of various European states, and of the United States and Brazil. They are appointed by their respective governments; Milner, England in Egypt.

These courts were instituted for a period of five years only, and have been renewed at various times. *Bonfils, Manual of Int.Law* 460; 23 L.Q.R. 409; 8 *Encyc.Laws of Eng.* 445.

MIXTION. The mixture or confusion of goods or chattels belonging severally to different owners, in such a way that they can no longer be separated or distinguished; as where two measures of wine belonging to different persons are poured together into the same cask.

MIXTUM IMPERIUM. Lat. In old English law, mixed authority; a kind of civil power. A term applied by Lord Hale to the "power" of certain subordinate civil magistrates as distinct from "jurisdiction." *Hale, Anal.* § 11.

MOB. An assemblage of many people, acting in a violent and disorderly manner, defying the law, and committing, or threatening to commit, depredations upon property or violence to persons. *Alexander v. State*, 40 Tex.Cr.R. 395, 50 S.W. 716; *Marshall v. Buffalo*, 50 App.Div. 149, 64 N.Y.S. 411; *Champaign County v. Church*, 62 Ohio St. 318, 57 N.E. 50, 48 L.R.A. 738.

The word, in legal use, is practically synonymous with "riot," but the latter is the more correct term. *Koska v. Kansas City*, 123 Kan. 362, 255 P. 57, 58; *Blakeman v. City of Wichita*, 93 Kan. 444, 144 P. 816, L.R.A.1915C, 578.

MOBBING AND RIOTING. In Scotch law, a general term including all those convocations of the lieges for violent and unlawful purposes, which are attended with injury to the persons or property of the lieges, or terror and alarm to the neighborhood in which it takes place. The two phrases are usually placed together; but, nevertheless, they have distinct meanings, and are sometimes used separately in legal language, the word "mobbing" being peculiarly applicable to the unlawful assemblage and violence of a number of persons, and that of "rioting" to the outrageous behavior of a single individual. *Alis. Crim. Law*, c. 23, p. 509.

MOBILIA. Lat. Movables; movable things; otherwise called "*res mobiles*."

MOBILIA NON HABENT SITUM. Movables have no *situs* or local habitation. *Holmes v. Remsen*, 4 Johns., N.Y., Ch. 472, 8 Am.Dec. 581.

MOBILIA SEQUUNTUR PERSONAM. Movables follow the [law of the] person. *Story, Confl. Law*, § 378; *Broom, Max.* 522.

MOCK. To deride, to laugh at, to ridicule, to treat with scorn and contempt. *State v. Warner*, 34 Conn. 279.

MOCKADOES. A kind of cloth made in England, mentioned in St. 23 Eliz. c. 9.

MODAL LEGACY. See Legacy.

MODE. The manner in which a thing is done; as the mode of proceeding, the mode of process. Anderson's L. Dict.

MODEL. A pattern or representation of something to be made. A *fac simile* of something invented, made on a reduced scale, in compliance with the patent laws. *State v. Fox*, 25 N.J.L. 566; *Montana Ore Purchasing Co. v. Boston*, etc., Min. Co., 27 Mont. 288, 70 P. 1126.

MODERAMEN INCULPATÆ TUTELÆ. Lat. In Roman law, the regulation of justifiable defense. A term used to express that degree of force in defense of the person or property which a person might safely use, although it should occasion the death of the aggressor. Calvin; Bell.

MODERATA MISERICORDIA. A writ founded on *Magna Charta*, which lies for him who is amerced in a court, not of record, for any transgression beyond the quality or quantity of the offense. It is addressed to the lord of the court, or his bailiff, commanding him to take a moderate amercement of the parties. *New Nat. Brev.* 167; *Fitzh. Nat. Brev.* 76.

MODERATE CASTIGAVIT. Lat. In pleading, he moderately chastised. The name of a plea in trespass which justifies an alleged battery on the ground that it consisted in a moderate chastisement of the plaintiff by the defendant, which, from their relations, the latter had a legal right to inflict.

MODERATE SPEED. In admiralty law, as applied to a steam-vessel, "such speed only is moderate as will permit the steamer reasonably and effectually to avoid a collision by slackening speed, or by stopping and reversing, within the distance at which an approaching vessel can be seen." *The City of New York*, C.C.N.Y., 35 F. 609; *The Allianca*, D.C.N.Y., 39 F. 480. As to sailing vessel, see *The Robert M. Thompson*, C.C.A.N.Y., 244 F. 662, 671.

MODERATOR. A chairman or president of an assembly. A person appointed to preside at a popular meeting. The presiding officer of town-meetings in New England is so called. See *Wheeler v. Carter*, 180 Mass. 382, 62 N.E. 471.

MODIATIO. In old English law, a certain duty paid for every tierce of wine.

MODICA CIRCUMSTANTIA FACTI JUS MUTAT. A small circumstance attending an act may change the law.

MODIFICATION. A change; an alteration which introduces new elements into the details, or cancels some of them, but leaves the general purpose

and effect of the subject-matter intact. *Wiley v. Corporation of Bluffton*, 111 Ind. 152, 12 N.E. 165; *State v. Tucker*, 36 Or. 291, 61 P. 894, 51 L.R.A. 246.

"Modification" is not exactly synonymous with "amendment," for the former term denotes some minor change in the substance of the thing, without reference to its improvement or deterioration thereby, while the latter word imports an amelioration of the thing (as by changing the phraseology of an instrument, so as to make it more distinct or specific) without involving the idea of any change in substance or essence.

Scotch law. The term usually applied to the decree of the teind court, awarding a suitable stipend to the minister of a parish. Bell.

MODIFY. To alter; to change in incidental or subordinate features; enlarge, extend; limit, reduce. *State v. Lincoln*, 133 Minn. 178, 158 N.W. 50, 52; *U. S. v. Felder*, D.C.N.Y., 13 F.2d 527, 528. See Modification.

MODIUS. Lat. A measure. Specifically, a Roman dry measure having a capacity of about 550 cubic inches; but in medieval English law used as an approximate translation of the word "bushel."

MODIUS TERRÆ VEL AGRI. In old English law, a quantity of ground containing in length and breadth 100 feet.

MODO ET FORMA. Lat. In manner and form. Words used in the old Latin forms of pleadings by way of traverse, and literally translated in the modern precedents, importing that the party traversing denies the allegation of the other party, not only in its general effect, but in the exact *manner and form* in which it is made. *Steph.Pl.* 189, 190.

MODUS. Lat. Civil law. Manner; means; way.

Old conveyancing. Mode; manner; the arrangement or expression of the terms of a contract or conveyance.

Also a consideration; the consideration of a conveyance, technically expressed by the word "*ut*."

A qualification, involving the idea of variance or departure from some general rule or form, either by way of restriction or enlargement, according to the circumstances of a particular case, the will of a donor, the particular agreement of parties, and the like. *Burrill*.

Criminal pleading. The *modus* of an indictment is that part of it which contains the narrative of the commission of the crime; the statement of the mode or manner in which the offense was committed. *Tray. Lat. Max.*

Ecclesiastical law. A peculiar manner of tithing, growing out of custom.

Rank modus. One that is too large. Rankness is a mere rule of evidence, drawn from the improbability of the fact, rather than a rule of law. 2 *Steph.Comm.* 729.

MODUS DE NON DECIMANDO. In ecclesiastical law, a custom or prescription of entire exemption from the payment of tithes; this is not valid, unless in the case of abbey-lands.

MODUS

MODUS DE NON DECIMANDO NON VALET. A *modus* (prescription) not to pay tithes is void. Lofft, 427; Cro.Eliz. 511; 2 Shars.Bl.Comm. 31.

MODUS DECIMANDI. In ecclesiastical law, a manner of tithing; a partial exemption from tithes, or a pecuniary composition prescribed by immemorial usage, and of reasonable amount; for it will be invalid as a *rank modus* if greater than the value of the tithes in the time of Richard I. Stim.Law Gloss.

MODUS ET CONVENTIO VINCUNT LEGEM. Custom and agreement overrule law. This maxim forms one of the first principles relative to the law of contracts. The exceptions to the rule here laid down are in cases against public policy, morality, etc. 2 Coke, 73; Broom, Max. 689, 691-695.

MODUS HABILIS. A valid manner.

MODUS LEGEM DAT DONATIONI. Custom gives law to the gift. Co.Litt. 19; Broom, Max. 459.

MODUS LEVANDI FINES. The manner of levying fines. The title of a short statute in French passed in the eighteenth year of Edward I. 2 Inst. 510; 2 Bl.Comm. 349.

MODUS TENENDI. The manner of holding; *i. e.*, the different species of tenures by which estates are held.

MODUS TRANSFERRENDI. The manner of transferring.

MODUS VACANDI. The manner of vacating. How and why an estate has been relinquished or surrendered by a vassal to his lord might well be referred to by this phrase. Tray.Lat.Max. *s. v.*

MOEBLE. L. Fr. *Movablè.* *Biens meubles*, movable goods. Britt. c. 11.

MOERDA. The secret killing of another; murder. 4 Bl.Comm. 194.

MOFUSSIL. In Hindu law, separated; particularized; the subordinate divisions of a district in contradistinction to *Sadder* or *Sudder*, which implies the chief seat of government. Wharton.

MOHAMMEDAN LAW. A system of native law prevailing among the Mohammedans in India, and administered there by the British government.

MOHATRA. In French law, a transaction covering a fraudulent device to evade the laws against usury.

It takes place where an individual buys merchandise from another on a credit at a high price, to sell it immediately to the first seller, or to a third person who acts as his agent, at a much less price for cash. 16 Toullier, no. 44.

MOIDORE. A gold coin of Portugal, valued at twenty-seven English shillings.

MOIETY. The half of anything. Joint tenants are said to hold by moieties. Litt. 125; 3 C.B. 274, 283; Young v. Smithers, 181 Ky. 847, 205 S.W. 949, 950.

MOIETY ACTS. A name sometimes applied to penal and criminal statutes which provide that half the penalty or fine shall inure to the benefit of the informer.

MOLENDINUM. In old records, a mill.

MOLENDUM. A grist; a certain quantity of corn sent to a mill to be ground.

MOLESTATION. In Scotch law, a possessory action calculated for continuing proprietors of landed estates in the lawful possession of them till the point of right be determined against all who shall attempt to disturb their possession. It is chiefly used in questions of commonry or of controverted marches. Ersk.Inst. 4, 1, 48.

MOLITURA. The toll or multure paid for grinding corn at a mill. Jacob.

MOLITURA LIBERA. Free grinding; a liberty to have a mill without paying tolls to the lord. Jacob.

MOLLITER MANUS IMPOSUIT. Lat. He gently laid hands upon. Formal words in the old Latin pleas in actions of trespass and assault where a defendant justified laying hands upon the plaintiff, as where it was done to keep the peace, etc. The phrase is literally translated in the modern precedents, and the original is retained as the name of the plea in such cases. 3 Bl.Comm. 21; 1 Chit.Pl. 501, 502; Id. 1071.

MOLMUTIAN LAWS. The laws of Dunvallo Molmutuis, a legendary or mythical king of the Britons, who is supposed to have begun his reign about 400 B. C. These laws were famous in the land till the Conquest. Tomlins; Mozley & Whiteley.

MOMENTUM. In the civil law, an instant; an indivisible portion of time. Calvin.

A portion of time that might be measured; a division or subdivision of an hour; answering in some degree to the modern *minute*, but of longer duration. Calvin.

MONACHISM. The state of monks.

MONARCHY. A government in which the supreme power is vested in a single person.

Where a monarch is invested with absolute power, the monarchy is termed "despotic;" where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a "limited" or "constitutional" monarchy. It is hereditary where the regal power descends immediately from the possessor to the next heir by blood, as in England; or elective, as was formerly the case in Poland. Wharton.

MONASTERIUM. A monastery; a church. Spelman.

MONASTICON. A book giving an account of monasteries, convents, and religious houses.

MONETA. Lat. Money, (*q. v.*).

MONETA EST JUSTUM MEDIUM ET MENSURA RERUM COMMUTABILUM, NAM PER MEDIUM MONETÆ FIT OMNIUM RERUM CONVENIENS ET JUSTA ÆSTIMATIO. Dav. Ir. K. B. 18. Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made.

MONETAGIUM. Mintage, or the right of coining money. Cowell. Hence, anciently, a tribute payable to a lord who had the prerogative of coining money, by his tenants, in consideration of his refraining from changing the coinage.

MONETANDI JUS COMPREHENDITUR IN REGALIBUS QUÆ NUNQUAM A REGIO SCEPTRO ABDICANTUR. The right of coining money is comprehended among those royal prerogatives which are never relinquished by the royal scepter. Dav. Ir. K. B. 18.

MONETARY. The usual meaning is "pertaining to coinage or currency or having to do with money", but it has been held to include personal property. In re Kipp's Will, Sur., 37 N.Y.S.2d 541, 543.

MONEY. In usual and ordinary acceptance it means gold, silver, or paper money used as circulating medium of exchange, and does not embrace notes, bonds, evidences of debt, or other personal or real estate. Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 81. Currency; the circulating medium; cash.

The term "moneys" is not of more extensive signification than "money," and means only cash, and not things in action. Mann v. Mann, 14 Johns., N.Y., 1, 7 Am.Dec. 416.

In its strict technical sense, "money" means coined metal, usually gold or silver, upon which the government stamp has been impressed to indicate its value. In its more popular sense, "money" means any currency, tokens, bank-notes, or other circulating medium in general use as the representative of value. Kennedy v. Briere, 45 Tex. 305; Cook v. State, 130 Ark. 90, 196 S.W. 922, 924; Vick v. Howard, 136 Va. 101, 116 S.E. 465, 467, 31 A.L.R. 240.

The simple meaning of "money" is current coin, but it may mean possessions expressible in money values. "Money" has no technical meaning, but is of ambiguous import, and may be interpreted having regard to all surrounding circumstances under which it is used. "Money" is often and popularly used as equivalent to "property." "Money" means wealth reckoned in terms of money; capital considered as a cash asset; specifically such wealth or capital dealt in as a commodity to be loaned, invested, or the like; wealth considered as a cash asset. Salt Lake County v. Utah Copper Co., C.C.A.Utah, 93 F.2d 127, 132.

In its more comprehensive and general sense, it means wealth,—the representative of commodities of all kinds, of lands, and of everything that can be transferred in commerce. Paul v. Ball, 31 Tex. 10. A general, indefinite term for the measure and representative of value.

Public Money. Revenue. Hays v. State, 22 Okl.Cr. 99, 210 P. 728, 730. Money received by officers of the state in the ordinary processes of taxation, etc. Beaumont S. L. & W. Ry. Co. v. State, Tex.Civ.App., 173 S.W. 641, 642; Wardell v. Town of Killingly, 97 Conn. 423, 117 A. 520, 522. Under a municipal charter, money or funds belonging to a city; moneys which are owing or payable to the city in its corporate capacity, such as assessments, license fees, or moneys derived from the sales of property, wharfage charges, and such like, City of Sacramento v. Simmons, 66 Cal.App. 18, 225 P. 36, 39. Under a statute, all money which by law the sheriff in his capacity as such and as treasurer of the county and district is authorized to collect, receive, and disburse for public purposes. Bunch v. Short, 78 W.Va. 764, 90 S.E. 810, 812. As used in the United

States statutes, the money of the federal government received from the public revenues, or intrusted to its fiscal officers, wherever it may be. See Branch v. U. S., 12 Ct.Cl. 281.

As to money "Broker," "Count," "Judgment," and "Scrivener," see those titles.

MONEY-BILL. In parliamentary language, an act by which revenue is directed to be raised, for any purpose or in any shape whatsoever, either for governmental purposes, and collected from the whole people generally, or for the benefit of a particular district, and collected in that district, or for making appropriations. Opinion of Justices, 126 Mass. 547; Northern Counties Inv. Trust v. Sears, 30 Or. 388, 41 P. 931, 35 L.R.A. 188.

MONEY CHANGERS. A money changer is one whose occupation is the exchanging of kinds or denominations of currency, and the common meaning of the term pertained to those persons who, in early history, engaged in the business of foreign exchange and it includes the business of a banker and buying and selling of uncurrent funds and the exchanging of one kind of money for another. Arnold v. City of Chicago, 387 Ill. 532, 56 N.E.2d 795, 799.

MONEY CLAIMS. In English practice, under the judicature act of 1875, claims for the price of goods sold, for money lent, for arrears of rent, etc., and other claims where money is directly payable on a contract express or implied, as opposed to the cases where money is claimed by way of damages for some independent wrong, whether by breach of contract or otherwise. These "money claims" correspond very nearly to the "money counts" hitherto in use. Mozley & Whitley.

MONEY DEMAND. A claim for a fixed and liquidated amount of money, or for a sum which can be ascertained by mere calculation; in this sense, distinguished from a claim which must be passed upon and liquidated by a jury, called "damages." Roberts v. Nodwift, 8 Ind. 341; Mills v. Long, 58 Ala. 460.

MONEY HAD AND RECEIVED. In pleading, the technical designation of a form of declaration in *assumpsit*, wherein the plaintiff declares that the defendant *had and received* certain money, etc.

Gist of action for "money had and received" is that defendant has received money which, in equity and good conscience, should have been paid to plaintiff and under such circumstances that he ought to pay it over. Bosworth v. Wolfe, 146 Wash. 615, 264 P. 413, 417, 56 A.L.R. 1117.

MONEY LAND. A phrase descriptive of money which is held upon a trust to convert it into land.

MONEY LENT. In pleading, the technical name of a declaration in an action of *assumpsit* for that the defendant promised to pay the plaintiff for money lent.

MONEY MADE. The return made by a sheriff to a writ of execution, signifying that he has collected the sum of money required by the writ.

MONEY OF ADIEU. In French law, earnest money; so called because given at parting in completion of the bargain. *Arrhes* is the usual French

MONEY

word for earnest money; "money of adieu" is a provincialism found in the province of Orleans. Poth.Cont. 507.

MONEY ORDER. Under the postal regulations of the United States, a money order is a species of draft drawn by one post-office upon another for an amount of money deposited at the first office by the person purchasing the money order, and payable at the second office to a payee named in the order. U. S. v. Long, C.C.Ga., 30 F. 679.

MONEY-ORDER OFFICE. One of the post-offices authorized to draw or pay money orders.

MONEY PAID. In pleading, the technical name of a declaration in *assumpsit*, in which the plaintiff declares for money paid for the use of the defendant.

MONEYED CAPITAL. This term has a more limited meaning than the term "personal property," and applies to such capital as is readily solvable in money. Mercantile Nat. Bank v. New York, 121 U.S. 138, 7 S.Ct. 826, 30 L.Ed. 895.

MONEYED CORPORATION. See Corporation.

MONGER. A dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity.

MONIERS, or MONEYEERS. Ministers of the mint; also bankers. Cowell.

MONIMENT. A memorial, superscription, or record.

MONITION. Admiralty. The summons to appear and answer, issued on filing the libel; which is either a simple monition *in personam* or an attachment and monition *in rem*. Ben.Adm. 228, 239.

It is sometimes termed "monition *vis et modis*," and has been supposed to be derived from the old Roman practice of summoning a defendant. Manro v. Almeida, 10 Wheat. 490, 6 L.Ed. 369.

The monition, in American admiralty practice, is, in effect, a summons, citation, or notice, though in form a command to the marshal to cite and admonish the defendant to appear and answer, and not a summons addressed to the party. 2 Conk.Adm., 2d Ed., 147.

General monition. In civil law and admiralty practice, a monition or summons to all parties in interest to appear and show cause against the decree prayed for.

Practice. A monition is a formal order of the court commanding something to be done by the person to whom it is directed, and who is called the "person monished." Thus, when money is decreed to be paid, a monition may be obtained commanding its payment. In ecclesiastical procedure, a monition is an order monishing or warning the party complained against to do or not to do a certain act "under pain of the law and contempt thereof." A monition may also be appended to a sentence inflicting a punishment for a past offense; in that case the monition forbids the repetition of the offense. Sweet.

MONITORY LETTERS. Communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognizance of his court.

MONOCRACY. A government by one person.

MONOCRAT. A monarch who governs alone; an absolute governor.

MONOGAMY. The marriage of one wife only, or the state of such as are restrained to a single wife. Webster.

A marriage contracted between one man and one woman, in exclusion of all the rest of mankind. The term is used in opposition to "bigamy" and "polygamy." Wolff, Dr. de la Nat. § 857.

MONOGRAM. A character or cipher composed of one or more letters interwoven, being an abbreviation of a name.

MONOGRAPH. A special treatise upon a particular subject of limited range; a treatise or commentary upon a particular branch or division of a general subject.

MONOMACHY. A duel; a single combat.

It was anciently allowed by law for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil law and canon laws.

MONOMANIA. In medical jurisprudence, derangement of a single faculty of the mind, or with regard to a particular subject, the other faculties being in regular exercise. See Insanity.

MONOPOLIA DICTUR, CUM UNUS SOLUS ALIQUOD GENUS MERCATURÆ UNIVERSUM EMIT, PRETIUM AD SUUM LIBITUM STATUENS. 11 Coke, 86. It is said to be a monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.

MONOPOLIUM. The sole power, right, or privilege of sale; monopoly; a monopoly. Calvin.

MONOPOLY. A privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of the whole supply of a particular commodity.

Defined in English law to be "a license or privilege allowed by the king for the sole buying and selling, making, working, or using, of anything whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before." 4 Bl. Comm. 159; 4 Steph.Comm. 291; State v. Duluth Board of Trade, 107 Minn. 506, 121 N.W. 395, 23 L.R.A., N.S., 1260.

A monopoly consists in the ownership or control of so large a part of the market-supply or output of a given commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices. State v. Atlantic Ice & Coal Co., 210 N.C. 742, 188 S.E. 412, 416.

MONSTER. A prodigious birth; a human birth or offspring not having the shape of mankind,

which cannot be heir to any land, albeit it be brought forth in marriage. Bract. fol. 5; Co.Litt. 7, 8; 2 Bl.Comm. 246.

MONSTRANS DE DROIT. L. Fr. In English law, a showing or manifestation of right; one of the common law methods of obtaining possession or restitution from the crown, of either real or personal property.

It is the proper proceeding when the right of the party, as well as the right of the crown, appears upon record, and consists in putting in a claim of right grounded on facts already acknowledged and established, and praying the judgment of the court whether upon these facts the king or the subject has the right. 3 Bl.Comm. 256; 4 Coke, 54b.

MONSTRANS DE FAITS. L. Fr. In old English practice, a showing of deeds; a species of profert. Cowell.

MONSTRAVERUNT, WRIT OF. In English law, a writ which lies for the tenants of ancient demesne who hold by free charter, and not for those tenants who hold by copy of court roll, or by the rod, according to the custom of the manor. Fitzh. Nat. Brev. 14.

MONSTRUM. A box in which relics are kept; also a muster of soldiers. Cowell.

MONTES. In Spanish law, forests or woods. White, New Recop. b. 2, tit. 1, c. 6, § 1.

MONTES PIETATIS. Public pawnbroking establishments; institutions established by government, in some European countries, for lending small sums of money on pledges of personal property. In France they are called "*monts de piété.*"

MONTH. Word "month," unless otherwise defined, means "calendar month," or time from any day of any of the months as adjudged in the calendar to corresponding day, if any, if not any, to last day, of next month. Daniel v. Ormand, 26 Ala.App. 441, 163 So. 361.

The space of time denoted by this term varies according as one or another of the following varieties of months is intended:

Astronomical, containing one-twelfth of the time occupied by the sun in passing through the entire zodiac.

Calendar, civil, or solar, which is one of the months in the Gregorian calendar,—January, February, March, etc.,—which are of unequal length.

Lunar, being the period of one revolution of the moon, or twenty-eight days.

The word "month," when used in a statute or contract without qualification, meant at common law a lunar month of 28 days. State v. White, 73 Fla. 426, 74 So. 486, 487.

The matter is generally regulated by statute now. In re McNamara's Estate, 181 Cal. 82, 183 P. 552, 556, 7 A.L.R. 313.

MONUMENT. Anything by which the memory of a person, thing, idea, art, science or event is preserved or perpetuated. A tomb where a dead body has been deposited. In re Ogden, 25 R.I. 373, 55 A. 933; Rhode Island Hospital Trust Co. v. Benedict, 41 R.I. 143, 103 A. 146, 147.

In real-property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey. In this sense the term includes not

only posts, pillars, stone markers, cairns, and the like, but also fixed natural objects, blazed trees, and even a watercourse. Grier v. Pennsylvania Coal Co., 128 Pa. 79, 18 A. 480; Cox v. Freedley, 33 Pa. 124, 75 Am.Dec. 584.

MONUMENTA QUÆ NOS RECORDA VOCAMUS SUNT VERITATIS ET VETUSTATIS VESTIGIA. Co.Litt. 118. Monuments, which we call "records," are the vestiges of truth and antiquity.

MONUNG. See Manung.

MONYA. In Norman law, moneyage. A tax or tribute of one shilling on every hearth, payable to the duke every three years, in consideration that he should not alter the coin. Hale, Com.Law, 148, and note.

MOOKTAR. In Hindu law, an agent or attorney.

MOOKTARNAMA. In Hindu law, a written authority constituting an agent; a power of attorney.

MOONSHINE. Intoxicating liquor illicitly produced or smuggled into community for beverage purposes, or spirituous liquor, illegally distilled or manufactured. State v. King, 331 Mo. 268, 53 S.W.2d 252, 254.

MOOR. An officer in the Isle of Man, who summons the courts for the several sheadings. The office is similar to the English bailiff of a hundred.

MOORAGE. A sum due by law or usage for mooring or fastening of ships to trees or posts at the shore, or to a wharf. Wharf Case, 3 Bland, Md., 373.

MOORING. In maritime law, anchoring or making fast to the shore or dock; the securing or confining a vessel in a particular station, as by cables and anchors or by a line or chain run to the wharf.

A vessel is "moored in safety," within the meaning of a policy of marine insurance, when she is thus moored to a wharf or dock, free from any immediate danger from any of the perils insured against. 1 Phil.Ins. 963; Bramhall v. Sun Mut. Ins. Co., 104 Mass. 516, 6 Am.Rep. 261.

MOOT, n. English law. Moots are exercises in pleading, and in arguing doubtful cases and questions, by the students of an inn of court before the benches of the inn. Sweet.

Saxon law. A meeting or assemblage of people, particularly for governmental or judicial purposes. The more usual forms of the word were "mote" and "gemot." See those titles.

MOOT, adj. A subject for argument; unsettled; undecided. A moot point is one not settled by judicial decisions. A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights. Adams v. Union R. Co., 21 R.I. 134, 42 A. 515, 44 L.R.A. 273.

One which seeks to get a judgment on a pretended controversy, or a decision in advance about a right before it has been actually asserted and contested, or a judgment on some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy. Smith v. Smith, 209 Wis. 605, 245 N.W. 644, 645.

MOOT COURT

MOOT COURT. A court held for the arguing of moot cases or questions.

MOOT HALL. The place where moot cases were argued. Also a council-chamber, hall of judgment, or town-hall.

MOOT HILL. Hill of meeting, (*gemot*), on which the Britons used to hold their courts, the judge sitting on the eminence; the parties, etc., on an elevated platform below. Enc.Lond.

MOOT MAN. One of those who used to argue the reader's cases in the inns of court.

MOOTA CANUM. In old English law, a pack of dogs. Cowell.

MOOTER. Marihuana is popularly known among the criminal element as "muggles," or "mooter" and addicts are commonly termed "muggle heads." State v. Navaro, 83 Utah 6, 26 P.2d 955.

MOOTING. The exercise of arguing questions of law or equity, raised for the purpose. See Moot.

MORA. Lat. In the civil law, delay; default; neglect; culpable delay or default. Calvin.

MORA. Sax. A moor; barren or unprofitable ground; marsh; a heath; a watery bog or moor. Co.Litt. 5; Fleta, 1, 2, c. 71.

MORA MUSSA. A watery or boggy moor; a morass.

MORA REPROBATUR IN LEGE. Delay is reprobated in law. Jenk.Cent. p. 51, case 97.

MORAL. Pertains to character, conduct, intention, social relations, etc. United States v. Carrollo, D.C.Mo., 30 F.Supp. 3, 6.

1. Pertaining or relating to the conscience or moral sense or to the general principles of right conduct.

2. Cognizable or enforceable only by the conscience or by the principles of right conduct, as distinguished from positive law.

3. Depending upon or resulting from probability; raising a belief or conviction in the mind independent of strict or logical proof.

4. Involving or affecting the moral sense; as in the phrase "moral insanity."

MORAL ACTIONS. Those only in which men have knowledge to guide them, and a will to choose for themselves. Ruth, Inst. lib. 1, c. 1.

MORAL CERTAINTY. That degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads. Wills, Circ.Ev. 7. A high degree of impression of the truth of a fact, falling short of absolute certainty, but sufficient to justify a verdict of guilty, even in a capital case. Burrill, Circ.Ev. 198-200.

As explained in the Century Dictionary, it signifies a probability sufficiently strong to justify action on it. In Webster's International, the first definition given is, "a very high degree of probability, although not demonstrable, as a certainty." It has also been used as indicating a conclusion of the mind established beyond a reasonable doubt. Gray v. State, 56 Okl.Cr. 208, 38 P.2d 967.

The phrase "moral certainty" has been introduced into our jurisprudence from the publicists and metaphysicians,

and signifies only a very high degree of probability. It was observed by Puffendorf that, "when we declare such a thing to be morally certain, because it has been confirmed by credible witnesses, this moral certitude is nothing else but a strong presumption grounded on probable reasons, and which very seldom fails and deceives us." "Probable evidence," says Bishop Butler, in the opening sentence of his Analogy, "is essentially distinguished from demonstrative by this: that it admits of degrees, and of all variety of them, from the highest moral certainty to the very lowest presumption." Com. v. Costley, 118 Mass. 23.

MORAL CONSIDERATION. See Consideration.

MORAL DURESS. Consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessity or weakness of another. Lafayette Dramatic Productions v. Ferentz, 305 Mich. 193, 9 N.W.2d 57, 66, 145 A.L.R. 1158.

MORAL EVIDENCE. As opposed to "mathematical" or "demonstrative" evidence, this term denotes that kind of evidence which, without developing an absolute and necessary certainty, generates a high degree of probability or persuasive force. It is founded upon analogy or induction, experience of the ordinary course of nature or the sequence of events, and the testimony of men.

MORAL FRAUD. This phrase is one of the less usual designations of "actual" or "positive" fraud or "fraud in fact," as distinguished from "constructive" fraud or "fraud in law." It means fraud which involves actual guilt, a wrongful purpose, or moral obliquity.

MORAL HAZARD. See Hazard.

MORAL INSANITY. See Insanity.

MORAL LAW. The law of conscience; the aggregate of those rules and principles of ethics which relate to right and wrong conduct and prescribe the standards to which the actions of men should conform in their dealings with each other. Moore v. Strickling, 46 W.Va. 515, 33 S.E. 274, 50 L.R.A. 279.

MORAL OBLIGATION. See Obligation.

MORAL TURPITUDE. An act of baseness, villainess, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Traders & General Ins. Co. v. Russell, Tex.Civ. App., 99 S.W.2d 1079, 1084; Jordan v. De George, 341 U.S. 223, 71 S.Ct. 703, 706.

Conduct contrary to justice, honesty, modesty, or good morals. Marsh v. State Bar of California, 210 Cal. 303, 291 P. 583, 584.

MORANDÆ SOLUTIONIS CAUSA. Lat. For the purpose of delaying or postponing payment or performance.

MORATORIUM. A term designating suspension of all or of certain legal remedies against debtors, sometimes authorized by law during financial distress. Brown v. State Nat. Bank of Shawnee, 133 Okl. 173, 271 P. 833, 834. A period of permissive or obligatory delay; specifically, a period during which an obligor has a legal right to delay meeting

an obligation. State ex rel. Jensen Livestock Co. v. Hyslop, 111 Mont. 122, 107 P.2d 1088, 1092.

MORATUR IN LEGE. Lat. He delays in law. The phrase describes the action of one who demurs, because the party does not proceed in pleading, but rests or abides upon the judgment of the court on a certain point, as to the legal sufficiency of his opponent's pleading. The courts deliberate and determine thereupon.

MORAVIANS. Otherwise called "Herrnhutters" or "United Brethren." A sect of Christians whose social polity is particular and conspicuous. It sprung up in Moravia and Bohemia, on the opening of that reformation which stripped the chair of St. Peter of so many votaries, and gave birth to so many denominations of Christians. They give evidence on their solemn affirmation. 2 Steph.Comm. 338*n*.

MORBUS SONTICUS. Lat. In the civil law, a sickness which rendered a man incapable of attending to business.

MORE COLONICO. Lat. In old pleading, in husband-like manner. Townsh.Pl. 198.

MORE OR LESS. About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. Alexander v. Hicks, 242 Ala. 243, 5 So.2d 781, 782, 783.

The words are intended to cover slight or unimportant inaccuracies in quantity. Carter v. Finch, 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred. Crowl v. Box, 144 Okl. 25, 288 P. 942, 946.

MOREOVER. In addition thereto, also, furthermore, likewise, beyond this, besides this. Pagano v. Cerri, 93 Ohio St. 345, 112 N.E. 1037, 1040, L.R.A. 1917A, 486; Aldersley v. McCloud, 35 Cal.App. 17, 168 P. 1153, 1155.

MORGANATIC-MARRIAGE. See Marriage.

MORGANGINA, or MORGANGIVA. A gift on the morning after the wedding; dowry; the husband's gift to his wife on the day after the wedding. Du Cange; Cowell.

MORGEN. Anglo-Dutch. In old New York law, a measure of land, equal to about two acres.

MORGUE. A place where the bodies of persons found dead are kept for a limited time and exposed to view, to the end that their friends may identify them.

MORMON. A member of the Church of Jesus Christ of Latter-day Saints. The Church was organized in 1830 at Seneca, New York,* by Joseph Smith, and today its headquarters are in Salt Lake City, Utah.

MORON. One whose intellectual development proceeds normally up to about the 8th year of age, then is arrested, and never exceeds that of a normal child of about 12 years. People v. Joyce, 233 N.Y. 61, 134 N.E. 836, 840.

MORPHINOMANIA, or MORPHINISM. The opium habit. An excessive desire for morphia.

MORRIS PLAN COMPANY. An industrial bank which accepts money from the public for investment in "investment certificates" which draw interest periodically payable to the investor, and which bank lends money principally to steadily employed salaried people who are required to secure repayment with the endorsement of two other employed salaried people, the contract calling for installment payments over a one year period. Other secured loans are also made. Board of Com'rs of Tulsa County v. Remedial Finance Corporation, 186 Okl. 648, 100 P.2d 240, 242.

MORS. Lat. Death. State v. Logan, 344 Mo. 351, 126 S.W.2d 256, 259, 122 A.L.R. 417.

MORS DICITUR ULTIMUM SUPPLICIUM. Death is called the "last punishment," the "extremity of punishment." 3 Inst. 212.

MORS OMNIA SOLVIT. Death dissolves all things. Jenk.Cent. p. 160, case 2. Applied to the case of the death of a party to an action.

MORSELLUM, or MORSELLUS, TERRÆ. In old English law, a small parcel or bit of land.

MORT CIVILE. In French law, civil death, as upon conviction for felony.

It was nominally abolished by a law of the 31st of May, 1854, but something very similar to it, in effect at least, still remains. Thus, the property of the condemned, possessed by him at the date of his conviction, goes and belongs to his successors, (*héritiers*), as in case of an intestacy; and his future acquired property goes to the state by right of its prerogative, (*par droit de déshérence*), but the state may, as a matter of grace, make it over in whole or in part to the widow and children. Brown.

MORT D'ANCESTOR. An ancient and now almost obsolete remedy in the English law. An assize of *mort d'ancestor* was a writ which lay for a person whose ancestor died seised of lands in fee-simple, and after his death a stranger abated; and this writ directed the sheriff to summon a jury or assize, who should view the land in question and recognize whether such ancestor were seised thereof on the day of his death, and whether the demandant were the next heir.

MORTAL. Destructive to life; causing or occasioning death; exposing to or deserving death, especially spiritual death; deadly; fatal; as, a mortal wound, State v. Logan, 344 Mo. 351, 126 S.W.2d 256, 259, 122 A.L.R. 417; or mortal sin; of or pertaining to time of death. State v. Baker, 122 Kan. 552, 253 P. 221, 223.

MORTALITY. This word, in its ordinary sense, never means violent death, but death arising from natural causes. Lawrence v. Aberdein, 5 Barn. & Ald. 110.

MORTALITY TABLES. A means of ascertaining the probable number of years any man or woman of a given age and of ordinary health will live. Butler v. Butler, 180 Minn. 134, 230 N.W. 575, 579.

MORTGAGE

MORTGAGE. An estate created by a conveyance absolute in its form, but intended to secure the performance of some act, such as the payment of money, and the like, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. 1 Washb.Real Prop. *475.

A conditional conveyance of land. *Mitchell v. Burnham*, 44 Me. 299.

A transfer of property passing conditionally as security for debt. *Potter v. Vernon*, 129 Okl. 251, 264 P. 611, 613.

A debt by specialty, secured by a pledge of lands, of which the legal ownership is vested in the creditor, but of which, in equity, the debtor and those claiming under him remain the actual owners, until debarred by judicial sentence or their own laches. *Coote, Mortg.* 1.

The foregoing definitions are applicable to the common-law conception of a mortgage. But in many states in modern times, it is regarded as a mere lien, and not as creating a title or estate. *Zeigler v. Sawyer*, Tex.Civ.App., 16 S.W.2d 894, 896. It is a pledge or security of particular property for the payment of a debt or the performance of some other obligation, whatever form the transaction may take, but is not now regarded as a conveyance in effect, though it may be cast in the form of a conveyance. *Muth v. Goddard*, 28 Mont. 237, 72 P. 621, 98 Am.St.Rep. 553; *Johnson v. Robinson*, 68 Tex. 399, 4 S.W. 625; *Killebrew v. Hines*, 104 N.C. 182, 10 S.E. 159, 17 Am.St.Rep. 672; *Stockel v. Elich*, 297 P. 595, 597, 112 Cal.App. 588; *In re Morgan*, D.C.N.J., 39 F.2d 489, 490.

Chattel mortgage. A mortgage of goods, chattels, or personal property. See *Chattel Mortgage*.

Conventional mortgage. The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another, to secure the execution of some engagement, but without divesting himself of possession. Civ.Code La. art. 3290; *Succession of Benjamin*, 39 La. Ann. 612, 2 So. 187. It is distinguished from the "legal" mortgage, which is a privilege which the law alone in certain cases gives to a creditor over the property of his debtor, without stipulation of the parties. This last is very much like a general lien at common law, created by the law rather than by the act of the parties, such as a judgment lien.

Equitable mortgage. A specific lien upon real property to secure the payment of money or the performance of some other obligation, which a court of equity will recognize and enforce, in accordance with the clearly ascertained intent of the parties to that effect, but which lacks the essential features of a legal mortgage, either because it grows out of the transactions of the parties without any deed or express contract to give a lien, or because the instrument used for that purpose is wanting in some of the characteristics of a common-law mortgage, or, being absolute in form, is accompanied by a collateral reservation of a

right to redeem, or because an explicit agreement to give a mortgage has not been carried into effect. 4 Kent, Comm. 150; 2 Story, Eq.Jur. § 1018; *Ketchum v. St. Louis*, 101 U.S. 306, 25 L.Ed. 999; *Gessner v. Palmateer*, 89 Cal. 89, 26 P. 789, 13 L.R.A. 187.

In English law, the following mortgages are equitable: (1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority. (2) Where it is an equity of redemption, which is merely a right to bring an action in the chancery division to redeem the estate. (3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land. (4) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. *Wharton*.

First mortgage. The first (in time or right) of a series of two or more mortgages covering the same property and successively attaching as liens upon it; also, in a more particular sense, a mortgage which is a first lien on the property, not only as against other mortgages, but as against any other charges or incumbrances. *Green's Appeal*, 97 Pa. 347.

First mortgage bonds. Bonds the payment of which is secured by a first mortgage on property. *Bank of Atchison County v. Byers*, 139 Mo. 627, 41 S.W. 325; *Com. v. Williamstown*, 156 Mass. 70, 30 N.E. 472.

General mortgage. Mortgages are sometimes classified as general and special, a mortgage of the former class being one which binds all property, present and future, of the debtor (sometimes called a "blanket" mortgage); while a special mortgage is limited to certain particular and specified property. *Barnard v. Erwin*, 2 Rob., La., 415.

Judicial mortgage. In the law of Louisiana, the lien resulting from judgments, whether rendered on contested cases or by default, whether final or provisional, in favor of the person obtaining them. Civ.Code La. art. 3321.

Legal mortgage. A term used in Louisiana. The law alone in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it. This is called "legal mortgage." Civ.Code La. art. 3311.

Mortgage of goods. A conveyance of goods in gage or mortgage by which the whole legal title passes conditionally to the mortgagee; and, if the goods are not redeemed at the time stipulated, the title becomes absolute in law, although equity will interfere to compel a redemption. It is distinguished from a "pledge" by the circumstance that possession by the mortgagee is not or may not be essential to create or to support the title. *Story*, *Bailm.* § 287. See *Chattel Mortgage*.

Purchase-money mortgage. A mortgage given, concurrently with a conveyance of land, by the vendee to the vendor, on the same land, to secure the unpaid balance of the purchase price. *Baker v.*

Clepper, 26 Tex. 629, 84 Am.Dec. 591; Keefe v. Cropper, 196 Iowa 1179, 194 N.W. 305, 306; Ladd & Tilton Bank v. Mitchell, 93 Or. 668, 184 P. 282, 284, 6 A.L.R. 1420.

Second mortgage. One which takes rank immediately after a first mortgage on the same property, without any intervening liens, and is next entitled to satisfaction out of the proceeds of the property. Green's Appeal, 97 Pa. 347. Properly speaking, however, the term designates the second of a series of mortgages, not necessarily the second lien. For instance, the lien of a judgment might intervene between the first and second mortgages; in which case, the second mortgage would be the third lien.

Tacit mortgage. In Louisiana, the same as a "legal" mortgage. See *supra*.

Welsh mortgage. In English law, a species of security which partakes of the nature of a mortgage, as there is a debt due, and an estate is given as security for the repayment, but differs from it in the circumstances that the rents and profits are to be received without account till the principal money is paid off, and there is no remedy to enforce payment, while the mortgagor has a perpetual power of redemption. It is now rarely used. 1 Pow.Mortg. 373a; Bentley v. Phelps, 3 F.Cas. 250.

MORTGAGE POOLS. Groups of mortgages. In re D'Happart's Estate, 132 Pa.Super. 326, 200 A. 927, 929.

MORTGAGEE. He that takes or receives a mortgage.

MORTGAGEE IN POSSESSION. A mortgagee of real property who is in possession of it with the agreement or assent of the mortgagor, express or implied, and in recognition of his mortgage and because of it, and under such circumstances as to make the satisfaction of his lien an equitable prerequisite to his being dispossessed. Rogers v. Benton, 39 Minn. 39, 38 N.W. 765, 12 Am.St.Rep. 613; Stouffer v. Harlan, 68 Kan. 135, 74 P. 610, 64 L.R.A. 320.

MORTGAGOR. One who, having all or some part of title to property, by written instrument pledges that property for some particular purpose such as security for a debt. Goodell v. Silver Creek Nat. Bank, Sup., 48 N.Y.S.2d 572, 576.

MORTH. Sax. Murder, answering exactly to the French "*assassinat*" or "*muertre de guet-apens*."

MORThLAGA. A murderer. Cowell.

MORThLAGE. Murder. Cowell.

MORTIFICATION. In Scotch law, a term nearly synonymous with "mortmain." Bell. Lands are said to be *mortified* for a charitable purpose.

MORTIS CAUSA. Lat. By reason of death; in contemplation of death. Thus used in the phrase "*Donatio mortis causa*," (q. v.).

MORTIS MOMENTUM EST ULTIMUM VITAE MOMENTUM. The last moment of life is the moment of death. Terrill v. Public Adm'r, 4 Bradf. Sur., N.Y., 245, 250.

MORTMAIN. A term applied to denote the alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of "mortmain" to be applied to such alienations. 2 Bl.Comm. 268; Co.Litt. 2b; Perin v. Carey, 24 How. 495, 16 L.Ed. 701.

MORTMAIN ACTS. These acts had for their object to prevent lands getting into the possession or control of religious corporations, or, as the name indicates, *in mortua manu*. After numerous prior acts dating from the reign of Edward I., it was enacted by the statute 9 Geo. II. c. 36, (called the "Mortmain Act" *par excellence*), that no lands should be given to charities unless certain requisites should be observed. Brown. Yates v. Yates, 9 Barb., N.Y., 324.

MORTON TOE. "Morton toe" is neuralgia of the fourth toe. State v. Armstrong, 38 Idaho 493, 225 P. 491, 493, 33 A.L.R. 835.

MORTUARY. In ecclesiastical law, a burial-place.

Modern term applied to undertaking and embalming establishments. City of Tucson v. Arizona Mortuary, 34 Ariz. 495, 272 P. 923, 924.

A kind of ecclesiastical heriot, being a customary gift of the second best living animal belonging to the deceased, claimed by and due to the minister in many parishes, on the death of his parishioners, whether buried in the church-yard or not. 2 Bl. Comm. 425. Ayrton v. Abbott, 14 Q.B. 19.

It has been sometimes used in a civil as well as in an ecclesiastical sense, and applied to a payment to the lord of the fee. Paroch.Antiq. 470.

MORTUARY TABLES. Tables for estimating the probable duration of the life of a party at a given age. Gallagher v. Market St. Ry. Co., 67 Cal. 16, 6 P. 871, 51 Am.Rep. 680.

MORTUUM VADIUM. A dead pledge; a mortgage (q. v.); a pledge where the profits or rents of the thing pledged are not applied to the payment of the debt.

MORTUUS. Lat. Dead. So in sheriff's return. *mortuus est*, he is dead.

MORTUUS CIVILITER. Civil death.

This incident attended every attainder of treason or other felony, whereby in the language of Lord Coke the attainted person "is disabled to bring any action, for he is *extra legem mortuus*"; Co.Litt. 199. He could be heard in court only for the direct purpose of reversing the attainder, and not in prosecution of a civil right; 1 B. & A. 159. He could be grantor or grantee after attainder, and the grant would be good against all persons except the king; Shepard, Touch. 231.

MORTUUS

MORTUUS EXITUS NON EST EXITUS. A dead issue is no issue. Co.Litt. 29. A child born dead is not considered as issue.

MORTUUS SINE PROLE. Dead without issue. In genealogical tables often abbreviated to "*m. s. p.*"

MOS RETINENDUS EST FIDELISSIMÆ VETUSTATIS. 4 Coke, 78. A custom of the truest antiquity is to be retained.

MOSCOW INTERNATIONAL. See Third International.

MOSLEM LAW. One of the two great systems of customary law which the English found in India. It regulated the life and relations of all Moslems, and parts of it, especially its penal provisions, were applied to both Moslems and Hindus. Bryce, Extension of the Law.

MOST FAVORED NATION CLAUSE. A clause found in most treaties providing that the citizens or subjects of the contracting states may enjoy the privileges accorded by either party to those of the most favored nations. It is said that the general design of such clauses is to establish the principle of equality of international treatment. The test of whether this principle is violated by the concession of advantages to a particular nation is, not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not of a mere evasion. The United States has always taken the stand that reciprocal commercial concessions are given for a valuable consideration and are not within the scope of this clause. Whitney v. Robertson, 124 U.S. 190, 8 S.Ct. 456, 31 L.Ed. 386. Great Britain has taken the opposite position.

See Consular Treaty Rights and Comments on the "Most Favored Nation" Clause, by Ernest Ludwig; 3 Amer.Journ.Int.L. 57; Herod, Most Favored Nation Treatment; Moore's Dig.Int.Law; 3 Amer. Journ.Int.Law 395.

MOSTRENCOS. In Spanish law, strayed goods; estrays. White, New Recop. b. 2, tit. 2, c. 6.

MOTE. Sax. A meeting; an assembly. Used in composition, as *burgmote*, *folknote*, etc.

MOTE-BELL. The bell which was used by the Saxons to summon people to the court. Cowell.

MOTEER. A customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege. Cowell.

MOTHER. A woman who has borne a child. Gardner v. Hall, 132 N.J.Eq. 64, 26 A.2d 799, 807. A female parent, Guide Pub. Co. v. Futrell, 175 Va. 77, 7 S.E.2d 133, 138. Correlative to "son" or "daughter." The term includes maternity during prebirth period. Watson v. Independent Banner of Love Soc., 54 Ga.App. 370, 187 S.E. 897, 898.

MOTHER-IN-LAW. The mother of one's wife or of one's husband.

MOTION. Parliamentary law. The formal mode in which a member submits a proposed measure or resolve for the consideration and action of the meeting.

Practice. Primarily an application for a rule or order made viva voce to a court or judge, but the term is generally employed with reference to all such applications, whether written or oral. Irwin v. Gilson Realty Co., 117 Fla. 394, 158 So. 77.

Special motion. A motion addressed to the discretion of the court, and which must be heard and determined; as distinguished from one which may be granted of course. Merchants' Bank v. Chrysler, Mo., 14 C.C.A. 444, 67 F. 390.

MOTION FOR DECREE. Under the chancery practice, the most usual mode of bringing on a suit for hearing when the defendant has answered is by motion for decree. Hunter, Suit Eq. 59; Daniell, Ch.Pr. 722.

MOTION FOR JUDGMENT. In English practice, a proceeding whereby a party to an action moves for the judgment of the court in his favor. S.Ct. Rules 1883, ord. 40.

MOTION IN ARREST OF JUDGMENT. It is intended to avoid judgment because of unamendable defect appearing on record. Turner v. Shackelford, 43 Ga.App. 271, 158 S.E. 439, 440.

MOTION IN ERROR. A motion in error stands on the same footing as a writ of error; the only difference is that, on a motion in error, no service is required to be made on the opposite party, because, being before the court when the motion is filed, he is bound to take notice of it at his peril. Treadway v. Coe, 21 Conn. 283.

MOTION TO SET ASIDE JUDGMENT. This is a step taken by a party in an action who is dissatisfied with the judgment directed to be entered at the trial of the action.

MOTIVE. Cause or reason that moves the will and induces action. Commonwealth v. Trunk, 311 Pa. 555, 167 A. 333, 338. An inducement, or that which leads or tempts the mind to indulge a criminal act. People v. Lewis, 275 N.Y. 33, 9 N.E.2d 765, 768.

In the popular mind intent and "motive" are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. "Motive" is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result. "Motive" is that which incites or stimulates a person to do an act. People v. Weiss, 252 App.Div. 463, 300 N.Y.S. 249, 255.

MOTOR VEHICLE. In the Uniform Act Regulating Traffic on Highways, 11 U.L.A., and similar statutes, any self-propelled "vehicle," defined as including every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human or muscular power or used exclusively upon stationary rails or tracks. The term "motor vehicles," although sometimes regarded as synonymous with or limited to "automobiles," often has

a broader meaning, and includes not only ordinary automobiles, but also motorbuses and trucks, as well as motorcycles. *Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., § 2.*

Motor vehicle insurance. See *Insurance.*

MOTORCYCLE. A bicycle propelled by a gasoline engine located in the frame between the wheels. *Ellett v. Klein, C.C.A.Pa., 252 F. 805, 806, certiorari denied Harley-Davidson Motor Co. v. Ellett, 39 S.Ct. 8, 248 U.S. 563, 63 L.Ed. 423; Bonds v. State, 16 Ga.App. 401, 85 S.E. 629, 630.*

A motorcycle is not a "motor-driven car" as that term is used in insurance policies. Generally, however, a motorcycle is included in the term "motor vehicle," although under some statutes the words "automobile" and "motorcycle" are separately defined and the regulations and liabilities with respect thereto differ in material ways. *Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., § 2.*

MOTU PROPRIO. Lat. Of his own motion. The commencing words of a certain kind of papal rescript.

MOUNTINGS. Used in the Tariff Act of 1913, in connection with optical instruments such as the microscope and polariscope, in the sense of accessories, adjuncts, or parts thereof. *U. S. v. International Forwarding Co., 9 Ct.Cust.App. 156, 159.*

MOURNING. The dress or apparel worn by mourners at a funeral and for a time afterwards. Also the expenses paid for such apparel.

As to "year of mourning," see that title.

MOUTH OF RIVER. By statute in some states, the mouth of a river or creek, which empties into another river or creek, is defined as the point where the middle of the channel of each intersects the other. *Pol.Code Cal. § 3908; Rev.St.Ariz.1901, par. 931, Rev.Code 1928, § 742.*

MOVABLE. That which can be changed in place, as movable property; or in time, as movable feasts or terms of court. *Goddard v. Winchell, 86 Iowa 71, 52 N.W. 1124, 17 L.R.A. 788.*

MOVABLE ESTATE. A term equivalent to "personal estate" or "personal property." *Den v. Sayre, 3 N.J.L. 187.*

MOVABLE FREEHOLD. A term applied by Lord Coke to real property which is capable of being increased or diminished by natural causes; as where the owner of seashore acquires or loses land as the waters recede or approach. *Holman v. Hodges, 112 Iowa 714, 84 N.W. 950, 58 L.R.A. 673.*

MOVABLES. Things movable; movable or personal chattels which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another. *2 Bl.Comm. 387.*

Movables consist—*First*, of inanimate things, as goods, plate, money, jewels, implements of war, garments, and the like or vegetable productions, as the fruit or other parts of a plant when severed from the body of it or the whole plant itself when severed from the ground; *secondly*, of animals, which have in themselves a principle and power of motion. *2 Steph.Comm. 67.*

Movables are further distinguished into such as are in possession, or which are in the power of the owner, as a horse in actual use, a piece of furniture in a man's own house; and such as are in the possession of another, and can only be recovered by action, which are therefore said to be in action, as a debt.

But it has been held that movable property, in a legacy, strictly includes only such as is corporeal and tangible; not, therefore, rights in action, as judgment or bond debts; *Strong v. White, 19 Conn. 238, 245; 1 Wm. Jones 225; but see Penniman v. French, 17 Pick., Mass., 404, 28 Am.Dec. 309; and that, in a will, "movables" is used in its largest sense, but will not pass growing crops, nor building materials on ground; Jackson v. Vandersprengle, 2 Dall. 142, 1 L.Ed. 323.*

Civil law. Movables (*mobilia*), properly denoted inanimate things; animals being distinguished as *moventia*, things moving. Calvin. But these words *mobilia* and *moventia* are also used synonymously, and in the general sense of "movables." *Id.*

Scotch law. "Movables" are opposed to "heritage." So that every species of property, and every right a man can hold, is by that law either heritable or movable. Bell.

MOVANT. One who moves; one who makes a motion before a court; the applicant for a rule or order.

MOVE. To make an application to a court for a rule or order, or to take action in any matter. To ask. *Harris v. Chicago House-Wrecking Co., 314 Ill. 500, 145 N.E. 666, 669.* The term comprehends all things necessary to be done by a litigant to obtain an order of the court directing the relief sought. *O'Hanion v. Great Northern Ry. Co., 76 Mont. 128, 245 P. 518, 519.*

To propose a resolution, or recommend action in a deliberate body.

To pass over; to be transferred; as when the consideration of a contract is said to "move" from one party to the other.

To occasion; to contribute to; to tend or lead to. The forewheel of a wagon was said "to move to the death of a man." *Sayer, 249.*

MOVE OUT. To vacate; to yield up possession. *Polich v. Severson, 68 Mont. 225, 216 P. 785, 787.*

MOVEMENT. In relating to train, the word "movement" was not restricted to actual revolution of wheels of train or locomotive engaged in interstate commerce, but could apply to a train tied up on a siding. *Great Northern Ry. Co. v. United States, C.C.A.Idaho, 211 F. 309, 312.* Similarly, as regards vehicles, the term could comprehend the control and management of vehicles, including power to require that motor be closed down when a motor vehicle was left on street. *White v. District of Columbia, 55 App.D.C. 197, 4 F.2d 163, 164.*

MOVENT. An alternative spelling of *movant*.

MOVING FOR AN ARGUMENT. Making a motion on a day which is not motion day in virtue of having argued a special case; used in the exchequer after it became obsolete in the queen's bench. Wharton.

MOVING

MOVING PAPERS. Such papers as are made the basis of some motion in court proceedings, *e. g.* a bill in equity with supporting affidavits.

MOVING PICTURE SHOW. A place where motion pictures are exhibited for the purpose of public amusement and entertainment. *State v. Morris*, 28 Idaho 599, 155 P. 296, 297, L.R.A.1916D, 573.

MRS. Title of courtesy prefixed to name of woman to indicate that she has been married. *Guide Pub. Co. v. Futrell*, 175 Va. 77, 7 S.E.2d 133, 138.

MUCIANA CAUTIO. See *Cautio*.

MUEBLES. In Spanish law, movables; all sorts of personal property. *White*, New Recop. b. 1, tit. 3, c. 1, § 2.

MUFFLER. Any of various devices to deaden the noise of escaping gases or vapors, such as a tube filled with obstructions, through which the exhaust gases of an internal combustion engine, as an automobile, are passed (called also a silencer), or an attachment usually consisting of a series of perforated baffles for a locomotive pop safety valve. *Hines v. Foreman*, Tex.Com.App., 243 S.W. 479, 484.

MUGGLE; MUGGLE HEADS. Marihuana is popularly known among the criminal element as "muggles" or "mooter," and addicts are commonly termed "muggle heads." *State v. Navaro*, 83 Utah, 6, 26 P.2d 955.

MUIRBURN. In Scotch law, the offense of setting fire to a muir or moor. 1 *Brown*, Ch. 78, 116.

MULATTO. A person that is the offspring of a negress by a white man, or of a white woman by a negro. *Thurman v. State*, 18 Ala. 276. In a more general sense, a person of mixed Caucasian and negro blood, or Indian and negro blood. *Webster*, Dict. See, also, *Mustizo*.

Properly a mulatto is a person one of whose parents is wholly black and the other wholly white; but the word does not always, though perhaps it does generally, require so exactly even a mixture of blood, nor is its signification alike in all the states. 1 *Bish. Mar. & D.* § 308.

MULCT. A penalty or punishment imposed on a person guilty of some offense, tort, or misdemeanor, usually a pecuniary fine or condemnation in damages. *Cook v. Marshall County*, 119 Iowa 384, 93 N.W. 372, 104 Am.St.Rep. 283. A forfeit, fine, or penalty. *Kleinath, Schuster & Hudson v. Reed*, 18 N.M. 358, 137 P. 841, 844. To sentence to a pecuniary penalty or forfeiture as a punishment; fine; hence to fine unjustly; to punish. *Gorton v. Doty*, 57 Idaho 792, 69 P.2d 136, 142.

Formerly, an imposition laid on ships or goods by a company of trade for the maintenance of consuls and the like.

MULCTA DAMNUM FAMÆ NON IRROGAT. Cod. 1, 54; Calvin. A fine does not involve loss of character.

MULE. A hybrid between the horse and the ass; especially, the offspring of a male ass and a mare. *Webster*, Dict.

MULIER. Lat. A woman; a wife; a widow; a virgin; a legitimate child. 1 *Inst.* 243; *Co.Litt.* 170, 253; 2 *Bla.Com.* 248.

The term is used always in contradistinction to a bastard, *mulier* being always legitimate. *Co. Litt.* 243.

MULIER PUISNÉ. L. Fr. When a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné*, and the younger son is *mulier puisné*.

MULIERATUS. A legitimate son. *Glanvil*.

MULIERTY. In old English law, the state or condition of a *mulier*, or lawful issue. *Co.Litt.* 352b. The opposite of bastardy. *Blount*.

MULTA. A fine or final satisfaction, anciently given to the king by the bishops, that they might have power to make their wills, and that they might have the probate of other men's wills, and the granting of administration. 2 *Inst.* 291. Called, also, *multura episcopi*.

A fine imposed *ex arbitrio* by magistrates on the *præsides provinciarum*. *Inst.* 4, 1.

MULTA CONCEDUNTUR PER OBLIQUUM QUÆ NON CONCEDUNTUR DE DIRECTO. Many things are allowed indirectly which are not allowed directly. 6 *Coke*, 47.

MULTA FIDEM PROMISSA LEVANT. Many promises lessen confidence. *Brown v. Castles*, 11 *Cush.* (Mass.) 350.

MULTA IGNORAMUS QUÆ NOBIS NON LAT-ERENT SI VETERUM LECTIO NOBIS FUIT FAMILIARIS. 10 *Coke*, 73. We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us.

MULTA IN JURE COMMUNI CONTRA RATIONEM DISPUTANDI, PRO COMMUNI UTILITATE INTRODUCTA SUNT. Many things have been introduced into the common law, with a view to the public good, which are inconsistent with sound reason. *Co.Litt.* 70b; *Broom*, Max. 158; 2 *Co.* 75. See 3 *Term* 146; 7 *id.* 252.

MULTA MULTO EXERCITATIONE FACILIUS QUAM REGULIS PERCIPIES. 4 *Inst.* 50. You will perceive many things much more easily by practice than by rules.

MULTA NON VETAT LEX, QUÆ TAMEN TACITE DAMNAVIT. The law forbids not many things which yet it has silently condemned.

MULTA TRANSEUNT CUM UNIVERSITATE QUÆ NON PER SE TRANSEUNT. Many things pass with the whole which do not pass separately. *Co.Litt.* 12a.

MULTI MULTA, NEMO OMNIA NOVIT. 4 *Inst.* 348. Many men have known many things; no one has known everything.

MULTIFARIOUSNESS. Equity pleading. The misjoinder of causes of action in a bill. *Van Antwerp v. Van Antwerp*, 242 Ala. 92, 5 So.2d 73, 77.

The fault of improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected against one defendant (more commonly called misjoinder of claims), or the demand of several matters of a distinct and independent nature against several defendants, in the same bill. *Story*, Eq.Pl. § 271; *Essen v. Adams*, 342 Mo. 1196, 119 S.W.2d 773, 777, 118 A.L.R. 1393.

"Multifariousness" as to matter consists in uniting in the same bill distinct and disconnected subjects, matters, or causes, and "multifariousness" as to parties consists in joining in same suit parties who are without a common interest in subject of litigation and have no connection with each other. *Essen v. Adams*, 342 Mo. 1196, 119 S.W.2d 773, 777, 118 A.L.R. 1393.

The joining of distinct and independent matters, each of which would constitute a cause of action. *Otto F. Stifel's Union Brewing Co. v. Weber*, 194 Mo.App. 605, 186 S.W. 1119, 1122; *Johnson v. Benbow*, 93 Fla. 124, 111 So. 504, 507.

"Multifariousness" abstractly is incapable of an accurate definition, but includes those cases where a party is brought as a defendant on a record with a large portion of which, and, in the case made by which, he has no connection whatever. *Stamey v. Fortner*, 230 Ala. 204, 160 So. 116.

The vice of multifariousness is the union of causes of action which, or of parties whose claims, it is either impractical or inconvenient to adjudicate in a single suit. Where it is as practical and convenient for court and parties to deal with the claims, and parties joined, in one suit as in many, there is no multifariousness. *Westinghouse Air Brake Co. v. R. Co.*, C.C.A.Mo., 71 C.C.A. 1, 137 F. 26; *Schell v. Leander Clark College*, C.C.A.Iowa, 2 F.2d 17, 21. And it is not essential that every defendant have an interest in or concern for all matters or phases of the controversy. *Mitchell v. Cudd*, 196 Ala. 162, 71 So. 660; *Norfolk Southern R. Co. v. Stricklin*, D.C.N.C., 264 F. 546, 555.

A bill is not multifarious which seeks alternative or inconsistent relief growing out of the same subject-matter or founded on the same contract or transaction, or relating to the same property between the same parties. Code Ala. § 3095, Code 1923, § 6526; *Szabo v. Speckman*, 73 Fla. 374, 74 So. 411, 412, L.R.A. 1917D, 357.

Legislation. The joining, in a single legislative act, of dissimilar and discordant subjects, which, by no fair intendment, can be considered as having a legitimate connection or relation to the subject of the act. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029, 1033.

MULTIPARTITE. Divided into many or several parts.

MULTIPLE EVIDENCE. That which is admissible for a specific purpose to which it must be confined and inadmissible to prove a different fact. *Green v. Atlantic Coast Line R. Co.*, 136 S.C. 337, 134 S.E. 385, 386.

MULTIPLE POINDING. In Scotch law, double distress; a name given to an action, corresponding to proceedings by way of interpleader, which may be brought by a person in possession of goods claimed by different persons pretending a right thereto, calling the claimants and all others to settle their claims, so that the party who sues may be liable only "in once and single payment." *Bell*.

MULTIPLEX ET INDISTINCTUM PARIT CONFUSIONEM; ET QUÆSTIONES, QUO SIMPLICIORES, EO LUCIDIORES. Hob. 335. Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.

MULTIPLICATA TRANSGRESSIONE CRESCAT POENÆ INFLICTIO. As transgression is multiplied, the infliction of punishment should increase. 2 Inst. 479.

MULTIPLICITY. A state of being many. That quality of a pleading which involves a variety of matters or particulars; undue variety. 2 Saund. 410. A multiplying or increasing. *Story*, Eq.Pl. § 287.

MULTIPLICITY OF ACTIONS, or SUITS. Numerous and unnecessary attempts to litigate the same right. A phrase descriptive of the state of affairs where several different suits or actions are brought upon the same issue. The actions must be against a single defendant. *Prospect Park & C. I. R. Co. v. Morey*, 155 App.Div. 347, 140 N.Y.S. 380, 385; *Williams v. Millington*, 1 H.Bl. 81.

MULTITUDE. An assemblage of many people. According to Coke it is not a word of very precise meaning; for some authorities hold that there must be at least ten persons to make a multitude, while others maintain that no definite number is fixed by law. *Co.Litt.* 257. Two cannot constitute a multitude. *Pike v. Witt*, 104 Mass. 595. Three or more constitute. *State v. Earp*, 196 N.C. 164, 145 S.E. 23, 25.

MULTITUDINEM DECEM FACIUNT. *Co.Litt.* 257. Ten make a multitude.

MULTITUDO ERRANTIUM NON PARIT ERRORI PATROCINUM. The multitude of those who err furnishes no countenance or excuse for error. 11 Coke, 75a. It is no excuse for error that it is entertained by numbers.

MULTITUDO IMPERITORUM PERDIT CURIAM. A great number of unskillful practitioners ruins a court. 2 Inst. 219.

MULTO. In old records, a wether sheep.

MULTO UTILIUS EST PAUCA IDONEA EFFUNDERE QUAM MULTIS INUTILIBUS HOMINES GRAVARI. 4 Coke, 20. It is more useful to pour forth a few useful things than to oppress men with many useless things.

MULTURA EPISCOPI. See *Multa*.

MULTURE. In Scotch law, the quantity of grain or meal payable to the proprietor of a mill, or to the multur, his tacksman, for manufacturing the corns. *Ersk.Inst.* 2, 9, 19.

MUMMIFICATION. In medical jurisprudence, the complete drying up of the body as the result of burial in a dry, hot soil, or the exposure of the body to a dry, cold atmosphere. 15 *Amer. & Eng. Enc. Law*, 261.

MUMMING

MUMMING. Antic diversions in the Christmas holidays, suppressed in Queen Anne's time.

MUND. In old English law, peace; whence *mund-bryc*, a breach of the peace.

MUNDBYRD, MUNDEBURDE. A receiving into favor and protection. Cowell.

MUNDIUM. In old French law, a tribute paid by a church or monastery to their seignorial *avoués* and *vidames*, as the price of protecting them. Steph.Lect. 236.

MUNERA. In the early ages of the feudal law, the name given to the grants of land made by a king or chieftain to his followers, which were held by no certain tenure, but merely at the will of the lord. Afterwards they became life-estates, and then hereditary, and were called first "benefices," and then "feuds." See Wright, Ten. 19.

MUNICEPS. Lat. In Roman Law, eligible to office. A provincial person; a countryman. This was the designation of one born in the provinces or in a city politically connected with Rome, who had come to Rome, and though a Roman citizen, yet was looked down upon as a provincial, and not allowed to hold the higher offices.

In the provinces the term seems to have been applied to the freemen of any city who were eligible to the municipal offices. Calvin.

MUNICIPAL. In narrower sense, it means pertaining to a local governmental unit, commonly, a city or town or other governmental unit. In its broader sense, it means pertaining to the public or governmental affairs of a state or nation or of a people. *Chadwick v. City of Crawfordsville*, 216 Ind. 399, 24 N.E.2d 937, 941, 942, 129 A.L.R. 469. Sometimes, pertaining to a county. *State ex rel. Schneider v. Midland Investment & Finance Corporation*, 219 Wis. 161, 262 N.W. 711, *contra*, *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P.2d 624, 628, 100 A.L.R. 581; local, particular, independent; *Horton v. Mobile School Com'rs*, 43 Ala. 598; also, pertaining to local self-government in general; *Woodward v. Livermore Falls Water Dist.*, 116 Me. 86, 100 A. 317, 319, L.R.A. 1917D, 678.

Relating to a state or nation, particularly when considered as an entity independent of other states or nations. *Hammel v. Little*, 66 App.D.C. 356, 87 F.2d 907, 910.

Among the Romans, cities were called *municipia*; these cities voluntarily joined the Roman republic in relation to their sovereignty only, retaining their laws, their liberties, and their magistrates, who were thence called *municipal magistrates*. With us this word has a more extensive meaning: for example, we call *municipal law* not the law of a city only, but the law of the state. 1 Bla.Comm. 44.

MUNICIPAL ACTION. Exercise of governmental power by a municipality. *Orme v. Atlas Gas & Oil Co.*, 217 Minn. 27, 13 N.W.2d 757, 761.

MUNICIPAL AFFAIRS. A term referring to the internal business affairs of a municipality. *Griffin v. City of Los Angeles*, 134 Cal.App. 763, 26 P. 2d 655.

The term is frequently used in constitutional and statutory provisions concerning the power to legislate as to the concerns of municipalities. *City of Los Angeles v. Central Trust Co. of New York*, 173 Cal. 323, 159 P. 1169, 1171; *State v. Cummings*, 47 Okl. 44, 147 P. 161, 163. And it has come to include public service activities, such as supplying water to the inhabitants, the construction of a reservoir for their benefit, the sale and distribution of electrical energy, and the establishment and operation of transportation service, which were once regarded as being of a strictly private nature. In re *Bonds of Orosi Public Utility Dist.*, 196 Cal. 43, 235 P. 1004, 1010.

MUNICIPAL AID. A contribution or assistance granted by a municipal corporation towards the execution or progress of some enterprise, undertaken by private parties, but likely to be of benefit to the municipality; *e. g.*, a railroad.

MUNICIPAL AUTHORITIES. As used in statutes contemplating the consent of such authorities, the term means the consent by the legislative authorities of the city acting by ordinance; *Holland Realty & Power Co. v. City of St. Louis*, 282 Mo. 180, 221 S.W. 51, 53, for example, in a town, the members of the town board; *Farnsworth v. Boro Oil & Gas Co.*, 216 N.Y. 40, 109 N.E. 860.

MUNICIPAL BONDS. Evidences of indebtedness issued by cities or other corporate public body, negotiable in form, payable at designated future time, and intended for sale in market with object of raising money for municipal expense, which is beyond immediate resources of reasonable taxation, as distinguished from temporary evidences of debt, such as vouchers, certificates of indebtedness, orders, or drafts drawn by one officer on another and similar devices for liquidating current obligations in anticipation of collection of taxes. *City of Stamford v. Town of Stamford*, 107 Conn. 596, 141 A. 891, 896.

MUNICIPAL CHARTER. A legislative enactment conferring governmental powers of the state upon its local agencies. *State v. Thompson*, 193 Ala. 561, 69 So. 461, 464.

MUNICIPAL CLAIMS. In Pennsylvania law, claims filed by a city against property owners therein, for taxes, rates, levies, or assessments for local improvements, such as the cost of grading, paving, or curbing the streets, or removing nuisances.

MUNICIPAL CORPORATION. A public corporation, created by government for political purposes, and having subordinate and local powers of legislation. 2 Kent, Comm. 275; *Bonaparte v. Camden & A. R. Co.*, Baldw. 222, F.Cas.No.1617.

An incorporation of persons, inhabitants of a particular place, or connected with a particular district, enabling them to conduct its local civil government *Glov.Mun.Corp.* 1.

A legal institution formed by charter from sovereign power erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state. *State v. Cheyenne County*, 127 Neb. 619, 256 N.W. 67.

A body corporate consisting of the inhabitants of a designated area created by the legislature with or without the consent of such inhabitants for governmental purposes,

possessing local legislative and administrative power, also power to exercise within such area so much of the administrative power of the state as may be delegated to it and possessing limited capacity to own and hold property, and to act in purveyance of public conveniences. *Van Gilder v. City of Madison*, 222 Wis. 58, 268 N.W. 108, 109.

Cities, towns, and villages are municipal corporations proper. *Strickfaden v. Green Creek Highway Dist.*, 42 Idaho 738, 248 P. 456, 458, 49 A.L.R. 1057. On the other hand, such term in many instances does not extend so far as to include counties; *Hersey v. Nelson*, 47 Mont. 132, 131 P. 30, 31, Ann.Cas.1914C, 963; or drainage districts; *Sawyer v. Camden Run Drainage Dist.*, 179 N.C. 182, 102 S.E. 273, 274; or irrigation districts; *Crawford v. Imperial Irr. Dist.*, 200 Cal. 318, 253 P. 726, 729; or road districts; *William T. Joyce Co. v. Police Jury of Parish of Tangipahoa*, 146 La. 322, 83 So. 587, 588; or school districts; *Dickson v. Brewer*, 180 N.C. 403, 104 S.E. 887, 889; nor does it include the state; *Herkimer Lumber Co. v. State*, 196 App. Div. 708, 189 N.Y.S. 119, 122; but see *contra*, as to the District of Columbia, *Stoutenburgh v. Hennick*, 129 U.S. 141, 9 S.Ct. 256, 32 L.Ed. 637. Nevertheless, it has been held in other cases, often under different circumstances or in different contexts, that the term may include counties; *Van Hess v. Board of Com'rs of St. Joseph County*, 190 Ind. 347, 129 N.E. 305, 307; and, in Louisiana, parishes; *State v. Hagen*, 136 La. 868, 67 So. 935; drainage districts; *State v. Little River Drainage Dist.*, 291 Mo. 267, 236 S.W. 848, 849; irrigation districts; *Peters v. Union Gap Irr. Dist.*, 98 Wash. 412, 167 P. 1085, 1086; road districts; *State ex rel. Little Prairie Special Road Dist. of Pemiscot County v. Thompson*, 315 Mo. 56, 285 S.W. 57, 61; and the like; *Milheim v. Moffat-Tunnel Improvement Dist.*, 72 Colo. 268, 211 P. 649, 653; *Drum v. University Place Water Dist.*, 144 Wash. 585, 258 P. 505, 506.

English law. A body of persons in a town having the powers of acting as one person, of holding and transmitting property, and of regulating the government of the town. Such corporations existed in the chief towns of England (as of other countries) from very early times, deriving their authority from "incorporating" charters granted by the crown. *Wharton*.

Quasi municipal corporations. Bodies politic and corporate, created for the sole purpose of performing one or more municipal functions. *Woodward v. Livermore Falls Water Dist.*, 116 Me. 86, 100 A. 317, 319, L.R.A.1917D, 678.

Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations (such as counties, townships, school districts, drainage districts, irrigation districts, etc.), but not municipal corporations proper, such as cities and incorporated towns. *Snider v. St. Paul*, 51 Minn. 466, 53 N.W. 763, 18 L.R.A. 151; *Plumbing Supply Co. v. Board of Education of Independent School Dist. of City of Canton*, 32 S.D. 270, 142 N.W. 1131, 1132; *Melin v. Community Consol. School Dist. No. 76*, 312 Ill. 376, 144 N.E. 13, 16.

MUNICIPAL CORPORATION DE FACTO. One which exists when there is (1) some law under which a corporation with the powers assumed might lawfully have been created; (2) a colorable and bona fide attempt to perfect an organization under such a law; (3) user of the rights claimed to have been conferred by the law. *Evens v. Anderson*, 132 Minn. 59, 155 N.W. 1040, 1041.

MUNICIPAL CORPORATIONS ACT. In English law, a general statute, (5 & 6 Wm. IV. c. 76,) passed in 1835, prescribing general regulations for the incorporation and government of boroughs.

MUNICIPAL COURTS. In the judicial organization of several states, courts are established un-

der this name, whose territorial authority is confined to the city or community in which they are erected. Such courts usually have a criminal jurisdiction corresponding to that of a police court, and, in some cases, possess civil jurisdiction in small causes. *Ex parte Gownlock*, 13 Okl.Cr. 293, 164 P. 130, 131.

MUNICIPAL DOMICILE. Sometimes used in contradistinction to "national domicile" and "quasi national domicile" to refer to residence in a county, township, or municipality; called also "domestic domicile." *Hayward v. Hayward*, 65 Ind.App. 440, 115 N.E. 966, 970.

MUNICIPAL ELECTION. One at which municipal officers are chosen. *Hutchins v. City of Des Moines*, 176 Iowa, 189, 157 N.W. 881, 883. Compare *Johnson v. Luers*, 129 Md. 521, 99 A. 710, 714.

MUNICIPAL FUNCTION. One created or granted for the special benefit and advantage of the urban community embraced within the corporate boundaries. *State ex rel. Gebhardt v. City Council of Helena*, 102 Mont. 27, 55 P.2d 671, 673.

Sometimes called a private function, as distinguished from a public or governmental function, which is one conferred or imposed on the municipality as a local agency of limited and prescribed jurisdiction to be employed in administering the affairs of the state, and promoting the public welfare generally. *Bryan v. City of West Palm Beach*, 75 Fla. 19, 77 So. 627; *Griffith v. City of Butte*, 72 Mont. 552, 234 P. 829, 831.

Logically all those are strictly municipal functions which specially and peculiarly promote the comfort, convenience, safety and happiness of the citizens of the municipality, rather than the welfare of the general public. Under this class of functions are included, in most jurisdictions, the proper care of streets and alleys, parks and other public places, and the erection and maintenance of public utilities and improvements generally. *Chardkoff Junk Co. v. City of Tampa*, 102 Fla. 501, 135 So. 457, 459.

MUNICIPAL GOVERNMENT. Instrumentalities of state for purpose of local government. *Moore v. State*, 159 Tenn. 468, 19 S.W.2d 233.

This term, in certain state constitutions, embraces the governmental affairs of counties; *State v. Touchberry*, 121 S.C. 5, 113 S.E. 345; and includes all forms of representative municipal government; *In re Opinion of the Justices*, 229 Mass. 601, 119 N.E. 778, 781.

MUNICIPAL LAW. Not the law of a city only but the law of the state. *People ex rel. Ray v. Martin*, 181 Misc. 925, 47 N.Y.S.2d 883, 891.

In contradistinction to international law, it is the law of an individual state or nation. It is the rule or law by which a particular district, community, or nation is governed. 1 Bl.Comm. 44. That which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and the law of nations. *Wharton*; *City of Louisville v. Babb*, C.C.A. Ind., 75 F.2d 162, 165. In its more modern and narrower connotation it means those laws which pertain to towns, cities and villages and their local government. *People ex rel. Ray v. Martin*, 294 N.Y. 61, 60 N.E.2d 541, 547, 548.

MUNICIPAL LIEN. A lien or claim existing in favor of a municipal corporation against a property owner for his proportionate share of a public improvement, made by the municipality, whereby his property is specially and individually benefited.

MUNICIPAL OFFICER. One who holds an office of a municipality. *Danculovic v. Zimmerman*,

MUNICIPAL ORDINANCE

184 Minn. 370, 238 N.W. 695. A city, town, or borough;—not including a county. *State v. Cooney*, 70 Mont. 355, 225 P. 1007, 1010, but the term often bears a special or limited sense, in which it may not apply even to members of the city council. *Lambert v. Barrett*, 115 Va. 136, 78 S.E. 586, 587, Ann.Cas.1914D, 1226.

MUNICIPAL ORDINANCE. A law, rule, or ordinance enacted or adopted by a municipal corporation for the proper conduct of its affairs or the government of its inhabitants. *Rutherford v. Swink*, 96 Tenn. 564, 35 S.W. 554. Particularly a regulation under a delegation of power from the state. *Harris v. City of Des Moines*, 202 Iowa 53, 209 N.W. 454, 456, 46 A.L.R. 1429.

MUNICIPAL PURPOSES. Public or governmental purposes as distinguished from private purposes; *Georgia Ry. & Power Co. v. City of Atlanta*, 154 Ga. 731, 115 S.E. 263, 271. It may comprehend all activities essential to the health, morals, protection, and welfare of the municipality. *State ex rel. Harper v. McDavid*, 145 Fla. 605, 200 So. 100, 102, 133 A.L.R. 360.

For example, the taking of land for a school; *Byfield v. City of Newton*, 247 Mass. 46, 141 N.E. 658, 661; lighting the streets; *City of Colorado Springs v. Pike's Peak Hydro-Electric Co.*, 57 Colo. 169, 140 P. 921, 927; supplying water to the inhabitants; *Marin Water & Power Co. v. Town of Sausalito*, 168 Cal. 587, 143 P. 767, 772; The collection and disposal of garbage and refuse; *N. Ward Co. v. Board of Street Com'rs of City of Boston*, 217 Mass. 381, 104 N.E. 965, 966; or the building of a subway; *In re Montague Street in Borough of Brooklyn in City of New York*, 87 Misc. 120, 150 N.Y.S. 382, 385.

MUNICIPAL SECURITIES. The evidences of indebtedness issued by cities, towns, counties, townships, school-districts, and other such territorial divisions of a state. They are of two general classes: (1) Municipal warrants, orders, or certificates; (2) municipal negotiable bonds. 15 Amer. & Eng. Enc. Law, 1206.

MUNICIPAL TAXATION. Refers to municipal purposes that are beneficial to municipality as a whole. *Klemm v. Davenport*, 100 Fla. 627, 129 So. 904, 910, 70 A.L.R. 156.

This term may have reference to any tax collected by the city tax collector, including state, county, and city or town taxes. *Boston Fish Market Corp. v. City of Boston*, 224 Mass. 31, 112 N.E. 616.

MUNICIPAL WARRANTS. A municipal warrant or order is an instrument, generally in the form of a bill of exchange, drawn by an officer of a municipality upon its treasurer, directing him to pay an amount of money specified therein to the person named or his order, or to bearer. 15 Amer. & Eng. Enc. Law, 1206.

MUNICIPALITY. A legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes. *State ex rel. Attorney General v. City of Avon Park*, 108 Fla. 641, 149 So. 409, 412.

A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community. *State ex rel. McIntire v. City Council of City of Libby*, 107 Mont. 216, 82 P.2d 587, 588.

Though sometimes limited in its application to cities only; *City of Bangor v. Ridley*, 117 Me. 297, 104 A. 230, 232; it ordinarily includes towns as well as cities of all classes; *Goodman Warehouse Corporation v. Jersey City*, 102 N.J.L. 294, 132 A. 503, 506; and may on occasion include townships; *Whittingham v. Milburn Tp.*, 90 N.J.L. 344, 100 A. 854; counties; *Murphy v. Freeholders of Hudson*, 91 N.J.L. 40, 102 A. 896; school districts; *Scobee v. Board of Education of Clark County*, 157 Ky. 510, 163 S.W. 472, 473; and every kind and character of public corporations which are created by statute or the Constitution of the state, and which are dependent for their support and maintenance from taxes imposed and collected; *Joint School Dist. No. 132 in Major County and Alfalfa County v. Dabney*, 127 Okl. 234, 260 P. 486, 487. But neither townships; *Petition of Herrington*, 266 Pa. 88, 109 A. 791, 793; nor school districts; *Long v. School Dist. of Cheltenham Tp.*, 269 Pa. 472, 112 A. 545, 546; nor drainage districts or the like are necessarily included; *Witty v. Ellsberry Drainage Dist.*, 126 Miss. 645, 89 So. 268, 270.

Also, the body of officers taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

MUNICIPIUM. In Roman law, a foreign town to which the freedom of the city of Rome was granted, and whose inhabitants had the privilege of enjoying offices and honors there. *Adams, Rom. Ant.* 47, 77. A free town which retained its original right of self-government, but whose inhabitants also acquired certain rights of Roman citizens. *Morey, Rom.L.* 51.

MUNIMENT-HOUSE, or MUNIMENT-ROOM. A house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, etc., purposely made for keeping deeds, charters, writings, etc. 3 Inst. 170; *Cowell*.

MUNIMENTS. Documentary evidence of title. *Merrill v. Rocky Mountain Cattle Co.*, 26 Wyo. 219, 181 P. 964, 971. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate. *Termes de la Ley*; 3 Inst. 170.

MUNITIONS OF WAR. In international law and United States statutes, this term includes not only ordnance, ammunition, and other material directly useful in the conduct of a war, but also whatever may contribute to its successful maintenance, such as military stores of all kinds and articles of food. *U. S. v. Sheldon*, 2 Wheat. 119, 4 L.Ed. 199.

MUNUS. Lat. A gift; an office; a benefice or feud. A gladiatorial show or spectacle. *Calvin*; *Du Cange*.

MURAGE. A toll formerly levied in England for repairing or building public walls.

MURAL MONUMENTS. Monuments made in walls.

MURDER. The unlawful killing of a human being by another with malice aforethought, either express or implied. *State v. Hutter*, 145 Neb. 798, 18 N.W.2d 203, 206.

The crime committed where a person of sound mind and discretion (that is, of sufficient age to form and execute a criminal design and not legally "insane") kills any human creature in being (excluding quick but unborn children) and in the peace of the state or nation (including all persons except the military forces of the public enemy in time

of war or battle) without any warrant, justification, or excuse in law, with malice aforethought, express or implied, that is, with a deliberate purpose or a design or determination distinctly formed in the mind before the commission of the act, provided generally that death results from the injury inflicted within one year and a day after its infliction. Kilpatrick v. Com., 31 Pa. 198; Hotema v. U. S., 186 U.S. 413, 22 S.Ct. 895, 46 L.Ed. 1225; Clarke v. State, 117 Ala. 1, 23 So. 671, 67 Am.St.Rep. 157.

The term implies a felonious homicide, while the word "kill" does not necessarily mean any more than to deprive of life, as a man may kill another by accident, or in self-defense, and in many other ways, without the imputation of crime. Pilcher v. State, 16 Ala.App. 237, 77 So. 75, 76.

For the distinction between murder and manslaughter and other forms of homicide, see Homicide; Manslaughter.

Statutory Definitions. Murder is the unlawful killing of a human being with malice aforethought. Pen.Code Cal. § 187; Arizona Code Ann. 1939, § 43-2901, Pen.Code Ariz. 1901, § 172. Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder. I.C.A. § 690.1. Murder is the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied. Georgia Code Ann. § 26-1002. The killing of a human being, without the authority of law, by any means, or in any manner shall be murder in the following cases: When done with deliberate design to effect the death of the person killed, or of any human being; when done in the commission of an act eminently dangerous to others, and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual; when done without any design to effect death, by any person engaged in the commission of the crime of rape, burglary, arson, or robbery, or in any attempt to commit such felonies. Mississippi Code 1942 § 2215. Every homicide, perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or the attempt to perpetrate, any arson, rape, robbery, or burglary; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evincing a depraved mind, regardless of human life, although without any pre-conceived purpose to deprive any particular person of life, is murder in the first degree; and every other homicide, committed under such circumstances as would have constituted murder at common law, is murder in the second degree. Code Ala. 1940, § 314. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned. S.H.A. ch. 38, § 358.

Common-Law. The willful killing of any subject whatever, with malice aforethought, whether the person slain shall be an Englishman or a foreigner. Hawk. P.C. b. 1, c. 13, § 3. The killing of any person under the king's peace, with malice prepense or aforethought, either express, or implied by law. 1 Russ. Crimes, 421; Com. v. Webster, 5 Cush., Mass., 304, 52 Am.Dec. 711. When a person of sound mind and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied. 3 Inst. 47; State v. Robinson, 143 La. 543, 78 So. 933, 935.

Degrees. These were unknown at common law, but have been introduced in many states by statutes, the terms of which are too variant to be here discussed in detail. In general, however, it may be said that most states only divide the crime into "murder in the first degree" and "murder in the second degree," though in some there are three degrees; and that the general purport of these statutes is to confine murder in the first degree to homicide committed by poison, lying in wait, and other killings committed in pursuance of a deliberate and premeditated design, and to those which accompany the commission of some of the more atrocious felonies, such as burglary, arson, rape, and robbery; while murder in the second degree occurs where there is no such deliberately formed design to take life or to perpetrate one of the enumerated

felonies as is required for the first degree, but where, nevertheless, there was a purpose to kill (or at least a purpose to inflict the particular injury without caring whether it caused death or not) formed instantaneously in the mind, and where the killing was without justification or excuse, and without any such provocation as would reduce the crime to the grade of manslaughter. State v. Nelson, 148 Minn. 285, 181 N.W. 850, 851; State v. Liolios, 285 Mo. 1, 225 S.W. 941, 947; Commonwealth v. Divomte, 262 Pa. 504, 105 A. 821, 822. In a few states, there is a crime of "murder in the third degree," which is defined as the killing of a human being without any design to effect death by a person who is engaged in the commission of a felony. Tillman v. State, 81 Fla. 558, 88 So. 377, 378.

MURDRUM. In old English law, the killing of a man in a secret manner.

When a man was thus killed, and he was unknown, by the laws of Canute he was presumed to be a Dane, and the vill was compelled to pay forty marks to the king for his death. After the conquest, a similar law was made in favor of Normans, which was abolished by 3 Edw. III.

The fine formerly imposed in England upon a person who had committed homicide *per infortunium* or *se defendendo*. Prin.Pen.Law 219, note.

MURORUM OPERATIO. Lat. The service of work and labor done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage* (*q. v.*). Cowell.

MURTHRUM. In old Scotch law, murder or murder. Skene.

MUSEUM. A building or institution for the cultivation of science or the exhibition of curiosities or works of art. The term embraces not only collections of curiosities for the entertainment of the sight, but also such as would interest, amuse, and instruct the mind. Bostick v. Purdy, 5 Stew. & P., Ala., 109.

MUSICAL INSTRUMENT. An instrument having the capacity in and of itself when properly operated to produce or initiate the musical sound. Dunbar v. Spratt-Snyder Co., 208 Iowa 490, 226 N. W. 22, 63 A.L.R. 1016.

MUSICAL TABLOID. As distinguished from vaudeville, a condensation of a musical comedy in which the plot and the characters taken by different actors are preserved, to produce just one whole play by itself, without any special independent features brought into it; it classifies as vaudeville only when other features are put on during the intermissions between the scenes or acts. Princess Amusement Co. v. Well, C.C.A. Tenn., 271 F. 226, 231.

MUSSA. In old English law, a moss or marsh ground, or a place where sedges grow; a place overrun with moss. Cowell.

MUSSEL. A fresh water shellfish capable of locomotion, usually living in the bed of streams partially covered with mud. Gratz v. McKee, C. C.A.Mo., 258 F. 335, 336.

MUST. This word, like the word "shall," is primarily of mandatory effect; State ex rel. McCabe v. District Court of Third Judicial Dist. in and for Deer Lodge County, 106 Mont. 272, 76 P.2d 634,

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637; and in that sense is used in antithesis to "may"; Emery v. First Nat. Bank, 32 N.D. 575, 156 N.W. 105, 109; Reinert Bros. Const. Co. v. Tootle, 200 Mo.App. 284, 206 S.W. 422, 424. But this meaning of the word is not the only one, and it is often used in a merely directory sense. Robinson v. City of Saginaw, 267 Mich. 557, 255 N.W. 396; Munro v. State, 223 N.Y. 208, 119 N.E. 444, 445; State v. Barnell, 109 Ohio St. 246, 142 N.E. 611, 614; and consequently is a synonym for the word "may" not only in the permissive sense of that word; Tosti v. Sbanco, 170 Misc. 828, 11 N.Y.S.2d 321, 323; Pleasant Grove Union School Dist. v. Algeo, 61 Cal.App. 660, 215 P. 726; but also in the mandatory sense which it sometimes has; People v. Highway Com'rs of Town of Anchor, 279 Ill. 542, 117 N.E. 56, 57.

MUSTER. To assemble together troops and their arms, whether for inspection, drill, or service in the field. To take recruits into the service in the army and inscribe their names on the muster-roll or official record. To summon together; to enroll in service. Bannister v. Soldiers' Bonus Board, 43 R.I. 346, 112 A. 422, 423, 13 A.L.R. 589. In the latter sense the term implies that the persons mustered are not already in the service. Tyler v. Pomeroy, 8 Allen, Mass., 480.

MUSTER-MASTER. One who superintended the muster to prevent frauds. St. 35 Eliz. c. 4.

MUSTER-BOOK. A book in which the forces are registered. Termes de la Ley.

MUSTER-ROLL. In maritime law, a list or account of a ship's company, required to be kept by the master or other person having care of the ship, containing the name, age, national character, and quality of every person employed in the ship. Abb.Shipp. 191, 192; Jac. Sea Laws, 161. It is of great use in ascertaining the ship's neutrality. Marsh.Ins. p. 407; Ketland v. Lebering, 2 Wash. C.C. 201, F.Cas.No.7,744.

MUSTIZO. A name given in a South Carolina Act of 1740 to the issue of an Indian and a negro. Miller v. Dawson, Dudl., S.C., 174.

MUTA-CANUM. A kennel of hounds; one of the mortuaries to which the crown was entitled at a bishop's or abbot's decease. 2 Bl.Comm. 426.

MUTATIO NOMINIS. Lat. In the civil law, change of name. Cod. 9, 25.

MUTATION. In French law, this term is synonymous with "change," and is especially applied to designate the change which takes place in the property of a thing in its transmission from one person to another. Mutation, therefore, happens when the owner of the thing sells, exchanges, or gives it. Merl.Répert.

MUTATION OF LIBEL. In practice, an amendment allowed to a libel, by which there is an alteration of the substance of the libel, as by propounding a new cause of action, or asking one thing instead of another. Dunl.Adm.Pr. 213; U. S. v. Four Part Pieces of Woollen Cloth, 1 Paine 435, F.Cas.No.15,150.

MUTATIS MUTANDIS. Lat. With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Housman v. Waterhouse, 191 App.Div. 850, 182 N.Y.S. 249, 251.

MUTE. Speechless; dumb; that cannot or will not speak.

In English criminal law, a prisoner is said to *stand mute* when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose or with such matter as is not allowable, and will not answer otherwise, or, upon having pleaded not guilty, refuses to put himself upon the country. 4 Bl.Comm. 324.

MUTILATION. As applied to written documents, such as wills, court records, and the like, this term means rendering the document imperfect by the subtraction from it of some essential part, as, by cutting, tearing, burning, or erasure, but without totally destroying it. Woodfill v. Patton, 76 Ind. 583, 40 Am.Rep. 269; Tinsley v. Carwile, 212 Ind. 675, 10 N.E.2d 597, 600. Also, the alteration in the writing, as in a negotiable instrument, so as to make it another and different instrument and no longer evidence of the contract which the parties made. Clem v. Chapman, Tex.Civ.App., 262 S.W. 168, 171.

In criminal law, the depriving a man of the use of any of those limbs which may be useful to him in fight, the loss of which amounts to *mayhem*. 1 Bl.Comm. 130; People v. Bullington, 27 Cal.App. 2d 396, 80 P.2d 1030, 1032.

MUTINOUS. Insubordinate; disposed to mutiny; tending to incite or encourage mutiny.

MUTINY, v. To rise against lawful or constituted authority, particularly in the naval or military service. United States v. Krafft, C.C.A.N.J., 249 F. 919, 925, L.R.A.1918F, 402.

MUTINY, n. In criminal law, an insurrection of soldiers or seamen against the authority of their commanders; a sedition or revolt in the army or navy. The Stacey Clarke, D.C.Ala., 54 F. 533; U. S. v. Smith, 1 Mas. 147, F.Cas.No.16,337.

MUTINY ACT. In English law, an act of parliament annually passed to punish mutiny and desertion, and for the better payment of the army and their quarters. It was first passed April 12, 1689, and was the only provision for the payment of the army. 1 Bl.Comm. 415.

MUTUAL. Common to both parties. Kansas Amusement Co. v. Maryland Casualty Co., 126 Kan. 354, 267 P. 968, 969.

Interchangeable; reciprocal; each acting in return or correspondence to the other; given and received;—spoken of an engagement or relation in which like duties and obligations are exchanged; e. g., the marital relation. O'Malley v. O'Malley, 46 Mont. 549, 129 P. 501, 502, Ann.Cas.1914B, 662; Canal-Commercial Trust & Savings Bank v. Brewer, 143 Miss. 146, 108 So. 424, 431, 47 A.L.R. 45.

As to mutual "Accounts," "Assent," "Combat," "Conditions," "Contracts," "Covenants," "Credits,"

"Debts," "Insurance," "Insurance Company," "Mistake," "Promise," and "Testaments," see those titles.

MUTUAL AFFRAY. A fight in which both parties willingly enter and is similar to a duel. *Taylor v. Commonwealth*, 281 Ky. 442, 136 S.W.2d 544.

MUTUAL BENEFIT ASSOCIATION. One based on reciprocal contracts and requires that a member receive benefits as a matter of right. In *re Hender-son's Estate*, 17 Cal.2d 853, 112 P.2d 605, 609.

MUTUAL COMPANY. One in which the members are both the insurers and the insured. *Pink v. Town Taxi Co.*, 138 Me. 44, 21 A.2d 656, 659.

MUTUAL DEMANDS. Those between the same parties and due in the same capacity or right. *Thompson v. Prince*, Tex.Civ.App., 126 S.W.2d 574, 576.

MUTUAL ENTERPRISE. Building and loan as- sociation is generally a "mutual enterprise," all members being under same rules, sharing in prof- its equally, and bearing proportionate share of losses. *Griffin v. White*, 182 S.C. 219, 189 S.E. 127, 131.

MUTUAL RELIEF ASSOCIATION. An insurer, chartered under a designated statute, having no capital stock, having relief funds created and sus- tained by assessments made upon the members, which files reports with insurance commissioner evidencing that it is not conducted for profit of its officers. *State v. Texas Mut. Life Ins. Co. of Texas*, Tex.Civ.App., 51 S.W.2d 405, 412.

MUTUAL RESERVE COMPANY. A company is- suing "benefit thrift certificates" containing both savings features and renewable term insurance features, paid for by a single premium, with cash and loan values and limitation upon the expense liable for cost of supervision and management, was a "mutual reserve company". *State ex rel. Smrha v. Cosmopolitan Old Line Life Ins. Co.*, 137 Neb. 742, 291 N.W. 72, 79.

MUTUAL SAVINGS BANK. A bank organized by depositors, whose interest is shown by certi- ficates of deposit, for the purpose of furnishing a safe depository for money of members. It need not be incorporated or under supervision unless state law so requires. *A-C Investment Ass'n v. Helvering*, 62 App.D.C. 339, 68 F.2d 386, 387.

MUTUAL WILLS. Those made as the separate wills of two people which are reciprocal in provi- sion. *Child v. Smith*, 225 Iowa 1205, 282 N.W. 316, 321. Or those executed pursuant to agreement or compact between two or more persons to dispose of their property in particular manner, each in con- sideration of the other. *Maloney v. Rose*, 224 Iowa 1071, 277 N.W. 572, 574.

MUTUALITY. Reciprocation; interchange. An acting by each of two parties; an acting in re- turn.

Contracts and obligations. "Mutuality of con- tract" means that obligation rests on each party to do or permit doing of something in considera- tion of other party's act or promise; neither party being bound unless both are bound. *Aden v. Dalton*, 341 Mo. 454, 107 S.W.2d 1070, 1073. Called, also, mutuality of obligation. *Warren v. Ray County Coal Co.*, 200 Mo.App. 442, 207 S.W. 883, 884; *United Appliance Corporation v. Boyd*, Tex. Civ.App., 108 S.W.2d 760, 764.

As to mutuality of "Assent," "Mistake," etc., see those titles.

MUTUANT. The person who lends chattels in the contract of *mutuum*, (*q. v.*).

MUTUARI. To borrow; *mutuatus*, a borrowing. 2 Arch.Pr. 25.

MUTUARY. A person who borrows personal chat- tels to be consumed by him and returned to the lender in kind and quantity; the borrower in a contract of *mutuum*.

MUTUATUS. A loan of money. See *Gilbert*, Com. Pleas 5.

MUTUS ET SURDUS. Lat. In civil and old Eng- lish law, dumb and deaf.

MUTUUM. Lat. A loan for consumption; a loan of chattels, upon an agreement that the borrower may consume them, returning to the lender an equivalent in kind and quantity; as, a loan of corn, wine, or money which is to be used or con- sumed, and is to be replaced by other corn, wine, or money. *Story*, Bailm. § 228; In *re Ellis' Estate*, 24 Del.Ch. 393, 6 A.2d 602, 611. At common law, such a transaction is regarded as a sale or ex- change, and not a bailment. *Hanes v. Shapiro & Smith*, 168 N.C. 24, 84 S.E. 33, 35; *New Domain Oil & Gas Co. v. Hayes*, 202 Ky. 377, 259 S.W. 715, 717, 38 A.L.R. 172.

MYNSTER-HAM. Monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality, or as a sanctuary for criminals. *Anc. Inst.Eng.*

MYSTERIOUS DISAPPEARANCE. Theft in- surance policy provision covering any disappear- ance or loss under unknown, puzzling or baffling circumstances which arouse wonder, curiosity or speculation, or circumstances which are difficult to understand or explain. *Claiborne v. U. S. Fire Ins. Co.*, La.App., 193 So.2d 315, 317.

MYSTERY. A trade, art, or occupation. 2 Inst. 668. Masters frequently bind themselves in the indentures with their apprentices to teach them their art, trade, and *mystery*. *State v. Bishop*, 15 Me. 122; *Barger v. Caldwell*, 2 Dana, Ky., 131.

MYSTIC TESTAMENT. In the law of Louisiana, a closed or sealed will, required by statute to be executed in a particular manner and to be signed (on the outside of the paper or of the envelope containing it) by a notary and seven witnesses as well as the testator. See *Civ.Code La. art. 1584*.