

**T.** As an abbreviation, this letter usually stands for either "Territory," "Trinity," "term," "tempore," (in the time of,) or "title."

Every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the thumb. Abolished by 7 & 8 Geo. IV. c. 27. Whart. Dict.

By a law of the Province of Pennsylvania, A. D. 1698, it was provided that a convicted thief should wear a badge in the form of the letter "T," upon his left sleeve, which badge should be at least four inches long and of a color different from that of his outer garment. Linn, Laws Prov. Pa. 275.

**T. R. E.** An abbreviation of "*Tempore Regis Edwardi*," (in the time of King Edward,) of common occurrence in Domesday, when the valuation of manors, as it was in the time of Edward the Confessor, is recounted. Cowell.

**TABARD.** A short gown; a herald's coat; a surcoat.

**TABARDER.** One who wears a tabard or short gown; the name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford. Enc. Lond.

**TABELLA.** Lat. In Roman law. A tablet. Used in voting, and in giving the verdict of juries and decision of judges; and, when written upon, commonly translated "ballot." The laws which introduced and regulated the mode of voting by ballot were called "*leges tabellarie*." Calvin.; 1 Kent, Comm. 232, note.

**TABELLIO.** Lat. In Roman law. An officer corresponding in some respects to a notary. His business was to draw legal instruments, (contracts, wills, etc.,) and witness their execution. Calvin.

*Tabelliones* differed from notaries in many respects: they had judicial jurisdiction in some cases, and from their judgments there were no appeals. Notaries were then the clerks or aiders of the *tabelliones*; they received the agreements of the parties, which they reduced to short notes; and these contracts were not binding until they were written in *extenso*, which was done by the *tabelliones*. Jacob Law Dict. *Tabellion*.

**TABERNACULUM.** In old records. A public inn, or house of entertainment. Cowell.

**TABERNARIUS.** Lat. In the civil law. A shopkeeper. Dig. 14, 3, 5, 7.

In old English law. A taverner or tavern keeper. Fleta, lib. 2, c. 12, § 17.

**TABES DORSALIS.** In medical jurisprudence. Another name for locomotor ataxia. It accompanies attacks of tabetic dementia. See Insanity.

**TABETIC DEMENTIA.** See Insanity.

**TABLE.** A synopsis or condensed statement, bringing together numerous items or details so as to be comprehended in a single view; as genealogical tables, exhibiting the names and relationships of all the persons composing a family; life and annuity tables, used by actuaries; interest tables, etc.

**TABLE DE MARBRE.** Fr. In old French law. Table of Marble; a principal seat of the admiralty, so called. These Tables de Marbre are frequently mentioned in the Ordonnance of the Marine. Burrill.

**TABLE OF CASES.** An alphabetical list of the adjudged cases cited, referred to, or digested in a legal text-book, volume of reports, or digest, with references to the sections, pages, or paragraphs where they are respectively cited, etc., which is commonly either prefixed or appended to the volume.

**TABLE RENTS.** In English law. Payments which used to be made to bishops, etc., reserved and appropriated to their table or housekeeping. Wharton.

**TABLEAU OF DISTRIBUTION.** In Louisiana. A list of creditors of an insolvent estate, stating what each is entitled to. Taylor v. Hollander, 4 Mart.N.S., La., 535.

**TABULA.** Lat. In the civil law. A table or tablet; a thin sheet of wood, which, when covered with wax, was used for writing.

**TABULA IN NAUFRAGIO.** Lat. A plank in a shipwreck. This phrase is used metaphorically to designate the power subsisting in a third mortgagee, who took without notice of the second mortgage, to acquire the first incumbrance, attach it to his own, and thus squeeze out and get satisfaction, before the second is admitted to the fund. 1 Story, Eq. Jur. § 414; 2 Ves.Ch. 573. "It may be fairly said that the doctrine survives only in the unjust and much-criticised English rule of tacking." Ames, Lect. Leg. Hist. 269. See Tacking. The use of the expression is attributed to Sir Matthew Hale. See 2 P. Wms. 491.

**TABULÆ.** Lat. In Roman law. Tables. Writings of any kind used as evidences of a transaction. Brissonius. Contracts and written instruments of all kinds, especially wills. So called because originally written on tablets and with wax. Calvinus.

**TABULÆ NUPTIALES.** In the civil law. A written record of a marriage; or the agreement as to the *dos*.

**TABULARIUS.** Lat. A notary, or tabellio. Calvin.

**TAC, TAK.** In old records. A kind of customary payment by a tenant. Cowell.

**TAC FREE.** In old records. Free from the common duty or imposition of *tac*. Cowell.

**TACHOMETER.** A device used on automobiles to record speed. Cooper v. Hoeglund, 221 Minn. 446, 22 N.W.2d 450.

**TACIT.** Existing, inferred, or understood without being openly expressed or stated, implied by silence or silent acquiescence, understood, implied as a tacit agreement; a tacit understanding. State v. Chadwick, 150 Or. 645, 47 P.2d 232, 234. Done or made in silence, implied or indicated, but not actually expressed. Goree v. Midstates Oil Corporation, 205 La. 988, 18 So.2d 591, 596. Manifested by the refraining from contradiction or objection; inferred from the situation and circumstances, in the absence of express matter.

**TACIT ACCEPTANCE.** In the civil law, a tacit acceptance of an inheritance takes place when some act is done by the heir which necessarily supposes his intention to accept and which he would have no right to do but in his capacity as heir. Civ. Code La. art. 988.

**TACIT DEDICATION.** Of property for public use is dedication arising from silence or inactivity, without express contract or agreement. Goree v. Midstates Oil Corporation, 205 La. 988, 18 So.2d 591, 596.

**TACIT HYPOTHECATION.** In the civil law, a species of lien or mortgage which is created by operation of law without any express agreement of the parties. Mackeld. Rom. Law, § 343. In admiralty law, this term is sometimes applied to a maritime lien, which is not, strictly speaking, an hypothecation in the Roman sense of the term, though it resembles it. See The Nestor, 1 Sumn. 73, 18 Fed.Cas. 9.

**TACIT LAW.** A law which derives its authority from the common consent of the people without any legislative enactment. 1 Bouv. Inst. no. 120.

**TACIT MORTGAGE.** In the law of 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." It is called also "tacit mortgage," because it is established by the law without the aid of any agreement. Civ. Code La. art. 3311.

**TACIT RELOCATION.** A doctrine borrowed from the Roman law. It is a presumed renovation of the contract from the period at which the former expired, and is held to arise from implied consent of parties, in consequence of their not having signified their intention that agreement should terminate at the period stipulated. Though the original contract may have been for a longer period than one year, the renewed agreement can never be for more than one year, because verbal

contract of location can extend longer. Srygley v. City of Nashville, 175 Tenn. 417, 135 S.W.2d 451.

In Scotch law. The tacit or implied renewal of a lease, inferred when the landlord, instead of warning a tenant to remove at the stipulated expiration of the lease, has allowed him to continue without making a new agreement. Bell, "Relocation."

**TACIT TACK.** In Scotch law. An implied tack or lease; inferred from a tacksman's possessing peaceably after his tack is expired. 1 Forb. Inst. pt. 2, p. 153.

**TACITA QUÆDAM HABENTUR PRO EXPRESSES.** 8 Coke, 40. Things unexpressed are sometimes considered as expressed.

**TACITE.** Lat. Silently; impliedly; tacitly.

**TACITURNITY.** In Scotch law, laches in not prosecuting a legal claim, or in acquiescing in an adverse one. Mozley & Whitley.

**TACK, v.** To annex some junior lien to a first lien, thereby acquiring priority over an intermediate one. See Tacking.

**TACK, n.** In Scotch law. A term corresponding to the English "lease," and denoting the same species of contract.

**Tack duty.** Rent reserved upon a lease.

**TACKING.** The uniting of securities given at different times, so as to prevent any intermediate purchaser from claiming a title to redeem or otherwise discharge one lien, which is prior, without redeeming or discharging the other liens also, which are subsequent to his own title. 1 Story, Eq. Jur. § 412. The term is particularly applied to the action of a third mortgagee who, by buying the first lien and uniting it to his own, gets priority over the second mortgagee.

The source and origin of the English doctrine is the case of Marsh v. Lee, 2 Ventr. 337; 1 Ch.Cas. 162; 1 Wh. & T. L.C.Eq. 611, notes. This case and the doctrine founded upon it has been the subject of severe criticism. Langd. Eq.Pl. 191. Lord Ch. J. Holt is said to have been one of the first to benefit by the right of tacking. Holt v. Mill, 2 Vern. 279. This doctrine is inconsistent with laws which require the recording of mortgages, and in the United States, it does not exist to any extent. Brayee v. Bank, 14 Ohio 318; Dyer v. Graves, 37 Vt. 375; Parkist v. Alexander, 1 Johns.Ch., N.Y., 399; Bisph.Eq. § 159.

The term is also used in a number of other connections, as of possessions, disabilities, or items in accounts or other dealings. In these several cases the purpose of the proposed tacking is to avoid the bar of a statute of limitations. See Davis v. Coblenz, 174 U.S. 719, 19 S.Ct. 832, 43 L.Ed. 1147; Knippenberg v. Morris, 80 Ind. 540; Eager v. Com., 4 Mass. 182; Sharp v. Stephens' Committee, 21 Ky.L.Rep. 687, 52 S.W. 977; Graham v. Stanton, 177 Mass. 321, 58 N.E. 1023; Moore v. Blackman, 109 Wis. 528, 85 N.W. 429. The term is applied especially to the process of making out title to land by adverse possession, when the present occupant and claimant has not been in possession for the full statutory period, but adds or "tacks" to his own possession that of previous occupants under whom he claims. See J. B. Streeter Co. v. Fredrickson, 11 N.D. 300, 91 N.W. 692; Frost v. Curtis, 172 Mass. 401, 52 N.E. 515; Murray v. Pannaci, 67 N.J.Eq. 724, 57 A. 1132.

## TACKSMAN

**TACKSMAN.** In Scotch law. A tenant or lessee; one to whom a *tack* is granted. 1 Forb. Inst. pt. 2, p. 153.

**TACTIS SACROSANCTIS.** Lat. In old English law. Touching the holy evangelists. Fleta, lib. 3, c. 16, § 21. "A bishop may swear *visis evangelis*, [looking at the Gospels,] and not *tactis*, and it is good enough." Freem. 133.

**TACTO PER SE SANCTO EVANGELIO.** Lat. Having personally touched the holy Gospel. Cro. Eliz. 105. The description of a corporal oath.

**TAIL.** Limited; abridged; reduced; curtailed, as a fee or estate in fee, to a certain order of succession, or to certain heirs.

**TAIL, ESTATE IN.** An estate of inheritance, which, instead of descending to heirs generally, goes to the heirs of the donee's body, which means his lawful issue, his children, and through them to his grandchildren in a direct line, so long as his posterity endures in a regular order and course of descent, and upon the death of the first owner without issue, the estate determines. 1 Washb. Real Prop. \*72. Kolmer v. Miles, 270 Ill. 20, 110 N.E. 407, 408; *Tantum v. Campbell*, 83 N.J. Eq. 361, 91 A. 120, 121; *Harwell v. Harwell*, 151 Tenn. 587, 271 S.W. 353, 355.

A freehold of inheritance, limited to a person and the heirs of his body, general or special, male or female, and is the creature of the statute *de Donis*. The estate, provided the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation, unless there be a limitation over to a third person on default of such descendants, when it vests in such third person or remainder-man. Wharton. In re Reeves, 10 Del. Ch. 324, 92 A. 246, 247; 10 Del.Ch. 483, 94 A. 511, 513; *Conover v. Cade*, 184 Ind. 604, 112 N.E. 7, 11; *Gardner v. Anderson*, 114 Kan. 778, 227 P. 743, 748; *Cox v. Fink*, 200 Ky. 219, 254 S.W. 757, 758.

### Several Tail

An entail severally to two; as if land is given to two men and their wives, and to the heirs of their bodies begotten; here the donees have a joint estate for their two lives, and yet they have a several inheritance, because the issue of the one shall have his moiety, and the issue of the other the other moiety. Cowell.

### Tail after Possibility of Issue Extinct

A species of estate tail which arises where one is tenant in special tail, and a person from whose body the issue was to spring dies without issue, or, having left issue, that issue becomes extinct. In either of these cases the surviving tenant in special tail becomes "tenant in tail after possibility of issue extinct." 2 Bl.Comm. 124.

### Tail Female

When lands are given to a person and the *female* heirs of his or her body. The male heirs are not capable of inheriting it.

### Tail General

An estate in tail granted to one "and the heirs of his body begotten," which is called "tail gen-

eral" because, how often soever such donee in tail be married, his issue in general by all and every such marriage is, in successive order, capable of inheriting the estate tail *per formam doni*. 2 Bl.Comm. 113; *Tantum v. Campbell*, 83 N.J. Eq. 361, 91 A. 120, 122. This is where an estate is limited to a man and the heirs of his body, without any restriction at all; or, according to some authorities, with no other restriction than that in relation to sex. Thus, tail male general is the same thing as tail male; the word "general," in such case, implying that there is no other restriction upon the descent of the estate than that it must go in the male line. So an estate in tail female general is an estate in tail female. The word "general," in the phrase, expresses a purely negative idea, and may denote the absence of any restriction, or the absence of some given restriction which is tacitly understood. *Mozley & Whitley*.

### Tail Male

When certain lands are given to a person and the *male* heirs of his or her body. The female heirs are not capable of inheriting it.

### Tail Special

This denotes an estate in tail where the succession is restricted to certain heirs of the donee's body, and does not go to all of them in general; *e. g.*, where lands and tenements are given to a man and "the heirs of his body on Mary, his now wife, to be begotten;" here no issue can inherit but such special issue as is engendered between those two, not such as the husband may have by another wife, and therefore it is called "special tail." 2 Bl.Comm. 113. It is defined by Cowell as the limitation of lands and tenements to a man and his wife and the heirs of their two bodies. But the phrase need not be thus restricted. Tail special, in its largest sense, is where the gift is restrained to certain heirs of the donor's body, and does not go to all of them in general. *Mozley & Whitley*.

**TAIL LIGHT.** Red light on the rear of a motor vehicle. *Mahar v. Mackay*, 55 Cal.App.2d 869, 132 P.2d 42, 47.

**TAILAGE.** See Tallage.

**TAILLE.** Fr.

In old English law. The fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but it is, by the first giver, cut or divided from all other, and tied to the issue of the donee,—in short, an estate-tail. Wharton.

In old Franch law. A tax or assessment levied by the king, or by any great lord, upon his subjects, usually taking the form of an imposition upon the owners of real estate. Brande. The equivalent of the English tallage—the typical direct tax in France of the Middle Ages, as *tonlieu* was the generic term for an indirect tax. See Tallage.

**TAILORS TO THE TRADE.** Those who cut, make, and trim garments for merchant tailors in different parts of the United States. *Magid v. Tannenbaum*, 164 App.Div. 142, 149 N.Y.S. 445.

**TAILZIE.** In Scotch law. An entail. A tailzied fee is that which the owner, by exercising his inherent right of disposing of his property, settles upon others than those to whom it would have descended by law. 1 Forb.Inst. pt. 2, p. 101.

**TAINT.** A conviction of felony, or the person so convicted. Cowell.

**TAKE.** To lay hold of; to gain or receive into possession; to seize; to deprive one of the use or possession of; to assume ownership. *City of Durham v. Wright*, 190 N.C. 568, 130 S.E. 161, 163.

Thus, constitutions generally provide that a man's property shall not be *taken* for public uses without just compensation. *Evansville & C. R. Co. v. Dick*, 9 Ind. 433; *Gas Products Co. v. Rankin*, 63 Mont. 372, 207 P. 993, 998, 24 A.L.R. 294; *Piper v. Ekern*, 180 Wis. 586, 194 N.W. 159, 162, 34 A.L.R. 32. Property may be deemed "taken" within the meaning of these constitutional provisions when it is totally destroyed or rendered valueless, *Lund v. Salt Lake County*, 58 Utah 546, 200 P. 510, 513; or when it is damaged by a public use in connection with an actual taking by the exercise of eminent domain, *City of St. Louis v. St. Louis, I. M. & S. Ry. Co.*, 272 Mo. 80, 197 S.W. 107, 111; or when there is interference with use of property to owner's prejudice, with resulting diminution in value thereof, *Webster County v. Lutz*, 234 Ky. 618, 28 S.W.2d 966, 967. But acquisition of title or total destruction of value is not essential to "taking," for which compensation must be made. *Cheves v. Whitehead*, D.C.Ga., 1 F. Supp. 321, 324.

The word take has many shades of meaning, precise meaning which it is to bear in any case depending on the subject with respect to which it is used. *Kennedy v. New York Life Ins. Co.*, 178 Misc. 258, 172 So. 743, 745.

In the law of larceny, to obtain or assume possession of a chattel unlawfully, and without the owner's consent; to appropriate things to one's own use with felonious intent. Thus, an actual *taking* is essential to constitute larceny. 4 Bl. Comm. 430. A "taking" occurs when a person with a preconceived design to appropriate property to his own use obtains possession of it by means of fraud or trickery. *People v. Edwards*, 72 Cal.App. 102, 236 P. 944, 948.

In this connection, "take" is not synonymous with "obtain," which embraces many other ways of acquiring property. *Allen v. State*, 97 Tex.Cr.R. 467, 262 S.W. 502, 503. Nor is "take" necessarily synonymous with "steal." *Hunt v. State*, 89 Tex.Cr.R. 89, 229 S.W. 869, 871; *Louisville & N. R. Co. v. Malone*, 200 Ala. 380, 76 So. 296, 297. But the phrase "take by stealth" may have the same meaning as "steal." *Roach v. State*, 23 Okl.Cr. 280, 214 P. 563, 564.

To seize or apprehend a person; to arrest the body of a person by virtue of lawful process. Thus, a *capias* commands the officer to *take* the body of the defendant. *Com. v. Hall*, 9 Gray, Mass., 267, 69 Am.Dec. 285.

To acquire the title to an estate; to receive or be entitled to an estate in lands from another person by virtue of some species of title. Thus one is said to "take by purchase," "take by descent," "take a life-interest under the devise," etc. In *re Bock*, 125 Misc. 653, 211 N.Y.S. 621, 622.

To receive the verdict of a jury; to superintend the delivery of a verdict; to hold a court. The commission of assize in England empowers the judges to *take the assizes*; that is, according to its ancient meaning, to take the verdict of a peculiar species of jury called an "assize;" but, in its present meaning, "to hold the assizes." 3 Bl. Comm. 59, 185. To choose; *e. g., ad capiendas assisas*, to choose a jury.

To procure or to obtain (an appeal). *Nessans v. Colomes*, 136 La. 1051, 68 So. 122; *Cochran v. State*, 206 Ala. 74, 89 So. 278.

See, also, Taking.

**TAKE AWAY.** This term in a statute punishing every person who shall take away any female under 18 from her father for the purpose of prostitution requires only that such person procure or cause her to go away by some persuasion, enticement, or inducement offered, exercised, or held out to the girl, or by furnishing her the means or money with which to go away. *State v. Corrigan*, 262 Mo. 195, 171 S.W. 51, 54.

**TAKE BACK.** To revoke; to retract; as, to take back one's promise. *Dimock State Bank v. Boehnen*, 46 S.D. 50, 190 N.W. 485.

**TAKE BY STEALTH.** To steal; feloniously to take and carry away the personal goods of another; to take without right, secretly, and without leave or consent of the owner. *Roach v. State*, 23 Okl.Cr. 280, 214 P. 563, 564.

**TAKE CARE OF.** To support; maintain; look after (a person). *Ballenger v. Ballenger*, 208 Ala. 147, 94 So. 127. To pay (a debt). *Scranton Mercantile Co. v. E. Schneider & Co.*, 163 Ark. 536, 260 S.W. 426, 427. To attend to. *Southern Surety Co. v. Chicago, R. I. & P. R. Co.*, 215 Iowa, 525, 245 N.W. 864, 868.

**TAKE EFFECT.** To become operative or executed. *Miller v. Oliver*, 54 Cal.App. 495, 202 P. 168, 171. To be in force, or go into operation. *Mowery v. Washington Nat. Ins. Co.*, 289 Ill.App. 443, 7 N.E.2d 334, 335.

**TAKE OVER.** To assume control or management of;—not necessarily involving the transfer of absolute title. *New York Trust Co. v. Farmers' Irr. Dist.*, C.C.A.Neb., 280 F. 785, 795. See, however, *Knight v. First Nat. Bank*, C.C.A.Ky., 281 F. 968, 972.

**TAKE UP.** To pay or discharge (a note). *Ashville Sav. Bank v. Lee*, 214 Ala. 501, 108 So. 335, 337; *McKenzie v. Smith*, 18 Ga.App. 626, 89 S.E. 1097, 1098; *Dilenbeck v. Herrold*, 183 Iowa, 264, 164 N.W. 869, 870. Also, sometimes, to purchase a note. *Dilenbeck v. Herrold*, *supra*. To retire (a negotiable instrument); to discharge one's liability on it;—said particularly of an indorser or acceptor.

A party to a negotiable instrument, particularly an indorser or acceptor, is said to "take up" the paper, or to "retire" it, when he pays its amount, or substitutes other security for it, and receives it again into his own hands. See *Hartzell v. McClurg*, 54 Neb. 316, 74 N.W. 626; *McKenzie v. Smith*, 18 Ga.App. 626, 89 S.E. 1097, 1098.

## TAKENOKO

**TAKENOKO.** Chopped, cooked, and canned bamboo sprouts from Japan, used as a vegetable in a manner similar to asparagus. Nippon Co. v. U. S., 12 Ct.Cust.App. 548, 549.

**TAKEOVER BID.** A tender offer, q. v.

**TAKER.** One who takes or acquires; particularly, one who takes an estate by devise. When an estate is granted subject to a remainder or executory devise, the devisee of the immediate interest is called the "first taker."

**TAKING.** In criminal law and torts. The act of laying hold upon an article, with or without removing the same. It implies a transfer of possession, dominion, or control. See Take.

Under various statutes relating to sexual offenses, such as the abduction of a girl under the age of 18 years for the purpose of carnal intercourse, to constitute a "taking" no force, actual or constructive, need be exercised. State v. Lauzer, 152 Minn. 279, 188 N.W. 558, 559. The "taking" may be effected by persuasion, enticement, or inducement. State v. Richards, 88 Wash. 160, 152 P. 720. And it is not necessary that the girl be taken from the control or against the will of those having lawful authority over her. State v. Lauzer, 152 Minn. 279, 188 N.W. 558. But the state must prove conduct by defendant indicating a control, complete or partial, of her person, having sexual intercourse as its object. State v. Clough, Del.Gen.Sess., 134 A. 172, 173.

**TALC.** A mineral compound, known as hydrated silicate of magnesia. U. S. v. R. C. Boeckel & Co., C.C.A.Mass., 221 F. 885, 886.

**TALE.** The count or counting of money. Said to be derived from the same root as "tally." Cowell. Whence also the modern word "teller."

### Old Pleading

The plaintiff's count, declaration, or narrative of his case. 3 Bl.Comm. 293.

**TALES.** Lat. Such; such men. A number of jurors added to a deficient panel to supply the deficiency. Nesbit v. People, 19 Colo. 441, 36 P. 221. See Shields v. Bank, 3 Hun, N.Y., 477, 479. When, by means of challenges or any other cause, a sufficient number of unexceptionable jurors does not appear at the trial, either party may pray a "tales," as it is termed; that is, a supply of such men as are summoned on the first panel in order to make up the deficiency. Brown. See State v. McCrystal, 43 La. Ann. 907, 9 So. 922; Railroad Co. v. Mask, 64 Miss. 738, 2 So. 360.

A list of such jurymen as were of the tales, kept in the king's bench office in England.

**TALES DE CIRCUMSTANTIBUS.** So many of the by-standers. The emphatic words of the old writ awarded to the sheriff to make up a deficiency of jurors out of the persons present in court. 3 Bl.Comm. 365.

The order of the judge for taking such by-standers as jurors. See Lee v. Eval, 1 N.J.Law, 283; Fuller v. State, 1 Blackf., Ind., 65.

**TALESMAN.** A person summoned to act as a juror from among the by-standers in the court. Linehan v. State, 113 Ala. 70, 21 So. 497; Shields v. Niagara County Sav. Bank, 5 Thomp. & C., N.Y.,

587. A person summoned as one of the tales added to a jury. Webster.

**TALIO.** Lat. In the civil law. Like for like; punishment in the same kind; the punishment of an injury by an act of the same kind, as an eye for an eye, a limb for a limb, etc. Calvin.

**TALIS INTERPRETATIO SEMPER FIENDA EST, UT EVITETUR ABSURDUM ET INCONVENIENS, ET NE JUDICIUM SIT ILLUSORIUM.** 1 Coke, 52. Interpretation is always to be made in such a manner that what is absurd and inconvenient may be avoided, and the judgment be not illusory [or nugatory].

**TALIS NON EST EADEM; NAM NULLUM SIMILE EST IDEM.** 4 Coke, 18. What is like is not the same; for nothing similar is the same.

**TALIS RES, VEL TALE RECTUM, QUÆ VEL QUOD NON EST IN HOMINE ADTUNC SUPERSTITE SED TANTUMMODO EST ET CONSISTIT IN CONSIDERATIONE ET INTELLIGENTIA LEGIS, ET QUOD ALII DIXERUNT TALEM REM VEL TALE RECTUM FORE IN NUBIBUS.** Such a thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance,] and others have said that such a thing or such a right is in the clouds. Co. Litt. 342.

**TALITER PROCESSUM EST.** So it has proceeded. Words formerly used in pleading, by which a defendant, in justifying his conduct by the process of an inferior court, alleged the proceedings in such inferior court. Steph.Pl. 5th ed. p. 369. Upon pleading the judgment of an inferior court, the proceedings preliminary to such judgment, and on which the same was founded, must, to some extent, appear in the pleading, but the rule is that they may be alleged with a general allegation that "such proceedings were had," instead of a detailed account of the proceedings themselves, and this general allegation is called the "*taliter processum est.*" A like concise mode of stating former proceedings in a suit is adopted at the present day in chancery proceedings upon petitions and in actions in the nature of bills of revivor and supplement. Brown.

**TALLAGE, or TAILAGE.** A piece cut out of the whole. Cowell. Used metaphorically for a share of a man's substance paid by way of tribute, toll, or tax, being derived from the French "*tailer,*" which signifies to cut a piece out of the whole. Cowell. See State v. Switzler, 143 Mo. 287, 45 S.W. 245, 40 L.R.A. 280; Lake Shore, etc., R. Co. v. Grand Rapids, 102 Mich. 374, 60 N.W. 767, 29 L.R.A. 195. A term used to denote subsidies, taxes, customs, and, indeed, any imposition whatever by the government for the purpose of raising a revenue. Bacon, Abr. *Smuggling*, etc. (B); Fort. *De Laud.* 26; Madd. Exch. c. 17; Co. 2d Inst. 531. A tax upon cities, townships and boroughs granted to the king as a part of the royal revenue. 2 Steph.Com. 622; 1 Poll. & Mail. 647.

**TALLAGER.** A tax or toll gatherer; mentioned by Chaucer (and spelled "talaigier").

**TALLAGIUM.** L. Lat. A term including all taxes.

**TALLAGIUM FACERE.** To give up accounts in the exchequer, where the method of accounting was by tallies.

**TALLATIO.** A keeping account by tallies. Cowell.

**TALLEY, or TALLY.** A stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts. One part was held by the creditor, and the other by the debtor. The use of tallies in the exchequer was abolished by St. 23 Geo. III. c. 82, and the old tallies were ordered to be destroyed by St. 4 & 5 Wm. IV. c. 15. Wharton. By the custom of London, sealed tallies were effectual as a deed. Liber Albus 191a. They are admissible by the French and Italian Codes as evidence between traders. It is said that they were negotiable. See Penny Encycl.; Hall, Antiq. of Exch. 118.

**Tallies of loan.** A term originally used in England to describe exchequer bills, which were issued by the officers of the exchequer when a temporary loan was necessary to meet the exigencies of the government, and charged on the credit of the exchequer in general, and made assignable from one person to another. *Briscoe v. Bank of Kentucky*, 11 Pet. 328, 9 L.Ed. 709.

**Tally trade.** A system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly installments. McCul. Dict.

**TALLIA.** L. Lat. A tax or tribute; tallage; a share taken or *cut out* of any one's income or means. Spelman.

**TALMUD.** A work which embodies the civil and canonical law of the Jewish people.

**TALTARUM'S CASE.** A case reported in *Yearb.* 12 Edw. IV. 19-21, which is regarded as having established the foundation of common recoveries.

**TALWEG.** Germ. (Tal meaning valley, Weg meaning way.) Commonly used by writers on international law in definition of water boundaries between states, meaning the middle or deepest or most navigable channel, and while often styled "fairway" or "midway" or "main channel" the word has been taken over into various languages and the doctrine of Talweg is often applicable in respect of water boundaries to sounds, bays, straits, gulfs, estuaries and other arms of the sea and also applies to boundary lakes and landlocked seas whenever there is a deep water sailing channel therein. *State of Louisiana v. State of Mississippi*, 26 S.Ct. 408, 421, 202 U.S. 1, 50 L.Ed. 913.

**TAM QUAM.** A phrase used as the name of a writ of error from inferior courts, when the error is supposed to be as well in giving the judgment

as in awarding execution upon it. (*Tam in redditione iudicii, quam in adjudicatione executionis.*)

#### Venire Tam Quam

One by which a jury was summoned, *as well* to try an issue *as* to inquire of the damages on a default. 2 Tidd, Pr. 722, 895.

**TAME.** Domesticated; accustomed to man; reclaimed from a natural state of wildness. In the Latin phrase, tame animals are described as *domitæ naturæ*.

**TAMEN.** Lat. Notwithstanding; nevertheless; yet.

**TAMPER.** To meddle so as to alter a thing, especially to make corrupting or perverting changes; as, to tamper with a document or a text; to interfere improperly; to meddle; to busy oneself rashly; to try trifling or foolish experiments. *United States v. Tomcich*, D.C.Pa., 41 F.Supp. 33, 35.

**TANAMOSHI.** Japanese. An association usually consisting of from fourteen to seventeen members. Members are obligated to contribute an agreed amount per month to the association. Each month a drawing is held and the member who bids the highest amount by way of interest and who has not yet received a loan from the association is entitled to take the aggregate of contributions for that particular month, except that at the last meeting of the association no interest is paid. The interest bid each month is returned to each member of the Tanamoshi as his profit on the amount of his contribution to the association. *Heylin v. Yil*, 30 Haw. 606, 607.

**TANGIBLE.** Capable of being touched; also, perceptible to the touch; tactile; palpable, and as being capable of being possessed or realized; readily apprehensible by the mind; real; substantial; evidence. *Moeller, McPherrin & Judd v. Smith*, 127 Neb. 424, 255 N.W. 551.

**TANGIBLE PROPERTY.** That which may be felt or touched, and is necessarily corporeal, although it may be either real or personal. *H. D. & J. K. Crosswell, Inc., v. Jones*, D.C.S.C., 52 F.2d 880, 883.

**TANISTRY.** In old Irish law. A species of tenure, founded on ancient usage, which allotted the inheritance of lands, castles, etc., to the "oldest and worthiest man of the deceased's name and blood." It was abolished in the reign of James I. Jacob; Wharton.

**TANK.** A receptacle for liquid. *American Tank Co. v. Revert Oil Co.*, 108 Kan. 690, 196 P. 1111, 1112.

**TANKAGE.** Waste matter from tanks, especially the dried, nitrogenous residue from tanks, in which fat has been rendered, used as a fertilizer. *Jenkins v. Springfield Reduction & Chemical Co.*, 169 Mo.App. 534, 154 S.W. 832, 834. The refuse of meat-packing houses, unfit for human consumption, is known as "tankage" or "liquid stick" according to its water content. *Darling & Co. v. U. S.*, 12 Ct.Cust.App. 86, 87.

## TANNERIA

**TANNERIA.** In old English law. Tannery; the trade or business of a tanner. *Fleta*, lib. 2, c. 52, § 35.

**TANTEO.** Span. In Spanish law. Pre-emption. White, *New Recop.* b. 2, tit. 2, c. 3.

**TANTO, RIGHT OF.** In Mexican law. The right enjoyed by an usufructuary of property, of buying the property at the same price at which the owner offers it to any other person, or is willing to take from another. *Civ.Code Mex.* art. 992.

**TANTUM BONA VALENT, QUANTUM VENDI POSSUNT.** Shep. *Touch.* 142. Goods are worth so much as they can be sold for. 3 *Inst.* 305.

**TANTUM HABENT DE LEGE, QUANTUM HABENT DE JUSTITIA.** (Precedents) have value in the law to the extent that they represent justice. *Hob.* 270.

**TARDE VENIT.** Lat. In practice. The name of a return made by the sheriff to a writ, when it came into his hands too late to be executed before the return-day.

**TARE.** A deficiency in the weight or quantity of merchandise by reason of the weight of the box, cask, bag, or other receptacle which contains it and is weighed with it. Also an allowance or abatement of a certain weight or quantity which the seller makes to the buyer, on account of the weight of such box, cask, etc. *Napier v. Barney*, 5 *Blatchf.* 191, 17 *Fed.Cas.* 1149. See *Tret*.

**TARIFF.** A cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority, or agreed on between the several princes and states that hold commerce together. *Enc. Lond.*; *Railway Co. v. Cushman*, 92 *Tex.* 623, 50 *S.W.* 1009; *Pacific S. S. Co. v. Cackette*, *C.C.A.Or.*, 8 *F.2d* 259, 261.

The list or schedule of articles on which a duty is imposed upon their importation into the United States, with the rates at which they are severally taxed. Also the custom or duty payable on such articles. And, derivatively, the system or principle of imposing duties on the importation of foreign merchandise.

**TASSUM.** In old English law. A heap; a hay-mow, or hay-stack. *Fœnum in tassis*, hay in stacks. *Reg. Orig.* 96.

**TATH.** In the counties of Norfolk and Suffolk, the lords of manors anciently claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground, which liberty was called by the name of the "tath." *Spelman*.

**TAURI LIBERI LIBERTAS.** Lat. A common bull; because he was free to all the tenants within such a manor, liberty, etc.

**TAUTOLOGY.** Describing the same thing twice in one sentence in equivalent terms; a fault in rhetoric. It differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms; the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never. *Wharton*.

**TAVERN.** A place of entertainment; a house kept up for the accommodation of strangers. Originally, a house for the retailing of liquors to be drunk on the spot. *Waitt Const. Co. v. Chase*, 197 *App.Div.* 327, 188 *N.Y.S.* 589, 592; *City of Birmingham v. Bollas*, 209 *Ala.* 512, 96 *So.* 591, 592.

The word "tavern," in a charter provision authorizing municipal authorities to "license and regulate taverns," includes hotels. "Tavern," "hotel," and "public house" are, in this country, used synonymously; and while they entertain the traveling public, and keep guests, and receive compensation therefor, they do not lose their character, though they may not have the privilege of selling liquors. *St. Louis v. Siegrist*, 46 *Mo.* 595. And see *Bonner v. Welborn*, 7 *Ga.* 306; *Rafferty v. Insurance Co.*, 18 *N.J.L.* 484, 38 *Am.Dec.* 525; *In re Brewster*, 39 *Misc.* 689, 80 *N.Y.S.* 666.

**TAVERN KEEPER.** One who keeps a tavern. One who keeps an inn; an innkeeper.

**TAVERNER.** In old English law. A seller of wine; one who kept a house or shop for the sale of wine.

**TAX, v.** To impose a tax; to enact or declare that a pecuniary contribution shall be made by the persons liable, for the support of government. Spoken of an individual, to be taxed is to be included in an assessment made for purposes of taxation.

### Practice

A pecuniary burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority. *In re Mytinger*, *D.C.Tex.*, 31 *F.Supp.* 977, 978, 979. Annual compensation paid to government for annual protection and for current support of government. *Alabama Power Co. v. Federal Power Commission*, *C.C.A.5*, 134 *F.2d* 602, 608. A ratable portion of the produce of the property and labor of the individual citizens, taken by the nation, in the exercise of its sovereign rights, for the support of government, for the administration of the laws, and as the means for continuing in operation the various legitimate functions of the state. *Black, Tax Titles*, § 2; *New London v. Miller*, 60 *Conn.* 112, 22 *A.* 499; *Graham v. St. Joseph Tp.*, 67 *Mich.* 652, 35 *N.W.* 808; *Gibbons v. Ogden*, 9 *Wheat.* 1, 6 *L.Ed.* 23; *Tevander v. Ruysdael*, *C.C.A.III.*, 299 *F.* 746, 753; *Montgomery County v. City of Montgomery*, 190 *Ala.* 366, 67 *So.* 311, 313; *Strand v. Marin*, 30 *N.D.* 165, 152 *N.W.* 280. An enforced contribution of money or other property, assessed in accordance with some reasonable rule or apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses. *Heirs v. Mitchell*, 95 *Fla.* 345, 116 *So.* 81, 85.

In a general sense, any contribution imposed by government upon individuals, for the use and serv-

ice of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. Story, Const. § 950. And in its essential characteristics is not a debt. *City of Newark v. Jos. Hollander, Inc.*, 136 N.J.Eq. 539, 42 A.2d 872, 875.

### Synonyms

In a broad sense, *taxes* undoubtedly include *assessments*, and the right to impose assessments has its foundation in the taxing power of the government; and yet, in practice and as generally understood, there is a broad distinction between the two terms. "Taxes," as the term is generally used, are public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to peculiar benefits to particular individuals or property. "Assessments" have reference to impositions for improvements which are specially beneficial to particular individuals or property, and which are imposed in proportion to the particular benefits supposed to be conferred. They are justified only because the improvements confer special benefits, and are just only when they are divided in proportion to such benefits. *Roosevelt Hospital v. New York*, 84 N.Y. 112. *Flansburg v. Shumway*, 117 Neb. 125, 219 N.W. 956, 958. As distinguished from other kinds of taxation, "assessments" are those special and local impositions upon property in the immediate vicinity of municipal improvements which are necessary to pay for the improvement, and are laid with reference to the special benefit which the property is supposed to have derived therefrom. *Hale v. Kenosha*, 29 Wis. 599; *Ridenour v. Saffin*, 1 Handy (Ohio) 464; *King v. Portland*, 2 Or. 146; *Witherow v. Board of Drainage Com'rs of Powder Springs Creek Drainage Dist. No. 2*, 155 Ga. 476, 117 S.E. 329, 330.

Taxes differ from *subsidies*, in being certain and orderly, and from forced contributions, etc., in that they are levied by authority of law, and by some rule of proportion which is intended to insure uniformity of contribution, and a just apportionment of the burdens of government. *Cooley, Tax'n*, 2.

To assess or determine; to liquidate, adjust, or settle. Spoken particularly of *taxing costs (q. v.)*.

### General

**Ad valorem tax.** See Ad Valorem.

**Capitation tax.** See that title.

**Collateral inheritance tax.** See Collateral Inheritance.

**Direct tax.** One which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another. Mill, Pol. Econ. Taxes are divided into "direct," under which designation

would be included those which are assessed upon the property, person, business, income, etc., of those who are to pay them, and "indirect," or those which are levied on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. *Cooley, Tax'n*, 6.

Historical evidence shows that personal property, contracts, occupations, and the like, have never been regarded as the subjects of direct tax. The phrase is understood to be limited to taxes on land and its appurtenances, and on polls. *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L.Ed. 482; *Railroad Co. v. Morrow*, 87 Tenn. 406, 11 S.W. 348, 2 L.R.A. 853; *People v. Knight*, 174 N.Y. 475, 67 N.E. 65, 63 L.R.A. 87.

**Estate tax.** A tax upon the right to transfer, while a succession or legacy tax is a tax upon the right to receive. *Hazard v. Bliss*, 43 R.I. 431, 113 A. 469, 471, 23 A.L.R. 826; *Frick v. Lewellyn*, D.C.Pa., 298 F. 803, 810; *In re Hamlin*, 226 N.Y. 407, 124 N.E. 4, 6, 7 A.L.R. 701; *In re Sherman's Estate*, 179 App.Div. 497, 166 N.Y.S. 19, 23.

**Excise and tax distinguished.** See Excise.

**Floor tax.** A tax on all the distilled spirits "on the floor" of a warehouse, *i. e.*, in the warehouse. *Greenbrier Distillery Co. v. U. S.*, D.C.Ky., 288 F. 893, 895.

**Franchise tax.** See Franchise.

**Income tax.** See Income.

**Indirect taxes** are those demanded in the first instance from one person in the expectation and intention that he shall indemnify himself at the expense of another. "Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes." *Pollock v. Farmers' L. & T. Co.*, 15 S.Ct. 673, 157 U.S. 429, 39 L.Ed. 759; *Thomasson v. State*, 15 Ind. 451; *Foster & Creighton Co. v. Graham*, 154 Tenn. 412, 285 S.W. 570, 572, 47 A.L.R. 971.

**Inheritance tax.** See Inheritance.

**Land tax.** See Land Tax.

**License tax.** See License Fee or Tax.

**Local taxes.** Those assessments which are limited to certain districts, as poor-rates, parochial taxes, county rates, municipal taxes, etc.

**Occupation tax.** See Occupation.

**Parliamentary taxes.** Such taxes as are imposed directly by act of parliament, *i. e.*, by the legislature itself, as distinguished from those which are imposed by private individuals or bodies under the authority of an act of parliament. Thus, a sewers rate, not being imposed directly by act of parliament, but by certain persons termed "commissioners of sewers," is not a parliamentary tax; whereas the income tax, which is directly imposed, and the amount also fixed, by act of parliament, is a parliamentary tax. *Brown*.



# TAX

**Personal tax.** This term may mean either a tax imposed on the person without reference to property, as a capitation or poll tax, or a tax imposed on personal property, as distinguished from one laid on real property. See *Jack v. Walker*, C.C.Ohio, 79 F. 138, 141; *Potter v. Ross*, 23 N.J.L. 517.

**Poll tax.** See that title.

**Proportional taxes.** Taxes are "proportional" when the proportion paid by each taxpayer bears the same ratio to the amount to be raised that the value of his property bears to the total taxable value, and in the case of a special tax when that is apportioned according to the benefits received. In re Opinion of the Justices, 220 Mass. 613, 108 N.E. 570, 572; *Perkins v. Inhabitants of Town of Westwood*, 226 Mass. 268, 115 N.E. 411, 412; In re Opinion of the Justices, 77 N.H. 611, 93 A. 311, 312.

**Public tax.** A tax levied for some general public purpose or for the purposes of the general public revenue, as distinguished from local municipal taxes and assessments. *Morgan v. Cree*, 46 Vt. 783, 14 Am.Rep. 640; *Buffalo City Cemetery v. Buffalo*, 46 N.Y. 509.

**Sinking fund tax.** See Fund.

**Specific tax.** A tax imposed as a fixed sum on each article or item of property of a given class or kind, without regard to its value; opposed to *ad valorem* tax.

**Succession tax.** See Succession.

**Surtax.** An additional tax imposed upon certain kinds of income, such as dividends from corporate stock, royalties, interest from money, notes, credits, bonds and other securities. A surtax is sometimes imposed on incomes exceeding a specified amount.

**Tax certificate.** A certificate of the purchase of land at a tax sale thereof, given by the officer making the sale, and which is evidence of the holder's right to receive a deed of the land if it is not redeemed within the time limited by law. See *Eaton v. Manitowoc County*, 44 Wis. 492; *Nelson v. Central Land Co.*, 35 Minn. 408, 29 N.W. 121.

**Tax lease.** The instrument (or estate) given to the purchaser of land at a tax sale, where the law does not permit the sale of the estate in fee for non-payment of taxes, but instead thereof directs the sale of an estate for years.

**Tax levy.** The total sum to be raised by a tax. Also the bill, enactment, or measure of legislation by which an annual or general tax is imposed.

**Tax purchaser.** A person who buys land at a tax-sale; the person to whom land, at a tax-sale thereof, is struck down.

**Tax roll.** See Roll.

**Tax sale.** See Sale.

**Tax-deed.** The conveyance given upon a sale of lands made for non-payment of taxes; the deed whereby the officer of the law undertakes to convey the title of the proprietor to the purchaser at the tax-sale.

**Tax-lien.** A statutory lien, existing in favor of the state or municipality, upon the lands of a person charged with taxes, binding the same either for the taxes assessed upon the specific tract of land or (in some jurisdictions) for all the taxes due from the individual, and which may be foreclosed for non-payment, by judgment of a court or sale of the land.

**Taxing district.** The district throughout which a particular tax or assessment is ratably apportioned and levied upon the inhabitants; it may comprise the whole state, one county, a city, a ward, or part of a street.

**Taxpayer.** A person chargeable with a tax; one from whom government demands a pecuniary contribution towards its support.

**Taxpayers' lists.** Written exhibits required to be made out by the taxpayers resident in a district, enumerating all the property owned by them and subject to taxation, to be handed to the assessors, at a specified date or at regular periods, as a basis for assessment and valuation.

**Tax-title.** The title by which one holds land which he purchased at a tax sale. That species of title which is inaugurated by a successful bid for land at a collector's sale of the same for non-payment of taxes, completed by the failure of those entitled to redeem within the specified time, and evidenced by the deed executed to the tax purchaser, or his assignee, by the proper officer.

**Tonnage tax.** See Tonnage Duty.

**Wheel tax.** A tax on wheeled vehicles of some or all kinds and bicycles.

**Window tax.** See that title.

**TAX FERRETS.** Persons engaged in the business of searching for property omitted from taxation. Their activities when permitted are usually regarded as private rather than as part of a state agency. *Pickett v. United States*, C.C.A.Mo., 100 F.2d 909, 913.

**TAXA.** L. Lat. A tax. Spelman.

In old records. An allotted piece of work; a task.

**TAXABLE.** Subject to taxation; liable to be assessed, along with others, for a share in a tax. *Mississippi State Tax Commission v. Brown*, 188 Miss. 483, 195 So. 465, 469, 127 A.L.R. 919. Something of value, subject to assessment, and to be levied upon and sold for taxes. *Williams v. School Dist. No. 32 in County of Fremont*, 56 Wyo. 1, 102 P.2d 48, 52.

Applied to costs in an action, the word means proper to be taxed or charged up; legally chargeable or assessable.

**TAXABLE YEAR.** This term in internal revenue statutes has different significations, according to its use. *Waterman S. S. Corporation v. United States*, Ct.Cl., 32 F.Supp. 880, 882; but when used in ordinarily accepted meaning, refers to annual accounting period of taxpayer. *American-Hawaiian S. S. Co. v. U. S.*, Ct.Cl., 46 F.2d 592, 598.

**TAXARE.** Lat. To rate or value. Calvin.

To tax; to lay a tax or tribute. Spelman.

In old English practice. To assess; to rate or estimate; to moderate or regulate an assessment or rate.

**TAXATI.** In old European law. Soldiers of a garrison or fleet, assigned to a certain station. Spelman.

**TAXATIO.** Lat. In Roman law. Taxation or assessment of damages; the assessment, by the judge, of the amount of damages to be awarded to a plaintiff, and particularly in the way of reducing the amount claimed or sworn to by the latter.

**TAXATIO ECCLESIASTICA.** The value of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III., and hence called "*Taxatio Norwicensis*." It is also called "Pope Innocent's Valor." Wharton.

**TAXATIO EXPENSARUM.** In old English practice. Taxation of costs.

**TAXATIO NORWICENSIS.** A valuation of ecclesiastical benefices made through every diocese in England, by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III. Cowell.

**TAXATION.** The process of taxing or imposing a tax. In practice. Adjustment. Fixing the amount; *e. g.* Taxation of costs. 3 Chitty, Gen. Pr. 602. See Tax.

The differences between taxation and taking property in right of eminent domain are that taxation exacts money or services from individuals, as and for their respective shares of contribution to any public burden; while private property taken for public use, by right of eminent domain, is taken, not as the owner's share of contribution to a public burden, but as so much beyond his share, and for which compensation must be made. Moreover, taxation operates upon a community, or upon a class of persons in a community, and by some rule of apportionment; while eminent domain operates upon an individual, and without reference to the amount or value exacted from any other individual, or class of individuals. *People v. Brooklyn*, 4 N.Y. 419, 55 Am.Dec. 266.

#### Double Taxation

See Double.

#### Taxation of Costs

In practice. The process of ascertaining and charging up the amount of costs in an action to which a party is legally entitled, or which are legally chargeable. And, in English practice, the

process of examining the items in an attorney's bill of costs and making the proper deductions, if any.

**TAXERS.** Two officers yearly chosen in Cambridge, England, to see the true gauge of all the weights and measures.

**TAXICAB.** A motor driven passenger conveyance propelled by electric or gas power, held for public hire, at designated places, charging upon a time or distance basis, carrying passengers to destinations without following any fixed routes. *Tuggle v. Parker*, 159 Kan. 572, 156 P.2d 533, 534. A conveyance similar to hackney carriage or old-fashioned hack or stage which is held for hire at designated places and has no regular schedule or route, but operates to carry passengers at any time to any point and subject to call. *Jarrell v. Orlando Transit Co.*, 123 Fla. 776, 167 So. 664, 668.

A "taxicab" differs from a jitney bus, street car, or omnibus as a carrier in that it does not follow a well-defined route prescribed by ordinance, but is vehicle subject to contract by person desiring special trip from one point to another, without reference to any prescribed legal route. *Jackie Cab Co. v. Chicago Park Dist.*, 366 Ill. 474, 9 N.E.2d 213, 215, 112 A.L.R. 1410.

**TAXING MASTER.** See Master.

**TAXING OFFICER.** Each house of parliament has a taxing officer, whose duty it is to tax the costs incurred by the promoters or opponents of private bills. May, Parl. Pr. 843.

**TAXING POWER.** The power of any government to levy taxes.

**TAXT-WARD.** An annual payment made to a superior in Scotland, instead of the duties due to him under the tenure of ward-holding. Abolished. Wharton.

**TEA CHEST.** A box containing a definite and prescribed amount of tea, otherwise called whole chest (a hundred weight to 140 pounds or more), now seldom shipped, the smaller package being spoken of as half chest (75 to 80 pounds, but the weight varies according to the kind of tea), and quarter chest (from 25 to 30 pounds) and thus a "tea chest" in the language of the trade is understood to be a half chest and not a whole chest. *Japan Tea Co. v. Franklin MacVeagh & Co.*, 142 Minn. 152, 171 N.W. 305, 307.

**TEACH.** To impart knowledge by means of lessons; to give instruction in; communicating knowledge; introducing into or impressing on the mind as truth or information, and may be done as well through written communications, personal direction, through the public press, or through any means by which information may be disseminated, or it may be done by the adoption of sentiment expressed or arguments made by others which are distributed to others for their adoption and guidance. *Ex parte Bernat*, D.C.Wash., 255 F. 429, 432.

**TEACHER.** One who teaches or instructs; especially one whose business or occupation is to teach others; an instructor; a preceptor. *Ortega*

## TEAM

v. Otero, 48 N.M. 588, 154 P.2d 252, 254, 255, 257; *Jeu Jo Wan v. Nagle*, C.C.A.Cal., 9 F.2d 309, 310.

**TEAM.** Two or more horses, oxen, or other beasts harnessed together for drawing. *Inman v. C., M. & St. P. R. Co.*, 60 Iowa 462, 15 N.W. 286; with the vehicle to which they are customarily attached; *Dains v. Prosser*, 32 Barb. (N.Y.) 291; *Wilcox v. Hawley*, 31 N.Y. 655, in reference to an exemption law. It may mean a vehicle with animals drawing it and used for loads instead of persons. *Hotchkiss v. Hoy*, 41 Conn. 577. A horse driven with other horses unharnessed; *Elliott v. Lisbon*, 57 N.H. 29; and a single horse; *Hoyt v. Van Alstyne*, 15 Barb. (N.Y.) 568; are held teams; *Jones v. Holland Furnace Co.*, 188 Wis. 394, 206 N.W. 57, 59; *Tate v. Cody-Henderson Co.*, 11 Ala.App. 350, 66 So. 837, 838; *American Mut. Liability Ins. Co. v. Witham*, 124 Me. 240, 127 A. 719. Automobiles may also be included in the meaning of team. *Bragdon v. Kellogg*, 118 Me. 42, 105 A. 433, 434, 6 A.L.R. 669; *Smith v. Howard*, 42 R.I. 126, 105 A. 649, 650.

**TEAM or THEAME.** In old English law. A royalty or privilege granted, by royal charter, to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, etc. *Glan. lib. 5, c. 2.*

**TEAM TRACK.** Analogous to freight depot in that it bears the same relation to carload freight that such depot bears to less than carload freight. Shippers have no part in its construction or maintenance. There is a difference between "industrial tracks" and "team tracks." The former are for the handling of carload freight from and to plants. The cost of construction is usually borne in part by the owners of the plants. Carload freight is switched to and from the plants irrespective of whether the carrier performing the switching service participated in the line haul or not. *Miller Engineering Co. v. Louisiana Ry. & Nav. Co.*, 144 La. 786, 81 So. 314, 317.

**TEAM WORK.** Within the meaning of an exemption law, this term means work done by a team as a substantial part of a man's business; as in farming, staging, express carrying, drawing of freight, peddling, or the transportation of material used or dealt in as a business. *Hickok v. Thayer*, 49 Vt. 375.

**TEAMSTER.** One who drives horses and a wagon for the purpose of carrying goods for hire. *Elder v. Williams*, 16 Nev. 416; *Brusie v. Griffith*, 34 Cal. 306, 91 Am.Dec. 695. He is liable as a common carrier. *Story*, *Bailm.* § 496. A teamster is a laborer; *McElwaine v. Hosey*, 135 Ind. 481, 35 N.E. 272. See *Carrier*.

Within an exemption statute, one who habitually makes his living by use of team, harness and wagon or some other form of horse-drawn vehicle. *Wertz v. Hale*, 212 Iowa, 294, 234 N.W. 534, 535.

**TEARING OF WILL.** Under statute providing that will may be revoked by tearing, any act of tearing of paper on which will is written, however slight, constitutes an act of "tearing," if done with

intent to revoke the will, but no act of tearing or cutting accomplishes such purpose unless done with intent to revoke. *Fleming v. Fleming*, 367 Ill. 97, 10 N.E.2d 641, 642.

**TECHNICAL.** Belonging or peculiar to an art or profession. Technical terms are frequently called in the books "words of art."

Immaterial, not affecting substantial rights, without substance. *Ætna Ins. Co. v. Waco Co.*, *Tex.Civ.App.*, 189 S.W. 315, 317; *City of Hartselle v. Culver*, 216 Ala. 668, 114 So. 58, 60; *Englebretson v. Industrial Accident Commission*, 170 Cal. 793, 151 P. 421, 422; *Jones v. State*, 10 Okl.Cr. 216, 137 P. 121, 122.

**TECHNICAL MORTGAGE.** A true and formal mortgage, as distinguished from other instruments which, in some respects, have the character of equitable mortgages. *Harrison v. Annapolis & E. R. R. Co.*, 50 Md. 514.

**TEDDING.** Spreading. Tedding grass is spreading it out after it is cut in the swath. 10 East, 5.

**TEDING-PENNY.** In old English law. A small tax or allowance to the sheriff from each tithing of his county towards the charge of keeping courts, etc. *Cowell*.

**TEEP.** In Hindu law. A note of hand; a promissory note given by a native banker or money-lender to *zemindars* and others, to enable them to furnish government with security for the payment of their rents. *Wharton*.

**TEGULA.** In the civil law. A tile. *Dig.* 19, 1, 18.

**TEIND COURT.** In Scotch law. A court which has jurisdiction of matters relating to *teinds*, or tithes.

**TEIND MASTERS.** Those entitled to tithes.

**TEINDS.** In Scotch law. A term corresponding to tithes (*q. v.*) in English ecclesiastical law.

**TEINLAND.** Sax. In old English law. Land of a thane or Saxon noble; land granted by the crown to a thane or lord. *Cowell*; 1 *Reeve*, *Eng. Law*, 5.

**TELEGRAM.** A telegraphic dispatch; a message sent by telegraph.

**TELEGRAM RACKET.** Consists in a fictitious communication such as by radiogram or telephone call authorizing a trustee to pay out money. *Cordovano v. State*, 61 Ga.App. 590, 7 S.E.2d 45, 47.

**TELEGRAPH.** In the English telegraph act of 1863, the word is defined as "a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication." *St. 26 & 27 Vict. c. 112*, § 3. An apparatus or device for transmitting messages to a distant point. *State Public Utilities Com. v. Postal Telegraph-Cable Co.*, 285 Ill. 411, 120 N.E. 795, 796. Any ap-

paratus for transmitting messages by means of electric currents and signals. *Davis v. Pacific Telephone and Telegraph Co.*, 127 Cal. 312, 315, 316, 59 P. 698, 699.

**TELEGRAPHIÆ.** A word occasionally used in old English law to describe ancient documents or written evidence of things past. Blount.

**TELEPHONE.** In a general sense, any instrument or apparatus which transmits sound beyond the limits of ordinary audibility. But, since the recent discoveries in telephony, the name is technically and primarily restricted to an instrument or device which transmits sound by means of electricity and wires similar to telegraphic wires. In a secondary sense, however, being the sense in which it is most commonly understood, the word "telephone" constitutes a generic term, having reference generally to the art of telephony as an institution, but more particularly to the apparatus, as an entirety, ordinarily used in the transmission, as well as in the reception, of telephonic messages. *Hockett v. State*, 105 Ind. 261, 5 N.E. 178, 55 Am.Rep. 201; *State Public Utilities Commission ex rel. Chicago Telephone Co. v. Postal Telegraph-Cable Co.*, 285 Ill. 411, 120 N.E. 795, 796.

**TELETYPE MACHINE.** A telegraph machine in general use in telegraph offices, which typewrites the telegram as the message is received instead of requiring an operator to receive it in the Morse code and transcribe it. In re *Teletype Mach. No. 33335*, 126 Pa.Super. 533, 191 A. 210, 211.

**TELEVISION.** Seeing at a distance by electrical means while a "motion picture exhibit" is produced by projecting upon a screen with the aid of light rays images recorded upon a film in such rapid and changing succession of exposures as to give the optical effect of a continuous picture of the objects even when in motion. The former directly employs natural phenomena; the latter, mechanics. A notable objective difference is that a motion picture may be re-exhibited as often as desired for the life of the film but a television exhibition once seen is gone forever so far as assembly of the electronic waves upon which the images are carried are concerned. *Philadelphia Retail Liquor Dealers Ass'n v. Pennsylvania Liquor Control Bd.*, 360 Pa. 269, 62 A.2d 53, 55, 4 A.L.R. 1212.

**TELLER.** One who numbers or counts. An officer of a bank who receives or pays out money. Also one appointed to count the votes cast in a deliberative or legislative assembly or other meeting. The name was also given to certain officers formerly attached to the English exchequer.

A considerable officer in the exchequer, of which officers there are four, whose office is to receive all money due to the king, and to give the clerk of the pells a bill to charge him therewith. They also pay to all persons any money payable by the king, and make weekly and yearly books of their receipts and payments, which they deliver to the lord treasurer. Cowell; Jacob.

**TELLERS IN PARLIAMENT.** In the language of parliament, the members of the house selected to

count the members when a division takes place. In the house of lords a division is effected by the "non-contents" remaining within the bar, and the "contents" going below it, a teller being appointed for each party. In the commons the "ayes" go into the lobby at one end of the house, and the "noes" into the lobby at the other end, the house itself being perfectly empty, and two tellers being appointed for each party. May, Parl. Pr.; Brown.

**TELEGRAPHUM.** An Anglo-Saxon charter of land. 1 Reeve, Eng. Law, c. 1, p. 10.

**TELLTALES.** In railroad practice ropes suspended from a wire across the track warning of a low bridge. *West v. Chicago, B. & Q. R. Co.*, 103 C.C. A. 293, 179 F. 801.

**TELLWORC.** That labor which a tenant was bound to do for his lord for a certain number of days.

**TEMENTALE, or TENEMENTALE.** A tax of two shillings upon every plow-land, a decennary.

**TEMERE.** Lat. In the civil law. Rashly; inconsiderately. A plaintiff was said *temere litigare* who demanded a thing out of malice, or sued without just cause, and who could show no ground or cause of action. Brissonius.

**TEMPERANCE.** Habitual moderation in regard to the indulgence of the natural appetites and passions; restrained or moderate indulgence; moderation; as temperance in eating and drinking; temperance in the indulgence of joy or mirth. *People v. Dashaway Ass'n*, 84 Cal. 123, 24 P. 277, 12 L.R.A. 117. Not synonymous with abstinence. *Mayfield v. Fidelity Casualty Co. of New York*, 16 Cal.App.2d 611, 61 P.2d 83, 89.

**TEMPEST.** A violent or furious storm; a current of wind rushing with extreme violence, and usually accompanied with rain or snow. *Stover v. Insurance Co.*, 3 Phila. (Pa.) 39; *Thistle v. Union Forwarding Co.*, 29 U.C.C.P. 84.

**TEMPLARS.** A religious order of knighthood, instituted about the year 1119, and so called because the members dwelt in a part of the temple of Jerusalem, and not far from the sepulcher of our Lord. They entertained Christian strangers and pilgrims charitably, and their profession was at first to defend travelers from highwaymen and robbers. The order was suppressed A.D. 1307, and their substance given partly to the knights of St. John of Jerusalem, and partly to other religious orders. Brown.

**TEMPLE.** Two English inns of court, thus called because anciently the dwelling place of the Knights Templar. On the suppression of the order, they were purchased by some professors of the common law, and converted into *hospitia* or inns of court. They are called the "Inner" and "Middle Temple," in relation to Essex House, which was also a part of the house of the Templars, and called the "Outer Temple," because situated without Temple Bar. Enc. Lond.

## TEMPORAL

**TEMPORAL LORDS.** The peers of England; the bishops are not in strictness held to be peers, but merely lords of parliament. 2 Steph.Comm. 330, 345.

**TEMPORALIS.** Lat. In the civil law. Temporary; limited to a certain time.

**TEMPORALIS ACTIO.** An action which could only be brought within a certain period.

**TEMPORALIS EXCEPTIO.** A temporary exception which barred an action for a time only.

**TEMPORALITIES.** In English law. The lay fees of bishops, with which their churches are endowed or permitted to be endowed by the liberality of the sovereign, and in virtue of which they become barons and lords of parliament. Spelman. In a wider sense, the money revenues of a church, derived from pew rents, subscriptions, donations, collections, cemetery charges, and other sources. See *Barabasz v. Kabat*, 86 Md. 23, 37 A. 720.

**TEMPORALITY.** The laity; secular people.

**TEMPORARILY.** Lasting for a time only, existing or continuing for a limited time, not of long duration, not permanent, transitory, changing, but a short time. *Young v. Povich*, 121 Me. 141, 116 A. 26, 27, 29 A.L.R. 48; *Burdine v. Sewell*, 92 Fla. 375, 109 So. 648, 653; *Vercruysse v. Ulaga*, 229 Mich. 49, 201 N.W. 192, 193.

**TEMPORARY.** That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration. Opposite of permanent. Thus, temporary alimony is granted for the support of the wife pending the action for divorce. *Dayton v. Drake*, 64 Iowa 714, 21 N.W. 158; *Wohlfort v. Wohlfort*, 116 Kan. 154, 225 P. 746, 748, 40 A.L.R. 538; *Flamm v. City of Passaic*, 141 N.J.Misc. 362, 184 A. 748, 750.

A temporary receiver is one appointed to take charge of property until a hearing is had and an adjudication made. *Boonville Nat. Bank v. Blakely*, 47 C.C.A. 43, 107 F. 895.

As to temporary "Disability", "Insanity", "Injunction", and "Statute" see those titles.

**TEMPORE.** Lat. In the time of. Thus, the volume called "*Cases tempore Holt*" is a collection of cases adjudged in the king's bench during the time of Lord Holt. Wall.Rep. 398.

**TEMPORIS EXCEPTIO.** Lat. In the civil law. A plea of time; a plea of lapse of time, in bar of an action. Corresponding to the plea of prescription, or the statute of limitations, in our law. See Mackeld. Rom. Law, § 213.

**TEMPUS.** Lat. In the civil and old English law. Time in general. A time limited; a season; *e. g.*, *tempus pessionis*, mast time in the forest.

**TEMPUS CONTINUUM.** In the civil law. A continuous or absolute period of time. A term which begins to run from a certain event, even though he for whom it runs has no knowledge of the event, and in which, when it has once begun to

run, all the days are reckoned as they follow one another in the calendar. Dig. 3, 2, 8; Mackeld. Rom. Law, § 195.

**TEMPUS ENIM MODUS TOLLENDI OBLIGATIONES ET ACTIONES, QUIA TEMPUS CURRIT CONTRA DESIDES ET SUI JURIS CONTEMPTORES.** For time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights. Fleta, l. 4, c. 5, § 12.

**TEMPUS SEMESTRE.** In old English law. The period of six months or half a year, consisting of one hundred and eighty-two days. Cro.Jac. 166.

**TEMPUS UTILE.** In the civil law. A profitable or advantageous period of time. A term which begins to run from a certain event, only when he for whom it runs has obtained a knowledge of the event, and in which, when it has once begun to run, those days are not reckoned on which one has no *experiri potestas*; *i. e.*, on which one cannot prosecute his rights before a court. Dig. 3, 6, 6; Mackeld. Rom. Law, § 195. A period of time which runs beneficially: *i. e.* feast-days are not included, nor does it run against one absent in a foreign country, or on business of the republic, or detained by stress of weather. But one detained by sickness is not protected from its running; for it runs where there is power to act by an agent as well as where there is power to act personally; and the sick man might have deputed his agent. Calvinus.

## TENANCY.

### The Estate of a Tenant

The estate of a tenant, as in the expressions "joint tenancy," "tenancy in common."

### The Term or Interest of a Tenant

The term or interest of a tenant for years or at will. *Sweet; Stone v. City of Los Angeles*, 114 Cal.App. 192, 299 P. 838, 841.

It implies a right of possession in tenant exclusive even of landlord. *Cleveland v. Milner*, 141 Tex. 120, 170 S.W.2d 472, 475.

### General Tenancy

A tenancy which is not fixed and made certain in point of duration by the agreement of the parties. *Brown v. Bragg*, 22 Ind. 122.

### Joint Tenancy

An estate in fee-simple, fee-tail, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The grand incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivors, and at length to the last survivor. *Pub.St. Mass.1882*, p. 1292; *Simons v. McLain*, 51 Kan. 153, 32 P. 919; *Thornburg v. Wiggins*, 135 Ind. 178, 34 N.E. 999, 22 L.R.A. 42, 41 Am.St.Rep. 422; *Van Ausdall v. Van Ausdall*, 48 R.I. 106, 135 A. 850,

851; *In re Huggins' Estate*, 96 N.J.Eq. 275, 125 A. 27, 30. See, also, *Tenancy by the Entirety, infra*.

### Several Tenancy

A tenancy which is separate, and not held jointly with another person.

### Tenancy by the Entirety

Is created by a conveyance to husband and wife, whereupon each becomes seized and possessed of the entire estate and after the death of one the survivor takes the whole. *Safe Deposit & Trust Co. v. Tait*, D.C.Md., 295 F. 429, 431; *Dutton v. Buckley*, 116 Or. 661, 242 P. 626, 627; *Settle v. Settle*, 8 F.2d 911, 912, 56 App.D.C. 50, 43 A.L.R. 1079; *Rapses v. Cheros*, 259 Mass. 37, 155 N.E. 787; *Gasner v. Pierce*, 286 Pa. 529, 134 A. 494, 495; *Smith v. Russell*, 172 App.Div. 793, 159 N.Y.S. 169, 170. And is available only to husband and wife. *Fairclaw v. Forrest*, 76 U.S.App.D.C. 197, 130 F.2d 829, 832, 833, 143 A.L.R. 1154. It is essentially a "joint tenancy," modified by the common-law theory that husband and wife are one person, and survivorship is the predominant and distinguishing feature of each. *United States v. Jacobs, Ill. & N. Y.*, 59 S.Ct. 551, 555, 306 U.S. 363, 83 L.Ed. 763.

The grand characteristic which distinguishes it from a joint tenancy is that it can be terminated only by joint action of husband and wife during their lives, while "joint tenancy" may be terminated by one tenant's conveyance of his interest. *Milan v. Boucher*, 285 Mass. 590, 189 N.E. 576, 578. *In re Cotter's Will*, 287 N.Y.S. 670, 673, 159 Misc. 324.

### Tenancy in Common

Where property is held by several and distinct titles by unity of possession, neither knowing his own severally, and therefore they all occupy promiscuously. *Fullerton v. Storthz Bros. Inv. Co.*, 190 Ark. 198, 77 S.W.2d 966, 968. The holding of an estate in land by different persons under different titles, but there must be unity of possession and each must have right to occupy the whole in common with his cotenants. *Fry v. Dewees*, 151 Kan. 488, 99 P.2d 844, 847.

Although "tenancy in common" is generally used with reference to real property, a tenancy in common may exist in personalty as well. *Haster v. Blair*, 41 Cal.App.2d 896, 107 P.2d 933, 934. See, also, *Tenant (Tenant in Common)*.

**TENANT.** In the broadest sense, one who holds or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise. *Cowell*; *Young v. Home Telephone Co.*, Mo.App., 201 S.W. 635, 636; *Kavanaugh v. Cohoes Power & Light Corporation*, 114 Misc. 590, 187 N.Y.S. 216, 230.

In a more restricted sense, one who holds lands of another; one who has the temporary use and occupation of real property owned by another person, (called the "landlord,") the duration and terms of his tenancy being usually fixed by an instrument called a "lease." *Becker v. Becker*, 13 App.Div. 342, 43 N.Y.S. 17; *Bowe v. Hunking*, 135 Mass. 383, 46 Am.Rep. 471; *Clift v. White*, 12 N.Y. 527; *Lightbody v. Truelsen*, 39 Minn. 310, 40 N.W. 67; *Williams v. Treece*, 184 Mo.App. 135, 168 S.W. 209, 211; *Minneapolis Iron Store Co. v. Bran-*

*um*, 36 N.D. 355, 162 N.W. 543, 545, L.R.A.1917E, 298. One who occupies another's land or premises in subordination to such other's title and with his assent, express or implied. *In re Wilson's Estate*, 349 Pa. 646, 37 A.2d 709, 710. One renting land and paying for it either in money or part of crop or equivalent. *Wilcox & Co. v. Deines*, 119 Neb. 692, 230 N.W. 682, 684.

Strictly speaking, a "tenant" is a person who holds land; but the term is also applied by analogy to personalty. Thus, we speak of a person being tenant for life, or tenant in common, of stock. *Sweet*.

### Feudal Law

One who holds of another (called "lord" or "superior") by some service; as fealty or rent.

### Tenant at Will

One who holds possession of premises by permission of owner or landlord, but without fixed term. *Wiedemann v. Brown*, 190 Minn. 33, 250 N.W. 724; where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called "tenant at will," because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him. *Litt.* § 68; *Sweet. Post v. Post*, 14 Barb. (N.Y.) 258; *Spalding v. Hall*, 6 D.C. 125; *Freedman v. Gordon*, 220 Mass. 324, 107 N.E. 982, 983; *Norton v. Averholtzer*, 63 Cal.App. 388, 218 P. 637, 640; *O'Connor v. Brinsfield*, 212 Ala. 68, 101 So. 679, 680.

### General

**Joint tenants.** Two or more persons to whom are granted lands or tenements to hold in fee-simple, fee-tail, for life, for years, or at will. 2 Bl.Comm. 179. Persons who own lands by a joint title created expressly by one and the same deed or will. 4 Kent, Comm. 357. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 2 Bl.Comm. 180. See, also, *Tenancy (Joint Tenancy)*.

**Land tenant.** See that title.

**Quasi tenant at sufferance.** An under-tenant, who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.

**Sole tenant.** He that holds lands by his own right only, without any other person being joined with him. *Cowell*.

**Tenant a volente.** L. Fr. A tenant at will.

**Tenant at sufferance.** One that comes into the possession of land by lawful title, but holds over by wrong, after the determination of his interest. 4 Kent, Comm. 116; 2 Bl.Comm. 150; *Fielder v. Childs*, 73 Ala. 577; *Pleasants v. Claghorn*, 2 Miles (Pa.) 304; *Bright v. McQuat*, 40 Ind. 525; *Parker v. Smith*, 211 Ky. 624, 277 S.W. 986, 987; *Lawer*

## TENANT

v. Mitts, 33 Wyo. 249, 238 P. 654, 659; Stanley v. Stembridge, 140 Ga. 750, 79 S.E. 842, 844; Coleman v. State ex rel. Carver, 119 Fla. 653, 161 So. 89, 91.

He has no estate nor title but only naked possession without right and wrongfully, and stands in no privity to landlord and is not entitled to notice to quit, and is a bare licensee to whom landlord owes merely duty not wantonly nor willfully to injure him. Margosian v. Markarian, 288 Mass. 197, 192 N.E. 612, 613; Welch v. Rice, 61 Wyo. 511, 159 P.2d 502, 506, 509.

**Tenant by copy of court roll** (shortly, "tenant by copy") is the old-fashioned name for a copyholder. Litt. § 73.

**Tenant by the curtesy.** One who, on the death of his wife seised of an estate of inheritance, after having by her issue born alive and capable of inheriting her estate, holds the lands and tenements for the term of his life. Co.Litt. 30a; 2 Bl.Comm. 126.

**Tenant by the manner.** One who has a less estate than a fee in land which remains in the reversioner. He is so called because in avowries and other pleadings it is specially shown in what manner he is tenant of the land, in contradistinction to the *veray tenant*, who is called simply "tenant." Ham. N.P. 393.

**Tenant for life.** One who holds lands or tenements for the term of his own life, or for that of any other person, (in which case he is called "*pur autre vie*,") or for more lives than one. 2 Bl.Comm. 120; In re Hyde, 41 Hun (N.Y.) 75.

**Tenant for years.** One who has the temporary use and possession of lands or tenements not his own, by virtue of a lease or demise granted to him by the owner, for a determinate period of time, as for a year or a fixed number of years. 2 Bl.Comm. 140.

**Tenant from year to year.** One who holds lands or tenements under the demise of another, where no certain term has been mentioned, but an annual rent has been reserved. See 1 Steph.Comm. 271; 4 Kent, Comm. 111, 114. One who holds over, by consent given either expressly or constructively, after the determination of a lease for years. 4 Kent, Comm. 112. See Shore v. Porter, 3 Term, 16; Rothschild v. Williamson, 83 Ind. 388; Hunter v. Frost, 47 Minn. 1, 49 N.W. 327; Coffman v. Sammons, 76 W.Va. 12, 84 S.E. 1061, 1063; Lawrence v. Goodstein, 91 Misc.Rep. 19, 154 N.Y.S. 229, 231. See, also, Year to Year, Tenancy from.

**Tenant in capite.** In feudal and old English law. Tenant in chief; one who held immediately under the king, in right of his crown and dignity. 2 Bl.Comm. 60.

**Tenant in common.** Tenants who hold the same land together by several and distinct titles, but by unity of possession, because none knows his own severalty, and therefore they all occupy promiscuously. 2 Bl.Comm. 191. Where two or more hold the same land, with interests accruing under different titles, or accruing under the same title, but at different periods, or conferred by words of

limitation importing that the grantees are to take in distinct shares. 1 Steph.Comm. 323. See Coster v. Lorillard, 14 Wend., N.Y., 336; Taylor v. Millard, 118 N.Y. 244, 23 N.E. 376, 6 L.R.A. 667; Perry v. Jones, 48 Okl. 362, 150 P. 168, 169; Whyman v. Johnston, 62 Colo. 461, 163 P. 76, 77; Stewart v. Young, 212 Ala. 426, 103 So. 44, 45. See, also, Tenancy (Tenancy in Common).

**Tenant in dower.** This is where the husband of a woman is seised of an estate of inheritance and dies; in this case the wife shall have the third part of all the lands and tenements whereof he was seised at any time during the coverture, to hold to herself for life, as her dower. Co.Litt. 30; 2 Bl.Comm. 129; Combs v. Young, 4 Yerg. (Tenn.) 225, 26 Am.Dec. 225.

**Tenant in fee-simple (or tenant in fee).** He who has lands, tenements, or hereditaments, to hold to him and his heirs forever, generally, absolutely, and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law. 2 Bl.Comm. 104; Litt. § 1; Dows v. Board of Com'rs of City of Bayonne, 117 N.J.L. 337, 188 A. 509, 510.

**Tenant in severalty.** One who holds lands and tenements in his own right only, without any other person being joined or connected with him in point of interest during his estate therein. 2 Bl.Comm. 179.

**Tenant in tail.** One who holds an estate in fee-tail, that is, an estate which, by the instrument creating it, is limited to some particular heirs, exclusive of others; as to the heirs of *his body* or to the heirs, *male* or *female*, of his body.

**Tenant in tail ex provisione viri.** Where an owner of lands, upon or previously to marrying a wife, settled lands upon himself and his wife, and the heirs of their two bodies begotten, and then died, the wife, as survivor, became tenant in tail of the husband's lands, in consequence of the husband's provision, (*ex provisione viri*.) Originally, she could bar the estate-tail like any other tenant in tail; but the husband's intention having been merely to provide for her during her widowhood, and not to enable her to bar his children of their inheritance, she was early restrained from so doing, by the statute 32 Hen. VII. c. 36. Brown.

**Tenant of the demesne.** One who is tenant of a mesne lord; as, where A. is tenant of B., and C. of A., B. is the lord, A. the mesne lord, and C. tenant of the demesne. Ham. N. P. 392, 393.

**Tenant paravaile.** The under-tenant of land; that is, the tenant of a tenant; one who held of a mesne lord.

**Tenant to the præcipe.** Before the English fines and recoveries act, if land was conveyed to a person for life with remainder to another in tail, the tenant in tail in remainder was unable to bar the entail without the concurrence of the tenant for life, because a common recovery could only be suffered by the person seised of the land. In such a case, if the tenant for life wished to concur

in barring the entail, he usually conveyed his life-estate to some other person, in order that the *proceipe* in the recovery might be issued against the latter, who was therefore called the "tenant to the *proceipe*." Williams, Seis. 169; Sweet.

**Tenants by the verge.** The "same nature as tenants by copy of court roll, [*i. e.*, copyholders.] But the reason why they be called 'tenants by the verge' is for that, when they will surrender their tenements into the hands of their lord to the use of another, they shall have a little rod (by the custome) in their hand, the which they shall deliver to the steward or to the bailife, \* \* \* and the steward or bailife, according to the custome, shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called 'tenants by the verge,' but they have no other evidence [title-deed] but by copy of court roll." Litt. § 78; Co.Litt. 61a.

**TENANT-RIGHT.** A kind of customary estate in the north of England, falling under the general class of copyhold, but distinguished from copyhold by many of its incidents.

The so-called tenant-right of renewal is the expectation of a lessee that his lease will be renewed, in cases where it is an established practice to renew leases from time to time, as in the case of leases from the crown, from ecclesiastical corporations, or other collegiate bodies. Strictly speaking, there can be no right of renewal against the lessor without an express compact by him to that effect, though the existence of the custom often influences the price in sales.

The Ulster tenant-right may be described as a right on the tenant's part to sell his holding to the highest bidder, subject to the existing or a reasonable increase of rent from time to time, as circumstances may require, with a reasonable veto reserved to the landlord in respect of the incoming tenant's character and solvency. Mozley & Whitley.

**TENANT'S FIXTURES.** This phrase signifies things which are fixed to the freehold of the demised premises, but which the tenant may detach and take away, provided he does so in season. Wall v. Hinds, 4 Gray (Mass.) 256, 270, 64 Am. Dec. 64.

**TENANTABLE REPAIR.** Such a repair as will render a house fit for present habitation.

**TENCON.** L. Fr. A dispute; a quarrel. Kelham.

**TEND.** To have a leaning; serve, contribute, or conduce in some degree or way, or have a more or less direct bearing or effect; to be directed as to any end, object, or purpose; to have a tendency, conscious or unconscious, to any end, object or purpose. Rogers v. State, 122 Tex.Cr.R. 331, 54 S.W.2d 1010, 1012.

In old English law. To tender or offer. Cowell.

**TENDER.** An offer of money; the act by which one produces and offers to a person holding a

claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition. Kastens v. Ruland, 94 N. J.Eq. 451, 120 A. 21, 22; Mondello v. Hanover Trust Co., 252 Mass. 563, 148 N.E. 136, 137; Wooton v. Dahlquist, 42 Idaho, 121, 244 P. 407, 409; McCall Co. v. Hobbs-Henderson Co., 138 S.C. 435, 136 S.E. 762, 763.

The offer of performance, not performance itself, and, when unjustifiably refused, places other party in default and permits party making tender to exercise remedies for breach of contract. Walker v. Houston, 215 Cal. 742, 12 P.2d 952, 953, 87 A.L.R. 937.

The actual proffer of money, as distinguished from mere proposal or proposition to proffer it. Caplan v. Shaw, W. Va., 30 S.E.2d 132, 140. Hence mere written proposal to pay money, without offer of cash, is not "tender." Wardlaw v. Woodruff, 175 Ga. 515, 165 S.E. 557, 560.

"Tender," though usually used in connection with an offer to pay money, is properly used in connection with offer of property other than money. Maxwell Implement Co. v. Fitzgerald, 85 Ind.App. 206, 146 N.E. 883, 885; Central Flour Mills Co. v. Gateway Milling Co., Mo.App., 213 S. W. 131, 134; In re Katzowitz, 214 App.Div. 429, 212 N.Y.S. 336, 338; Harrison v. Beals, 111 Or. 563, 222 P. 728, 731; Jose v. Aufderheide, 222 Mo.App. 524, 293 S.W. 476, 479.

Tender, in pleading, is a plea by defendant that he has been always ready to pay the debt demanded, and before the commencement of the action tendered it to the plaintiff, and now brings it into court ready to be paid to him, etc. Brown.

Legal tender is that kind of coin, money, or circulating medium which the law compels a creditor to accept in payment of his debt, when tendered by the debtor in the right amount.

#### Tender of Amends

An offer by a person who has been guilty of any wrong or breach of contract to pay a sum of money by way of amends. If a defendant in an action make tender of amends, and the plaintiff decline to accept it, the defendant may pay the money into court, and plead the payment into court as a satisfaction of the plaintiff's claim. Mozley & Whitley.

#### Tender of Issue

A form of words in a pleading, by which a party offers to refer the question raised upon it to the appropriate mode of decision. The common tender of an issue of fact by a defendant is expressed by the words, "and of this he puts himself upon the country." Steph.Pl. 54, 230.

**TENEMENT.** This term, in its vulgar acceptance, is only applied to houses and other buildings, but in its original, proper, and legal sense it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal, kind. Thus, *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc.



## TENEMENT

2 Bl.Comm. 16; Mitchell v. Warner, 5 Conn. 517; Oskaloosa Water Co. v. Board of Equalization, 84 Iowa 407, 51 N.W. 18, 15 L.R.A. 296; Field v. Higgins, 35 Me. 341.

Property held by tenant, everything of permanent nature which may be holden, and, in more restrictive sense, house or dwelling. Hughes v. Milby and Dow Coal and Mining Co., 127 Okl. 30, 259 P. 559, 560.

### Dominant Tenement

One for the benefit or advantage of which an easement exists or is enjoyed.

### Servient Tenement

One which is subject to the burden of an easement existing for or enjoyed by another tenement. See Easement.

**TENEMENTAL LAND.** Land distributed by a lord among his tenants, as opposed to the demesnes which were occupied by himself and his servants. 2 Bl.Comm. 90.

**TENEMENTIS LEGATIS.** An ancient writ, lying to the city of London, or any other corporation, (where the old custom was that men might devise by will lands and tenements, as well as goods and chattels,) for the hearing and determining any controversy touching the same. Reg.Orig. 244.

**TENENDAS.** In Scotch law. The name of a clause in charters of heritable rights, which derives its name from its first words, "*tenendas prædictas terras*;" it points out the superior of whom the lands are to be holden, and expresses the particular tenure. Ersk. Inst. 2, 3, 24.

**TENENDUM.** Lat. To be holden. It was used to indicate the lord of whom the land was to be held and the tenure by which it was to be held. but, since all freehold tenures have been converted into socage, the *tenendum* is of no further use, and is therefore joined in the *habendum*,—"to have and to hold." 2 Bl.Comm. 298; 4 Cruise, Dig. 26.

**TENENS.** A tenant; the defendant in a real action.

**TENENTIBUS IN ASSISÂ NON ONERANDIS.** A writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assize for damages, if the disseisor had wherewith to satisfy them. Reg. Orig. 214.

**TENERE.** Lat. In the civil law. To hold; to hold fast; to have in possession; to retain.

In relation to the doctrine of possession, this term expresses merely the fact of manual detention, or the corporal possession of any object, without involving the question of title; while *habere* (and especially *possidere*) denotes the maintenance of possession by a lawful claim; *i. e.*, civil possession, as distinguished from mere *natural* possession.

**TENERI.** The Latin name for that clause in a bond in which the obligor expresses that he is "held and firmly bound" to the obligee, his heirs, etc.

**TENET; TENUIT.** Lat. He holds; he held. In the Latin forms of the writ of waste against a tenant, these words introduced the allegation of tenure. If the tenancy still existed, and recovery of the land was sought, the former word was used, (and the writ was said to be "in the *tenet*." ) If the tenancy had already determined, the latter term was used, (the writ being described as "in the *tenuit*," ) and then damages only were sought.

**TENHEDED, or TIENHEOFED.** In old English law. A dean. Cowell.

**TENMENTALE.** The number of ten men, which number, in the time of the Saxons, was called a "decennary;" and ten decennaries made what was called a "hundred." Also a duty or tribute paid to the crown, consisting of two shillings for each plowland. Enc.Lond.

**TENNE.** A term of heraldry, meaning orange color. In engravings it should be represented by lines in bend sinister crossed by others bar-ways. Heralds who blazon by the names of the heavenly bodies, call it "dragon's head," and those who employ jewels, "jacinth." It is one of the colors called "stainand." Wharton.

**TENOR.** A term used in pleading to denote that an exact copy is set out. 1 Chit.Crim.Law. 235.

By the tenor of a deed, or other instrument in writing, is signified the matter contained therein, according to the true intent and meaning thereof. Cowell.

"Tenor," in pleading a written instrument, imports that the very words are set out. "Purport" does not import this, but is equivalent only to "substance." Com. v. Wright, 1 Cush. (Mass.) 65; Dana v. State, 2 Ohio St. 93; State v. Bonney, 34 Me. 384; State v. Atkins, 5 Blackf. (Ind.) 458; State v. Chinn, 142 Mo. 507, 44 S.W. 245; Saugerties Bank v. Delaware & Hudson Co., 204 App.Div. 211, 198 N.Y.S. 722, 723; State v. Collins, 297 Mo. 257, 248 S.W. 599, 602; Johns v. Rice, 165 Iowa, 233, 145 N.W. 290, 291.

The action of proving the tenor, in Scotland, is an action for proving the contents and purport of a deed which has been lost. Bell.

### In Chancery Pleading

A certified copy of records of other courts removed in chancery by *certiorari*. Gres.Eq.Ev. 309.

**TENOR EST QUI LEGEM DAT FEUDO.** It is the tenor [of the feudal grant] which regulates its effect and extent. Craigius, Jus Feud. (3d Ed.) 66; Broom, Max. 459.

**TENORE INDICTAMENTI MITTENDO.** A writ whereby the record of an indictment, and the process thereupon, was called out of another court into the queen's bench. Reg.Orig. 69.

**TENORE PRÆSENTIUM.** By the tenor of these presents, *i. e.*, the matter contained therein, or rather the intent and meaning thereof. Cowell.

**TENSERLÆ.** A sort of ancient tax or military contribution. Wharton.

**TENT.** A shelter of flexible material supported by poles stretched by cords that are secured by pegs in the ground. Knowles v. State, 19 Ala.App. 476, 98 So. 207, 208; City of St. Louis v. Nash, 266 Mo. 523, 181 S.W. 1145, 1146, Arn.Cas.1918B, 134; Killman v. State, 2 Tex.App. 222, 28 Am.Rep. 432.

**TENTATES PANIS.** The essay or assay of bread. Blount.

**TENTERDEN'S ACT.** In English law. The statute 9 Geo. IV. c. 14, taking its name from Lord Tenterden, who procured its enactment, which is a species of extension of the statute of frauds, and requires the reduction of contracts to writing.

**TENTHS.** In English law. A temporary aid issuing out of personal property, and granted to the king by parliament; formerly the real tenth part of all the movables belonging to the subject. 1 Bl.Comm. 308.

In English ecclesiastical law. The tenth part of the annual profit of every living in the kingdom, formerly paid to the pope, but by statute 26 Hen. VIII. c. 3, transferred to the crown, and afterwards made a part of the fund called "Queen Anne's Bounty." 1 Bl.Comm. 284-286.

**TENUIT.** A term used in stating the tenure in an action for waste done after the termination of the tenancy. See Tenet.

**TENURA.** In old English law. Tenure.

**TENURA EST PACTIO CONTRA COMMUNEM FEUDI NATURAM AC RATIONEM, IN CONTRACTU INTERPOSITA.** Wright, Ten. 21. Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.

**TENURE.** The mode or system of holding lands or tenements in subordination to some superior, which, in the feudal ages, was the leading characteristic of real property.

Tenure is the direct result of feudalism, which separated the *dominium directum*, (the dominion of the soil,) which is placed mediately or immediately in the crown, from the *dominion utile*, (the possessory title,) the right to the use and profits in the soil, designated by the term "seisin," which is the highest interest a subject can acquire. Wharton; Kavanaugh v. Cohoes Power & Light Corporation, 187 N.Y.S. 216, 231, 114 Misc. 590.

Wharton gives the following list of tenures which were ultimately developed:

#### Lay Tenures

I. Frank tenement, or freehold. (1) The military tenures (abolished, except grand serjeanty, and reduced to free socage tenures) were: Knight service proper, or tenure in chivalry; grand serjeanty; cornage. (2) Free socage, or plow-service; either petit serjeanty, tenure in burgage, or gavelkind.

II. Villeinage. (1) Pure villeinage, (whence copyholds at the lord's [nominal] will, which is regulated according to custom). (2) Privileged villeinage, sometimes called "villein socage," (whence tenure in ancient demesne, which is an exalted species of copyhold, held according to custom, and not according to the lord's will.) and is of three kinds: Tenure in ancient demesne: privileged copyholds, customary freeholds, or free copyholds; copyholds of base tenure.

#### Spiritual Tenures

I. Frankalmoigne, or free alms.

II. Tenure by divine service.

In its general sense, a mode of holding or occupying. Thus, we speak of the tenure of an office, meaning the manner in which it is held, especially with regard to time, (tenure for life, tenure during good behavior,) and of tenure of land in the sense of occupation or tenancy, especially with reference to cultivation and questions of political economy; *e. g.*, tenure by peasant proprietors, cottiers, etc. Sweet. See Bard v. Grun- dy, 2 Ky. 169; People v. Waite, 9 Wend. (N.Y.) 58; Barrett v. Duff, 114 Kan. 220, 217 P. 918, 922; People ex rel. McCoy v. McCahey, 296 Ill.App. 310, 15 N.E.2d 988, 993.

**TENURE BY DIVINE SERVICE.** Where an ecclesiastical corporation, sole or aggregate, holds land by a certain divine service; as, to say prayers on a certain day in every year, "or to distribute in alms to an hundred poore men an hundred pence at such a day." Litt. § 137.

**TENURE IN OFFICE.** Right to perform duties and receive emoluments thereof. State ex rel. Daly v. City of Toledo, 142 Ohio St. 123, 50 N.E.2d 338, 342.

**TERCE.** In Scotch law. Dower; a widow's right of dower, or a right to a life estate in a third part of the lands of which her husband died seised.

**TERCER.** In Scotch law. A widow that possesses the third part of her husband's land, as her legal jointure. 1 Kames, Eq. pref.

**TERCERONE.** A term applied in the West Indies to a person one of whose parents was white and the other a mulatto. See Daniel v. Guy, 19 Ark. 131.

**TERM.** A word or phrase; an expression; particularly one which possesses a fixed and known meaning in some science, art, or profession.

A fixed period, a determined or prescribed duration. Carpenter v. Okanogan County, 163 Wash. 18, 299 P. 400, 404.

#### Civil Law

A space of time granted to a debtor for discharging his obligation. Poth. Obl. pt. 2, c. 3, art. 3, § 1; Civ.Code La. art. 2048.

#### Estates

Bounds, limitation, or extent of time for which an estate is granted; as when a man holds an estate for any limited or specific number of years, which is called his "term," and he himself is called, with reference to the term he so holds, the "termor," or "tenant of the term." Gay Mfg. Co. v. Hobbs, 128 N.C. 46, 38 S.E. 26, 83 Am.St.Rep. 661; Sanderson v. Scranton, 105 Pa. 472; Hurd v. Whitsett, 4 Colo. 84; Rooney v. City of Omaha, 105 Neb. 447, 181 N.W. 143, 144; Curry v. Bacharach Quality Shops, 271 Pa. 364, 117 A. 435, 438.

# TERM

## Of Court

When used with reference to a court, signifies the space of time during which the court holds a session. A *session* signifies the time during the term when the court sits for the transaction of business, and the session commences when the court convenes for the term, and continues until final adjournment, either before or at the expiration of the term. The *term* of the court is the time prescribed by law during which it may be in *session*. The *session* of the court is the time of its actual sitting. *Lipari v. State*, 19 Tex.App. 431; *Conkling v. Ridgely*, 112 Ill. 36, 1 N.E. 261, 54 Am.Rep. 204; *Lanier v. Shayne*, 85 Fla. 212, 95 So. 617, 618; *Trower v. Mudd*, Mo.App., 242 S.W. 993, 994. But "term" and "session" are often used interchangeably. *Nation v. Savelly*, 127 Okl. 117, 260 P. 32, 35; *Muse v. Harris*, 122 Okl. 250, 254 P. 72, 73; *Lewis County Pub. Co. v. Lewis County Court*, 75 W.Va. 305, 83 S.E. 993, 995.

## General

**General term.** A phrase used in some jurisdictions to denote the ordinary session of a court, for the trial and determination of causes, as distinguished from a *special* term, for the hearing of motions or arguments or the despatch of various kinds of formal business, or the trial of a special list or class of cases. Or it may denote a sitting of the court *in banc*. *State v. Eggers*, 152 Mo. 485, 54 S.W. 498.

**Regular term.** A term begun at the time appointed by law, and continued, in the discretion of the court, to such time as it may appoint, consistent with the law. *Wightman v. Karsner*, 20 Ala. 451; *Glebe v. State*, 106 Neb. 251, 183 N.W. 295, 296; *Carter v. State*, 14 Ga.App. 242, 80 S.E. 533, 534; *State v. Thompson*, 100 W.Va. 253, 130 S.E. 456, 460; *Ex parte Daly*, 66 Fla. 345, 63 So. 834, 835.

**Special term.** In New York practice, that branch of the court which is held by a single judge for hearing and deciding in the first instance motions and causes of equitable nature is called the "special term," as opposed to the "general term," held by three judges (usually) to hear appeals. *Abbott*; *Gracie v. Freeland*, 1 N.Y. 232.

**Term attendant on the inheritance.** See *Attendant Terms*.

**Term fee.** In English practice. A certain sum which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party; payable for every term in which any proceedings subsequent to the summons shall take place. *Wharton*.

**Term for deliberating.** The time given to the beneficiary heir, to examine if it be for his interest to accept or reject the succession which has fallen to him. *Civ.Code La. art. 1033*.

**Term for years.** An *estate for years* and the time during which such estate is to be held are

each called a "term;" hence the term may expire before the time, as by a surrender. *Co.Litt. 45*.

**Term in gross.** A term of years is said to be either in gross (outstanding) or attendant upon the inheritance. It is outstanding, or in gross, when it is unattached or disconnected from the estate or inheritance, as where it is in the hands of some third party having no interest in the inheritance; it is attendant, when vested in some trustee in trust for the owner of the inheritance. *Brown*.

**Term of lease.** The word "term," when used in connection with a lease, means the period which is granted for the lessee to occupy the premises, and does not include the time between the making of the lease and the tenant's entry. *Young v. Dake*, 5 N.Y. 463, 55 Am.Dec. 356; *De Pauw University v. United Electric Coal Cos.*, 299 Ill.App. 339, 20 N.E.2d 146, 149.

**Term of office.** The period during which elected officer or appointee is entitled to hold office, perform its functions, and enjoy its privileges and emoluments. *State v. Knight*, 76 Mont. 71, 245 P. 267, 268; *Wilson v. McCarron*, 112 Me. 181, 91 A. 839, 840; *State v. Board of Com'rs of Sierra County*, 29 N.M. 209, 222 P. 654, 655, 31 A.L.R. 1310; *State v. Oklahoma City*, 38 Okl. 349, 134 P. 58, 59, 60; *Bayley v. Garrison*, 190 Cal. 690, 214 P. 871, 872.

**Term probatory.** The period of time allowed to the promoter of an ecclesiastical suit to produce his witnesses, and prove the facts on which he rests his case. *Coote, Ecc.Pr. 240, 241*.

**Term to conclude.** In English ecclesiastical practice. An appointment by the judge of a time at which both parties are understood to renounce all further exhibits and allegations.

**Term to propound all things.** In English ecclesiastical practice. An appointment by the judge of a time at which both parties are to exhibit all the acts and instruments which make for their respective causes.

In the Law of Contracts and in Court Practice. The word is generally used in the plural, and "terms" are conditions; propositions stated or promises made which, when assented to or accepted by another, settle the contract and bind the parties. *Webster*. See *Hutchinson v. Lord*, 1 Wis. 313, 60 Am.Dec. 381; *State v. Fawcett*, 58 Neb. 371, 78 N.W. 636; *Nakdimen v. Ft. Smith & Van Buren Bridge Dist.*, 115 Ark. 194, 172 S.W. 272, 275.

**Special terms.** Peculiar or unusual conditions imposed on a party before granting some application to the favor of the court.

**Under terms.** A party is said to be *under terms* when an indulgence is granted to him by the court in its discretion, on certain conditions. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by

such order as to damages as the court may make at the hearing. *Mozley & Whitley*.

**TERM INSURANCE.** See Insurance.

**TERMES DE LA LEY.** Terms of the law. The name of a lexicon of the law French words and other technicalities of legal language in old times.

**TERMINABLE PROPERTY.** This name is sometimes given to property of such a nature that its duration is not perpetual or indefinite, but is limited or liable to terminate upon the happening of an event or the expiration of a fixed term; *e. g.*, a leasehold, a life-annuity, etc.

**TERMINATE.** To put an end to; to make to cease; to end. *Towne v. Towne*, 117 Mont. 453, 159 P.2d 352, 357.

**TERMINATING BUILDING SOCIETIES.** Societies, in England, where the members commence their monthly contributions on a particular day, and continue to pay them until the realization of shares to a given amount for each member, by the advance of the capital of the society to such members as required it, and the payment of interest as well as principal by them, so as to insure such realization within a given period of years. They have been almost superseded by permanent building societies. *Wharton*.

**TERMINATION OF CONDITIONAL CONTRACT.** To abrogate so much of it as remains unperformed, doing away with existing agreement under agreed terms and consequences. *Sanborn v. Ballanfonte*, 98 Cal.App. 482, 277 P. 152, 155. To put an end to all of the unperformed portions thereof. *Blodgett v. Merritt Annex Oil Co.*, 19 Cal.App.2d 169, 65 P.2d 123, 125.

**TERMINATION OF EMPLOYMENT.** Within policies providing that insurance should cease immediately upon termination of employment, means a complete severance of relationship of employer and employee. *Edwards v. Equitable Life Assur. Soc. of United States*, 296 Ky. 448, 177 S.W.2d 574, 577, 578; *Peters v. Ætna Life Ins. Co. of Hartford, Conn.*, 279 Mich. 663, 273 N.W. 307, 308.

**TERMINER.** L. Fr. To determine. See Oyer and Terminer.

**TERMINI.** Lat. Ends; bounds; limiting or terminating points.

**TERMINO.** In Spanish law. A common; common land. Common because of vicinage. *White*, *New Recop.* b. 2, tit. 1, c. 6, § 1, note.

**TERMINUM.** A day given to a defendant. *Spelman*.

**TERMINUM QUI PRETERIIT, WRIT OF ENTRY AD.** A writ which lay for the reversioner, when the possession was withheld by the lessee, or a stranger, after the determination of a lease for years. *Brown*.

**TERMINUS.** Boundary; a limit, either of space or time.

The phrases "*terminus a quo*" and "*terminus ad quem*" are used, respectively, to designate the starting point and terminating point of a private way. In the case of a street, road, or railway, either end may be, and commonly is, referred to as the "*terminus*."

**TERMINUS ANNORUM CERTUS DEBET ESSE ET DETERMINATUS.** *Co. Litt.* 45. A term of years ought to be certain and determinate.

**TERMINUS ET FEODUM NON POSSUNT CON-STARE SIMUI IN UNA EADEMQUE PERSONA.** *Plowd.* 29. A term and the fee cannot both be in one and the same person at the same time.

**TERMINUS HOMINIS.** In English ecclesiastical practice. A time for the determination of appeals, shorter than the *terminus juris*, appointed by the judge. *Hallifax, Civil Law*, b. 3, c. 11, no. 36.

**TERMINUS JURIS.** In English ecclesiastical practice. The time of one or two years, allowed by law for the determination of appeals. *Hallifax, Civil Law*, b. 3, c. 11, no. 38.

**TERMOR.** He that holds lands or tenements for a term of years or life. But we generally confine the application of the word to a person entitled for a term of years. *Mozley & Whitley*.

**TERMS TO BE UNDER.** A party is said to be *under terms*, when an indulgence is granted to him by the court in its discretion, on certain conditions. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the court may make at the hearing. *Moz. & W.*

**TERRA.** Lat. Earth; soil; arable land. *Kennett, Gloss.*

**TERRA AFFIRMATA.** Land let to farm.

**TERRA BOSCALIS.** Woody land.

**TERRA CULTA.** Cultivated land.

**TERRA DEBILIS.** Weak or barren land.

**TERRA DOMINICA, or INDOMINICATA.** The demesne land of a manor. *Cowell*.

**TERRA EXCULTABILIS.** Land which may be plowed. *Mong. Ang.* i. 426.

**TERRA EXTENDENDA.** A writ addressed to an escheator, etc., that he inquire and find out the true yearly value of any land, etc., by the oath of twelve men, and to certify the extent into the chancery. *Reg. Writs*, 293.

**TERRA FRUSCA, or FRISCA.** Fresh land, not lately plowed. *Cowell*.

**TERRA HYDATA.** Land subject to the payment of hydate. *Selden*.

**TERRA INSTAURATA.** See Instaurum.

**TERRA LUCRABILIS.** Land gained from the sea or inclosed out of a waste. *Cowell*.

## TERRA

**TERRA NORMANORUM.** Land held by a Norman. Paroch. Antiq. 197.

**TERRA NOVA.** Land newly converted from wood ground or arable. Cowell.

**TERRA MANENS VACUA OCCUPANTI CONCEDITUR.** 1 Sid. 347. Land lying unoccupied is given to the first occupant.

**TERRA PUTURA.** Land in forests, held by the tenure of furnishing food to the keepers therein. 4 Inst. 307.

**TERRA SABULOSA.** Gravelly or sandy ground.

**TERRA SALICA.** In Salic law. The land of the house; the land within that inclosure which belonged to a German house. No portion of the inheritance of Salic land passes to a woman, but this the male sex acquires; that is, the sons succeed in that inheritance. Lex Salic. tit. 62, § 6.

**TERRA TESTAMENTALIS.** Gavel-kind land, being disposable by will. Spelman.

**TERRA TRANSIT CUM ONERE.** Land passes with the incumbrances. Co.Litt. 231; Broom, Max. 437, 630.

**TERRA VESTITA.** Land sown with corn. Cowell.

**TERRA WAINABILIS.** Tillable land. Cowell.

**TERRA WARRENATA.** Land that has the liberty of free-warren.

**TERRÆ DOMINICALES REGIS.** The demesne lands of the crown.

**TERRAGE.** In old English law. A kind of tax or charge on land; a boon or duty of plowing, reaping, etc. Cowell.

**TERRAGES.** An exemption from all uncertain services. Cowell.

**TERRARIUS.** In old English law. A landholder.

**TERRE-TENANT.** He who is literally in the occupation or possession of the land, as distinguished from the owner out of possession. But, in a more technical sense, the person who is seised of the land, though not in actual occupancy of it, and locally, in Pennsylvania, one who purchases and takes land subject to the existing lien of a mortgage or judgment against a former owner. See Dengler v. Kiehner, 13 Pa. 38, 53 Am.Dec. 441; Hulett v. Insurance Co., 114 Pa. 142, 6 A. 554; Commonwealth Trust Co. of Pittsburgh v. Harkins, 312 Pa. 402, 167 A. 278, 280.

**TERRIER.** In English law. A landroll or survey of lands, containing the quantity of acres, tenants' names, and such like; and in the exchequer there is a terrier of all the glebe lands in England, made about 1338. In general, an ecclesiastical terrier contains a detail of the temporal possessions of the church in every parish. Cowell; Tomlins; Mozley & Whitley.

**TERRIS BONIS ET CATALIS REHABENDIS POST PURGATIONEM.** A writ for a clerk to recover his lands, goods, and chattels, formerly seized, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged. Reg. Orig.

**TERRIS ET CATALIS TENTIS ULTRA DEBITUM LEVATUM.** A judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt. Reg. Jud.

**TERRIS LIBERANDIS.** A writ that lay for a man convicted by attain, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste. Reg. Orig. 232. Also it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them. Orig. 293.

**TERRITORIAL, TERRITORIALITY.** These terms are used to signify connection with, or limitation with reference to, a particular country or territory. Thus, "territorial law" is the correct expression for the law of a particular country or state, although "municipal law" is more common. "Territorial waters" are that part of the sea adjacent to the coast of a given country which is by international law deemed to be within the sovereignty of that country, so that its courts have jurisdiction over offenses committed on those waters, even by a person on board a foreign ship. Sweet.

**TERRITORIAL COURTS.** The courts established in the territories of the United States.

**TERRITORIAL JURISDICTION.** Territory over which a government or a subdivision thereof has jurisdiction. State v. Cox, 106 Utah 253, 147 P.2d 858, 861.

Jurisdiction considered as limited to cases arising or persons residing within a defined territory, as, a county, a judicial district, etc. The authority of any court is limited by the boundaries thus fixed. See Phillips v. Thralls, 26 Kan. 781.

**TERRITORIAL PROPERTY.** The land and water over which the state has jurisdiction and control whether the legal title be in the state itself or in private individuals. Lakes and waters wholly within the state are its property and also the marginal sea within the three-mile limit, but bays and gulfs are not always recognized as state property.

**TERRITORY.** A part of a country separated from the rest, and subject to a particular jurisdiction.

### American Law

A portion of the United States, not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized, with a separate legislature, and with executive and judicial officers appointed by the president. See Ex parte Morgan, D.C.Ark., 20 F. 298, 304; People v. Daniels, 6 Utah, 288, 22 P. 159, 5 L.R.A. 444; Ex

parte Heikich Terui, 187 Cal. 20, 200 P. 954, 956, 17 A.L.R. 630.

Const. Amend. 18, prohibiting the transportation of intoxicating liquor within or the importation thereof into the United States and territory subject to its jurisdiction, uses the word "territory" as meaning the regional areas of land and adjacent waters over which the United States claims and exercises dominion and control as a sovereign power. *Cunard S. S. Co. v. Mellon*, 262 U.S. 100, 43 S.Ct. 504, 507, 67 L.Ed. 894, 27 A.L.R. 1306; *International Mercantile Marine v. Stuart*, D.C.N.Y., 285 F. 78, 81; *State v. Morton*, 31 Idaho, 329, 171 P. 495, 496.

**TERRITORY OF A JUDGE.** The territorial jurisdiction of a judge; the bounds, or district, within which he may lawfully exercise his judicial authority. *Phillips v. Thralls*, 26 Kan. 781.

**TERROR.** Alarm; fright; dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation; fear caused by the appearance of danger. In an indictment for riot, it must be charged that the acts done were "to the terror of the people." See *Arto v. State*, 19 Tex.App. 136.

**TERTIA DENUNCIATIO.** Lat. In old English law. Third publication or proclamation of intended marriage.

**TERTIUS INTERVENIENS.** Lat. In the civil law. A third person intervening; a third person who comes in between the parties to a suit; one who interpleads. *Gilbert's Forum Rom.* 47.

**TEST.** To bring one to a trial and examination, or to ascertain the truth or the quality or fitness of a thing.

Something by which to ascertain the truth respecting another thing; a criterion, gauge, standard, or norm.

In public law, an inquiry or examination addressed to a person appointed or elected to a public office, to ascertain his qualifications therefor, but particularly a scrutiny of his political, religious, or social views, or his attitude of past and present loyalty or disloyalty to the government under which he is to act. See *Attorney General v. Detroit Common Council*, 58 Mich. 213, 24 N.W. 887, 55 Am.Rep. 675; *People v. Hoffman*, 116 Ill. 587, 5 N.E. 596, 56 Am.Rep. 793; *Rogers v. Buffalo*, 51 Hun 637, 3 N.Y.S. 674.

**TEST ACT.** The statute 25 Car. II. c. 2, which directed all civil and military officers to take the oaths of allegiance and supremacy, and make the declaration against transubstantiation, within six months after their admission, and also within the same time receive the sacrament according to the usage of the Church of England, under penalty of £500 and disability to hold the office. 4 Bl.Comm. 58, 59. This was abolished by St. 9 Geo. IV. c. 17, so far as concerns receiving the sacrament, and a new form of declaration was substituted.

**TEST ACTION.** An action selected out of a considerable number of suits, concurrently depending in the same court, brought by several plaintiffs against the same defendant, or by one plaintiff against different defendants, all similar in their circumstances, and embracing the same

questions, and to be supported by the same evidence, the selected action to go first to trial, (under an order of court equivalent to consolidation,) and its decision to serve as a test of the right of recovery in the others, all parties agreeing to be bound by the result of the test action.

**TEST OATH.** An oath required to be taken as a criterion of the fitness of the person to fill a public or political office; but particularly an oath of fidelity and allegiance (past or present) to the established government.

**TEST-PAPER.** In practice. A paper or instrument shown to a jury as evidence. A term used in the Pennsylvania courts. *Depue v. Clare*, 7 Pa. 428.

**TESTA DE NEVIL.** An ancient and authentic record in two volumes, in the custody of the king's remembrancer in the exchequer, said to be compiled by John de Nevil, a justice itinerant, in the eighteenth and twenty-fourth years of Henry III. Cowell. These volumes were printed in 1807, under the authority of the commissioners of the public records, and contain an account of fees held either immediately of the king or of others who held of the king *in capite*; fees holden in frankalmoigne; serjeanties holden of the king; widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king; churches in the gift of the king; escheats, and sums paid for scutages and aids, especially within the county of Hereford. Cowell; Wharton.

**TESTABLE.** A person is said to be testable when he has capacity to make a will; a man of twenty-one years of age and of sane mind is testable.

**TESTACY.** The state or condition of leaving a will at one's death. Opposed to "intestacy."

**TESTAMENT.** A disposition of personal property to take place after the owner's decease, according to his desire and direction. *Pluche v. Jones*, C.C.A.Tex., 54 F. 860, 865, 4 C.C.A. 622; *Aubert's Appeal*, 109 Pa. 447, 1 A. 336; *Conklin v. Egerton*, 21 Wend., N.Y., 436; *Ragsdale v. Booker*, 2 Strob. Eq. (S.C.) 348; *In re Lester's Will*, 100 N.J.Eq. 521, 136 P. 322.

The act of last will, clothed with certain solemnities, by which the testator disposes of his property, either universally, or by universal title, or by particular title. *Civ.Code La. art. 1571.*

The common usage the world over is to employ the words "will," "testament," and "last will and testament" as exactly synonymous. *Occidental Life Ins. Co. v. Powers*, 192 Wash. 475, 74 P.2d 27, 32, 114 A.L.R. 531. But strictly speaking, the term testament denotes only a will of personal property; a will of land not being called a "testament." *Wyers v. Arnold*, 347 Mo. 413, 147 S.W.2d 644, 647, 134 A.L.R. 876. The word "testament" is now seldom used, except in the heading of a formal will, which usually begins: "This is the last will and testament of me, A. B.," etc. Sweet.

The true declaration of a man's last will as to that which he would have to be done, after his death. It is compounded, according to Justinian, from *testatio mentis*; but the better opinion is that it is a simple word formed from the Latin *testor*, and not a compound word. *Mozley & Whitley.*

## TESTAMENT

### Military Testament

In English law. A nuncupative will, that is, one made by word of mouth, by which a soldier may dispose of his goods, pay, and other personal chattels, without the forms and solemnities which the law requires in other cases. St. 1 Vict. c. 26, § 11.

### Mutual Testaments

Wills made by two persons who leave their effects reciprocally to the survivor.

### Mystic Testament

A form of testament made under Spanish law which prevailed in Louisiana and California. See *Broutin v. Vassant*, 5 Mart. O.S. (La.) 182; *Schoul. Wills* § 9. In the law of Louisiana. A sealed testament. The mystic or secret testament, otherwise called the "closed testament," is made in the following manner: The testator must sign his dispositions, whether he has written them himself or has caused them to be written by another person. The paper containing those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus closed and sealed to the notary and to seven witnesses, or he shall cause it to be closed and sealed in their presence. Then he shall declare to the notary, in presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses. Civ.Code La. art. 1584.

**TESTAMENTA CUM DUO INTER SE PUGNANTIA REPERIUNTUR, ULTIMUM RATUM EST; SIC EST, CUM DUO INTER SE PUGNANTIA REPERIUNTUR IN EODEM TESTAMENTO.** Co.Litt. 112. When two conflicting wills are found, the last prevails; so it is when two conflicting clauses occur in the same will.

**TESTAMENTA LATISSIMAM INTERPRETATIONEM HABERE DEBENT.** Jenk.Cent. 81. Wills ought to have the broadest interpretation.

**TESTAMENTARY.** Pertaining to a will or testament; as *testamentary* causes. Derived from, founded on, or appointed by a testament or will; as a *testamentary* guardian, letters *testamentary*, etc.

A paper, instrument, document, gift, appointment, etc., is said to be "testamentary" when it is written or made so as not to take effect until after the death of the person making it, and to be revocable and retain the property under his control during his life, although he may have believed that it would operate as an instrument of a different character. Sweet. See *In re Murphy's Estate*, 193 Wash. 400, 75 P.2d 916, 920.

### Letters Testamentary

The formal instrument of authority and appointment given to an executor by the proper

court, upon the admission of the will to probate, empowering him to enter upon the discharge of his office as executor.

### Testamentary Capacity

That measure of mental ability which is recognized in law as sufficient for the making of a will. See *Nicewander v. Nicewander*, 151 Ill. 156, 37 N. E. 698; *Delafield v. Parish*, 25 N.Y. 29; *Duffield v. Robeson*, 2 Har. (Del.) 379; *Lowe v. Williamson*, 2 N.J.Eq. 85.

A testator to have such capacity must have sufficient mind and memory to intelligently understand the nature of business in which he is engaged, to comprehend generally the nature and extent of property which constitutes his estate, and which he intends to dispose of, and to recollect the objects of his bounty. In *re Larsen's Estate*, 191 Wash. 257, 71 P.2d 47, 49. And it depends upon capacity at very time will was executed, and not previously or subsequently. *Bishop v. Scharf*, 214 Iowa 644, 241 N.W. 3, 7.

### Testamentary Causes

In English law. Causes or matters relating to the probate of wills, the granting of administrations, and the suing for legacies, of which the ecclesiastical courts have jurisdiction. 3 Bl.Comm. 95, 98. Testamentary causes are causes relating to the validity and execution of wills. The phrase is generally confined to those causes which were formerly matters of ecclesiastical jurisdiction, and are now dealt with by the court of probate. *Mozley & Whitley*.

### Testamentary Class

Body of persons, uncertain in number at time of gift, ascertainable in future, and each taking in equal or in other definite proportions. *Newlin v. Mercantile Trust Co. of Baltimore*, 161 Md. 622, 158 A. 51, 57.

### Testamentary Disposition

A disposition of property by way of gift, which is not to take effect unless the grantor dies or until that event. *Diefendorf v. Diefendorf*, 56 Hun 639, 8 N.Y.S. 617; *Chestnut St. Nat. Bank v. Fidelity Ins., etc., Co.*, 40 A. 486, 186 Pa. 333, 65 Am.St.Rep. 860; *Patch v. Squires*, 105 Vt. 405, 165 A. 919, 921.

### Testamentary Guardian

A guardian appointed by the last will of a father for the person and real and personal estate of his child until the latter arrives of full age. 1 Bl.Comm. 462; 2 Kent, Comm. 224; *In re De Saulles*, 101 Misc. 447, 167 N.Y.S. 445, 453.

### Testamentary Paper or Instrument

An instrument in the nature of a will; an unprobated will; a paper writing which is of the character of a will, though not formally such, and, if allowed as a testament, will have the effect of a will upon the devolution and distribution of property. *Young v. O'Donnell*, 129 Wash. 219, 224 P. 682, 684.

### Testamentary Power

A power of appointment exercisable only by will. Restatement, Property, § 321(1).

**Testamentary Succession**

In Louisiana, that which results from the institution of an heir contained in a testament executed in the form prescribed by law. Civ.Code La. 1900, art. 876.

**Testamentary Trustee**

See Trustee.

**TESTAMENTI FACTIO.** Lat. In the civil law. The ceremony of making a testament, either as testator, heir, or witness.

**TESTAMENTUM.** Lat. In the civil law. A testament; a will, or last will.

In old English law. A testament or will; a disposition of property made in contemplation of death. Bract. fol. 60.

A general name for any instrument of conveyance, including deeds and charters, and so called either because it furnished written testimony of the conveyance, or because it was authenticated by witnesses, (*testes.*) Spelman.

**TESTAMENTUM EST VOLUNTATIS NOSTRÆ JUSTA SENTENTIA, DE EO QUOD QUIS POST MORTEM SUAM FIERI VELIT.** A testament is the just expression of our will concerning that which any one wishes done after his death, [or, as Blackstone translates, "the legal declaration of a man's intentions which he wills to be performed after his death."] Dig. 28, 1, 1; 2 Bl.Comm. 499.

**TESTAMENTUM, i. e., TESTATIO MENTIS, FACTA NULO PRÆSENTE METU PERICULI, SED COGITATIONE MORTALITATIS.** Co. Litt. 322. A testament, *i. e.*, the witnessing of one's intention, made under no present fear of danger, but in expectancy of death.

**TESTAMENTUM INOFFICIOSUM.** Lat. In the civil law. An inofficious testament, (*q. v.*).

**TESTAMENTUM OMNE MORTE CONSUMMATUR.** Every will is perfected by death. A will speaks from the time of death only. Co. Litt. 232.

**TESTARI.** Lat. In the civil law. To testify; to attest; to declare, publish, or make known a thing before witnesses. To make a will. Calvin.

**TESTATE.** One who has made a will; one who dies leaving a will.

If deceased's property passed to the devisees under his will, then he died "testate"; but, if no part of the property of his estate passed by will, but by the statute of descent and distribution, then he died "intestate". Lefler v. Lefler, 151 Fla. 455, 10 So.2d 799, 804.

**TESTATION.** Witness; evidence.

**TESTATOR.** One who makes or has made a testament or will; one who dies leaving a will. This term is borrowed from the civil law. Inst. 2, 14, 5, 6.

**TESTATORIS ULTIMA VOLUNTAS EST PERIMPLENDA SECUNDUM VERAM INTENTIONEM SUAM.** Co. Litt. 322. The last will of a testator is to be thoroughly fulfilled according to his real intention.

**TESTATRIX.** A woman who makes a will; a woman who dies leaving a will; a female testator.

**TESTATUM.** The name of a writ which is issued by the court of one county to the sheriff of another county in the same state, when defendant cannot be found in the county where the court is located: for example, after a judgment has been obtained, and a *ca. sa.* has been issued, which has been returned non est inventus, a testatum *ca. sa.* may be issued to the sheriff of the county where the defendant is. See Viner, Abr. Testatum 259.

In conveyancing. That part of a deed which commences with the words, "This indenture witnesseth."

**TESTATUM WRIT.** In practice. A writ containing a *testatum* clause; such as a *testatum capias*, a *testatum fi. fa.*, and a *testatum ca. sa.* See Testatum.

**TESTATUS.** Lat. In the civil law. Testate; one who has made a will. Dig. 50, 17, 7.

**TESTE MEIPSO.** Lat. In old English law and practice. A solemn formula of attestation by the sovereign, used at the conclusion of charters, and other public instruments, and also of original writs out of chancery. Spelman.

**TESTE OF A WRIT.** In practice. The concluding clause, commencing with the word "Witness," etc. A writ which bears the teste is sometimes said to be *tested*.

"Teste" is a word commonly used in the last part of every writ, wherein the date is contained beginning with the words, "*Teste meipso*," meaning the sovereign, if the writ be an original writ, or be issued in the name of the sovereign; but, if the writ be a judicial writ, then the word "Teste" is followed by the name of the chief judge of the court in which the action is brought, or, in case of a vacancy of such office, in the name of the senior puisne judge. Mozley & Whitley.

**TESTED.** To be tested is to bear the teste, (*q. v.*).

**TESTES.** Lat. Witnesses.

**TESTES PONDERANTUR, NON NUMERANTUR.** Witnesses are weighed, not numbered. That is, in case of a conflict of evidence, the truth is to be sought by weighing the credibility of the respective witnesses, not by the mere numerical preponderance on one side or the other.

**TESTES QUI POSTULAT DEBET DARE EIS SUMPTUS COMPETENTES.** Whosoever demands witnesses must find them in competent provision.

**TESTES, TRIAL PER.** A trial had before a judge without the intervention of a jury, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but this mode of trial, although it was common in the civil law, was seldom resorted to in the practice of the common law, but it is now becoming common when each party waives his right to a trial by jury. Brown.



## TESTIBUS

### TESTIBUS DEPONENTIBUS IN PARI NUMERO, DIGNIORIBUS EST CREDENDUM.

Where the witnesses who testify are in equal number, [on both sides,] the more worthy are to be believed. 4 Inst. 279.

**TESTIFY.** To bear witness; to give evidence as a witness; to make a solemn declaration, under oath or affirmation, in a judicial inquiry, for the purpose of establishing or proving some fact. See *State v. Robertson*, 26 S.C. 117, 1 S.E. 443; *Gannon v. Stevens*, 13 Kan. 459; *Mudge v. Gilbert*, 43 How.Prac. (N.Y.) 221; *People v. Krotz*, 341 Ill. 214, 172 N.E. 135, 137.

**TESTIMONIA PONDERANDA SUNT, NON NUMERANDA.** Evidence is to be weighed, not enumerated.

**TESTIMONIAL.** Besides its ordinary meaning of a written recommendation to character, "testimonial" has a special meaning, under St. 39 Eliz. c. 17, § 3, passed in 1597, under which it signified a certificate under the hand of a justice of the peace, testifying the place and time when and where a soldier or mariner landed, and the place of his dwelling or birth, unto which he was to pass, and a convenient time limited for his passage. Every idle and wandering soldier or mariner not having such a testimonial, or willfully exceeding for above fourteen days the time limited thereby, or forging or counterfeiting such testimonial, was to suffer death as a felon, without benefit of clergy. This act was repealed, in 1812, by St. 52 Geo. III. c. 31. *Mozley & Whitley*.

**TESTIMONIAL PROOF.** In the civil law. Proof by the evidence of witnesses, *i. e.*, parol evidence, as distinguished from proof by written instruments, which is called "literal" proof.

**TESTIMONIO.** In Spanish law. An authentic copy of a deed or other instrument, made by a notary and given to an interested party as evidence of his title, the original remaining in the public archives. *Guilbeau v. Mays*, 15 Tex. 414.

**TESTIMONIUM CLAUSE.** In conveyancing. That clause of a deed or instrument with which it concludes: "In witness whereof, the parties to these presents have hereunto set their hands and seals."

**TESTIMONY.** Evidence given by a competent witness, under oath or affirmation; as distinguished from evidence derived from writings, and other sources. *Edelstein v. United States*, 79 C.C. A. 328, 149 F. 636, 640, 9 L.R.A.N.S., 236; *Grayson v. Durant*, 43 Okl. 799, 144 P. 592, 594; *Cable v. Key*, Tex.Civ.App., 256 S.W. 654, 655.

### Evidence and Testimony as Synonymous or Distinguishable

The words "testimony" and "evidence" are not synonymous. *Bednarik v. Bednarik*, 18 N.J.Misc. 633, 16 A.2d 80, 89.

Although testimony is evidence, evidence may or may not be testimony or may, and in most cases does, consist

of more than testimony, *Superior Meat Products v. Holloway*, 113 Ill.App. 320, 48 N.E.2d 83, 86.

Anything perceptible to the five senses, constitutes evidence, when submitted to court or jury, if competent, *In re Fisher's Estate*, 47 Idaho 668, 279 P. 291, 293.

Application for policy, although evidence in suit on policy, was not "testimony," *Metropolitan Life Ins. Co. v. Lodzinski*, 121 N.J.Eq. 183, 188 A. 681, 688.

"Evidence" is the broader term and includes all testimony. *Bednarik v. Bednarik*, 18 N.J.Misc. 633, 16 A.2d 80, 89. *In re Seigle's Estate*, 26 N.Y.S.2d 410, 413, 176 Misc. 15.

"Evidence" of transaction between claimant and decedent, were not "testimony." *In re Seigle's Estate*, 264 App.Div. 76, 34 N.Y.S.2d 489, 491.

Exhibits are "evidence" but not "testimony". *Worland v. McGill*, 26 Ohio App. 442, 160 N.E. 478, 480; *Madison v. State*, 138 Fla. 467, 189 So. 832, 835.

"Testimony" is found in spoken words of witnesses while "evidence" includes documents and other exhibits which may properly be submitted to jury. *Madison v. State*, 138 Fla. 467, 189 So. 832, 835.

"Testimony" is that species of evidence which is produced through language of witnesses. *Weeks v. Bailey*, 33 N.M. 193, 263 P. 29, 30.

Testimony is one species of evidence. But the word "evidence" is a generic term which includes every species of it. *Gazette Printing Co. v. Morss*, 60 Ind. 157. Testimony is the evidence given by witnesses. Evidence is whatever may be given to the jury as tending to prove a case. It includes the testimony of witnesses, documents, admissions of parties, etc. *Mann v. Higgins*, 83 Cal. 66, 23 P. 206; *Carroll v. Bancker*, 43 La. Ann. 1078, 10 So. 192; *Columbia Nat. Bank v. German Nat. Bank*, 56 Neb. 803, 77 N.W. 346; *Harris v. Tomlinson*, 130 Ind. 426, 30 N.E. 214; *Jones v. Gregory*, 48 Ill.App. 230; *Industrial Commission v. Jasionowski*, 24 Ohio App. 66, 156 N.E. 616, 618. What is sworn is testimony; what is the truth deduced therefrom is "evidence." *Louisville & N. R. Co. v. Rogers*, 21 Ga.App. 324, 94 S.E. 321, 322; *Mick v. Mart*, N.J.Ch., 65 A. 851.

But in common parlance, "testimony" and "evidence" are synonymous. *State v. Winney*, 21 N.D. 72, 128 N.W. 680, 681; *Jones v. City of Seattle*, 51 Wash. 245, 98 P. 743, 745; *Fitzgerald v. Benner*, 219 Ill. 485, 76 N.E. 709, 716; *Grayson v. Durant*, 43 Okl. 799, 144 P. 592, 594.

Testimony properly means only such evidence as is delivered by a witness on the trial of a cause, either orally or in the form of affidavits or depositions. Thus, an ancient deed, when offered under proper circumstances, is evidence but it could not strictly be called "testimony."

The words "testimony" and "evidence," are frequently used synonymously. *Superior Lloyds of America v. Foxworth*, Tex.Civ.App., 178 S.W.2d 724, 726; *Roberts v. Carlson*, 142 Neb. 851, 857, 8 N.W.2d 175, 179; *Wyuta Cattle Co. v. Connell*, 43 Wyo. 135, 299 P. 279, 281.

As used in instruction "testimony" was used in the sense of "evidence." *In re Burcham's Estate*, 211 Iowa 1395, 235 N.W. 764, 766.

The use of the word "testimony" instead of "evidence" in an instruction, where both oral evidence and physical facts and circumstances are defensively interposed, is not prejudicial where it is clear from all the instructions that it was intended that such physical facts should also be considered by the jury. *Roberts v. Carlson*, 142 Neb. 857, 8 N.W.2d 175, 179.

The word "testimony" as used in statute providing that when any deed, writing, or other document necessary as "testimony" may be in possession of a resident who is not a party subpoena duces tecum shall be issued on application, means "evidence". *Ex parte Hart*, 240 Ala. 642, 200 So. 783, 786.

### Expert Testimony

See Expert Evidence.

**Negative Testimony**

Testimony not bearing directly upon the immediate fact or occurrence under consideration, but evidencing facts from which it may be inferred that the act or fact in question could not possibly have happened. See *Barclay v. Hartman*, 43 A. 174, 2 Marv. (Del.) 351; *Cinadar v. Detroit, G. H. & M. Ry. Co.*, 193 Mich. 38, 159 N.W. 312; *Heywood v. State*, 12 Ga.App. 643, 77 S.E. 1130; *Williams v. State*, 23 Ga.App. 542, 99 S.E. 43.

**Positive Testimony**

Direct testimony that a thing did or did not happen. *Williams v. State*, 23 Ga.App. 542, 99 S.E. 43; *Roberts v. State*, 90 Fla. 779, 107 So. 242, 244.

**TESTIS.** Lat. A witness; one who gives evidence in court, or who witnesses a document.

**TESTIS DE VISU PRÆPONDERAT ALIIS.** 4 Inst. 279. An eye-witness is preferred to others.

**TESTIS LUPANARIS SUFFICIT AD FACTUM IN LUPANARI.** Moore, 817. A lewd person is a sufficient witness to an act committed in a brothel.

**TESTIS NEMO IN SUA CAUSA ESSE POTEST.** No one can be a witness in his own cause.

**TESTIS OCULATUS UNUS PLUS VALET QUAM AURITI DECEM.** 4 Inst. 279. One eye-witness is worth more than ten ear-witnesses.

**TESTMOIGNE.** An old law French term, denoting evidence or testimony of a witness.

**TESTMOIGNES NE POENT TESTIFIER LE NEGATIVE, MES L'AFFIRMATIVE.** Witnesses cannot testify to a negative; they must testify to an affirmative. 4 Inst. 279.

**TEXT-BOOK.** A legal treatise which lays down principles or collects decisions on any branch of the law.

**TEXTUS ROFFENSIS.** In old English law. The Rochester text. An ancient manuscript containing many of the Saxon laws, and the rights, customs, tenures, etc., of the church of Rochester, drawn up by Ernulph, bishop of that see from A. D. 1114 to 1124. Cowell.

**THAINLAND.** In old English law. The land which was granted by the Saxon kings to their thains or thanes was so called.

**THALWEG.** Old German spelling of Talweg, which title see.

**THANAGE OF THE KING.** A certain part of the king's land or property, of which the ruler or governor was called "thane." Cowell.

**THANE.** An Anglo-Saxon nobleman; an old title of honor, perhaps equivalent to "baron." There were two orders of thanes,—the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused. Cowell.

**THANELANDS.** Such lands as were granted by charter of the Saxon kings to their thanes with all immunities, except from the *trinoda necessitas*. Cowell.

**THANESHIP.** The office and dignity of a thane; the seigniorship of a thane.

**THAT.** A relative pronoun equivalent to who or which, either singular or plural. *Dunn v. Bryan*, 77 Utah 604, 299 P. 253, 255.

**THAT WHICH I MAY DEFEAT BY MY ENTRY I MAKE GOOD BY MY CONFIRMATION.** Co. Litt. 300.

**THAVIES INN.** An inn of chancery. See Inns of Chancery.

**THE.** An article which particularizes the subject spoken of. "Grammatical niceties should not be resorted to without necessity; but it would be extending liberality to an unwarrantable length to confound the articles 'a' and 'the'. The most unlettered persons understand that 'a' is indefinite, but 'the' refers to a certain object." Per *Tilghman, C. J., Sharff v. Com.*, 2 Bin., Pa., 516; *Penn Mut. Life Ins. Co. v. Henderson*, D.C.Fla., 244 F. 877, 880; *Howell v. State*, 138 S.E. 206, 210, 164 Ga. 204; *Hoffman v. Franklin Motor Car Co.*, 32 Ga.App. 229, 122 S.E. 896, 900. "The" house means only one house. *Rocci v. Massachusetts Acc. Co.*, 222 Mass. 336, 110 N.E. 972, 973, Ann. Cas.1918C, 529.

**THE FUND WHICH HAS RECEIVED THE BENEFIT SHOULD MAKE THE SATISFACTION.** 4 Bouv. Inst. note 3730.

**THE LAW ABHORS A MULTIPLICITY OF SUITS.**

**THE PARTIES BEING IN PARI CASU, JUSTICE IS IN EQUILIBRIO.**

**THE REPEAL OF THE LAW IMPOSING A PENALTY IS ITSELF A REMISSION.**

**THEATER.** Any edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance-money is received, not including halls rented or used occasionally for concerts or theatrical representations. See *Bell v. Mahn*, 121 Pa. 225, 15 A. 523, 1 L.R.A. 364, 6 Am.St.Rep. 786; *Zucarro v. State*, 197 S.W. 982, 985, 82 Tex.Cr.R. 1, L.R.A.1918B, 354; *City of Ames v. Gerbracht*, 189 N.W. 729, 194 Iowa, 267.

**THEATER ADMISSION TICKET.** Is in nature of a permit to enter place of amusement and use accommodations provided therein for enjoyment of entertainment offered and is evidence of payment of admission fee to proper person, but carries with it no obligation of theater owner to do anything or perform any service. *Jordan v. Concho Theatres*, Tex.Civ.App., 160 S.W.2d 275, 276.

**THEFT.** A popular name for larceny. See *State v. Stewart*, 67 A. 786, 788, 6 Pennewill (Del.) 435. The fraudulent taking of corporeal personal prop-

## THEFT

erty belonging to another, from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. *Quitow v. State*, 1 Tex.App. 65, 28 Am.Rep. 396; *Mullins v. State*, 37 Tex. 338; *U. S. v. Thomas*, D.C.Cal., 69 F. 588, 590; *Fidelity Phœnix Fire Ins. Co. of New York v. Oldsmobile Sales Co.*, Tex.Civ.App., 261 S.W. 492, 497; *Reese v. State*, 239 S.W. 619, 620, 91 Tex.Cr.R. 457; *Fidelity and Guaranty Fire Corporation v. Ratterman*, 262 Ky. 350, 90 S.W.2d 679, 680.

It was also said that it is a wider term than larceny and that it includes swindling and embezzlement and that generally, one who obtains possession of property by lawful means and thereafter appropriates the property to the taker's own use is guilty of a "theft". *Kidwell v. Paul Revere Fire Ins. Co.*, 294 Ky. 833, 172 S.W.2d 639, 640; *Whitworth v. State*, 11 Tex.App. 414, 428, 429; *People v. Pillsbury*, 138 P.2d 320, 322, 59 Cal.App.2d 107.

In Scotch law. The secret and felonious abstraction of the property of another for sake of lucre, without his consent. *Alis.Crim.Law*, 250.

**THEFT-BOTE.** The offense committed by a party who, having been robbed and knowing the felon, takes back his goods again, or receives other amends, upon an agreement not to prosecute. *Farmers' Nat. Bank of Somerset v. Tarter*, 256 Ky. 70, 75 S.W.2d 758, 760.

**THEFT-BOTE EST EMENDA FURTI CAPTA, SINE CONSIDERATIONE CURIÆ DOMINI REGIS.** 3 Inst. 134. Theft-bote is the paying money to have goods stolen returned, without having any respect for the court of the king.

**THEFT BY FALSE PRETEXT.** Obtaining property by means of false pretext with intent to deprive owner of value of property without his consent and to appropriate it to own use, followed by such appropriation. *Vernon's Ann.P.C.* art. 1413. *Hoovel v. State*, 125 Tex.Cr.R. 545, 69 S.W. 2d 104, 106.

**THEGN.** An Anglo-Saxon term meaning a retainer. Afterwards it came to designate the territorial nobility. At a later period these were king's thegns, who were persons of great importance, and inferior thegns. Military service appears to have run through it all. After the Conquest, they were merged into the class of knights. *Encycl. Br.*

**THEGNAGE TENURE.** A kind of tenure in Northumbria in the 13th century and beyond, of which little is known. 2 Holdsw. Hist. E. L. 132.

**THELONIO IRRATIONABILI HABENDO.** A writ that formerly lay for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled. *Reg. Orig.* 87.

**THELONIUM.** An abolished writ for citizens or burgesses to assert their right to exemption from toll. *Fitzh. Nat. Brev.* 226.

**THELONMANNUS.** The toll-man or officer who receives toll. *Cowell.*

**THELUSSON ACT.** The statute 39 & 40 Geo. III. c. 98, which restricted accumulations to a term of twenty-one years from the testator's death. It was passed in consequence of litigation over the will of one Thelussou.

**THEME.** In Saxon law. The power of having jurisdiction over naifs or villeins, with their suits or offspring, lands, goods, and chattels. *Co. Litt.* 116a.

**THEMMAGIUM.** A duty or acknowledgment paid by inferior tenants in respect of theme or team. *Cowell.*

**THEN.** This word, as an adverb, means "at that time," referring to a time specified, either past or future. It has no power in itself to fix a time. It simply refers to a time already fixed. *Mangum v. Piester*, 16 S.C. 329. It may also denote a contingency, and be equivalent to "in that event." *Pintard v. Irwin*, 20 N.J.L. 505; *Western & A. R. Co. v. Smith*, 145 Ga. 276, 88 S.E. 983, 985; *State ex rel. Hanly v. Montgomery*, 132 La. 679, 61 So. 735, 736; *In re Swift's Estate*, 279 Pa. 424, 124 A. 135, 136; *Lermond v. Hyler*, 121 Me. 54, 115 A. 546, 551; *Roberts v. Wadley*, 156 Ga. 35, 118 S.E. 664, 665.

**THEN AND THERE.** At the time and place last previously mentioned or charged. Context, however, may give the phrase a more remote antecedent than the time and place last previously mentioned or charged. *Vogrin v. American Steel & Wire Co.*, 263 Ill. 474, 105 N.E. 332, 333; *State v. Mahoney*, 115 Me. 251, 98 A. 750, 752; *Brogan v. State*, 199 Ind. 203, 156 N.E. 515, 516; *Bashara v. State*, 84 Tex.Cr.R. 263, 206 S.W. 359, 360; *State v. Bückwald*, 117 Me. 344, 104 A. 520, 521.

**THENCE.** In surveying, and in descriptions of land by courses and distances, this word, preceding each course given, imports that the following course is continuous with the one before it. *Flagg v. Mason*, 141 Mass. 66, 6 N.E. 702.

**THENCE DOWN THE RIVER.** This phrase as used in field notes of a surveyor of a patent, is construed to mean with the meanders of the river, unless there is positive evidence that the meander line as written was where the surveyor in fact ran it; for such lines are to show the general course of the stream and to be used in estimating acreage, and not necessarily boundary lines. *Burkett v. Chestnutt*, Tex.Civ.App., 212 S.W. 271, 274.

**THEOCRACY.** Government of a state by the immediate direction of God, (or by the assumed direction of a supposititious divinity,) or the state thus governed.

**THEODEN.** In Saxon law. A husbandman or inferior tenant; an under-thane. *Cowell.*

**THEODOSIAN CODE.** See Codex Theodosianus.

**THEOF.** In Saxon law. Offenders who joined in a body of seven to commit depredations. Wharton.

**THEOPHILUS' INSTITUTES.** See Institutes.

**THEORETICAL AGRICULTURE.** A science comprehending in its scope the nature and properties of soils, the different sorts of plants and seeds fitted for them, the composition and qualities of manures, and the rotation of crops, and involving a knowledge of chemistry, geology, and kindred sciences. State ex rel. Boynton v. Wheat Farming Co., 137 Kan. 697, 22 P.2d 1093.

**THEORY OF CASE.** Facts on which the right of action is claimed to exist. Pittsburgh, C., C. and St. L. Ry. Co. v. Rogers, 45 Ind.App. 230, 87 N.E. 28, 31. The basis of liability or grounds of defense. Higgins v. Fuller, 48 N.M. 218, 148 P.2d 575, 579.

**THEOWES, THEOWMEN, or THEWS.** In feudal law. Slaves, captives, or bondmen. Spel. Feuds, c. 5.

**THERE.** In or at that place. Bedell v. Richardson Lubricating Co., 201 Mo.App. 251, 211 S.W. 104, 106.

**THEREABOUT.** About that place. Austin v. Bluff City Shoe Co., 176 Mo.App. 546, 158 S.W. 709, 713.

**THEREAFTER.** After the time last mentioned; after that; after that time; afterward; subsequently; thenceforth. People v. St. Louis, A. & T. H. R. Co., 300 Ill. 519, 133 N.E. 217; Lamoutte v. Title Guaranty & Surety Co., 165 App.Div. 573, 151 N.Y.S. 148, 154; Dauwe v. State, 147 Tex.Cr.R. 384, 180 S.W.2d 925, 927.

**THEREBY.** By that means; in consequence of that. Fall City Ice & Beverage Co. v. Scanlan Coal Co., 208 Ky. 820, 271 S.W. 1097, 1099.

**THEREFOR.** For that thing; for it, or them. State v. Dayton Lumber Co., Tex.Civ.App., 159 S.W. 391, 398.

**THEREIN.** In that place. Mulville v. City of San Diego, 183 Cal. 734, 192 P. 702, 703; City Hospital of Quincy v. Inhabitants of Town of Milton, 232 Mass. 273, 122 N.E. 274.

**THEREUPON.** Without delay or lapse of time. Putnam v. Langley, 133 Mass. 205. See Hill v. Wand, 47 Kan. 340, 27 P. 988, 27 Am.St.Rep. 288. Immediately. 6 M. & W. 492. See 3 Q. B. 79, where the terms thereupon and thereby are distinguished. Following on; in consequence of. Yuma County Water Users' Ass'n v. Schlecht, 43 S.Ct. 498, 500, 262 U.S. 138, 67 L.Ed. 909; Stephens v. Nacey, 47 Mont. 479, 133 P. 361, 362; Atlanta Gaslight Co. v. Sams, 29 Ga.App. 446, 116 S.E. 21, 25.

**THESAURER.** Treasurer. 3 State Tr. 691.

**THESAURUS, THESAURIUM.** The treasury; a treasure.

**THESAURUS ABSCONDITUS.** In old English law. Treasure hidden or buried. Spelman.

**THESAURUS COMPETIT DOMINO REGI, ET NON DOMINO LIBERATIS, NISI SIT PER VERBA SPECIALIA.** Fitzh. Coron. 281. A treasure belongs to the king, and not to the lord of a liberty, unless it be through special words.

**THESAURUS INVENTUS.** In old English law. Treasure found; treasure-trove. Bract. fols. 119b, 122.

**THESAURUS INVENTUS EST VETUS DISPOSITIO PECUNIAE, ETC., CUJUS NON EXTAT MODO MEMORIA, ADEO UT JAM DOMINUM NON HABEAT.** 3 Inst. 132. Treasure-trove is an ancient hiding of money, etc., of which no recollection exists, so that it now has no owner.

**THESAURUS NON COMPETIT REGI, NISI QUANDO NEMO SCIT QUI ABSCONDIT THESAURUM.** 3 Inst. 132. Treasure does not belong to the king, unless no one knows who hid it.

**THESAURUS REGIS EST VINCULUM PACIS ET BELLORUM NERVUS.** Godb. 293. The king's treasure is the bond of peace and the sinews of war.

**THESMOTHETE.** A law-maker; a law-giver.

**THETHINGA.** A tithing.

**THIA.** Lat. In the civil and old European law. An aunt.

**THIEF.** One who steals; one who commits theft or larceny. Nugent v. Union Automobile Ins. Co., 140 Or. 61, 13 P.2d 343, 344.

**THINGS.** The objects of dominion or property as contradistinguished from "persons." Western Union Telegraph Co. v. Bush, 191 Ark. 1085, 89 S.W. 2d 723, 725, 103 A.L.R. 367; Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763, 768. The object of a right; *i. e.*, whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty. Holl. Jur. 83.

The word "estate" in general is applicable to anything of which riches or fortune may consist. The word is likewise relative to the word "things," which is the second object of jurisprudence, the rules of which are applicable to persons, things, and actions. Civ.Code La. art. 448.

Such permanent objects, not being persons, as are sensible, or perceptible through the senses. Aust.Jur. § 452.

Things are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*). Wharton.

**THINGS IN ACTION.** A right to recover money or other personal property by a judicial proceeding. Civ.Code Cal. § 953. See Chose in Action.

## THINGS

**THINGS OF VALUE.** To be the subject of gaming may be any thing affording the necessary lure to indulge the gambling instinct. *Painter v. State*, 163 Tenn. 627, 45 S.W.2d 46, 47. *Heartley v. State*, 178 Tenn. 254, 157 S.W.2d 1, 3.

**THINGS PERSONAL.** Goods, money, and all other movables, which may attend the owner's person wherever he thinks proper to go. 2 Bl.Comm. 16. Things personal consist of goods, money, and all other movables, and of such rights and profits as relate to movables. 1 Steph. Comm. 156; *People v. Brooklyn*, 9 Barb. (N.Y.) 546; *Castle v. Castle*, C.C.A.Hawaii, 267 F. 521, 522. Also all 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. *Western Union Telegraph Co. v. Bush*, 191 Ark. 1085, 89 S.W.2d 723, 725, 103 A.L.R. 367.

**THINGS REAL.** Such things as are permanent, fixed, and immovable, which cannot be carried out of their place; as lands and tenements and hereditaments. 2 Bl. Comm. 16. *Western Union Telegraph v. Bush*, 191 Ark. 1085, 89 S.W.2d 723, 725, 103 A.L.R. 367.

This definition has been objected to as not embracing incorporeal rights. Mr. Stephen defines *things real* to "consist of things substantial and immovable, and of the rights and profits annexed to or issuing out of these." 1 Steph. Comm. 156. *Things real* are otherwise described to consist of lands, tenements, and hereditaments. *People v. Brooklyn*, 9 Barb., N.Y., 546; *Sox v. Miracle*, 35 N.D. 458, 160 N.W. 716, 719.

**THINGS ACCESSORY ARE OF THE NATURE OF THE PRINCIPAL.** *Finch*, Law, b. 1, c. 3, n. 25.

**THINGS ARE CONSTRUED ACCORDING TO THAT WHICH WAS THE CAUSE THEREOF.** *Finch*, Law, b. 1, c. 3, n. 4.

**THINGS ARE DISSOLVED AS THEY BE CONTRACTED.** *Finch*, Law, b. 1, c. 3, n. 7.

**THINGS GROUNDED UPON AN ILL AND VOID BEGINNING CANNOT HAVE A GOOD PERFECTION.** *Finch*, Law, b. 1, c. 3, n. 8.

**THINGS IN ACTION, ENTRY, OR RE-ENTRY CANNOT BE GRANTED OVER.** *Van Rensselaer v. Ball*, 19 N.Y. 100, 103.

**THINGS INCIDENT CANNOT BE SEVERED.** *Finch*, Law, b. 3, c. 1, n. 12.

**THINGS INCIDENT PASS BY THE GRANT OF THE PRINCIPAL.** *Seymour v. Canandaigua & N. F. R. Co.*, 25 Barb. (N.Y.) 284, 310.

**THINGS INCIDENT SHALL PASS BY THE GRANT OF THE PRINCIPAL, BUT NOT THE PRINCIPAL BY THE GRANT OF THE INCIDENT.** *Co. Litt.* 152a, 151b; *Broom*, Max. 433.

**THINGS SHALL NOT BE VOID WHICH MAY POSSIBLY BE GOOD.**

**THINGUS.** In Saxon law. A thane or nobleman; knight or freeman. *Cowell*.

**THINK.** To believe, to consider, to conclude, to esteem; to recollect or call to mind. *Martin v. Iowa Ry. Co.*, 59 Iowa, 414, 13 N.W. 424; *Abbott v. Church*, 288 Ill. 91, 123 N.E. 306, 308, 4 A.L.R. 975; *Trice v. Powell*, 168 Va. 397, 191 S.E. 758, 762.

**THIRD.** Following next after the second; also, with reference to any legal instrument or transaction or judicial proceeding, any outsider or person not a party to the affair nor immediately concerned in it.

**Third opposition.** In Louisiana, when an execution is levied on property which does not belong to the defendant, but to an outsider, the remedy of the owner is by an intervention called a "third opposition," in which, on his giving security, an injunction or prohibition may be granted to stop the sale. See *New Orleans v. Louisiana Const. Co.*, 9 S.Ct. 223, 129 U.S. 45, 32 L.Ed. 607; *Norton v. Walton*, C.C.A.La., 288 F. 359, 360.

**Third parties.** See *Party*.

**Third penny.** A portion (one-third) of the amount of all fines and other profits of the county court, which was reserved for the earl, in the early days when the jurisdiction of those courts was extensive, the remainder going to the king.

**Third possessor.** In Louisiana, a person who buys mortgaged property, but without assuming the payment of the mortgage. *Thompson v. Levy*, 50 La. Ann. 751, 23 So. 913; *New Orleans Land Co. v. Southern States Fair-Pan-American Exposition Co.*, 143 La. 884, 79 So. 525, 526.

**THIRD CONVICTION.** Before charge can be considered a "third conviction" of a felony in contemplation of Habitual Criminal Act, accused must have been convicted of a second felony subsequent to his conviction of first one and after he had paid penalty inflicted for it, and third conviction should be subsequent to second, and after he had paid penalty for it. *Cobb v. Commonwealth*, 267 Ky. 176, 101 S.W.2d 418, 420.

**THIRD INTERNATIONAL.** Communist International, Moscow International, Red International. An organization founded at Moscow in March, 1919, by delegates from twelve different countries, as a protest against the inactivity and bourgeois character of the Second International and as a call to Communists all over the world to support the Russian Revolution and inaugurate similar movements in other countries. It is still predominantly Russian. *Garriga v. Richfield*, 174 Misc. 315, 20 N.Y.S.2d 544, 547.

**THIRD PARTY BENEFICIARY.** In order for one not privy to a contract to maintain an action thereon as a "third party beneficiary", it must appear that the contract was made and intended for his benefit. *Fagiarone v. Consolidated Film Industries*, 20 N.J.Misc. 193, 26 A.2d 425, 426. And the benefit must be one that is not merely incidental, but must be immediate in such a sense and degree as to indicate the assumption of a duty to make reparation if the benefit is lost. *Associated*

**Flour Haulers & Warehousemen v. Hoffman**, 282 N.Y. 173, 26 N.E.2d 7, 10.

Member of union is "third party beneficiary" of contract between employer and union. *Helt v. Britten-Fenton Co.*, 44 N.Y.S.2d 58, 60, 180 Misc. 1077.

**THIRD PARTY CLAIM PROCEEDING.** A proceeding for the purpose of determining whether the debtor has any right, title or interest in the property upon which the levy has been made and the judgment of the court in such proceedings is only made conclusive as to the right of the plaintiff or other person in whose favor the writ runs to have the property taken and to subject it to payment for other satisfaction of his judgment. *Deevy v. Lewis*, 54 Cal.App.2d 24, 128 P.2d 577, 579.

**THIRDBOROUGH, or THIRDBOROW.** An underconstable. Cowell.

**THIRDINGS.** The third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat, in Hereford. Blount.

**THIRD-NIGHT-AWN-HINDE.** By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a "third-night-awn-hinde," and his host was answerable for him if he committed any offense. The first night, for-man-night, or uncouth, (unknown,) he was reckoned a stranger; the second night, twa-night, a guest; and the third night, an awn-hinde, a domestic. Bract. l. 3.

**THIRDS.** The designation, in colloquial language, of that portion of a decedent's personal estate (one-third) which goes to the widow where there is also a child or children. See *Yeomans v. Stevens*, 2 Allen, Mass., 350; *O'Hara v. Dever*, 46 Barb. (N.Y.) 614.

**THIRLAGE.** In Scotch law. A servitude by which lands are astricted or "thirled" to a particular mill, to which the possessors must carry the grain of the growth of the astricted lands to be ground, for the payment of such duties as are either expressed or implied in the constitution of the right. *Ersk. Inst.* 2, 9, 18.

**THIRTY-NINE ARTICLES.** See Articles of Religion.

**THIS.** When "this" and "that" refer to different things before expressed, "this" refers to the thing last mentioned, and "that" to the thing first mentioned. *Russell v. Kennedy*, 66 Pa. 251. "This" is a demonstrative adjective, used to point out with particularity a person or thing present in place or in thought. *Stevens v. Haile*, Tex.Civ.App., 162 S.W. 1025, 1028.

**THIS DAY SIX MONTHS.** Fixing "this day six months," or "three months," for the next stage of a bill, is one of the modes in which the house of lords and the house of commons reject bills of which they disapprove. A bill rejected in this manner cannot be reintroduced in the same session. Wharton.

**THISTLE-TAKE.** It was a custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permitted them to graze or take but a thistle, he should pay a halfpenny a-piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called "thistle-take." Cowell.

**THOROUGHFARE.** The term means, according to its derivation, a street or passage *through* which one can *fare*, (travel;) that is, a street or highway affording an unobstructed exit at each end into another street or public passage. If the passage is closed at one end, admitting no exit there, it is called a "*cul de sac*." *Mankato v. Warren*, 20 Minn. 150 (Gil. 128); *Wiggins v. Tallmadge*, 11 Barb. (N.Y.) 462; *Morris v. Blunt*, 49 Utah, 243, 161 P. 1127, 1130; *Burnham v. Holmes*, 137 Me. 183, 16 A.2d 476, 477.

**THRAVE.** In old English law. A measure of corn or grain, consisting of twenty-four sheaves or four shocks, six sheaves to every shock. Cowell.

**THREAD.** A middle line; a line running through the middle of a stream or road. See *Filum*; *Filum Aquæ*; *Filum Viæ*; *Thalweg*.

**THREAT.** A declaration of intention or determination to inflict punishment, loss, or pain on another, or to injure another by the commission of some unlawful act. *U. S. v. Daulong*, D.C.La., 60 F.Supp. 235, 236. A menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent. *Abbott, United States v. French*, D.C.Fla., 243 F. 785, 786; *State v. Brownlee*, 84 Iowa 473, 51 N.W. 25. *Cote v. Murphy*, 159 Pa. 420, 28 A. 190, 23 L.R.A. 135, 39 Am.St.Rep. 686. A declaration of one's purpose or intention to work injury to the person, property, or rights of another, with a view of restraining such person's freedom of action. *McKenzie v. State*, 113 Neb. 576, 204 N.W. 60, 61. *Kamenitsky v. Corcoran*, 177 App.Div. 605, 164 N.Y.S. 297, 300.

**THREATENING LETTERS.** Sending threatening letters is the name of the offense of sending letters containing threats of the kinds recognized by the statute as criminal. See *People v. Griffin*, 2 Barb. (N.Y.) 429.

**THREE-DOLLAR PIECE.** A gold coin of the United States, of the value of three dollars; authorized by the seventh section of the act of February 21, 1853.

**THREE-WEEKS COURT.** In the Kentish custom of gavellet, it was the lord's court. 18 Harv.L.R. 40.

**THRENGES.** Vassals, but not of the lowest degree; those who held lands of the chief lord.

## THRITHING

**THRITHING.** In Saxon and old English law. The third part of a county; a division of a county consisting of three or more hundreds. Cowell. Corrupted to the modern "riding," which is still used in Yorkshire. 1 Bl.Comm. 116.

**THROUGH.** By means of, in consequence of, by reason of; in, within; over; from end to end, or from one side to the other. Mississippi Cent. R. Co. v. Pace, 109 Miss. 667, 68 So. 926, 927; Hyde Park v. Oakwoods Cemetery Ass'n, 119 Ill. 147, 7 N.E. 627. By the intermediary of; in the name or as agent of; by the agency of; because of. Great Atlantic & Pacific Tea Co. v. City of Richmond, 183 Va. 931, 33 S.E.2d 795, 802.

**THROUGH LOT.** A lot that abuts upon a street at each end. Illinois Surety Co. v. O'Brien, C.C.A. Ohio, 223 F. 933, 938.

**THROW OUT.** To ignore (a bill of indictment.)

**THROWN FROM AUTOMOBILE.** This phrase within accident policy means tossed or hurled out of automobile by some force. Independence Ins. Co. v. Blanford's Adm'x, 276 Ky. 692, 125 S.W.2d 249, 251; Guaranty Trust Co. v. Continental Life Ins. Co., 159 Wash. 683, 294 P. 585, 587.

**THRUSTING.** Within the meaning of a criminal statute, is not necessarily an attack with a pointed weapon; it means pushing or driving with force, whether the point of the weapon be sharp or not. State v. Lowry, 33 La. Ann. 1224.

**THRYMSA.** A Saxon coin worth fourpence. Du Fresne.

**THUDE-WEALD.** A woodward, or person that looks after a wood.

**THURINGIAN CODE.** One of the "barbarian codes," as they are termed; supposed by Montesquieu to have been given by Theodoric, king of Austrasia, to the Thuringians, who were his subjects. Esprit des Lois, lib. 28, c. 1.

**THUS.** In the way just indicated. Schrader v. City of Los Angeles, 19 Cal.App.2d 332, 65 P.2d 374, 375.

**THWERTNICK.** In old English law. The custom of giving entertainments to a sheriff, etc., for three nights.

**TICK.** A colloquial expression for credit or trust; credit given for goods purchased.

**TICKET.** In contracts. A slip of paper containing a certificate that the person to whom it is issued, or the holder, is entitled to some right or privilege therein mentioned or described; such, for example, are railroad tickets, theater tickets, pawn tickets, lottery tickets, etc. See Allaire v. Howell Works Co., 14 N.J.L. 24; Interstate Amusement Co. v. Martin, 8 Ala.App. 481, 62 So. 404, 405.

In election law. A list of candidates for particular offices to be submitted to the voters at an election; a ballot. Barr v. Cardell, 173 Iowa 18, 155 N.W. 312, 313; Denny v. Pratt, 104 Conn. 396, 133 A. 107, 109.

**TICKET OF LEAVE.** In English law. A license or permit given to a convict, as a reward for good conduct, particularly in the penal settlements, which allows him to go at large, and labor for himself, before the expiration of his sentence, subject to certain specific conditions and revocable upon subsequent misconduct.

**TICKET-OF-LEAVE MAN.** A convict who has obtained a ticket of leave.

**TICKET SPECULATOR.** One who sells at an advance over the price charged by the management. Speculation of this kind frequently leads to abuse, especially when the theater is full and but few tickets are left, so that extortionate prices may be exacted. Levine v. Brooklyn Nat. League Baseball Club, 179 Misc. 22, 36 N.Y.S.2d 474, 477.

**TIDAL.** In order that a river may be "tidal" at a given spot, it may not be necessary that the water should be salt, but the spot must be one where the tide, in the ordinary and regular course of things, flows and reflows. 8 Q.B.Div. 630.

**TIDE.** The ebb and flow of the sea. See Baird v. Campbell, 67 App.Div. 104, 73 N.Y.S. 617.

### Neap Tides

Those tides which happen between the full and change of the moon twice in every 24 hours. F. A. Hihn Co. v. City of Santa Cruz, 170 Cal. 430, 150 P. 62, 65.

### Tide Land

Land between the lines of the ordinary high and low tides, covered and uncovered successively by the ebb and flow thereof; land covered and uncovered by the ordinary tides; land over which the tide ebbs and flows; land which is daily covered and uncovered by water by the ordinary ebb and flow of normal tides; land usually overflowed by the neap or ordinary tides; such land as is affected by the tide, that lies between ordinary high-water mark and low-water mark, and which is alternately covered and left dry by the ordinary flux and reflux of the tides; that portion of the shore or beach covered and uncovered by the ebb and flow of ordinary tides. Bolsa Land Co. v. Vaqueros Major Oil Co., Cal.App., 76 P.2d 519, 521; Hardy v. California Trojan Powder Co., 109 Or. 76, 219 P. 197, 199.

### Tide-Water

Water which falls and rises with the ebb and flow of the tide. The term is not usually applied to the open sea, but to coves, bays, rivers, etc.

### Tideway

That land between high and low water mark. In re Inwood Hill Park in Borough of Manhattan, City of New York, 217 App.Div. 587, 217 N.Y.S. 359, 363.

**TIDESMEN,** in English law, are certain officers of the custom-house, appointed to watch or attend upon ships till the customs are paid; and they

are so called because they go aboard the ships at their arrival in the mouth of the Thames, and come up with the tide. Jacob.

**TIE, v.** To bind. "The parson is not tied to find the parish clerk." 1 Leon. 94.

**TIE, n.** When, at an election, neither candidate receives a majority of the votes cast, but each has the same number, there is said to be a "tie." So when the number of votes cast in favor of any measure, in a legislative or deliberative body, is equal to the number cast against it. See Wooster v. Mullins, 64 Conn. 340, 30 A. 144, 25 L.R.A. 694.

**TIEL.** L. Fr. Such. *Nul tiel record*, no such record.

**TIEMPO INHABIL.** Span. A time of inability; a time when the person is not able to pay his debts, (when, for instance, he may not alienate property to the prejudice of his creditors.) The term is used in Louisiana. *Brown v. Kenner*, 3 Mart.O.S. (La.) 270; *Thorn v. Morgan*, 4 Mart. N.S. (La.) 292, 16 Am.Dec. 173.

**TIERCE.** L. Fr. Third. *Tierce mein*, third hand. Britt. c. 120.

**TIERCE.** A liquid measure, containing the third part of a pipe, or forty-two gallons.

**TIGH.** In old records. A close or inclosure; a croft. Cowell.

**TIGHT.** As colloquially applied to a note, bond, mortgage, lease, etc., this term signifies that the clauses providing the creditor's remedy in case of default (as, by foreclosure, execution, distress, etc.) are summary and stringent.

**TIGNI IMMITTENDI.** Lat. In the civil law. The name of a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight. Wharton. See Dig. 8, 2, 36.

**TIGNUM.** Lat. A civil-law term for building material; timber.

**TIHLER.** In old Saxon law. An accusation.

**TILLAGE.** A place tilled or cultivated; land under cultivation, as opposed to lands lying fallow or in pasture.

**TIMBER.** Wood felled for building or other such like use. In a legal sense it generally means (in England) oak, ash, and elm, but in some parts of England, and generally in America, it is used in a wider sense, which is recognized by the law.

The term "timber," as used in commerce, refers generally only to large sticks of wood, squared or capable of being squared for building houses or vessels; and certain trees only having been formerly used for such purposes, namely, the oak, the ash, and the elm, they alone were recognized as timber trees. But the numerous uses to which wood has come to be applied, and the general employment of all kinds of trees for some valuable purpose, has wrought a change in the general acceptance of terms in connection therewith, and we find that Webster defines "timber" to be

"that sort of wood which is proper for buildings or for tools, utensils, furniture, carriages, fences, ships, and the like." This would include all sorts of wood from which any useful articles may be made, or which may be used to advantage in any class of manufacture or construction. *U. S. v. Stores*, C.C., 14 F. 824; *Wilson v. State*, 17 Tex. App. 393; *U. S. v. Soto*, 7 Ariz. 230, 64 P. 420; *Tuscarora Nation of Indians v. Williams*, 141 N.Y.S. 207, 210, 79 Misc. 445; *Eagle Coal Co. v. Patrick's Adm'r*, 161 Ky. 333, 170 S.W. 960, 961; *Nettles v. Lichtman*, 228 Ala. 52, 152 So. 450, 453, 91 A.L.R. 1455.

**TIMBER CULTURE ENTRY.** See Entry.

**TIMBER-TREES.** Oak, ash, elm, in all places, and, by local custom, such other trees as are used in building. 2 Bl.Comm. 281.

**TIMBERLODE.** A service by which tenants were bound to carry timber felled from the woods to the lord's house. Cowell.

**TIME.** The measure of duration.

The word is expressive both of a precise *point* or *terminus* and of an *interval* between two points.

**Pleading**

A point in or space of duration at or during which some fact is alleged to have been committed.

**General**

**Cooling time.** See that title.

**Reasonable time.** Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject-matter, and to the attending circumstances. It is a maxim of English law that "how long a 'reasonable time' ought to be is not defined in law, but is left to the discretion of the judges." Co. Litt. 50. See *Hoggins v. Becraft*, 1 Dana (Ky.) 28; *Hill v. Hobart*, 16 Me. 168; *Twin Lick Oil Co. v. Marbury*, 91 U.S. 591, 23 L.Ed. 328; *Hearne v. Fischer Lime & Cement Co.*, 220 Ky. 791, 295 S.W. 1012, 1013; *Lumbermen's Reciprocal Ass'n v. Warren*, Tex.Civ. App., 272 S.W. 826, 827; *Simmons v. Western Indemnity Co.*, Tex.Civ.App., 210 S.W. 713, 715.

**Time-bargain.** In the language of the stock exchange, an agreement to buy or sell stock at a future time, or within a fixed time, at a certain price. It is in reality nothing more than a bargain to pay differences.

**Time check.** A certificate signed by a master mechanic or other person in charge of laborers, reciting the amount due to the laborer for labor for a specified time. *Burlington Voluntary Relief Dept. v. White*, 41 Neb. 547, 59 N.W. 747, 43 Am.St.Rep. 701; *Gerlach v. North Texas & S. F. Ry. Co.*, Tex.Civ.App., 244 S.W. 662, 666.

**Time immemorial.** Time whereof the memory of a man is not to the contrary.

**Time is the essence of contract.** Means that performance by one party at time or within period specified in contract is essential to enable him to require performance by other party. *Hayes Mfg. Corporation v. McCauley*, C.C.A.Ohio, 140 F.2d



## TIME

187, 190; *Williams v. Shamrock Oil and Gas Co.*, 128 Tex. 146, 95 S.W.2d 1292, 1295, 107 A.L.R. 269.

A contract where the parties evidently contemplated a punctual performance, at the precise time named, as vital to the agreement, and one of its essential elements. Time is *not* of the essence of the contract in any case where a moderate delay in performance would not be regarded as an absolute violation of the contract.

**Time of accident.** In occupational disease cases, time when disability first occurs. *Michigan Quartz Silica Co. v. Industrial Commission*, 214 Wis. 492, 253 N.W. 167.

**Time of memory.** In English law. Time commencing from the beginning of the reign of Richard I. 2 Bl.Comm. 31. Lord Coke defines *time of memory* to be "when no man alive hath had any proof to the contrary, nor hath any consunance to the contrary." Co. Litt. 86a, 86b.

**Time out of memory.** Time beyond memory; time out of mind; time to which memory does not extend.

**Time-policy.** A policy of marine insurance in which the risk is limited, not to a given voyage, but to a certain fixed term or period of time.

**TIMOCRACY.** An aristocracy of property; government by men of property who are possessed of a certain income.

**TIMORES VANI SUNT ÆSTIMANDI QUI NON CADUNT CONSTANTEM VIRUM.** 7 Coke, 17. Fears which do not assail a resolute man are to be accounted vain.

**TINBOUNDING.** A custom regulating the manner in which tin is obtained from wasteland, or land which has formerly been wasteland, within certain districts in Cornwall and Devon. The custom is described in the leading case on the subject as follows: "Any person may enter on the waste-land of another, and may mark out by four corner boundaries a certain area. A written description of the plot of land so marked out with metes and bounds, and the name of the person, is recorded in the local stannaries court, and is proclaimed on three successive court-days. If no objection is sustained by any other person, the court awards a writ to the bailiff to deliver possession of the said 'bounds of tinwork' to the 'bounder,' who thereupon has the exclusive right to search for, dig, and take for his own use all tin and tin-ore within the inclosed limits, paying as a royalty to the owner of the waste a certain proportion of the produce under the name of 'toll-tin.'" 10 Q.B. 26, cited in *Elton Commons*, 113. The right of tinbounding is not a right of common, but is an interest in land, and, in Devonshire, a corporeal hereditament. In Cornwall tin bounds are personal estate. Sweet.

**TINEL.** L. Fr. A place where justice was administered. Kelham.

**TINEMAN.** Sax. In old forest law. A petty officer of the forest who had the care of vert and venison by night, and performed other servile duties.

**TINET.** In old records. Brush-wood and thorns for fencing and hedging. Cowell; Blount.

**TINEWALD.** The ancient parliament or annual convention in the Isle of Man, held upon Midsummer-day, at St. John's chapel. Cowell.

**TINKERMEN.** Fishermen who destroyed the young fry on the river Thames by nets and unlawful engines. Cowell.

**TINNELLUS.** In old Scotch law. The sea-mark; high-water mark. Tide-mouth. Skene.

**TINPENNY.** A tribute paid for the liberty of digging in tin-mines. Cowell.

**TINSEL OF THE FEU.** In Scotch law. The loss of the feu, from allowing two years of feu duty to run into the third unpaid. Bell.

**TIP.** A sum of money given, as to a servant usually to secure better or more prompt service. *Restaurants and Patisseries Longchamps v. Pedrick*, D.C.N.Y., 52 F.Supp. 174. A gift. *Williams v. Jacksonville Terminal Co.*, C.C.A.Fla., 118 F.2d 324, 325.

**TIPPLING HOUSE.** A place where intoxicating drinks are sold in drams or small quantities to be drunk on the premises, and where men resort for drinking purposes. *Hussey v. State*, 69 Ga. 58; *Emporia v. Volmer*, 12 Kan. 629; *Mohrman v. State*, 32 S.E. 143, 105 Ga. 709, 43 L.R.A. 398, 70 Am.St.Rep. 74.

**TIPSTAFF.** In American law. An officer appointed by the court, whose duty is to wait upon the court when it is in session, preserve order, serve process, guard juries, etc.

In English law. An officer appointed by the marshal of the king's bench to attend upon the judges with a kind of rod or staff tipped with silver, who take into their custody all prisoners, either committed or turned over by the judges at their chambers, etc. Jacob.

**TITHER.** One who gathers tithes.

**TITHES.** In English law. The *tenth* part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 Bl.Comm. 24. A species of incorporeal hereditament, being an ecclesiastical inheritance collateral to the estate of the land, and due only to an ecclesiastical person by ecclesiastical law. 1 Crabb, Real Prop. § 133.

### Great Tithes

In English ecclesiastical law. Tithes of corn, peas and beans, hay and wood. 2 Chit.Bl.Comm. 24, note; 3 Steph.Comm. 127.

### Minute Tithes

Small tithes, such as usually belong to a vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, etc.

### Mixed Tithes

Those which arise not immediately from the ground, but from those things which are nourished by the ground, *e. g.*, colts, chickens, calves, milk, eggs, etc. 3 Burn, *Ecc. Law*, 380; 2 Bl. *Comm.* 24.

### Personal Tithes

Personal tithes are tithes paid of such profits as come by the labor of a man's person; as by buying and selling, gains of merchandise and handicrafts, etc. Tomlins.

### Predial Tithes

Such as arise immediately from the ground; as, grain of all sorts, hay, wood, fruits, and herbs.

### Tithe-Free

Exempted from the payment of tithes.

### Tithe Rent-Charge

A rent-charge established in lieu of tithes, under the tithes commutation act, 1836, (St. 6 & 7 Wm. IV. c. 71.) As between landlord and tenant, the tenant paying the tithe rent-charge is entitled, in the absence of express agreement, to deduct it from his rent, under section 70 of the above act. And a tithe rent-charge unpaid is recoverable by distress as rent in arrear. Mozley & Whitley.

**TITHING.** One of the civil divisions of England, being a portion of that greater division called a "hundred." It was so called because ten freeholders with their families composed one. It is said that they were all knit together in one society, and bound to the king for the peaceable behavior of each other. In each of these societies there was one chief or principal person, who, from his office, was called "teothing-man," now "tithing-man." Brown.

### TITHING-MAN.

#### Modern Law

A constable. "After the introduction of justices of the peace, the offices of constable and *tithing-man* became so similar that we now regard them as precisely the same." Willc. *Const. Introd.*

#### New England

A parish officer annually elected to preserve good order in the church during divine service, and to make complaint of any disorderly conduct. Webster, *Dict.*

#### In Saxon Law

The head or chief of a tithing or decennary of ten families; he was to decide all lesser causes between neighbors. Jacob, *Law Dict.* In modern English law, he is the same as an under-constable or peace-officer.

**TITHING-PENNY.** In Saxon and old English law. Money paid to the sheriff by the several tithings of his county. Cowell.

**TITIUS.** In Roman law. A proper name, frequently used in designating an indefinite or ficti-

tious person, or a person referred to by way of illustration. "Titius" and "Seius," in this use, correspond to "John Doe" and "Richard Roe," or to "A. B." and "C. D."

**TITLE.** The radical meaning of this word appears to be that of a mark, style, or designation; a distinctive appellation; the name by which anything is known. Thus, in the law of persons, a title is an appellation of dignity or distinction, a name denoting the social rank of the person bearing it; as "duke" or "count." So, in legislation, the title of a statute is the heading or preliminary part, furnishing the name by which the act is individually known. It is usually prefixed to the statute in the form of a brief summary of its contents; as "An act for the prevention of gaming." *State v. Thomas*, 301 Mo. 603, 256 S.W. 1028, 1029. Again, the title of a patent is the short description of the invention, which is copied in the letters patent from the inventor's petition; *e. g.*, "a new and improved method of drying and preparing malt." *Johns. Pat. Man.* 90.

The title of a book, or any literary composition, is its name; that is, the heading or caption prefixed to it, and disclosing the distinctive appellation by which it is to be known. This usually comprises a brief description of its subject-matter and the name of its author.

"Title" is also used as the name of one of the subdivisions employed in many literary works, standing intermediate between the divisions denoted by the term "books" or "parts," and those designated as "chapters" and "sections."

### Law of Trade-Marks

A title may become a subject of property; as one who has adopted a particular title for a newspaper, or other business enterprise, may, by long and prior user, or by compliance with statutory provisions as to registration and notice, acquire a right to be protected in the exclusive use of it. Abbott.

### Real Property Law

Title is the means whereby the owner of lands has the just possession of his property. Co. *Litt.* 345; 2 Bl. *Comm.* 195; *Horney v. Price*, 189 N.C. 820, 128 S.E. 321, 323; *Hahn v. Fletcher*, 189 N.C. 729, 128 S.E. 326, 327; *Wimpey v. Ledford*, Mo. *Sup.*, 11 A.L.R. 7, 177 S.W. 302, 304; *Case v. Mortgage Guarantee and Title Co.*, 52 R.I. 155, 158 A. 724, 726. The union of all the elements which constitute ownership. *Carroll v. City of Newark*, 108 N.J.L. 323, 158 A. 458, 461. Full, independent and fee ownership. *In re Pelis' Estate*, 150 Misc. 918, 271 N.Y.S. 731. The right to or ownership in land. *Andrews v. New Britain Nat. Bank*, 113 Conn. 467, 155 A. 838, 840.

Title may be defined generally to be the evidence of right which a person has to the possession of property. The word "title" certainly does not merely signify the right which a person has to the possession of property; because there are many instances in which a person may have the right to the possession of property, and at the same time have no title to the same. In its ordinary legal acceptance, however, it generally seems to imply a right of possession also. It therefore, appears, on the whole, to signify the outward evidence of the right, rather than the mere right itself. Thus, when it is said that the "most

## TITLE

Imperfect degree of title consists in the mere naked possession or actual occupation of an estate," it means that the mere circumstance of occupying the estate is the weakest species of evidence of the occupier's right to such possession. The word is defined by Sir Edward Coke thus: *Titulus est justa causa possidendi id quod nostrum est*, (1 Inst. 34;) that is to say, the ground whether purchase, gift, or other such ground of acquiring; "*titulus*" being distinguished in this respect from "*modus acquirendi*," which is the *traditio*, *i. e.*, delivery or conveyance of the thing. Brown.

Title is when a man hath lawful cause of entry into lands, whereof another is seised; and it signifies also the means whereby a man comes to lands or tenements, as by feoffment, last will and testament, etc. The word "title" includes a right, but is the more general word. Every right is a title, though every title is not a right for which an action lies. Jacob.

The investigation of titles is one of the principal branches of conveyancing and in that practice the word "title" has acquired the sense of "history," rather than of "right." Thus, we speak of an abstract of title, and of investigating a title, and describe a document as forming part of the title to property. Sweet.

### Pleading

The right of action which the plaintiff has. The declaration must show the plaintiff's title, and, if such title be not shown in that instrument, the defect cannot be cured by any of the future pleadings. Bac. Abr. "Pleas," etc., B 1.

### Procedure

Every action, petition, or other proceeding has a title, which consists of the name of the court in which it is pending, the names of the parties, etc. Administration actions are further distinguished by the name of the deceased person whose estate is being administered. Every pleading, summons, affidavit, etc., commences with the title. In many cases it is sufficient to give what is called the "short title" of an action, namely, the court, the reference to the record, and the surnames of the first plaintiff and the first defendant. Sweet.

### General

**Absolute title.** As applied to title to land, an exclusive title, or at least a title which excludes all others not compatible with it; an absolute title to land cannot exist at the same time in different persons or in different governments. Johnson v. McIntosh, 21 U.S. 543, 8 Wheat. 543, 588, 5 L.Ed. 681.

**Abstract of title.** See that title.

**Adverse title.** A title set up in opposition to or defeasance of another title, or one acquired or claimed by adverse possession.

**Bond for title.** See Bond.

**Chain of title.** See that title.

**Clear title, good title, merchantable title, marketable title,** are synonymous; "clear title" meaning that the land is free from incumbrances, "good title" being one free from litigation, palpable defects, and grave doubts, comprising both legal and equitable titles and fairly deducible of record. Ogg v. Herman, 71 Mont. 10, 227 P. 476, 477; Veselka v. Forres, Tex.Civ.App., 283 S.W. 303, 306; Sipe v. Greenfield, 116 Okl. 241, 244 P. 424, 425.

**Clear title of record, or clear record title,** means freedom from apparent defects, grave doubts, and litigious uncertainties, and is such title as a reasonably prudent person, with full knowledge, would accept. A title dependent for its validity on extraneous evidence, ex parte affidavits, or written guaranties against the results of litigation is not a clear title of record, and is not such title as equity will require a purchaser to accept. Ammerman v. Karnowski, 109 Okl. 156, 234 P. 774, 776; Cleval v. Sullivan, 258 Mass. 348, 154 N.E. 920, 921.

**Color of title.** See that title.

**Covenants for title.** Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty." Rawle, Cov. § 21.

**Doubtful title.** See that title.

**Equitable title.** A right in the party to whom it belongs to have the legal title transferred to him; or the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another. Wyatt v. Meade County Bank, 40 S.D. 111, 166 N.W. 423, 424; Pogue v. Simon, 47 Or. 6, 81 P. 566, 567, 114 Am. St.Rep. 903, 8 Ann.Cas. 474; Karalis v. Agnew, 111 Minn. 522, 127 N.W. 440, 441; Joy v. Midland State Bank of Omaha, Neb., 23 S.D. 262, 133 N.W. 276, 277; Harris v. Mason, 120 Tenn. 668, 115 S.W. 1146, 25 L.R.A.(N.S.) 1101; Niles v. Anderson, 5 How. (Miss.) 365, 385, quoted in Ayres v. U. S., 42 Ct.Cl. 385, 413. See Equitable Estate.

**Examination of title,** see Examination.

**Imperfect title.** One which requires a further exercise of the granting power to pass the fee in land, or which does not convey full and absolute dominion. Paschal v. Perez, 7 Tex. 367; Paschal v. Dangerfield, 37 Tex. 300; Lambert v. Gant, Tex. Civ.App., 290 S.W. 548, 551.

**Legal title.** See that title.

**Lucrative title.** In the civil law, title acquired without the giving of anything in exchange for it; the title by which a person acquires anything which comes to him as a clear gain, as, for instance, by gift, descent, or devise. Opposed to "onerous title," as to which see *infra*.

**Marketable title.** See that title.

**Onerous title.** In the civil law, title to property acquired by the giving of a valuable consideration for it, such as the payment of money, the rendition of services, the performance of conditions, the assumption of obligations, or the discharge of liens on the property; opposed to "lucrative" title, or one acquired by gift or otherwise without the giving of an equivalent. Scott v. Ward, 13 Cal. 471; Kircher v. Murray, C.C.A.Tex.,

54 F. 617, 624; *Yates v. Houston*, 3 Tex. 453; Rev. Civ.Code La. 1900, art. 3556, subd. 22.

**Paper title.** A title to land evidenced by a conveyance or chain of conveyances; the term generally implying that such title, while it has color or plausibility, is without substantial validity.

**Passive title.** In Scotch law. A title incurred by an heir in heritage who does not enter as heir in the regular way, and therefore incurs liability for all the debts of the decedent, irrespective of the amount of assets. *Paterson*.

**Perfect title.** Various meanings have been attached to this term: (1) One which shows the absolute right of possession and of property in a particular person. *Henderson v. Beatty*, 124 Iowa, 163, 99 N.W. 716; *Wilcox Lumber Co. v. Bullock*, 109 Ga. 532, 35 S.E. 52; *Donovan v. Pitcher*, 53 Ala. 411, 25 Am.Rep. 634. (2) A grant of land which requires no further act from the legal authority to constitute an absolute title to the land taking effect at once. *Hancock v. McKinney*, 7 Tex. 457. (3) A title which does not disclose a patent defect suggesting the possibility of a lawsuit to defend it; a title such as a well-informed and prudent man paying full value for the property would be willing to take. *Birge v. Bock*, 44 Mo.App. 77. (4) A title which is good both at law and in equity. *Warner v. Middlesex Mut. Assur. Co.*, 21 Conn. 449. (5) One which is good and valid beyond all reasonable doubt. *Sheehy v. Miles*, 93 Cal. 288, 28 P. 1046; *Reynolds v. Borel*, 86 Cal. 538, 25 P. 67. (6) A marketable or merchantable title. *Ross v. Smiley*, 18 Colo.App. 204, 70 P. 766; *McCleary v. Chipman*, 32 Ind.App. 489, 68 N.E. 320.

**Presumptive title.** A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property, (*jus possessionis*), without any apparent right, or any pretense of right, to hold and continue such possession.

**Record title.** See Record.

**Singular title.** The title by which a party acquires property as a singular successor.

**Tax title.** See Tax.

**Title by adverse possession or prescription.** The right which a possessor acquires to property by reason of his adverse possession during a period of time fixed by law. *Walker v. Steffes*, 139 Ga. 520, 77 S.E. 580.

The elements of "title by prescription" are open, visible and continuous use under a claim of right, adverse to and with knowledge of owner. *Dry Gulch Ditch Co. v. Hutton*, 170 Or. 656, 133 P.2d 601, 610.

Such title is equivalent to a "title by deed" and cannot be lost or divested except in the same manner, and mere recognition of title in another after such acquisition will not operate to divest the adverse claimant of that which he has acquired. *Maloney v. Bedford*, 290 Ky. 647, 162 S.W.2d 198, 199.

**Title by descent.** That title which one acquires by law as heir to the deceased owner. *Stabel v. Gertel*, N.J.Sup., 11 N.J.Misc. 247, 165 A. 876, 879.

**Title by prescription.** See Title by adverse possession, supra.

**Title deeds.** Deeds which constitute or are the evidence of title to lands.

**Title defective in form.** Title on face of which some defect appears, not one that may prove defective by circumstances or evidence dehors the instrument. Title defective in form cannot be basis of prescription. *Thompson v. Futral*, 18 La. App. 685, 136 So. 654.

**Title insurance.** See Insurance.

**Title of a cause.** The distinctive appellation by which any cause in court, or other juridical proceeding, is known and discriminated from others.

**Title of an act.** The heading, or introductory clause, of a statute, wherein is briefly recited its purpose or nature, or the subject to which it relates.

**Title of clergymen, (to orders.)** Some certain place where they may exercise their functions; also an assurance of being preferred to some ecclesiastical benefice. 2 Steph.Comm. 661.

**Title of declaration.** That preliminary clause of a declaration which states the name of the court and the term to which the process is returnable.

**Title of entry.** The right to enter upon lands. *Cowell*.

**Title retention.** A form of lien, in the nature of a chattel mortgage, to secure the purchase price. *American Indemnity Co. v. Allen, for Use and Benefit of Commerce Union Bank*, 176 Tenn. 134, 138 S.W.2d 445, 446.

**Title to orders.** In English ecclesiastical law, a title to orders is a certificate of preferment or provision required by the thirty-third canon, in order that a person may be admitted into holy orders, unless he be a fellow or chaplain in Oxford or Cambridge, or master of arts of five years' standing in either of the universities, and living there at his sole charges; or unless the bishop himself intends shortly to admit him to some benefice or curacy. 2 Steph.Comm. 661.

**Unmarketable title.** See that title.

**TITULADA.** In Spanish law. Title. *White*, New Recop. b. 1, tit. 5, c. 3, § 2.

**TITULARS OF ERECTION.** Persons who in Scotland, after the Reformation, obtained grants from the crown of the monasteries and priories then erected into temporal lordships. Thus the titles formerly held by the religious houses, as well as the property of the lands, were conferred on these grantees, who were also called "lords of erection" and "titulars of the teinds." *Bell*.

**TITULUS.** Lat. Title. In the civil law. The source or ground of possession; the means whereby possession of a thing is acquired, whether such possession be lawful or not.

## TITULUS

In old Ecclesiastical law. A temple or church; the material edifice. So called because the priest in charge of it derived therefrom his name and title. Spelman.

**TITULUS EST JUSTA CAUSA POSSIDENDI ID QUOD NOSTRUM EST; DICITUR A TUENDO.** 8 Coke, 153. A title is the just right of possessing that which is our own; it is so called from "*tuendo*," defending.

**TO.** This is ordinarily a word of exclusion, when used in describing premises; it excludes the terminus mentioned. *Littlefield v. Hubbard*, 120 Me. 226, 113 A. 304, 306; *Sinford v. Watts*, 123 Me. 230, 122 A. 573, 574; *Skeritt Inv. Co. v. City of Englewood*, 79 Colo. 645, 248 P. 6, 8. It may be a word of inclusion, and may also mean "into." *People v. Poole*, 284 Ill. 39, 119 N.E. 916, 917; *Thompson v. Reynolds*, 59 Utah, 416, 204 P. 516, 518.

**TO HAVE AND TO HOLD.** The words in a conveyance which show the estate intended to be conveyed. Thus, in a conveyance of land in fee-simple, the grant is to "A. and his heirs, to have and to hold the said [land] unto and to the use of the said A., his heirs and assigns forever." *Williams*, Real Prop. 198.

Strictly speaking, however, the words "to have" denote the estate to be taken, while the words "to hold" signify that it is to be held of some superior lord, i. e., by way of tenure, (*q. v.*). The former clause is called the "*habendum*," the latter, the "*tenendum*." Co.Litt. 6a.

**TO WIT.** That is to say; namely; *scilicet*; *vide licet*. *Spears v. Wise*, 187 Ala. 346, 65 So. 786; *Williams v. Shows*, 187 Ala. 132, 65 So. 839, 840; *J. R. Kilgore & Son v. Shannon & Co.*, 6 Ala.App. 537, 60 So. 520, 525.

**TOALIA.** In feudal law. A towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation. Cowell.

**TOBACCONIST.** Any person, firm, or corporation whose business it is to manufacture cigars, snuff, or tobacco in any form. Act of congress of July 13, 1866, § 9 (14 Stat. 120).

**TOFT.** A place or piece of ground on which a house formerly stood, which has been destroyed by accident or decay. 2 *Broom & H.Comm.* 17.

**TOFTMAN.** In old English law. The owner of a toft. Cowell; Spelman.

**TOGATI.** Lat. In Roman law. Advocates; so called under the empire because they were required, when appearing in court to plead a cause, to wear the *toga*, which had then ceased to be the customary dress in Rome. Vicat.

**TOGETHER.** In union with, along with. *Gilmore v. Mulvihill*, 109 Mont. 601, 98 P.2d 335, 341.

**TOILET.** Act or process of dressing up. *Inecto, Inc., v. Higgins*, D.C.N.Y., 21 F.Supp. 418, 426. A cleansing and grooming of one's person. *Mennen Co. v. Kelly*, C.C.A.N.J., 137 F.2d 866, 868.

**TOILET PREPARATION.** Within statute taxing a "toilet preparation", any preparation which is

intended to affect, and conceivably, to improve the bodily appearance. *Peroxide Chemical Co. v. Sheehan*, C.C.A.Mo., 108 F.2d 306, 308, 309.

**TOKEN.** A sign or mark; a material evidence of the existence of a fact. Thus, cheating by "false tokens" implies the use of fabricated or deceitfully contrived material objects to assist the person's own fraud and falsehood in accomplishing the cheat. See *State v. Green*, 18 N.J. Law, 181; *State v. Leonard*, 73 Or. 451, 144 P. 113, 118; *Smith v. State*, 74 Fla. 594, 77 So. 274, 277; *State v. Whiteaker*, 64 Or. 297, 129 P. 534, 537.

**TOKEN-MONEY.** A conventional medium of exchange consisting of pieces of metal, fashioned in the shape and size of coins, and circulating among private persons, by consent, at a certain value. No longer permitted or recognized as money. 2 *Chit.Com.Law*, 182.

**TOLERATE.** To allow so as not to hinder; to permit as something not wholly approved of; to suffer; to endure. *Gregory v. U. S.*, 17 Blatchf. 330, Fed.Cas.No. 5,803.

**TOLERATION.** The allowance of religious opinions and modes of worship which are contrary to, or different from, those of the established church or belief. Webster.

**TOLERATION ACT.** The statute 1 W. & M. St. 1, c. 18, for exempting Protestant dissenters from the penalties of certain laws is so called. Brown.

**TOLL, v.** To bar, defeat, or take away; thus, to toll the entry means to deny or take away the right of entry.

To toll the statute of limitations means to show facts which remove its bar of the action.

**TOLL, n.** A sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature. See *Sands v. Manistee River Imp. Co.*, 8 S.Ct. 113, 123 U.S. 288, 31 L.Ed. 149; *Anthony v. Kozar*, D.C.Or., 11 F.2d 641, 645; *City of Madera v. Black*, 181 Cal. 306, 184 P. 397, 400; *Rogge v. United States*, C.C.A.Alaska, 128 F.2d 800, 802. The price of the privilege of travel over that particular highway and it is a quid pro quo and rests on principle that he who receives the toll does or has done something as an equivalent to him who pays it. *State ex rel. Washington Toll Bridge Authority v. Yelle*, 195 Wash. 636, 82 P.2d 120, 125.

In English law. An excise of goods; a seizure of some part for permission of the rest. It has two significations: A liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market; a tribute or custom paid for passage. Wharton.

A Saxon word signifying, properly, a payment in towns, markets, and fairs for goods and cattle bought and sold. It is a reasonable sum of money due to the owner of the fair or market, upon sale of things tollable within the same. The word is used for a liberty as well to take as to be free from toll. Jacob.

In modern English law. A reasonable sum due to the lord of a fair or market for things sold

there which are tollable. 1 Crabb, Real Prop. p. 350, § 683.

**Toll and Team**

Words constantly associated with Saxon and old English grants of liberties to the lords of manors. Bract. fols. 56, 104b, 124b, 154b. They appear to have imported the privileges of having a market, and jurisdiction of villeins. See Team.

**Toll Bridge**

A part of the public highway the same as a bridge built by general taxation, the only difference being that it is made at the expense of others, instead of the public, and the cost of construction and maintenance is reimbursed by a toll fixed for the purpose. White River Bridge Co. v. Hurd, 159 Ark. 652, 252 S.W. 917.

**Toll Road**

A road or highway over which the public has the right to travel upon payment of toll, and on which the parties entitled to such toll have the right to erect gates and bars to insure its payment. In re Newland, C.C.A.Pa., 115 F.2d 165, 166.

**Toll Gatherer**

The officer who takes or collects toll.

**Toll-Thorough**

In English law. A toll for passing through a highway, or over a ferry or bridge. Cowell. A toll paid to a town for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it. Com. Dig. "Toll." C. A toll claimed by an individual where he is bound to repair some particular highway. 3 Steph.Comm. 257. And see King v. Nicholson, 12 East, 340; Charles River Bridge v. Warren Bridge, 11 Pet. 582, 9 L.Ed. 773.

**Toll Traverse**

In English law. A toll for passing over a private man's ground. Cowell. A toll for passing over the private soil of another, or for driving beasts across his ground. Cro.Eliz. 710.

**Toll-Turn**

In English law. A toll on beasts returning from a market. 1 Crabb, Real Prop. p. 101, § 102. A toll paid at the return of beasts from fair or market, though they were not sold. Cowell.

**TOLLAGE.** Payment of toll; money charged or paid as toll; the liberty or franchise of charging toll.

**TOLLBOOTH.** A prison; a customhouse; an exchange; also the place where goods are weighed. Wharton.

**TOLLDISH.** A vessel by which the toll of corn for grinding is measured.

**TOLLE VOLUNTATEM ET ERIT OMNIS ACTUS INDIFFERENS.** Take away the will, and every action will be indifferent. Bract. fol. 2.

**TOLLER.** One who collects tribute or taxes.

**TOLLERE.** Lat. In the civil law. To lift up or raise; to elevate; to build up.

**TOLLS.** In a general sense, any manner of customs, subsidy, prestation, imposition, or sum of money demanded for exporting or importing of any wares or merchandise to be taken of the buyer. 2 Inst. 58. For "Fair and Reasonable Tolls," see that title.

**TOLLSESTER.** An old excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale. Cowell.

**TOLSEY.** The same as "tollbooth." Also a place where merchants meet; a local tribunal for small civil causes held at the Guildhall, Bristol.

**TOLT.** A writ whereby a cause depending in a court baron was taken and removed into a county court. Old Nat. Brev. 4.

**TOLTA.** In old English law. Wrong; rapine; extortion. Cowell.

**TOLZEY COURT.** An inferior court of record having civil jurisdiction, still existing at Bristol, England.

**TOMB.** An excavation in earth or rock, intended to receive the dead body of a human being. Leap-hart v. Harmon, 186 S.C. 362, 195 S.E. 628, 629.

**TOMBSTONE.** Stone marking place of burial and usually inscribed with memorial of deceased. Anshe Sephard Congregation v. Weisblatt, 170 Md. 390, 185 A. 107, 108.

**TON.** A measure of weight; differently fixed, by different statutes, at two thousand pounds avoirdupois, (1 Rev.St.N.Y. 609, § 35,) or at twenty hundred-weights, each hundred-weight being one hundred and twelve pounds avoirdupois, (19 U.S. C.A. § 420); Chemung Iron & Steel Co. v. Mersereau Metal Bed Co., Sup., 179 N.Y.S. 577, 578.

**TONNAGE.** The capacity of a vessel for carrying freight or other loads, calculated in tons. But the way of estimating the tonnage varies in different countries. In England, tonnage denotes the actual weight in tons which the vessel can safely carry; in America, her carrying capacity estimated from the cubic dimensions of the hold. See Roberts v. Opdyke, 40 N.Y. 259; Kiessig v. San Diego County, 51 Cal.App.2d 47, 124 P.2d 163, 166.

The "tonnage" of a vessel is her capacity to carry cargo, and a charter of "the whole tonnage" of a ship transfers to the charterer only the space necessary for that purpose. Thwing v. Insurance Co., 103 Mass. 405, 4 Am.Rep. 567.

The tonnage of a vessel is her internal cubical capacity, in tons. Inman S. S. Co. v. Tinker, 94 U.S. 238, 24 L.Ed. 118.

**TONNAGE-DUTY.**

In American law. A tax laid upon vessels according to their tonnage or cubical capacity.

## TONNAGE-DUTY

A tonnage duty is a duty imposed on vessels in proportion to their capacity. The vital principle of a tonnage duty is that it is imposed, whatever the subject, solely according to the rule of weight; either as to the capacity to carry or the actual weight of the thing itself. *Inman S. S. Co. v. Tinker*, 94 U.S. 238, 24 L.Ed. 118; *Ross v. Mayor and Council of Borough of Edgewater*, 115 N.J.L. 477, 180 A. 866.

A tonnage tax is defined to be a duty levied on a vessel according to the tonnage or capacity. It is a tax upon the boat as an instrument of navigation, and not a tax upon the property of a citizen of the state. *The North Cape*, 6 Biss. 505. Fed.Cas.No.10,316.

In English law. A duty imposed by parliament upon merchandise exported and imported, according to a certain rate upon every ton. *Brown*.

**TONNAGE-RENT.** When the rent reserved by a mining lease or the like consists of a royalty on every ton of minerals gotten in the mine, it is often called a "tonnage-rent." There is generally a dead rent in addition. *Sweet*.

**TONNAGIUM.** In old English law. A custom or impost upon wines and other merchandise exported or imported, according to a certain rate per ton. *Spelman*; *Cowell*.

**TONNETIGHT.** In old English law. The quantity of a ton or tun, in a ship's freight or bulk, for which tonnage or tunnage was paid to the king. *Cowell*.

**TONODERACH.** In old Scotch law. A thief-taker.

**TONSURA.** Lat. In old English law. A shaving, or polling; the having the crown of the head shaven; tonsure. One of the peculiar badges of a clerk or clergyman.

**TONSURE.** In old English law. A being shaven; the having the head shaven; a shaven head. 4 Bl. Comm. 367.

**TONTINE.** In French law. A species of association or partnership formed among persons who are in receipt of perpetual or life annuities, with the agreement that the shares or annuities of those who die shall accrue to the survivors. This plan is said to be thus named from Tonti, an Italian, who invented it in the seventeenth century. The principle is used in some forms of life insurance. *Merl. Repert*; *Cahn v. Northwestern Mut. Life Ins. Co.*, 208 Ill.App. 317, 322; *Gourley v. Northwestern Nat. Life Ins. Co.*, 94 Okl. 46, 220 P. 645, 646.

Under the "Tontine" plan of insurance, no accumulation or earnings are credited to the policy unless it remains in force for the Tontine period of a specified number of years. Thus those who survive the period and keep their policies in force share in the accumulated funds and those who die or permit their policies to lapse during period do not; neither do their beneficiaries participate in such accumulation. *Commercial Travelers' Ins. Co. v. Carlson*, 104 Utah 41, 137 P.2d 656, 660.

**TOOK AND CARRIED AWAY.** In criminal pleading. Technical words necessary in an indictment for simple larceny.

**TOOL.** An instrument of manual operation, that is, an instrument to be used and managed by the hand instead of being moved and controlled by machinery. *Lovewell v. Westchester F. Ins. Co.*, 124 Mass. 420, 26 Am.Rep. 671; *Reffitt v. Southern Sheet & Tin Plate Co.*, 170 Ky. 362, 186 S.W. 155,

157; *Sturgis Nat. Bank v. Maryland Casualty Co.*, 252 Mich. 426, 233 N.W. 367, 369.

### Simple Tool

In law of Master and Servant. One whose condition can be seen at a glance, or by slightest inspection. Track wrench used to tighten and loosen nuts on railroad track held "simple tool." *Allen Gravel Co. v. Yarbrough*, 133 Mass. 652, 98 So. 117, 118; *Arkansas Cent. R. Co. v. Goad*, 136 Ark. 467, 206 S.W. 901, 902; *Swaim v. Chicago, R. I. & P. Ry. Co.*, Iowa, 170 N.W. 296, 299; *Kromer v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 139 Minn. 424, 166 N.W. 1072, 1073; *Ronconi v. Northwestern Pac. R. Co.*, 35 Cal.App. 560, 170 P. 635, 636.

"Simple tool doctrine" is based on the idea that ordinarily an employee has better opportunity than employer to observe defects and guard himself against them and that the employer should not be charged with duty of care or safety of employee with respect to a matter in which the employee is in better position to care for himself. A "tool" is an instrument of manual operation. *Tucker v. Holly Hill Lumber Co.*, 200 S.C. 259, 20 S.E.2d 704, 706.

### Tools of Trade, Apparatus of Trade

And like terms under exemption statutes and bankruptcy act cover tools that vary according to the trade, handicraft or art in which they are used. The meaning of the word "tool" dominates the meaning of such terms. *Comer v. Powell*, Tex.Civ.App., 189 S.W. 88, 91; *Lindquist v. Clayton*, 54 Utah 79, 179 P. 655, 656; *Hooper v. Kennedy*, 100 Vt. 314, 137 A. 194, 196; *Busse v. Murray Meat & Live Stock Co.*, 45 Utah 596, 147 P. 626, 628.

**TORPEDO DOCTRINE.** Attractive nuisance doctrine. *Schock v. Ringling Bros. and Barnum & Bailey Combined Shows*, 5 Wash.2d 599, 105 P.2d 838, 843.

**TORRENS TITLE SYSTEM.** A system under which, upon the landowner's application the court may, after appropriate proceedings, direct the issuance of a certificate of title. With exceptions, this certificate is conclusive as to applicant's estate in land. This system is so called, the author being Sir Robert Torrens.

**TORT** (from Lat. torquere, to twist, tortus, twisted, wrested aside). A private or civil wrong or injury. A wrong independent of contract. 1 Hill, Torts 1. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. *Coleman v. California Yearly Meeting of Friends Church*, 27 Cal.App.2d 579, 81 P.2d 469, 470. There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties. *Diver v. Miller*, Del.Super., 148 A. 291, 293.

Three elements of every tort action are: Existence of legal duty from defendant to plaintiff, breach of duty, and damage as proximate result. *City of Mobile v. McClure*, 221 Ala. 51, 127 So. 832, 835.

A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the in-

fraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual. In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases, such damage is necessary. Code Ga. 1882, § 2951 (Civ.Code 1910, § 4403). And see Hayes v. Insurance Co., 125 Ill. 626, 18 N.E. 322, 1 L.R.A. 303; Railway Co. v. Hennegan, 33 Tex. Civ.App. 314, 76 S.W. 453. Churchill v. Howe, 186 Mich. 107, 152 N.W. 989, 991; Strachan Shipping Co. v. Hazlip-Hood Cotton Co., 35 Ga.App. 94, 132 S.E. 454, 459; Kelper v. Anderson, 138 Minn. 392, 165 N.W. 237, 239, L.R.A.1918C, 299. A violation of a right in rem which plaintiff has as against all persons with whom he comes in contact or the violation of a right which is created by law and not by any act of parties. Mitchell v. Health Culture Co., 349 Mo. 475, 162 S.W.2d 233, 237.

#### Maritime Tort

See Maritime.

#### Personal Tort

One involving or consisting in an injury to the person or to the reputation or feelings, as distinguished from an injury or damage to real or personal property, called a "property tort." Mumford v. Wright, 12 Colo.App. 214, 55 P. 744. Gray v. Blight, C.C.A.Colo., 112 F.2d 696, 699.

#### Property Tort

See Personal Tort, supra.

#### Quasi Tort

Though not a recognized term of English law, may be conveniently used in those cases where a man who has not committed a tort is liable as if he had. Thus, a master is liable for wrongful acts done by his servant in the course of his employment. Broom, Com. Law, 690; Underh. Torts, 29.

#### Willful Tort

See that title.

**TORT-FEASOR.** A wrong-doer; one who commits or is guilty of a tort. Gordon v. Lee, 133 Me. 361, 178 A. 353, 355.

#### Joint Tort-Feasors

To be "joint tort-feasors," the parties must either act together in committing the wrong, or their acts, if independent of each other, must unite in causing a single injury. Young v. Dille, 127 Wash. 398, 220 P. 782, 784; Anderson v. Smith, Tex.Civ.App., 231 S.W. 142, 144; Kirkland v. Ensign-Bickford Co., D.C.Conn., 267 F. 472, 475; Verheyen v. Dewey, 27 Idaho 1, 146 P. 1116, 1119; The Ross Coddington, C.C.A.N.Y., 6 F.2d 191, 192; Anderson v. Smith, Tex.Civ.App., 231 S.W. 142, 144.

**TORTIOUS.** Wrongful; of the nature of a tort. Formerly certain modes of conveyance (*e. g.*, feoffments, fines, etc.) had the effect of passing not merely the estate of the person making the conveyance, but the whole fee-simple, to the injury of the person really entitled to the fee; and they were hence called "tortious conveyances." Litt. § 611; Co. Litt. 271b, n. 1; 330b, n. 1. But this operation has been taken away. Sweet.

**TORTURA LEGUM PESSIMA.** The torture or wresting of laws is the worst [kind of torture.] 4 Bacon's Works, 434.

**TORTURE.** In old criminal law. The question; the infliction of violent bodily pain upon a person, by means of the rack, wheel, or other engine, under judicial sanction and superintendence, in connection with the interrogation or examination of the person, as a means of extorting a confession of guilt, or of compelling him to disclose his accomplices.

**TORY.** Originally a nickname for the wild Irish in Ulster. Afterwards given to, and adopted by, one of the two great parliamentary parties which have alternately governed Great Britain since the Revolution in 1688. Wharton.

The name was also given, in America, during the struggle of the colonies for independence, to the party of those residents who favored the side of the king and opposed the war.

**TOT.** In old English practice. A word written by the foreign opposer or other officer opposite to a debt due the king, to denote that it was a good debt; which was hence said to be *totted*.

**TOTA CURIA.** L. Lat. In the old reports. The whole court.

**TOTAL.** Whole, not divided, lacking no part, entire, full, complete, the whole amount. In re Merritt's Estate, Sur., 180 N.Y.S. 877, 879; Jefferson Standard Life Ins. Co. v. King, 165 S.C. 219, 163 S.E. 653, 656; Utter, absolute. Glaze v. Hart, 225 Mo.App. 1205, 36 S.W.2d 684.

**TOTAL DEPENDENCY.** Within Workmen's Compensation Acts exist where the dependent subsists entirely on the earnings of the workman. Garbutt v. Stoll, 287 Mich. 396, 283 N.W. 624, 626; Burrows v. Industrial Commission, 246 Wis. 152, 16 N.W.2d 434, 435.

**TOTAL DISABILITY.** See Disability.

**TOTAL EVICTION.** That which occurs when the possessor is wholly deprived of his rights in the premises.

#### TOTAL LOSS.

**Fire insurance.** The complete destruction of the insured property by fire, so that nothing of value remains from it; as distinguished from a *partial* loss, where the property is damaged, but not entirely destroyed. Springfield Fire & Marine Ins. Co. of Springfield, Mass., v. Shapoff, 179 Ky. 804, 201 S.W. 1116, 1118; Fire Ass'n of Philadelphia v. Strayhorn, Tex.Com.App., 211 S.W. 447, 448, 449; Lowry v. Fidelity-Phoenix Fire Ins. Co., 272 S.W. 79, 80, 219 Mo.App. 121; Roquette v. Farmers Ins. Co., 191 N.W. 772, 774, 49 N.D. 478; Teter v. Franklin Fire Ins. Co., 82 S.E. 40, 42, 74 W.Va. 344.

Test whether building burned is "total loss" is whether substantial portion is left standing in condition reasonably suitable as basis on which to reconstruct building in like condition as to strength, security, and utility as it was before fire. Commerce Ins. Co. v. Sergl, Tex.Civ.App., 60 S.W.2d 1046.

**Marine insurance.** The entire destruction or loss, to the insured, of the subject-matter of the



## TOTAL

policy, by the risks insured against. *St. Paul Fire & Marine Ins. Co. v. Beacham*, 128 Md. 414, 97 A. 708, 709, L.R.A.1916F, 1168.

**Actual total loss.** The total loss of the vessel covered by a policy of insurance, by its real and substantive destruction, by injuries which leave it no longer existing *in specie*, by its being reduced to a wreck irretrievably beyond repair, or by its being placed beyond the control of the insured and beyond his power of recovery. Distinguished from a *constructive* total loss, which occurs where the vessel, though injured by the perils insured against, remains *in specie* and capable of repair or recovery, but at such an expense, or under such other conditions, that the insured may claim the whole amount of the policy upon abandoning the vessel to the underwriters. In such cases the insured is entitled to indemnity as for a total loss. An exception to the rule requiring abandonment is found in cases where the loss occurs in foreign ports or seas, where it is impracticable to repair. In such cases the master may sell the vessel for the benefit of all concerned, and the insured may claim as for a total loss by accounting to the insurer for the amount realized on the sale.

**Constructive total loss.** See Actual total loss, *supra*.

**Partial loss.** Where an injury results to the vessel from a peril insured against, but where the loss is neither actually nor constructively total. *Globe Ins. Co. v. Sherlock*, 25 Ohio St. 50, 64; *Burt v. Insurance Co.*, 9 Hun (N.Y.) 383; *Carr v. Insurance Co.*, 109 N.Y. 504, 17 N.E. 369; *Wallerstein v. Insurance Co.*, 3 Rob. (N.Y.) 528.

See, also, Fire Insurance, *supra*.

**TOTIDEM VERBIS.** Lat. In so many words.

**TOTIES QUOTIES.** Lat. As often as occasion shall arise.

**TOTIS VIRIBUS.** Lat. With all one's might or power; with all his might; very strenuously.

**TOTTED.** A good debt to the crown, *i. e.*, a debt paid to the sheriff, to be by him paid over to the king. *Cowell*; *Mozley & Whitley*.

**TOTTEN TRUST.** See Trust.

**TOTUM PRÆFERTUR UNICUIQUE PARTI.** 3 Coke, 41. The whole is preferable to any single part.

**TOUCH.** In insurance law. To stop at a port. If there be liberty granted by the policy to *touch*, or to *touch and stay*, at an intermediate port on the passage, the better opinion now is that the insured may *trade* there, when consistent with the object and the furtherance of the adventure, by breaking bulk, or by discharging and taking in cargo, provided it produces no unnecessary delay, nor enhances nor varies the risk. 3 Kent, Comm. 314.

**TOUCH AND STAY.** Words frequently introduced in policies of insurance, giving the party in-

sured the right to stop and stay at certain designated points in the course of the voyage. A vessel which has the power to touch and stay at a place in the course of the voyage must confine herself strictly to the terms of the liberty so given; for any attempt to trade at such a port during such a stay, as, by shipping or landing goods, will amount to a species of deviation which will discharge the underwriters, unless the ship have also liberty to trade as well as to touch and stay at such a place. 1 Marsh. Ins. 275.

**TOUCHING A DEAD BODY.** It was an ancient superstition that the body of a murdered man would bleed freshly when touched by his murderer. Hence, in old criminal law, this was resorted to as a means of ascertaining the guilt or innocence of a person suspected of the murder.

**TOUJOURS ET UNCORE PRIST.** L. Fr. Always and still ready. This is the name of a plea of tender.

**TOUR D'ECHELLE.** In French law. An easement consisting of the right to rest ladders upon the adjoining estate, when necessary in order to repair a party-wall or buildings supported by it.

Also the vacant space surrounding a building left unoccupied in order to facilitate its reparation when necessary. *Merl. Repert.*

**TOURIST.** One who makes a tour; one who travels from place to place for pleasure or culture. *Jones v. State*, 64 Ga.App. 376, 13 S.E.2d 462, 465.

**TOURN.** In old English law. A court of record, having criminal jurisdiction, in each county, held before the sheriff, twice a year, in one place after another, following a certain circuit or rotation.

**TOUT.** Fr. All; whole; entirely. *Tout temps prist*, always ready.

**TOUT CE QUE LA LOI NE DEFEND PAS EST PERMIS.** Everything is permitted which is not forbidden by law.

**TOUT TEMPS PRIST.** L. Fr. Always ready. The emphatic words of the old plea of tender; the defendant alleging that he has always been ready, and still is ready, to discharge the debt. 3 Bl. Comm. 303; 2 Salk. 622.

**TOUT UN SOUND.** L. Fr. All one sound; sounding the same; *idem sonans*.

**TOUTE EXCEPTION NON SURVEILLÉE TEND À PRENDRE LA PLACE DU PRINCIPE.** Every exception not watched tends to assume the place of the principle.

**TOWAGE.** The act or service of towing ships and vessels, usually by means of a small steamer called a "tug." That which is given for towing ships in rivers.

The drawing a ship or barge along the water by another ship or boat, fastened to her, or by men or horses, etc., on land. It is also money which is given by bargemen to the owner of ground next a river, where they tow a barge or

other vessel. *Jacob. And see Ryan v. Hook*, 34 Hun (N.Y.) 191; *The Kingaloch*, 26 Eng. Law & Eq. 597; *The Egypt*, D.C.Va., 17 F. 359, 370.

**TOWAGE SERVICE.** In admiralty law. A service rendered to a vessel, by towing, for the mere purpose of expediting her voyage, without reference to any circumstances of danger. It is confined to vessels that have received no injury or damage. *The Reward*, 1 W. Rob. 177; *The Athenian*, D.C.Mich., 3 F. 248, 249; *The Kennebec*, C.C. A.Tex., 231 F. 423, 425; *The Mercer*, C.C.A.N.Y., 297 F. 981, 984.

**TOWARD.** The word has been held to mean not simply "to" but to include "about." *Hudson v. State*, 6 Tex.App. 565, 32 Am.Rep. 593. Also, in a course or line leading to, in the direction of. *People v. Kreidler*, 180 Mich. 654, 147 N.W. 559, 560; *State v. Trent*, 122 Or. 444, 259 P. 893, 898.

## TOWN.

### American Law

A civil and political division of a state, varying in extent and importance, but usually one of the divisions of a county. In the New England states, the town is the political unit, and is a municipal corporation. In some other states, where the county is the unit, the town is merely one of its subdivisions, but possesses some powers of local self-government. In still other states, such subdivisions of a county are called "townships," and "town" is the name of a village, borough, or smaller city. See *Herrman v. Guttenberg*, 62 N.J.Law, 605, 43 A. 703; *Van Riper v. Parsons*, 40 N.J.Law, 1; *State v. Denny*, 118 Ind. 449, 21 N.E. 274, 4 L.R.A. 65; *Guadalupe County v. Poth* (Tex.Civ.App.), 163 S.W. 1050, 1051; *People v. Adams State Bank*, 272 Ill. 277, 111 N.E. 989, 991; *In re Opinion of the Justices*, 229 Mass. 601, 119 N.E. 778, 781.

### English Law

Originally, a vill or tithing; but now a generic term, which comprehends under it the several species of cities, boroughs, and common towns. 1 Bl. Comm. 114.

The word "town" is quite commonly used as a generic term and as including both cities and villages. *Village of Ashley v. Ashley Lumber Co.*, 40 N.D. 515, 169 N.W. 87, 90; *Plainfield-Union Water Co. v. Inhabitants of City of Plainfield*, 84 N.J.L. 634, 87 A. 448, 450.

**TOWN AGENT.** Under the prohibitory liquor laws in force in some of the New England states a town agent is a person appointed in each town to purchase intoxicating liquors for the town and having the exclusive right to sell the same for the permitted purposes, medical, mechanical, scientific, etc. He either receives a fixed salary or is permitted to make a small profit on his sales. The stock of liquors belongs to the town, and is bought with its money. See *Black, Intox. Liq.* §§ 204, 205.

**TOWN CLAUSE.** In English practice. A cause tried at the sittings for London and Middlesex, 3 Steph. Comm. 517.

**TOWN COLLECTOR.** One of the officers of a town charged with collecting the taxes assessed for town purposes.

**TOWN COMMISSIONER.** In some of the states where the town is the political unit the town commissioners constitute a board of administrative officers charged with the general management of the town's business.

**TOWN ORDER OR WARRANT.** An official direction in writing by the auditing officers of a town, directing the treasurer to pay a sum of money.

**TOWN POUND.** A place of confinement maintained by a town for estrays.

**TOWN PURPOSE.** When it is said that taxation by a town, or the expenditure of the town's money, must be for town purposes, it is meant that the purposes must be public with respect to the town; *i. e.*, concern the welfare and advantage of the town as a whole.

**TOWN-REEVE.** The reeve or chief officer of a town.

**TOWN TAX.** Such tax as a town may levy for its peculiar expenses; as distinguished from a county or state tax.

**TOWN TREASURER.** The treasurer of a town which is an organized municipal corporation.

**TOWN-CLERK.** In those states where the town is the unit for local self-government, the town clerk is a principal officer who keeps the records, issues calls for town-meetings, and performs generally the duties of a secretary to the political organization. See *Seamons v. Fitts*, 21 R.I. 236, 42 A. 863.

**TOWN-CRIER.** An officer in a town whose business it is to make proclamations.

**TOWN-HALL.** The building maintained by a town for town-meetings and the offices of the municipal authorities.

**TOWN-MEETING.** Under the municipal organization of the New England states, the town-meeting is a legal assembly of the qualified voters of a town, held at stated intervals or on call, for the purpose of electing town officers, and of discussing and deciding on questions relating to the public business, property, and expenses of the town. See *In re Foley*, 8 Misc. 57, 28 N.Y.S. 608; *Railroad Co. v. Mallory*, 101 Ill. 588; *Portland Water Co. v. Town of Portland*, 97 Conn. 628, 118 A. 84, 86; *In re Opinion of the Justices*, 229 Mass. 601, 119 N.E. 778, 781.

**TOWNSHIP.** 1. In surveys of the public land of the United States, a "township" is a division of territory six miles square, containing thirty-six sections.

2. In some of the states, this is the name given to the civil and political subdivisions of a county. *Town, and Liberty Tp. v. Rock Island Tp.*, 44 Okl. 398, 144 P. 1025, 1026; *People v. Stewart*, 281 Ill.

## TOWNSHIP TRUSTEE

365, 118 N.E. 55, 56; City of Hutchinson v. Reno County, 124 Kan. 149, 257 P. 750, 751. Rich v. Industrial Commission, 80 Utah 511, 15 P.2d 641, 645.

**TOWNSHIP TRUSTEE.** One of a board of officers to whom, in some states, affairs of a township are intrusted.

**TOWNSITE.** Portion of public domain segregated by proper authority and procedure as site for a town. Metropolitan Life Ins. Co. v. Keating, 191 Minn. 520, 254 N.W. 813.

**TOXIC.** (Lat. *toxicum*; Gr. *toxikon*.) In medical jurisprudence. Poisonous; having the character or producing the effects of a poison; referable to a poison; produced by or resulting from a poison.

**Toxic convulsions.** Such as are caused by the action of a poison on the nervous system.

**Toxic dementia.** Weakness of mind or feeble cerebral activity, approaching imbecility, resulting from continued use or administration of slow poisons or of the more active poisons in repeated small doses, as in cases of lead poisoning and in some cases of addiction to such drugs as opium or alcohol.

**Toxanemia.** A condition of *anemia* (impoverishment or deficiency of blood) resulting from the action of certain toxic substances or agents.

**Toxemia or toxicemia.** Blood-poisoning; the condition of the system caused by the presence of toxic agents in the circulation; including both *septicemia* and *pyaemia*.

**Toxicosis.** A diseased state of the system due to the presence and action of any poison.

**TOXICAL.** Poisonous; containing poison.

**TOXICANT.** A poison; a toxic agent; any substance capable of producing toxication or poisoning.

**TOXICATE.** To poison. Not used to describe the act of one who administers a poison, but the action of the drug or poison itself.

### Auto-Intoxication

Self-empoisonment from the absorption of the toxic products of internal metabolism, *e. g.*, ptomaine poisoning.

### Intoxication

The state of being poisoned; the condition produced by the administration or introduction into the human system of a poison. This term is popularly used as equivalent to "drunkenness," which, however, is more accurately described as "alcoholic intoxication."

**TOXICOLOGY.** The science of poisons; that department of medical science which treats of poisons, their effect, their recognition, their anti-

dotes, and generally of the diagnosis and therapeutics of poisoning.

**TOXIN.** In its widest sense, this term may denote any poison or toxicant; but as used in pathology and medical jurisprudence it signifies, in general, any diffusible alkaloidal substance (as, the ptomaines, abrin, brucin, or serpent venoms), and in particular the poisonous products of pathogenic (disease-producing) bacteria.

### Anti-Toxin

A product of pathogenic bacteria which, in sufficient quantities, will neutralize the toxin or poisonous product of the same bacteria. In therapeutics, a preventive remedy (administered by inoculation) against the effect of certain kinds of toxins, venoms, and disease-germs, obtained from the blood of an animal which has previously been treated with repeated minute injections of the particular poison or germ to be neutralized.

### Toxicomania

An excessive addiction to the use of toxic or poisonous drugs or other substances; a form of mania or affective insanity characterized by an irresistible impulse to indulgence in opium, cocaine, chloral, alcohol, etc.

### Toxiphobia

Morbid dread of being poisoned; a form of insanity manifesting itself by an excessive and unfounded apprehension of death by poison.

**TOY.** A plaything, often but not necessarily always imaginative of some living or manufactured thing. Steel Stamping Co. v. N. N. Hill Brass Co., D.C.Conn., 17 F.Supp. 18, 20.

**TRABES.** Lat. In civil law. A beam or rafter of a house. Calvin.

In old English law. A measure of grain, containing twenty-four sheaves; a thrave. Spelman.

**TRACEA.** In old English law. The track or trace of a felon, by which he was pursued with the hue and cry; a foot-step, hoof-print, or wheel-track. Bract. fols. 116, 121b.

**TRACING.** A tracing is a mechanical copy or *fac simile* of an original, produced by following its lines, with a pen or pencil, through a transparent medium, called tracing paper. Chapman v. Ferry, C.C.Or., 18 F. 539, 540.

**TRACKS.** A term that may mean rails, or rails and cross-ties, or roadbed according to context. City of Bayonne v. Public Service Ry. Corporation, 98 N.J.L. 255, 119 A. 9. City of Dayton v. South Covington & C. St. Ry. Co., 177 Ky. 202, 197 S.W. 670, 672, L.R.A. 1918B, 476, Ann.Cas.1918E, 229.

### Dead Track

A track having a switch to other tracks at one end only with a bumper at the other end. Hoyer v. Central R. Co. of New Jersey, C.C.A.N.Y., 255 F. 493, 494.

**Track Delivery Shipments**

Carload shipments, as distinguished from ordinary freight unloaded from the cars, known as a "drop shipment" delivery. *Boshell v. Receivers of St. Louis & S. F. R. Co.*, 200 Ala. 366, 76 So. 282, 284.

**TRACT.** A lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension. See *Edwards v. Derrickson*, 28 N.J.L. 45; *Holt v. Wichita County Water Improvement Dist. No. 2*, Tex.Civ.App., 48 S.W.2d 527, 529.

As applied to a mineral location the word "tract" implies a surface location. *Whildin v. Maryland Gold Quartz Mining Co.*, 33 Cal.App. 270, 164 P. 908, 910.

**TRACTOR.** That which draws or is used for drawing as a traction engine, or an automotive vehicle used for drawing or hauling something as a vehicle, plow, harrow, or reaper. *State ex rel. Rice v. Louisiana Oil Corporation*, 174 Misc. 585, 165 So. 423, 425.

**TRACTENT FABRILIA FABRI.** Let smiths perform the work of smiths. 3 Co. Epist.

**TRADAS IN BALLIUM.** You deliver to bail. In old English practice. The name of a writ which might be issued in behalf of a party who, upon the writ *de odio et atia*, had been found to have been maliciously accused of a crime, commanding the sheriff that, if the prisoner found twelve good and lawful men of the county who would be mainperners for him, he should *deliver* him *in bail* to those twelve, until the next assize. *Bract. fol. 123; 1 Reeve, Eng. Law, 252.*

**TRADE.** The act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter. *May v. Sloan*, 101 U.S. 237, 25 L.Ed. 797; *U. S. v. Cassidy*, D.C.Cal., 67 F. 698; *State v. Deckebach*, 113 Ohio St. 347, 149 N.E. 194, 196.

The business which a person has learned and which he carries on for procuring subsistence, or for profit; occupation or employment, particularly mechanical employment; distinguished from the liberal arts and learned professions, and from agriculture. *Woodfield v. Colzey*, 47 Ga. 124; *People v. Warden of City Prison*, 144 N.Y. 529, 39 N.E. 686, 27 L.R.A. 718; *Detroit Taxicab & Transfer Co. v. Callahan*, C.C.A.Mich., 1 F.2d 911, 912. A line of work or a form of occupation pursued as a business or calling, as for a livelihood or for profit; anything practiced as a means of getting a living, money, booty, etc.; mercantile or commercial business in general, or the buying and selling, or exchanging, of commodities, either by wholesale or retail within a country or between countries. *Helvering v. Wilmington Trust Co.*, C.C.A.3, 124 F.2d 156, 158.

All wholesale trade, all buying in order to sell again by wholesale, may be reduced to three sorts: The home trade, the foreign trade of consumption, and the carrying trade. 2 *Smith, Wealth Nat. b. 2, c. 5.*

**TRADE ACCEPTANCE.** A draft or bill of exchange drawn by the seller on the purchaser of

goods sold and accepted by such purchaser. *Luikart v. Massachusetts Bonding & Insurance Co.*, 129 Neb. 771, 263 N.W. 124, 129.

**TRADE AND COMMERCE.** The words "trade" and "commerce," when used in juxtaposition impart to each other enlarged signification, so as to include practically every business occupation carried on for subsistence or profit, and into which the elements of bargain and sale, barter, exchange, or traffic, enter. *State v. Tagami*, 234 P. 102, 105, 195 Cal. 522.

**TRADE AGREEMENT.** See *Collective Labor Agreement.*

**TRADE COMMISSION, FEDERAL.** An act of congress was passed September 26, 1914, creating a Federal Trade Commission, composed of five commissioners appointed by the President with the advice and consent of the Senate. The act provides: "That unfair methods of competition in commerce are hereby declared unlawful," and the commission is "directed to prevent persons, partnerships or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce."

**TRADE DISPUTE.** Within Unemployment Insurance Act barring benefit payments to persons who leave work because of trade dispute, the term includes controversy over working conditions, *American-Hawaiian S. S. Co. v. California Employment Commission*, 24 Cal.2d 716, 151 P.2d 213, 215; unwillingness to cross picket lines, *Mattson Terminals v. California Employment Commission*, 24 Cal.2d 695, 151 P.2d 202, 206.

**TRADE DOLLAR.** A silver coin of the United States, of the weight of four hundred and twenty grains, troy. *Rev.St.U.S. § 3513.*

**TRADE FIXTURES.** See *Fixtures.*

**TRADE-MARK.** Generally speaking, a distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others. It may consist in any symbol or in any form of words, but, as its office is to point out distinctively the origin or ownership of the articles to which it is affixed, it follows that no sign or form of words can be appropriated as a valid trade-mark which, from the nature of the fact conveyed by its primary meaning, others may employ with equal truth and with equal right for the same purpose. *Jantzen Knitting Mills v. West Coast Knitting Mills*, Cust. & Pat.App., 46 F.2d 182, 184.

A distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for. *Trade-Mark Cases*, 100 U.S. 87, 25 L.Ed. 550; *Buffalo Rubber Mfg. Co. v. Batavia Rubber Co.*, 90 Misc.Rep. 418, 153 N.Y.S. 779, 783; *Iowa Auto Market v. Auto Market & Exchange*, 197 Iowa, 420, 197 N.W. 321, 322; *Tillman & Bend-*

## TRADE-MARK

el v. California Packing Corporation, C.C.A.Cal., 63 F.2d 498, 503.

"Trade-mark" is created chiefly by use, which must be general, continuous, and exclusive and applied to goods and used in trade under such circumstances of publicity and length of use as to show intention to adopt mark for specific goods. *Continental Corporation v. National Union Radio Corporation*, C.C.A.Ill., 67 F.2d 938, 942.

A "trade-mark" is merely a protection for good will and is not the subject of property rights except in connection with an existing business. 15 U.S.C.A. § 90. *Lazar v. Cecilia Co.*, D.C.N.Y., 30 F.Supp. 769, 771.

Generally speaking, a "trade-mark" is applicable to a vendible commodity, to which it is affixed, and a "trade-name" to a business and its good will. *American Steel Foundries v. Robertson*, 46 S.Ct. 160, 162, 269 U.S. 372, 70 L.Ed. 317.

### TRADE-MARKS REGISTRATION ACT, 1875.

This is the statute 38 & 39 Vict. c. 91, amended by the acts of 1876 and 1877. It provides for the establishment of a register of trade-marks under the superintendence of the commissioners of patents, and for the registration of trade-marks as belonging to particular classes of goods, and for their assignment in connection with the good-will of the business in which they are used. *Sweet*.

**TRADE-NAME.** A name used in trade to designate a particular business of certain individuals considered somewhat as an entity, or the place at which a business is located, or of a class of goods, but which is not a technical trade-mark either because not applied or affixed to goods sent into the market or because not capable of exclusive appropriation by anyone as a trade-mark. "Trade-names" may, or may not, be exclusive. Non-exclusive "trade-names" are names that are publici juris in their primary sense, but which in a secondary sense have come to be understood as indicating the goods or business of a particular trader. "Trade-names" are acquired by adoption and user and belong to one who first used them and gave them a value. *St. Louis Independent Packing Co. v. Houston*, C.C.A.Mo., 215 F. 553, 560; *Hartzler v. Goshen Churn & Ladder Co.*, 55 Ind.App. 455, 104 N.E. 34, 37. See, also, *Trade-mark*. For "Fanciful Trade-Name," see that title.

A "trade-name" is descriptive of the manufacturer or dealer for protection in trade, to avoid confusion in business, and to secure the advantages of a good reputation and is applied more to the good will of a business than as an identification of a product. *Mary Muffet, Inc. v. Smelansky*, Mo. App., 158 S.W.2d 168, 170.

**TRADE-SECRET.** A plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it. *Victor Chemical Works v. Iliff*, 299 Ill. 532; 132 N.E. 806, 811; *Progress Laundry Co. v. Hamilton*, 208 Ky. 348, 270 S.W. 834, 835. A secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. *Glucol Mfg. Co. v. Shulist*, 239 Mich. 70, 214 N.W. 152, 153; *U. S. ex rel. Norwegian Nitrogen Products Co. v. U. S. Tariff Commission*, 6 F.2d 491, 495, 55 App.D.C. 366.

**TRADE-UNION.** A combination of workmen of the same trade or of several allied trades, for the purpose of securing by united action the most

favorable conditions regarding wages, hours of labor, etc., for its members. *People v. Distributors Division, Smoked Fish Workers Union, Local No. 20377*, Sup., 7 N.Y.S.2d 185, 187; *Keith Theatre v. Vachon*, 134 Me. 392, 187 A. 692, 694.

**TRADE-UNION ACT.** The statute 34 & 35 Vict. c. 31, passed in 1871, for the purpose of giving legal recognition to trade unions, is known as the "trade-union act," or "trade-union funds protection act." It provides that the members of a trade union shall not be prosecuted for conspiracy merely by reason that the rules of such union are in restraint of trade; and that the agreements of trade unions shall not on that account be void or voidable. Provisions are also made with reference to the registration and registered offices of trade unions, and other purposes connected therewith. *Mozley & Whitley*.

**TRADE USAGE.** The usage or customs commonly observed by persons conversant in, or connected with, a particular trade.

**TRADER.** One who makes it his business to buy merchandise, goods, or chattels to sell the same at a profit. *People v. Terkanian*, 27 Cal.App.2d 460, 81 P.2d 251, 253. One who sells goods substantially in the form in which they are bought; one who has not converted them into another form of property by his skill and labor. *Albuquerque Lumber Co. v. Bureau of Revenue of New Mexico*, 42 N.M. 58, 75 P.2d 334, 336.

**TRADESMAN.** In England, a shopkeeper; in the United States, a mechanic or artificer of any kind, whose livelihood depends on the labor of his hands; *Richie v. McCauley*, 4 Pa. 472.

**TRADICION.** Span. In Spanish law. Delivery. White. *New Recop. b. 2, tit. 2, c. 9*.

**TRADING.** Engaging in trade, (*q. v.*) pursuing the business or occupation of trade or of a trader.

**TRADING CORPORATION.** See Corporation.

**TRADING PARTNERSHIP.** A firm the nature of whose business, according to the usual modes of conducting it, imports the necessity of buying and selling. *Dowling v. National Exch. Bank*, 145 U. S. 512, 12 S.Ct. 928, 36 L.Ed. 795; *Schumacher v. Sumner Telephone Co.*, 161 Iowa, 326, 142 N.W. 1034, 1036, *Ann.Cas.* 1916A, 201; *Maasdam v. Blokland*, 123 Or. 128, 261 P. 66, 68.

**TRADING STAMPS.** The name for a method of conducting some kinds of retail business which consists of an agreement between a number of merchants and a corporation that the latter shall print the names of the former in its subscribers' dictionary and circulate a number of copies of the book, and that the merchants shall purchase of the corporation a number of so-called trading stamps, to be given to purchasers with their purchases, and by them preserved and pasted in the books aforesaid until a certain number have been secured, when they shall be presented to the corporation in exchange for the choice of certain articles kept in stock by the corporation. *Lansburgh v. D. of Col.*, 11 App.D.C. 512.

**TRADING VOYAGE.** One which contemplates the touching and stopping of the vessel at various ports for the purpose of traffic or sale and purchase or exchange of commodities on account of the owners and shippers, rather than the transportation of cargo between terminal points, which is called a "freighting voyage."

**TRADITIO.** Lat. In the civil law. Delivery; transfer of possession; a derivative mode of acquiring, by which the owner of a corporeal thing, having the right and the will of aliening it, transfers it for a lawful consideration to the receiver. Heinecc. Elem. lib. 2, tit. 1, § 380.

#### Quasi Traditio

A supposed or implied delivery of property from one to another. Thus, if the purchaser of an article was already in possession of it before the sale, his continuing in possession is considered as equivalent to a fresh delivery of it, delivery being one of the necessary elements of a sale; in other words, a *quasi traditio* is predicated.

#### Traditio Brevi Manu

A species of constructive or implied delivery. When he who already holds possession of a thing in another's name agrees with that other that thenceforth he shall possess it in his own name, in this case a delivery and redelivery are not necessary. Mackeld. Rom. Law, § 284.

#### Traditio Clavium

Delivery of keys; a symbolical kind of delivery, by which the ownership of merchandise in a warehouse might be transferred to a buyer. Inst. 2, 1, 44.

#### Traditio Longa Manu

A species of delivery which takes place where the transferor places the article in the hands of the transferee, or, on his order, delivers it at his house. Mackeld. Rom. Law, § 284.

#### Traditio Rei

Delivery of the thing. See 5 Maule & S. 82.

**TRADITIO LOQUI FACIT CHARTAM.** Delivery makes a deed speak. Delivery gives effect to the words of a deed. 5 Coke, 1a.

**TRADITIO NIHIL AMPLIUS TRANSFERRE DEBET VEL POTEST, AD EUM QUI ACCIPIT, QUAM EST APUD EUM QUI TRADIT.** Delivery ought to, and can, transfer nothing more to him who receives than is with him who delivers. Dig. 41, 1, 20, pr.

**TRADITION.** Delivery. A close translation or formation from the Latin "*traditio*." 2 Bl. Comm. 307.

The tradition or delivery is the transferring of the thing sold into the power and possession of the buyer. Civ. Code La. art. 2477.

In the rule respecting the admission of tradition or general reputation to prove boundaries, questions of pedigree, etc., this word means knowledge or belief derived from the statements or declarations of contemporary witnesses

and handed down orally through a considerable period of time. See *Westfelt v. Adams*, 131 N.C. 379, 42 S.E. 823; *In re Hurlburt's Estate*, 68 Vt. 366, 35 A. 77, 35 L.R.A. 794.

**TRADITIONARY EVIDENCE.** Evidence derived from tradition or reputation or the statements formerly made by persons since deceased, in regard to questions of pedigree, ancient boundaries, and the like, where no living witnesses can be produced having knowledge of the facts. *Lay v. Neville*, 25 Cal. 554.

**TRADITOR.** In old English law. A traitor; one guilty of high treason. *Fleta*, lib. 1, c. 21, § 8.

**TRADITUR IN BALLIUM.** In old practice. Is delivered to bail. Emphatic words of the old Latin bail-piece. 1 Salk. 105.

**TRAFFIC.** Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing of goods or commodities from one person to another for an equivalent in goods or money. *Senior v. Ratterman*, 44 Ohio St. 673, 11 N.E. 321; *Fine v. Moran*, 74 Fla. 417, 77 So. 533, 538; *Bruno v. U. S.*, C.C.A.Mass., 289 F. 649, 655; *Kroger Grocery and Baking Co. v. Schwer*, 36 Ohio App. 512, 173 N.E. 633. The subjects of transportation on a route, as persons or goods; the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, canal, etc. *United States v. Golden Gate Bridge and Highway Dist. of California*, D.C.Cal., 37 F. Supp. 505, 512.

**TRAFFIC BALANCES.** Balances of moneys collected in payment for the transportation of passengers and freight. *Chicago & A. R. Co. v. United States & Mexican Trust Co.*, C.C.A.Kan., 225 F. 940, 946.

**TRAFFIC REGULATIONS.** Prescribed rules of conduct to promote the orderly and safe flow of traffic. *Dembicer v. Pawtucket Cabinet & Builders Finish Co.*, 58 R.I. 451, 193 A. 622, 625.

**TRAHENS.** Lat. In French law. The drawer of a bill. *Story, Bills*, § 12 note.

**TRAIL-BASTON.** Justices of trail-baston were justices appointed by King Edward I., during his absence in the Scotch and French wars, about the year 1305. They were so styled, says Hollingshed, for trailing or drawing the staff of justice. Their office was to make inquisition, throughout the kingdom, of all officers and others, touching extortion, bribery, and such like grievances, of intruders into other men's lands, barrators, robbers, breakers of the peace, and divers other offenders. *Cowell; Tomlins*.

**TRAILER.** A separate vehicle, not driven or propelled by its own power, but drawn by some independent power; a semi-trailer is a separate vehicle which is not driven or propelled by its own power, but, which, to be useful, must be attached to and become a part of another vehicle, and then loses its identity as a separate vehicle. *Leamon v. State*, 17 Ohio App. 323, 326; *Maryland Casualty Co. v. Cross*, C.C.A.Tex., 112 F.2d 58, 60.

## TRAIN

**TRAIN.** Continuous or connected line of cars or carriages being transported on railroad from one terminal to another, not merely cars being moved in switchyard for purpose of making up trains or placing them in another part of yard. Squibb v. Elgin, J. & E. Ry. Co., 99 Ind.App. 136, 190 N.E. 879, 881.

**TRAIN WRECK.** These words, in an accident insurance policy, mean either total or partial destruction of the train. The smashing in of a portion of a passenger car is a "train wreck," though the car is not derailed, and the train soon continues under its own power. Mochel v. Iowa State Traveling Men's Ass'n, 203 Iowa, 623, 213 N.W. 259, 261, 51 A.L.R. 1327.

**TRAINBANDS.** The militia; the part of a community trained to martial exercises.

**TRAITIS.** In old Scotch law. A roll containing the particular dittay taken up upon malefactors, which, with the *porteous*, is delivered by the justice clerk to the coroner, to the effect that the persons whose names are contained in the *porteous* may be attached, conform to the dittay contained in the *traistis*. So called, because committed to the *traist*, [trust,] faith, and credit of the clerks and coroner. Skene; Burrill.

**TRAITOR.** One who, being trusted, betrays; one guilty of treason, (*q. v.*). Vulcan Detinning Co. v. St. Clair, 315 Ill. 140, 145 N.E. 657, 659.

**TRAITOROUSLY.** In criminal pleading. An essential word in indictments for treason. The offense must be laid to have been committed *traitorously*. Whart.Crim.Law, 100.

**TRAJECTITIA PECUNIA.** A loan to a shipper to be repaid only in case of a successful voyage. The lender could charge an extraordinary rate of interest, *nauticum fœnus*. Holland, Jurispr. 250.

**TRAJECTITIUS.** Lat. In the civil law. Sent across the sea.

**TRAMMER.** A mine laborer shoveling the ore or dirt as it is mined or thrown down into tram cars. Mesich v. Tamarack Mining Co., 184 Mich. 363, 151 N.W. 564, 566.

**TRAMP.** One who roams about from place to place, begging or living without labor or visible means of support; a vagrant. See State v. Hogan, 63 Ohio St. 202, 58 N.E. 572, 52 L.R.A. 863, 81 Am.St.Rep. 626; Miller v. State, 73 Ind. 92; Railway Co. v. Boyle, 115 Ga. 836, 42 S.E. 242, 59 L.R.A. 104.

**TRANSACT.** In Scotch law. To compound. Amb. 185.

In common parlance, equivalent to "carry on," when used with reference to business. Territory v. Harris, 8 Mont. 140, 19 P. 286; In re Wellings' Estate, 192 Cal. 506, 221 P. 628, 631.

**TRANSACTING BUSINESS.** Doing or performing series of acts occupying time, attention, and labor of men for purpose of livelihood, profit or

pleasure. Seidenbach's v. A. E. Little Co., 146 Okl. 247, 294 P. 126, 128.

**TRANSACTIO.** Lat. In the civil law. The settlement of a suit or matter in controversy, by the litigating parties, between themselves, without referring it to arbitration. Halifax, Civil Law, b. 3, c. 8, no. 14. An agreement by which a suit, either pending or about to be commenced, was forborne or discontinued on certain terms. Calvin.

**TRANSACTION.** Act of transacting or conducting any business; negotiation; management; proceeding; that which is done; an affair. Sheehan v. Pierce, 23 N.Y.S. 1119, 1121, 70 Hun 62, 53 St. R. 438. Something which has taken place, whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. Baker v. S. A. Healy Co., 302 Ill.App. 634, 24 N.E.2d 228, 234.

A broader term than "contract". Hoffman Machinery Corporation v. Ebenstein, 150 Kan. 790, 96 P.2d 661, 663.

A group of facts so connected together as to be referred to by a single legal name; as a crime, a contract, a wrong. Steph.Dig.Evid. art. 3.

### Code Practice

"Transaction," as used in statutes permitting cause of action arising out of transaction set forth in complaint to be foundation of counterclaim, properly embraces that combination of acts and events, whether in nature of contract or tort, out of which a legal right springs, or upon which a legal obligation is predicated. Haut v. Gunderson, 54 N.D. 826, 211 N.W. 982, 983; Southeastern Life Ins. Co. v. Palmer, 120 S.C. 490, 113 S.E. 310, 311; Scott v. Waggoner, 48 Mont. 536, 139 P. 454, 456, L.R.A.1916C, 491.

### Evidence

A "transaction" between a witness and a decedent, within statutory provisions excluding evidence of such transactions, embraces every variety of affairs which can form the subject of negotiations, interviews, or actions between two persons, and includes every method by which one person can derive impressions or information from the conduct, condition, or language of another. Kentucky Utilities Co. v. McCarty's Adm'r, 169 Ky. 38, 183 S.W. 237, 239; Bright v. Virginia & Gold Hill Water Co., C.C.A.Nev., 270 F. 410, 413; Madero v. Calzado, Tex.Civ.App., 281 S.W. 328, 331. An action participated in by witness and decedent and to which decedent could testify of his own personal knowledge, if alive. Nelson v. Janssen, 144 Neb. 811, 14 N.W.2d 662, 665. A personal or mutual transaction wherein deceased and witness actively participate. Seligman v. Orth, 205 Wis. 199, 236 N.W. 115, 117.

### Civil Law

An agreement between two or more persons, who, for preventing or putting an end to a law-

suit, adjust their differences by mutual consent, in the manner which they agree on. This contract must be reduced into writing. Civ.Code La. art. 3071.

**TRANSAZIONE.** An Italian term which technically refers to an instrument whereby parties agree to put an end to a dispute by means of mutual concessions and is the equivalent of "transactio" under the Roman Law, the principles of which have been carried into the common law and are found in agreements of accord and satisfaction and compromise and settlement. *Castelli v. Tolibia*, Sup., 83 N.Y.S.2d 554, 562.

**TRANSCRIPT.** That which has been transcribed; a copy of any kind; a writing made from or after an original; a copy; a copy, particularly of a record; a copy of an original writing or deed and suggests the idea of an original writing. *Stephenson v. State*, 179 N.E. 633, 637, 205 Ind. 141; *O'Quinn v. Tate*, Tex.Civ.App., 187 S.W.2d 241, 243.

**TRANSCRIPT OF RECORD.** The printed record as made up in each case for the supreme court of the United States is so called; also in the Circuit Court of Appeals. If a necessary part has been omitted and is subsequently presented to the appellate court, duly certified, it may be made part of the record by direct order. Jurisdiction attaches upon the filing in the court above of the writ of error and is not defeated by irregularity in the transcript or its certification. *Burnham v. North Chicago St. R. Co.*, 30 C.C.A. 594, 87 F. 168.

**TRANSCRIPTIO PEDIS FINIS LEVATI MITTENDO IN CANCELLARIUM.** A writ which certified the foot of a fine levied before justices in eyre, etc., into the chancery. Reg.Orig. 669.

**TRANSCRIPTIO RECOGNITIONIS FACTÆ CORAM JUSTICIARIIS ITINERANTIBUS, Etc.** An old writ to certify a cognizance taken by justices in eyre. Reg.Orig. 152.

**TRANSFER, v.** To convey or remove from one place, person, etc., to another; pass or hand over from one to another; specif., to make over the possession or control of (as, to transfer a title to land); sell or give. *Chappell v. State*, 216 Ind. 666, 25 N.E.2d 999, 1001.

**TRANSFER, n.** An act of the parties, or of the law, by which the title to property is conveyed from one person to another. Innerarity v. Mims, 1 Ala. 669; *Sands v. Hill*, 55 N.Y. 18; *Wallach v. Stein*, 136 A. 209, 210, 103 N.J.L. 470; *O'Hagan v. Kracke*, 165 Misc. 4, 300 N.Y.S. 351, 361. Alienation; conveyance. 2 Bl.Comm. 294.

**TRANSFER OF A CAUSE.** The removal of a cause from the jurisdiction of one court or judge to another by lawful authority.

**TRANSFER IN CONTEMPLATION OF DEATH.** A transfer made under a present apprehension on the part of the transferor, from some existing bodily or mental condition or impending peril, creating a reasonable fear that death is near at

hand. This apprehension must be direct and animating and the only cause of the transfer. *Rea v. Heiner*, D.C.Pa., 6 F.2d 389, 392.

**TRANSFER TAX.** A tax upon the passing of the title to property or a valuable interest therein out of or from the estate of a decedent, by inheritance, devise, or bequest. In re *Hoffman's Estate*, 143 N.Y. 327, 38 N.E. 311; In re *Brez's Estate*, 64 N.E. 958, 172 N.Y. 609. Sometimes also applied to a tax on the transfer of property, particularly of an incorporeal nature, such as bonds or shares of stock, between living persons.

**TRANSFER TICKET.** An undertaking on the part of a common carrier to continue the carriage further without additional charge if the passenger, in accordance with its terms, again presents himself at the proper place for carriage. It generally designates the point at which the journey is to be renewed, but contains no contract, express or implied, for safety in making the transfer. *Anton v. St. Louis Public Service Co.*, 335 Mo. 188, 71 S.W.2d 702, 706.

**TRANSFERABLE.** A term used in a *quasi* legal sense, to indicate that the character of assignability or negotiability attaches to the particular instrument, or that it may pass from hand to hand, carrying all rights of the original holder. The words "not transferable" are sometimes printed upon a ticket, receipt, or bill of lading, to show that the same will not be good in the hands of any person other than the one to whom first issued.

**TRANSFEREE.** He to whom a transfer is made. *Kramer v. Spradlin*, 148 Ga. 805, 98 S.E. 487, 488.

**TRANSFERENCE.** In Scotch law. The proceeding to be taken upon the death of one of the parties to a pending suit, whereby the action is transferred or continued, in its then condition, from the decedent to his representatives. Transference is either *active* or *passive*; the former, when it is the pursuer (plaintiff) who dies; the latter, upon the death of the defender. *Ersk.Inst.* 4, 1, 60.

The transferring of a legacy from the person to whom it was originally given to another; this is a species of ademption, but the latter is the more general term, and includes cases not covered by the former.

**TRANSFEROR.** One who makes a transfer.

**TRANSFERUNTUR DOMINIA SINE TITULO ET TRADITIONE, PER USUCAPTIONEM, SCIL, PER LONGAM CONTINUAM ET PACIFICAM POSSESSIONEM.** Co. Litt. 113. Rights of dominion are transferred without title or delivery, by usucaption, to-wit, long and quiet possession.

**TRANSFRETATIO.** Lat. In old English law. A crossing of the strait, [of Dover;] a passing or sailing over from England to France. The royal passages or voyages to Gascony, Brittany, and other parts of France were so called, and time was sometimes computed from them.

**TRANSGRESSIO.** In old English law. A violation of law. Also trespass; the action of trespass.



## TRANSGRESSIO

**TRANSGRESSIO EST CUM MODUS NON SERVATUR NEC MENSURA, DEBIT ENIM QUILIBET IN SUO FACTO MODUM HABERE ET MENSURAM.** Co.Litt. 37. Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.

**TRANSGRESSIONE.** In old English law. A writ or action of trespass.

**TRANSGRESSIONE MULTIPLICATA, CRESCAT POENÆ INFLICTIO.** When transgression is multiplied, let the infliction of punishment be increased. 2 Inst. 479.

**TRANSGRESSIVE TRUST.** See Trust.

**TRANSHIPMENT.** In maritime law. The act of taking the cargo out of one ship and loading it in another.

**TRANSIENT, n.** One who, or that which is temporary. Synonymous with transitory, fugitive, fleeting, momentary. Tilly v. Woodham, La.App., 163 So. 771, 772.

**TRANSIENT, adj.** Passing across, as from one thing or person to another; passing with time of short duration; not permanent; not lasting. Tilly v. Woodham, La.App., 163 So. 771, 772.

**TRANSIENT FOREIGNER.** One who visits the country, without the intention of remaining. Yates v. Iams, 10 Tex. 170.

**TRANSIENT MERCHANT.** A merchant who engages in the vending or sale of merchandise at any place in the state temporarily, and who does not intend to become, and does not become, a permanent merchant of such place. State v. Fleming, 24 N.D. 593, 140 N.W. 674.

**TRANSIENT PERSON.** Within venue statute one who is found in state but who has no fixed place of residence therein. Fagg v. Benners, Tex. Civ.App., 47 S.W.2d 872, 873.

**TRANSIRE, v.** Lat. To go, or pass over; to pass from one thing, person, or place to another.

**TRANSIRE, n.** In English law. A warrant or permit for the custom-house to let goods pass.

**TRANSIT.** A stop-over privilege on a continuous journey granted by carrier by which a break de facto in continuity of carriage of goods is disregarded and two legs of a journey are treated as though covered without interruption, uniting both legs into a through route for which a joint rate can be published. Galveston Truck Line Corporation v. State, Tex.Civ.App., 123 S.W.2d 797, 802; Baltimore and O. R. Co. v. United States, D.C.N.Y., 24 F.Supp. 734, 735.

**TRANSIT IN REM JUDICATAM.** It passes into a matter adjudged; it becomes converted into a *res judicata* or judgment. A contract upon which a judgment is obtained is said to pass *in rem judicatam*. United States v. Cushman, 2 Sumn. 436, Fed.Cas.No.14,908; 3 East, 251; Robertson v. Smith, 18 Johns. (N.Y.) 480, 9 Am.Dec. 227.

**TRANSIT TERRA CUM ONERE.** Land passes subject to any burden affecting it. Co. Litt. 231a; Broom, Max. 495, 706.

**TRANSITIVE COVENANT.** See Covenant.

**TRANSITORY.** Passing from place to place; that may pass or be changed from one place to another; the opposite of "local." See "Action."

**TRANSITUS.** Lat. Passage from one place to another; transit. *In transitu*, on the passage, transit, or way. 2 Kent, Comm. 543.

**TRANSLADO.** Span. A transcript.

**TRANSLATION.** The reproduction in one language of a book, document, or speech in another language.

The transfer of property; but in this sense it is seldom used. 2 Bl.Comm. 294.

In ecclesiastical law. As applied to a bishop, the term denotes his removal from one diocese to another.

**TRANSLATITUM EDICTUM.** Lat. In Roman law. The prætor, on his accession to office, did not usually publish an entirely new edict, but retained the whole or a part of that promulgated by his predecessor, as being of an approved or permanently useful character. The portion thus repeated or handed down from year to year was called the "*edictum translaticum*." See Mackeld. Rom. Law, § 36.

**TRANSLATIVE FACT.** A fact by means of which a right is transferred or passes from one person to another; one, that is, which fulfills the double function of terminating the right of one person to an object, and of originating the right of another to it.

**TRANSMISSION.** In the civil law. The right which heirs or legatees may have of passing to their successors the inheritance or legacy to which they were entitled, if they happen to die without having exercised their rights. Domat, liv. 3, t. 1, s. 10; 4 Toullier, no. 186; Dig. 50, 17, 54; Code, 6, 51.

**TRANSPORT, n.** In old New York law. A conveyance of land.

**TRANSPORT, v.** To carry or convey from one place to another. Sacramento Nav. Co. v. Salz, 47 S.Ct. 368, 369, 273 U.S. 326, 71 L.Ed. 663; People v. One 1941 Cadillac Club Coupe, 63 Cal.2d 418, 147 P.2d 49, 51.

**TRANSPORTATION.** The removal of goods or persons from one place to another, by a carrier. Railroad Co. v. Pratt, 22 Wall. 133, 22 L.Ed. 827; Interstate Commerce Com'n v. Brimson, 14 S.Ct. 1125, 154 U.S. 447, 38 L.Ed. 1047; Gloucester Ferry Co. v. Pennsylvania, 5 S.Ct. 826, 114 U.S. 196, 29 L.Ed. 158.

### Criminal Law

A species of punishment consisting in removing the criminal from his own country to another,

(usually a penal colony,) there to remain in exile for a prescribed period. *Fong Yue Ting v. U. S.*, 13 S.Ct. 1016, 149 U.S. 698, 37 L.Ed. 905.

**TRANSMPT.** In Scotch law, an action of transumpt is an action competent to any one having a partial interest in a writing, or immediate use for it, to support his title or defenses in other actions. It is directed against the custodian of the writing, calling upon him to exhibit it, in order that a transumpt, *i. e.*, a copy, may be judicially made and delivered to the pursuer. *Bell*.

**TRAP.** A device, as a pitfall, snare, or machine that shuts suddenly as with a spring, for taking game and other animals; a gin. Hence, any device or contrivance by which one may be caught unawares, strategem; snare; gin. *Jones v. C. F. Smith Co.*, 280 Mich. 514, 273 N.W. 786, 787.

It imports an affirmative intent or design either malicious or mischievous, to cause injury. *Gumbart v. Waterbury Club Holding Corporation*, D.C.Conn., 27 F.Supp. 228, 229, 230.

The doctrine of "trap" as ground for recovery by trespasser is rested upon theory that owner expected trespasser and prepared an injury. *Moseley v. Alabama Power Co.*, 246 Ala. 416, 21 So.2d 305, 307.

**TRASLADO.** In Spanish law. A copy; a sight. *White*, New Recop. b. 3, tit. 7, c. 3.

A copy of a document taken by the notary from the original, or a subsequent copy taken from the protocol, and not a copy taken directly from the matrix or protocol. *Downing v. Diaz*, 80 Tex. 436, 16 S.W. 54.

**TRASSANS.** Drawing; one who draws. The drawer of a bill of exchange.

**TRASSATUS.** One who is drawn, or drawn upon. The drawee of a bill of exchange. *Heinecc. de Camb. c. 6, §§ 5, 6.*

**TRAUMA.** In medical jurisprudence. A wound; any injury to the body caused by external violence. *Periss v. Nevada Industrial Commission*, 55 Nev. 40, 24 P.2d 318.

**TRAUMATIC.** Caused by or resulting from a wound or any external injury; as, traumatic insanity, produced by an injury to or fracture of the skull with consequent pressure on the brain. *Straight Creek Fuel Co. v. Hunt*, 221 Ky. 265, 298 S.W. 686, 687.

**TRAUMATISM.** A diseased condition of the body or any part of it caused by a wound or external injury. *Markham v. State Industrial Commission*, 85 Okl. 81, 205 P. 163, 169.

**TRAVAIL.** The act of child-bearing. A woman is said to be in her travail from the time the pains of child-bearing commence until her delivery. *Scott v. Donovan*, 153 Mass. 378, 26 N.E. 871.

**TRAVEL.** To go from one place to another at a distance; to journey; spoken of voluntary change of place. *White v. Beazley*, 1 Barn. & Ald. 171; *Hancock v. Rand*, 94 N.Y. 1, 46 Am.Rep. 112; *State v. Smith*, 157 Ind. 241, 61 N.E. 566, 87 Am. St.Rep. 205.

**TRAVELED PART OF HIGHWAY.** See *Traveled Way*.

**TRAVELED PLACE.** A place where the public have, in some manner, acquired the legal right to travel. *Sanders v. Southern Ry. Co.*, Carolina Division, 97 S.C. 423, 81 S.E. 786, 788.

**TRAVELED WAY.** The traveled path, or the path used for public travel, within located limits of the way. *Dupuis v. Town of Billerica*, 260 Mass. 210, 157 N.E. 339, 341. Also called "traveled part of highway." *Westlund v. Iverson*, 154 Minn. 52, 191 N.W. 253; *Schnabel v. Kafer*, 39 S.D. 70, 162 N.W. 935, 936.

**TRAVELER.** One who passes from place to place, whether for pleasure, instruction, business or health. *Lockett v. State*, 47 Ala. 45; 10 C.B.N.S. 429.

**TRAVELER'S CHECK.** A bill of exchange drawn by the issuing bank upon itself, accepted by the act of issuance, and the right of countermand applied to ordinary checks does not exist as to it. It has the characteristics of a cashier's check of the issuing bank. *Pines v. United States*, C.C.A. Iowa, 123 F.2d 825, 828.

**TRAVELING SALESMAN.** A person who travels from town to town and who takes or solicits orders for goods, and forwards them to his principal for approval or rejection. *T. C. May Co. v. Menzies Shoe Co.*, 184 N.C. 150, 113 S.E. 593, 594; *Upchurch v. City of La Grange*, 159 Ga. 113, 125 S.E. 47, 48.

A traveling salesman is not employed or authorized to fix prices. He cannot pass upon the credit or standing of customers. He does not collect accounts. He is not responsible for the quality, condition or delivery of the goods. He makes no personal contracts and he has no other interest in the sale than his compensation for those which are approved by his employer. The territory assigned to him may be confined to a single city or state, or it may cover cities or states. Commonly, the employer pays the salesman's expenses, but sometimes, especially if he works for a commission, he pays his own expenses. Sometimes he is allotted a certain territory and he receives a commission upon all sales which are sent in from that territory. In some cases the employer may direct the routes he is to travel, and in other cases the salesman chooses his own routes. Sometimes the salesman sends the orders directly to his employer and sometimes the customers themselves send in the orders to the employer. He often sells after exhibiting samples. In *re Herbert Candy Co.*, D.C.Pa., 43 F.Supp. 588, 591.

**TRAVELING WAYS.** As applied to coal mining, places for the passage of workmen to and from different parts of the mine. *Ricardo v. Central Coal & Coke Co.*, 100 Kan. 95, 163 P. 641, 643.

**TRAVERSE.** In the language of pleading, a traverse signifies a denial. Thus, where a defendant denies any material allegation of fact in the plaintiff's declaration, he is said to traverse it, and the plea itself is thence frequently termed a "traverse." *Brown*.

**Criminal Practice**

To put off or delay the trial of an indictment till a succeeding term. More properly, to deny or take issue upon an indictment. 4 Bl.Comm. 351.

## TRAVERSE

### General

**Common traverse.** A simple and direct denial of the material allegations of the opposite pleading, concluding to the country, and without inducement or *absque hoc*.

**General traverse.** One preceded by a general inducement, and denying in general terms all that is last before alleged on the opposite side, instead of pursuing the words of the allegations which it denies. Gould.Pl. vii. 5.

**Special traverse.** A peculiar form of traverse or denial, the design of which, as distinguished from a *common* traverse, is to explain or qualify the denial, instead of putting it in the direct and absolute form. It consists of an affirmative and a negative part, the first setting forth the new affirmative matter tending to explain or qualify the denial, and technically called the "inducement," and the latter constituting the direct denial itself, and technically called the "*absque hoc*." Steph.Pl. 169-180; Allen v. Stevens, 29 N.J.L. 513; Chambers v. Hunt, 18 N.J.L. 352; People v. Pullman's Car Co., 175 Ill. 125, 51 N.E. 664, 64 L.R.A. 366.

**Traverse jury.** A petit jury; a trial jury; a jury impaneled to try an action or prosecution, as distinguished from a grand jury. State v. James, 96 N.J.L. 132, 114 A. 553, 555, 16 A.L.R. 1141; De Krasner v. State, 54 Ga.App. 41, 187 S.E. 402, 405.

**Traverse of indictment or presentment.** The taking issue upon and contradicting or denying some chief point of it. Jacob.

**Traverse of office.** The proving that an inquisition made of lands or goods by the escheator is defective and untruly made. Tomlins. It is the challenging, by a subject, of an inquest of office, as being defective and untruly made. Mozley & Whitley.

**Traverse upon a traverse.** One growing out of the same point or subject-matter as is embraced in a preceding traverse on the other side.

**TRAVERSER.** In pleading. One who traverses or denies. A prisoner or party indicted; so called from his traversing the indictment.

**TRAVERSING NOTE.** This is a pleading in chancery, and consists of a denial put in by the plaintiff on behalf of the defendant, generally denying all the statements in the plaintiff's bill. The effect of it is to put the plaintiff upon proof of the whole contents of his bill, and is only resorted to for the purpose of saving time, and in a case where the plaintiff can safely dispense with an answer. A copy of the note must be served on the defendant. Brown.

**TREACHER, TRECHETOUR, or TREACHOUR.** A traitor.

**TREAD-MILL, or TREAD-WHEEL.** An instrument of prison discipline, being a wheel or cylinder with an horizontal axis, having steps attached to

it, up which the prisoners walk, and thus put the axis in motion. The men hold on by a fixed rail, and, as their weight presses down the step upon which they tread, they ascend the next step, and thus drive the wheel. Enc. Brit.

**TREASON.** The offense of attempting by overt acts to overthrow the government of the state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power. Webster.

"Treason" consists of two elements: Adherence to the enemy, and rendering him aid and comfort. Cramer v. U. S., U.S.N.Y., 65 S.Ct. 918, 932, 325 U.S. 1, 89 L.Ed. 1441.

In England, treason is an offense particularly directed against the person of the sovereign, and consists (1) in compassing or imagining the death of the king or queen, or their eldest son and heir; (2) in violating the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; (3) in levying war against the king in his realm; (4) in adhering to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and (5) slaying the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. 4 Steph.Comm. 185-193; 4 Bl. Comm. 76-84.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. U.S.Const. art. 3, § 3, cl. 1. See Young v. U. S., 97 U.S. 62, 24 L.Ed. 992; U. S. v. Bollman, 1 Cranch, C.C. 373, Fed.Cas.No.14,622; U. S. v. Pryor, 3 Wash.C.C. 234, Fed.Cas.No.16,096.

### Constructive Treason

Treason imputed to a person by law from his conduct or course of actions, though his deeds taken severally do not amount to actual treason. This doctrine is not known in the United States.

### High Treason

In English law. Treason against the king or sovereign, as distinguished from petit or petty treason, which might formerly be committed against a subject. 4 Bl.Comm. 74, 75; 4 Steph. Comm. 183, 184, note.

### Misprision of Treason

See Misprision.

### Petit Treason

In English law. The crime committed by a wife in killing her husband, or a servant his lord or master, or an ecclesiastic his lord or ordinary. 4 Bl.Comm. 75.

### Treason-felony

Under the English statute 11 & 12 Vict. c. 12, passed in 1848, is the offense of compassing, devising, etc., to depose her majesty from the crown; or to levy war in order to intimidate either house of parliament, etc., or to stir up foreigners by any printing or writing to invade the kingdom. This offense is punishable with penal servitude for life, or for any term not less than five years, etc., under statutes 11 & 12 Vict. c. 12, § 3; 20 & 21 Vict. c. 3, § 2; 27 & 28 Vict. c. 47, § 2. By the statute first above mentioned, the government is enabled to treat as felony many offenses which must formerly have been treated as high treason. Mozley & Whitley.

**TREASONABLE.** Having the nature or guilt of treason.

**TREASURE.** A treasure is a thing hidden or buried in the earth, on which no one can prove his property, and which is discovered by chance. Civil Code La. art. 3423, par. 2. See Treasure-Trove.

**TREASURE-TROVE.** Literally, treasure found. Money or coin, gold, silver, plate or bullion found hidden in the earth or other private place, the owner thereof being unknown. 1 Bl.Comm. 295. Called in Latin "*thesaurus inventus*;" and in Saxon "*fynderinga*." Huthmacher v. Harris, 38 Pa. 499, 80 Am.Dec. 502; Vickery v. Hardin, 77 Ind.App. 558, 133 N.E. 922, 923.

Finder of "treasure trove," is entitled thereto as against owner of land where "treasure trove" is found and all the world save the true owner, in absence of statute. Groover v. Tippins, 51 Ga.App. 47, 179 S.E. 634, 635.

**TREASURER.** An officer of a public or private corporation, company, or government, charged with the receipt, custody, and disbursement of its moneys or funds. See State v. Eames, 39 La. Ann. 986, 3 So. 93; In re Millward-Cliff Cracker Co.'s Estate, 161 Pa. 167, 28 A. 1072; Jones v. Marrs, 114 Tex. 62, 263 S.W. 570, 574.

**TREASURER, LORD HIGH.** Formerly the chief treasurer of England, who had charge of the moneys in the exchequer, the chancellor of the exchequer being under him. He appointed all revenue officers and escheaters, and leased crown lands. The office is obsolete, and his duties are now performed by the lords commissioners of the treasury. Stim. Gloss.

**TREASURER OF THE UNITED STATES.** An officer in the treasury department appointed by the president by and with the advice and consent of the senate. His principal duties are—to receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the secretary of the treasury, countersigned by either comptroller and recorded by the register; to take receipts for all moneys paid by him; to render his account to the first comptroller quarterly, or oftener if required, and transmit a copy thereof, when settled, to the secretary of the treasury; to lay before each house, on the third day of every session of congress, fair and accurate copies of all accounts by him from time to time rendered to and settled with the first comptroller, and a true and perfect account of the state of the treasury; to submit at all times to the secretary of the treasury and the comptroller, or either of them, the inspection of the moneys in his hands. (31 U.S.C.A. § 141 et seq.).

The office of the Treasurer of the United States and certain other offices and agencies and their functions were consolidated into the Fiscal Service of the Treasury Department, the function of said office to be administered by the Treasurer of the United States by Reorg. Plan No. III, § 1(a), eff. June 30, 1940, set out in note under 5 U.S.C.A. § 133t.

**TREASURER'S REMEMBRANCER.** In English law. He whose charge was to put the lord treasurer and the rest of the judges of the exchequer in

remembrance of such things as were called on and dealt in for the sovereign's behoof. There is still one in Scotland. Wharton.

**TREASURY.** A place or building in which stores of wealth are repositied; particularly, a place where the public revenues are deposited and kept, and where money is disbursed to defray the expenses of government. Webster.

That department of government which is charged with the receipt, custody, and disbursement (pursuant to appropriations) of the public revenues or funds.

**TREASURY, FIRST LORD OF.** A high office of state in Great Britain, usually held by the Prime Minister.

**TREASURY BENCH.** In the English house of commons, the first row of seats on the right hand of the speaker is so called, because occupied by the first lord of the treasury or principal minister of the crown. Brown.

**TREASURY CHEST FUND.** A fund, in England, originating in the unusual balances of certain grants of public money, which is used for banking and loan purposes by the commissioners of the treasury. Wharton.

**TREASURY NOTE.** A note or bill issued by the treasury department by the authority of the United States government, and circulating as money. See Brown v. State, 120 Ala. 342, 25 So. 182.

**TREASURY SECURITIES.** Such as have been lawfully issued and thereafter have been bought by corporation for a consideration out of corporate funds or otherwise acquired from owners, and not retired but placed as an asset of the corporation in its treasury for future use as such. Miners Nat. Bank of Pottsville v. Frackville Sewerage Co., 157 Pa.Super. 167, 42 A.2d 177, 179.

**TREASURY STOCK.** Ordinarily stock which has been issued as fully paid to stockholders and subsequently acquired by the corporation to be used by it in furtherance of its corporate purposes, and stock which is merely to be held as unsubscribed for and unissued is not usually regarded as "treasury stock". In re Public Service Holding Corporation, Del., 24 A.2d 584, 586.

**TREATMENT.** A broad term covering all the steps taken to effect a cure of an injury or disease; the word including examination and diagnosis as well as application of remedies. Kirschner v. Equitable Life Assur. Soc. of U. S., 157 Misc. 635, 284 N.Y.S. 506, 510; Hester v. Ford, 221 Ala. 592, 130 So. 203, 206.

## TREATY.

### International Law

A compact made between two or more independent nations with a view to the public welfare. Louis Wolf & Co. v. United States, Cust. & Pat.App., 107 F.2d 819, 827; United States v. Belmont, N.Y., 57 S.Ct. 758, 761, 301 U.S. 324, 81 L. Ed. 1134.

## TREATY

An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of each state. *Edye v. Robertson*, 5 S.Ct. 247, 112 U.S. 580, 28 L.Ed. 798; *Ex parte Ortiz*, C.C.Minn., 100 F. 962; *Charlton v. Kelly*, 33 S.Ct. 945, 954, 29 S.Ct. 447, 57 L.Ed. 1274, 46 L.R.A., N.S., 397.

A "treaty" is not only a law but also a contract between two nations and must, if possible, be so construed as to give full force and effect to all its parts. *United States v. Reid*, C.C.A.Or., 73 F.2d 153, 155.

*Personal* treaties relate exclusively to the persons of the contracting sovereigns, such as family alliances, and treaties guaranteeing the throne to a particular sovereign and his family. As they relate to the persons, they expire of course on the death of the sovereign or the extinction of his family. With the advent of constitutional government in Europe these treaties have lost their importance. *Real* treaties relate solely to the subject-matters of the convention, independently of the persons of the contracting parties, and continue to bind the state, although there may be changes in its constitution or in the persons of its rulers. *Boyd's Wheat*. Int. Law § 29.

### Private Law

The discussion of terms which immediately precedes the conclusion of a contract or other transaction. A warranty on the sale of goods, to be valid, must be made during the "treaty" preceding the sale. *Chit. Cont.* 419; *Sweet*.

**TREATY OF PEACE.** An agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace and regulate the manner in which it is to be restored and supported. *Vattel*, b. 4, c. 2, § 9.

**TREBELLANIC PORTION.** In consequence of this article, the trebellanic portion of the civil law—that is to say, the portion of the property of the testator which the instituted heir had a right to detain when he was charged with a *fidei commissa* or fiduciary bequest—is no longer a part of our law. *Civ.Code La.* art. 1520, par. 3.

**TREBLE COSTS.** See *Costs*.

**TREBLE DAMAGES.** In practice. Damages given by statute in certain cases, consisting of the single damages found by the jury, actually tripled in amount. The usual practice has been for the jury to find the single amount of the damages, and for the court, on motion, to order that amount to be trebled. 2 *Tidd*, Pr. 893, 894.

**TREBUCKET.** A tumbrel, castigatory, or cuckold stool. See *James v. Comm.*, 12 *Serg. & R.* (Pa.) 227.

**TREE.** A woody plant, the branches of which spring from, and are supported upon, a trunk or body. *Nettles v. Lichtman*, 228 Ala. 52, 152 So. 450, 452, 91 A.L.R. 1455.

**TREET.** In old English law. Fine wheat.

**TREMAGIUM, TREMESIUM.** In old records. The season or time of sowing summer corn, being

about March, the third month, to which the word may allude. *Cowell*.

**TRES FACIUNT COLLEGIUM.** Three make a corporation; three members are requisite to constitute a corporation. *Dig.* 50, 16, 8; 1 *Bl.Comm.* 469.

**TRESAEL.** L. Fr. A great-great-grandfather. *Britt. c.* 119. Otherwise written "tresaiel," and "tresayle." 3 *Bl.Comm.* 186; *Litt.* § 20.

**TRESAYLE.** An abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

**TRESPASS.** Doing of unlawful act or of lawful act in unlawful manner to injury of another's person or property. *Waco Cotton Oil Mill of Waco v. Walker*, *Tex.Civ.App.*, 103 S.W.2d 1071, 1072. An unlawful act committed with violence, actual or implied, causing injury to the person, property, or relative rights of another; an injury or misfeasance to the person, property, or rights of another, done with force and violence, either actual or implied in law. *Grunson v. State*, 89 *Ind.* 536, 46 *Am.Rep.* 178; *Southern Ry. Co. v. Harden*, 101 *Ga.* 263, 28 S.E. 847; *Brown v. Walker*, 188 *N.C.* 52, 123 S.E. 633, 636. It comprehends not only forcible wrongs, but also acts the consequences of which make them tortious. *Mawson v. Vess Beverage Co.*, *Mo.App.*, 173 S.W.2d 606, 612, 613, 614.

Trespass, in its most comprehensive sense, signifies any transgression or offense against the law of nature, of society, or of the country in which we live; and this, whether it relates to a man's person or to his property. In its more limited and ordinary sense, it signifies an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence though none is actually used, when the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon a person's land. *Brown*.

In practice a form of action, at the common law, which lies for redress in the shape of money damages for any unlawful injury done to the plaintiff, in respect either to his person, property, or rights, by the immediate force and violence of the defendant.

**Continuing trespass.** One which is in its nature a permanent invasion of the rights of another; as, where a person builds on his own land so that a part of the building overhangs his neighbor's land. *H. H. Hitt Lumber Co. v. Cullman Property Co.*, 189 *Ala.* 13, 66 *So.* 720, 721.

**Joint trespass.** Where two or more persons unite in committing it, or where some actually commit the tort, the others command, encourage or direct it. *Stephens v. Schadler*, 182 *Ky.* 833, 207 S.W. 704.

**Permanent trespass.** One which consists of a series of acts, done on successive days, which are of the same nature, and are renewed or continued from day to day, so that, in the aggregate, they make up one indivisible wrong. 3 *Bl.Comm.* 212.

**Trespass de bonis asportatis.** (Trespass for goods carried away.) In practice. The technical name of that species of action of trespass for injuries to personal property which lies where the injury consists in *carrying away* the goods or property. See 3 Bl.Comm. 150, 151.

**Trespass for mesne profits.** A form of action supplemental to an action of ejectment, brought against the tenant in possession to recover the profits which he has wrongfully received during the time of his occupation. 3 Bl.Comm. 205.

**Trespass on the case.** The form of action, at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force, or which is the indirect or secondary consequence of defendant's act. Commonly called, by abbreviation, "Case." *Munal v. Brown*, C.C.Colo., 70 F. 968; *Nolan v. Railroad Co.*, 70 Conn. 159, 39 A. 115, 43 L.R.A. 305; *New York Life Ins. Co. v. Clay County*, 221 Iowa 966, 267 N.W. 79, 80.

**Trespass quare clausum fregit.** "Trespass wherefore he broke the close." The common-law action for damages for an unlawful entry or trespass upon the plaintiff's land. In the Latin form of the writ, the defendant was called upon to show why he broke the plaintiff's close; *i. e.*, the real or imaginary structure inclosing the land, whence the name. It is commonly abbreviated to "*trespass qu. cl. fr.*" See *Kimball v. Hilton*, 92 Me. 214, 42 A. 394. See, also, *Trespass to try title, infra*.

**Trespass to try title.** The name of the action used in several of the states for the recovery of the possession of real property, with damages for any trespass committed upon the same by the defendant.

A procedure by which rival claims to title or right to possession of land may be adjudicated, and as an incident partition may also be had when the controversy concerning title or right to possession is settled. *Tide Water Oil Co. v. Bean*, Tex.Civ.App., 148 S.W.2d 184, 187, 188.

It is different from "trespass quare clausum fregit," in that title must be proved. *Bethea v. Home Furniture Co.*, 185 S.C. 271, 194 S.E. 10, 11.

**Trespass vi et armis.** Trespass with force and arms. The common-law action for damages for any injury committed by the defendant with direct and immediate force or violence against the plaintiff or his property. See *Mawson v. Vess Beverage Co.*, Mo.App., 173 S.W.2d 606, 613.

**TRESPASSER.** One who has committed trespass.

**Joint Trespassers**

Two or more who unite in committing a trespass. *Kansas City v. File*, 60 Kan. 157, 55 P. 877; *Bonte v. Postel*, 109 Ky. 64, 58 S.W. 536, 51 L.R.A. 187.

**Trespasser Ab Initio**

Trespasser from the beginning. A term applied to a tort-feasor whose acts relate back so as to make a previous act, at the time innocent, unlaw-

ful; as if he enter peaceably, and subsequently commit a breach of the peace, his entry is considered a trespass. *Stim. Gloss.* See *Wright v. Marvin*, 59 Vt. 437, 9 A. 601.

**TRESTORNARE.** In old English law. To turn aside; to divert a stream from its course. *Bract. fols.* 115, 234b. To turn or alter the course of a road. *Cowell.*

**TRESVIRI.** Lat. In Roman law. Officers who had the charge of prisons, and the execution of condemned criminals. *Calvin.*

**TRET.** An allowance made for the water or dust that may be mixed with any commodity. It differs from *tare*, (*q. v.*).

**TRETHINGA.** In old English law. A trithing; the court of a trithing.

**TREYT.** Withdrawn, as a juror. Written also *treat*. *Cowell.*

**TRIA CAPITA**, in Roman law, were *civitas*, *libertas*, and *familia*; *i. e.*, citizenship, freedom, and family rights.

**TRIAL.** A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it. *People v. Vitale*, 364 Ill. 589, 5 N.E. 2d 474, 475. *Gulf, C. & S. F. Ry. Co. v. Muse*, 109 Tex. 352, 207 S.W. 897, 899, 4 A.L.R. 613; *State v. Dubray*, 121 Kan. 886, 250 P. 316, 319; *Photo Cines Co. v. American Film Mfg. Co.*, 190 Ill.App. 124, 128. For purpose of determining such issue. *City of Pasadena v. Superior Court* in and for Los Angeles County, 212 Cal. 309, 298 P. 968, 970; *State ex rel. Stokes v. Second Judicial Dist. Court*, in and for Washoe County, 55 Nev. 115, 127 P.2d 534.

It includes all proceedings from time when issue is joined, or, more usually, when parties are called to try their case in court, to time of its final determination. *Molen v. Denning & Clark Livestock Co.*, 56 Idaho 57, 50 P.2d 9, 11.

And in its strict definition, the word "trial" in criminal procedure means the proceedings in open court after the pleadings are finished and the prosecution is otherwise ready, down to and including the rendition of the verdict. *Thomas v. Mills*, 117 Ohio St. 114, 157 N.E. 488, 489, 54 A. L.R. 1220.

**Fair and Impartial Trial.**

See *Fair and Impartial Trial*.

**Fair Trial**

See *Fair Trial*.

**Mistrial**

See that title.

**New Trial**

A re-examination of an issue of fact in the same court after a trial and decision by a jury or court or by referees. *Code Civ.Proc.Cal.* § 656. A re-examination of the issue in the same court, before another jury, after a verdict has been given. *Pen.Code Cal.* § 1179. A re-examination in the same court of an issue of fact, or some part or portions thereof, after the verdict by a jury, re-

## TRIAL

port of a referee, or a decision by the court. Rev. Code Iowa 1880, § 2837 (Code 1931, § 11549). And see *Oxford v. State*, 80 Okl. 103, 194 P. 101; *Warner v. Goding*, 91 Fla. 260, 107 So. 406, 408.

### New Trial Paper

In English practice. A paper containing a list of causes in which rules *nisi* have been obtained for a new trial, or for entering a verdict in place of a nonsuit, or for entering judgment *non obstante veredicto*, or for otherwise varying or setting aside proceedings which have taken place at *nisi prius*. These are called on for argument in the order in which they stand in the paper, on days appointed by the judges for the purpose. Brown.

### Public Trial

A trial held in public, in the presence of the public, or in a place accessible and open to the attendance of the public at large, or of persons who may properly be admitted. "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions; and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether." *Cooley, Const.Lim.* \*312. And see *People v. Hall*, 64 N.Y.S. 433, 51 App.Div. 57; *Commonwealth v. Trinkle*, 124 A. 191, 192, 279 Pa. 564; *People v. Greeson*, 203 N.W. 141, 149, 230 Mich. 124.

### Separate Trial

See Separate.

### Speedy Trial

See that title.

### State Trial

See State.

### Trial Amendment

Pleading that a litigant files during progress of actual trial of case, office of which is to meet some situation that is developed by evidence. *Texas Electric Service Co. v. Kinkead*, Tex.Civ. App., 84 S.W.2d 567, 570.

### Trial at Bar

A species of trial now seldom resorted to, excepting in cases where the matter in dispute is one of great importance and difficulty. It takes place before all the judges at the bar of the court in which the action is brought. Brown. See 2 Tidd, Pr. 747; Steph.Pl. 84.

### Trial at Nisi Prius

In practice. The ordinary kind of trial which takes place at the sittings, assizes, or circuit, before a single judge. 2 Tidd, Pr. 751, 819.

### Trial by Certificate

A form of trial allowed in cases where the evidence of the person certifying was the only proper criterion of the point in dispute. Under such circumstances, the issue might be determined by the certificate alone, because, if sent to a jury, it would be conclusive upon them, and therefore their intervention was unnecessary. Tomlins.

### Trial by Fire

See Ordeal.

### Trial by Grand Assize

A peculiar mode of trial allowed in writs of right. See Assize; Grand Assize.

### Trial by Inspection or Examination

A form of trial in which the judges of the court, upon the testimony of their own senses, decide the point in dispute.

### Trial by Jury

A trial in which the issues of fact are to be determined by the verdict of a jury of twelve men, duly selected, impaneled, and sworn. The terms "jury" and "trial by jury" were used at the adoption of the constitution, and always, it is believed, before that time, and almost always since, in a single sense. A jury for the trial of a cause was a body of twelve men, described as upright, well-qualified, and lawful men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impaneled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them, who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict upon the issue submitted to them. *State v. McClear*, 11 Nev. 60. And see *Gunn v. Union R. Co.*, 23 R.I. 289, 49 A. 999; *State v. Hamey*, 168 Mo. 167, 67 S.W. 620, 57 L.R.A. 846; *Branham v. Commonwealth*, 209 Ky. 734, 273 S.W. 489, 490; *Davis v. Central States Fire Ins. Co.*, 121 Kan. 69, 245 P. 1062, 1063; *N. Wagman & Co. v. Schafer Motor Freight Service*, 167 Misc. 681, 4 N.Y.S.2d 526, 529.

In a federal court a trial by jury as understood and applied at common law and includes all the essential elements as they were recognized in this country and England when the constitution was adopted, including a jury of 12 men, neither more nor less. U.S.C.A.Const. art. 3, § 2, cl. 3; Amend. 6. *Coates v. Lawrence*, D.C.Ga., 46 F.Supp. 414, 423.

The Seventh Amendment to Federal Constitution declaring the right of "trial by jury" applies only to suits at common law. U.S.C.A.Const. Amend. 7. *Ransom v. Staso Milling Co.*, D.C.Vt., 2 F.R.D. 128, 130, 131.

A right to a "trial by jury" when given by a constitution means a trial by a jury of 12, but where the right to a jury trial is not given by the constitution, the legislature may fix the number of jurors at less than 12. *Doyle v.*

Police Court of City of Niagara Falls, 177 Misc. 359, 30 N. Y.S.2d 324, 325. And is right to a jury trial in such cases as it existed at time of adoption of constitution. *Blum v. Fresh Grown Preserve Corporation*, N.Y., 292 N.Y. 241, 54 N.E.2d 809, 810.

#### Trial by Proviso

A proceeding allowed where the plaintiff in an action desists from prosecuting his suit, and does not bring it to trial in convenient time. The defendant, in such case, may take out the *venire facias* to the sheriff, containing these words, "*proviso quod*," etc., *i. e.*, provided that. If plaintiff take out any writ to that purpose, the sheriff shall summon but one jury on them both. This is called "going to trial by proviso." Jacob, tit. "Proviso."

#### Trial by the Record

A form of trial resorted to where issue is taken upon a plea of *nul tiel record*, in which case the party asserting the existence of a record as pleaded is bound to produce it in court on a day assigned. If the record is forthcoming, the issue is tried by inspection and examination of it. If the record is not produced, judgment is given for his adversary. 3 Bl.Comm. 330.

#### Trial by Wager of Battel

See Wager of Battel.

#### Trial by Wager of Law

In old English law. A method of trial, where the defendant, coming into court, made oath that he did not owe the claim demanded of him, and eleven of his neighbors, as compurgators, swore that they believed him to speak the truth. 3 Bl. Comm. 343. See Wager of Law.

#### Trial by Witnesses

The name "*trial per testes*" has been used for a trial without the intervention of a jury, is the only method of trial known to the civil law, and is adopted by depositions in chancery. The judge is thus left to form, in his own breast, his sentence upon the credit of the witnesses examined. But it is very rarely used at common law. Tomlins.

#### Trial De Novo

A new trial or retrial had in an appellate court in which the whole case is gone into as if no trial whatever had been had in the court below. See *Karcher v. Green*, 32 A. 225, 8 Houst. (Del.) 163; *Ex parte Morales*, Tex.Cr.App., 53 S.W. 108; *Carlson v. Avery Co.*, 196 Ill.App. 262, 272; *Bardwell v. Riverside Oil and Refining Co.*, 139 Okl. 26, 280 P. 1083, 1085.

#### Trial Jury

See Jury.

#### Trial List

A list of cases marked down for trial for any one term.

#### Trial With Assessors

Admiralty actions involving nautical questions, *e. g.*, actions of collision, are generally tried in

England before a judge, with Trinity Masters sitting as assessors. Rosc.Adm. 179.

**TRIATIO IBI SEMPER DEBET FIERI, UBI JUR-ATORES MELIOREM POSSUNT HABERE NOTITIAM.** Trial ought always to be had where the jurors can have the best information. 7 Coke, 1.

**TRIBAL LANDS.** Lands of Indian reservation which are not occupied by individual Indians and are the unallotted or common lands of the nation. *Tuscarora Nation of Indians v. Williams*, 79 Misc. 445, 141 N.Y.S. 207, 208.

Land allotted in severalty to a restricted Indian is no longer part of the "reservation" nor is it "tribal land" but the virtual fee is in the allottee with certain restrictions on the right of alienation. *United States v. Oklahoma Gas & Electric Co.*, C.C.A.Okl., 127 F.2d 349, 353.

**TRIBUERE.** Lat. In the civil law. To give; to distribute.

**TRIBUNAL.** The seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise. See *Foster v. Worcester*, 16 Pick. (Mass.) 81.

#### Roman Law

An elevated seat occupied by the praetor, when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and movable, but afterwards built of stone in the form of a semicircle. *Adams*, Rom. Ant. 132, 133.

**TRIBUNAUX DE COMMERCE.** In French law. Certain courts composed of a president, judges, and substitutes, which take cognizance of all cases between merchants, and of disagreements among partners. Appeals lie from them to the courts of justice. Brown.

**TRIBUTARY, n.** Any stream flowing directly or indirectly into a river. [1895] 1 Q.B. 237; *Bull v. Siegrist*, 169 Or. 180, 126 P.2d 832, 834.

**TRIBUTARY, adj.** Paying or yielding tribute, taxed or assessed by tribute. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723, 724.

**TRIBUTE.** A contribution which is raised by a prince or sovereign from his subjects to sustain the expenses of the state.

A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter. Brande.

**TRICESIMA.** An ancient custom in a borough in the county of Hereford, so called because thirty burgesses paid 1d. rent for their houses to the bishop, who was lord of the manor. Wharton.

**TRIDING-MOTE.** The court held for a triding or trithing. Cowell.

**TRIDUUM.** In old English law. The space of three days. *Fleta*, lib. 1, c. 31, § 7.



## TRIENNIAL

**TRIENNIAL ACT.** An act of parliament of 1641, which provided that if in every third year parliament was not summoned and assembled before September 3, it should assemble on the second Monday of the next November.

Also an act of 1694, which provided that a parliament be called within three years after dissolution, and that the utmost limit of a parliament be three years. This was followed by the Septennial Act of 1716.

**TRIENS.** Lat.

In feudal law. Dower or third. 2 Bl.Comm. 129.

In Roman law. A subdivision of the *as*, containing four *unciae*; the proportion of four-twelfths or one-third. 2 Bl.Comm. 462, note *m*. A copper coin of the value of one-third of the *as*. Brande.

**TRIGAMUS.** In old English law. One who has been thrice married; one who, at different times and successively, has had three wives; a trigamist. 3 Inst. 88.

**TRIGILD.** In Saxon law. A triple gild, geld, or payment; three times the value of a thing, paid as a composition or satisfaction. Spelman.

**TRINEPOS.** (Lat.) In Roman law. Great-grandson of a grandchild.

**TRINEPTIS.** (Lat.) Great-granddaughter of a grandchild.

**TRINITY HOUSE.** In English law. A society at Deptford Strond, incorporated by Hen. VIII. in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, light-houses, buoys, etc. Wharton.

**TRINITY MASTERS.** Elder brethren of the Trinity House. If a question arising in an admiralty action depends upon technical skill and experience in navigation, the judge or court is usually assisted at the hearing by two Trinity Masters, who sit as assessors, and advise the court on questions of a nautical character. Williams & B. Adm. Jur. 271; Sweet.

**TRINITY SITTINGS.** Sittings of the English court of appeal and of the high court of justice in London and Middlesex, commencing on the Tuesday after Whitsun week, and terminating on the 8th of August.

**TRINITY TERM.** One of the four terms of the English courts of common law, beginning on the 22d day of May, and ending on the 12th of June. 3 Steph.Comm. 562.

**TRINIUMGELDUM.** In old European law. An extraordinary kind of composition for an offense, consisting of *three times nine*, or twenty-seven times the single geld or payment. Spelman.

**TRINKETS.** Small articles of personal adornment or use when the object is essentially ornamental. 28 L.J.C.P. 626.

**TRINODA NECESSITAS.** Lat. In Saxon law. A threefold necessity or burden. A term used to denote the three things from contributing to the performance of which no lands were exempted, viz., *pontis reparatio* (the repair of bridges,) *arcis constructio*, (the building of castles,) *et expeditio contra hostem*, (military service against an enemy.) 1 Bl.Comm. 263, 357.

**TRIOBS.** In practice. Persons who are appointed to try challenges to jurors, *i. e.*, to hear and determine whether a juror challenged for favor is or is not qualified to serve.

The lords chosen to try a peer, when indicted for felony, in the court of the lord high steward, are also called "triors." Mozley & Whitley.

**TRIP, n.** A journey or going from one place to another. *F. S. Royster Guano Co. v. Globe & Rutgers Fire Ins. Co.*, 252 N.Y. 75, 168 N.E. 834, 837.

In mining, a number of cars attached together and drawn by a mule. *Maize v. Big Creek Coal Co.*, Mo.App., 203 S.W. 633, 634.

**TRIP, v.** To make a false step; to catch the foot; to stumble; to cause to stumble, or take a false step; to cause to lose the footing, as by suddenly checking the motion of a foot or leg; to throw off balance. *Johnston v. City of St. Louis*, Mo.App., 138 S.W.2d 666, 671.

**TRIPARTITE.** In conveyancing. Of three parts; a term applied to an indenture to which there are three several parties, (of the first, second, and third parts,) and which is executed in triplicate.

**TRIPLE ALLIANCE.** A treaty between Germany, Austria-Hungary and Italy, formed at the close of the Franco-Prussian War (1870-71).

**TRIPLE ENTENTE.** A treaty between Russia, France and Great Britain, formed early in the 20th century.

**TRIPLICACION.** L. Fr. In old pleading. A rejoinder in pleading; the defendant's answer to the plaintiff's replication. Britt. c. 77.

**TRIPLICATIO.** Lat. In the civil law. The reply of the plaintiff to the rejoinder of the defendant. It corresponds to the surrejoinder of common law. Inst. 4, 14; Bract. l. 5, t. 5, c. 1.

**TRISTRIS.** In old forest law. A freedom from the duty of attending the lord of a forest when engaged in the chase. Spelman.

**TRITAVIA.** Lat. In the civil law. A great-grandmother's great-grandmother; the female ascendant in the sixth degree.

**TRITAVUS.** Lat. In the civil law. A great-grandfather's great-grandfather; the male ascendant in the sixth degree.

**TRITHING.** In Saxon law. One of the territorial divisions of England, being the *third* part of a county, and comprising three or more hundreds. Within the trithing there was a court held (called

"trithing-mote") which resembled the court-leet, but was inferior to the county court.

**TRITHING-MOTE.** The court held for a trithing or riding.

**TRITHING-REEVE.** The officer who superintended a trithing or riding.

**TRIUMVIR.** Lat. In old English law. A trithing man or constable of three hundred. Cowell.

**TRIUMVIRI CAPITALES.** Lat. In Roman law. Officers who had charge of the prison, through whose intervention punishments were inflicted. They had eight lictors to execute their orders. Vicat, Voc.Jur.

**TRIVERBIAL DAYS.** In the civil law. Juridical days; days allowed to the prætor for deciding causes; days on which the prætor might speak the *three* characteristic words of his office, viz., *do, dico, addico.* Calvin. Otherwise called "*dies fasti.*" 3 Bl.Comm. 424, and note *u.*

**TRIVIAL.** Trifling; inconsiderable; of small worth or importance. In equity, a demurrer will lie to a bill on the ground of the *triviality* of the matter in dispute, as being below the dignity of the court. 4 Bouv.Inst. no. 4237.

**TRONAGE.** In English law. A customary duty or toll for weighing wool; so called because it was weighed by a common *trona*, or beam. Fleta, lib. 2, c. 12.

**TRONATOR.** A weigher of wool. Cowell.

**TROOPS.** Within railroad land grant acts, requiring the railroads to transport free from toll or other charge troops of the United States, and in the land grant equalization agreements, whereby the railroads were to transport such troops at half rates, means soldiers collectively, a body of soldiers, and does not include discharged soldiers or military prisoners, rejected applicants for enlistment returning home from recruiting depots, accepted applicants for enlistment going to recruiting depots, retired soldiers or soldiers on furloughs, traveling as individuals and not as a body. United States v. Union Pac. R. Co., 39 S.Ct. 294, 295, 249 U.S. 354, 63 L.Ed. 643; Southern Pac. Co. v. U. S., 52 S.Ct. 324, 325, 285 U.S. 240, 76 L.Ed. 736. Or army engineers, engaged in improvement of rivers and harbors. Southern Pac. Co. v. U. S., 52 S.Ct. 324, 326, 285 U.S. 240, 76 L.Ed. 736.

**TROPHY.** Anything taken from an enemy and shown or treasured up in proof of victory; a price or token of victory in any contest; hence, a memento of victory or success; an ornamental group of objects hung together on a wall, or any collection of objects typical of some event, art, industry, or branch of knowledge; a memento or memorial. In re Vortex Cup Co., Cust. & Pat.App., 83 F.2d 821, 822.

**TROPHY MONEY.** Money formerly collected and raised in London, and the several counties of England, towards providing harness and maintenance for the militia, etc.

**TROVER.** In common-law practice, the action of trover (or trover and conversion) is a species of action on the case, and originally lay for the recovery of damages against a person who had *found* another's goods and wrongfully converted them to his own use. Subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. 3 Steph.Comm. 425. Sweet. See Burnham v. Pidcock, 33 Misc. 65, 66 N.Y.S. 806; Spellman v. Richmond & D. R. Co., 35 S.C. 475, 14 S.E. 947, 28 Am.St.Rep. 858; Daisy-Belle Petroleum Co. v. Thomas, 151 Okl. 94, 1 P.2d 700, 702. In form a fiction; in substance, a remedy to recover the value of personal chattels *wrongfully* converted by another to his own use. 1 Burr. 31; Athens & Pomeroy Coal & Land Co. v. Tracy, 22 Ohio App. 21, 153 N.E. 240, 243; Siverson v. Clanton, 88 Or. 261, 170 P. 933, 935. See Conversion.

A possessory action wherein plaintiff must show that he has either a general or special property in thing converted and the right to its possession at the time of the alleged conversion. Patten v. Dennison, 137 Me. 1, 14 A.2d 12. And lies only for wrongful appropriation of goods, chattels, or personal property which is specific enough to be identified. Olschewski v. Hudson, 87 Cal.App. 282, 262 P. 43, 46.

**TROY WEIGHT.** A weight of twelve ounces the pound, having its name from Troyes, a city Aube, France.

**TRUCE.** In international law. A suspens<sup>1</sup> temporary cessation of hostilities by agr<sup>v</sup> between belligerent powers; an ar<sup>v</sup> Wheat. Int.Law, 442.

**TRUCE OF GOD.** In medieval law. suspension of arms promulgated by putting a stop to private hostilities a<sup>v</sup> riods or during certain sacred seas

**TRUCK.** Wheeled vehicle for c<sup>v</sup> weight; an automobile for trar<sup>v</sup> loads. Paltani v. Sentinel Life J 447, 237 N.W. 392.

**TRUCK ACTS.** Acts in Engl<sup>v</sup> amended in 1887 and 1896, workmen shall not have un<sup>v</sup> made from their wages (r<sup>v</sup> goods, materials, or tools) paid otherwise than in c<sup>v</sup> liged to spend them in an<sup>v</sup> ner.

**TRUE.** Conformable actual; genuine; hor<sup>v</sup> Teague v. Hadden, 1170.

In one sense, that to the actual state o<sup>v</sup> "untrue" which do are. But in ano<sup>v</sup> often used as a "fraudulent." Z United States, ( American Life 447.

# TRUE ADMISSION

**TRUE ADMISSION.** A formal act done in course of judicial proceedings which waives or dispenses with production of evidence by conceding for purposes of litigation that proposition of fact alleged by opponent is true. *Maltz v. Jackoway-Katz Cap Co.*, 336 Mo. 1000, 82 S.W.2d 909, 917.

**TRUE BILL.** In criminal practice. The indorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them, and are satisfied of the truth of the accusation. 4 Bl.Comm. 306.

**TRUE COPY.** A true copy, does not mean an absolutely exact copy but means that the copy shall be so true that anybody can understand it. It may contain an error or omission. 51 L.J.Ch. 905.

**TRUE, PUBLIC, AND NOTORIOUS.** These three qualities used to be formally predicated in the libel in the ecclesiastical courts, of the charges which it contained, at the end of each article severally. Wharton.

**VALUE RULE.** Under this rule, one who subscribes for and receives corporate stock must pay for the par value thereof either in money or property of equal worth, so that the real assets of the corporation shall at least square with its liabilities. However, whether by fraud, accident or mistake, the value of property, labor or services paid does not equal par value, the unpaid for to the full extent of the liability holders are liable to pay for the stock notwithstanding good faith. *St. Louis Union Trust Co.*, 599, 603.

A fiduciary relation with respect to property, subjecting person by whom the property is held to equitable duties to deal with the property for the benefit of another person which arises as the result of a manifestation of an intention to create it. *Goodenough v. Union Guardian Trust Co.*, 267 N.W. 772, 773, 774, 275 Mich. 698. An obligation on a person arising out of confidence reposed in him to apply property faithfully and according to such confidence; as being in nature of deposition by which proprietor transfers to another property of subject intrusted, not that it should remain with him, but that it should be applied to certain uses for the behoof of third party. *MacKenzie v. Union Guardian Trust Co.*, 262 Mich. 563, 247 N.W. 914, 919; *Gurnett v. Mutual Life Ins. Co. of New York*, 356 Ill. 612, 191 N.E. 250, 252.

A "trust" can be created for any purpose which is not illegal, and which is not against public policy. *Collins v. Lyon, Inc.*, 181 Va. 230, 24 S.E.2d 572, 579.

Essential elements of "trust" are designated beneficiary and trustee, fund sufficiently identified to enable title to pass to trustee, and actual delivery to trustee with intention of passing title. *City Bank Farmers' Trust Co. v. Charity Organization Soc. of City of New York*, 238 App. Div. 720, 265 N.Y.S. 267.

**Accessory trust.** In Scotch law, equivalent to "active" or "special" trust. See *infra*.

**Active trust.** One which imposes upon the trustee the duty of taking active measures in the execution of the trust, as, where property is conveyed to trustees with directions to sell and distribute the proceeds among creditors of the grantor; distinguished from a "passive" or "dry" trust. In *re Buch's Estate*, 278 Pa. 185, 122 A. 239, 240; *Welch v. Northern Bank & Trust Co.*, 100 Wash. 349, 170 P. 1029, 1032.

**Cestui que trust.** The person for whose benefit a trust is created or who is to enjoy the income or the avails of it.

**Charitable trusts.** Trusts designed for the benefit of a class or the public generally. They are essentially different from private trusts in that the beneficiaries are uncertain. *Bauer v. Myers*, C. A.Kan., 244 F. 902, 911.

**Complete voluntary trust.** One completely created, the subject-matter being designated, the trustee and beneficiary being named, and the limitations and trusts being fully and perfectly declared. In *re Leigh's Estate*, 186 Iowa 931, 173 N.W. 143, 146.

**Constructive trust.** A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee of the parties who in equity are entitled to the beneficial enjoyment. *Hill, Trustees*, 116; 1 *Spence, Eq.Jur.* 511; *Nester v. Gross*, 66 Minn. 371,

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69 N.W. 39; Porter v. Shaffer, 147 Va. 921, 133 S.E. 614, 616; Misamore v. Berglin, 197 Ala. 111, 72 So. 347, 349, L.R.A.1916F, 1024.

See, also, Involuntary Trust *infra*.

"Constructive trusts" do not arise by agreement or from intention, but by operation of law, and fraud, active or constructive, is their essential element. Actual fraud is not necessary, but such a trust will arise whenever circumstances under which property was acquired made it inequitable that it should be retained by him who holds the legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done, and such trusts are also known as "trusts ex maleficio" or "ex delicto" or "involuntary trusts" and their forms and varieties are practically without limit, being raised by courts of equity whenever it becomes necessary to prevent a failure of justice. Union Guardian Trust Co. v. Emery, 292 Mich. 394, 290 N.W. 841, 845.

**Contingent trust.** An express trust depending for its operation upon a future event. Civ.Code Ga.1910, § 3734.

**Direct trust.** An express trust, as distinguished from a constructive or implied trust. Currence v. Ward, 43 W.Va. 367, 27 S.E. 329.

**Directory trust.** One which is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into detail according to later specific directions.

**Dry trust.** One which merely vests the legal title in the trustee, and does not require the performance of any active duty on his part to carry out the trust. In re Shaw's Estate, 198 Cal. 352, 246 P. 48, 52; Blackburn v. Blackburn, 167 Ky. 113, 180 S.W. 48, 49.

**Educational trusts.** Trusts for the founding, endowing, and supporting schools for the advancement of all useful branches of learning, which are not strictly private. Richards v. Wilson, 185 Ind. 335, 112 N.E. 780, 794.

**Executed trust.** A trust of which the scheme has in the outset been completely declared. Adams, Eq. 151. A trust in which the estates and interest in the subject-matter of the trust are completely limited and defined by the instrument creating the trust, and require no further instruments to complete them. Bisp.Eq. 20; Pillot v. Landon, 46 N.J.Eq. 310, 19 A. 25; Egerton v. Brownlow, 4 H.L.Cas. 210; Mattsen v. U. S. Ensilage Harvester Co., 171 Minn. 237, 213 N.W. 893, 895.

**Executory trust.** One which requires the execution of some further instrument, or the doing of some further act, on the part of the creator of the trust or of the trustee, towards its complete creation or full effect. Martling v. Martling, 55 N.J.Eq. 771, 39 A. 203; Carradine v. Carradine, 33 Miss. 729; In re Fair's Estate, 132 Cal. 523, 60 P. 442, 84 Am.St.Rep. 70; Pillot v. Landon, 46 N.J.Eq. 310, 19 A. 25.

**Express active trust.** Where will confers upon executor authority to generally manage property of estate and pay over net income to devisees or legatees, such authority creates an "express active

trust." In re Thomas' Estate, 17 Wash.2d 674, 136 P.2d 1017, 1020, 147 A.L.R. 598.

**Express private passive trust** has been defined as existing where land is conveyed to or held by one person in trust for another, without any power being expressly or impliedly given trustee to take actual possession of land or exercise acts of ownership over it, except by beneficiary's direction. Elvins v. Seestedt, 141 Fla. 266, 193 So. 54, 57, 126 A.L.R. 1001.

**Express trust.** A trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties. State v. Campbell, 59 Kan. 246, 52 P. 454; Kaphan v. Toney, Tenn.Ch., 58 S.W. 913; Sanford v. Van Pelt, 314 Mo. 175, 282 S.W. 1022, 1030; Holsapple v. Schrontz, 65 Ind.App. 390, 117 N.E. 547, 549.

**Imperfect trust.** An executory trust, (which see;) and see Executed Trust.

**Implied trust.** A trust raised or created by implication of law; a trust implied or presumed from circumstances. Wilson v. Welles, 79 Minn. 53, 81 N.W. 549; Holsapple v. Schrontz, 65 Ind. App. 390, 117 N.E. 547, 549; Springer v. Springer, 144 Md. 465, 125 A. 162, 166.

**Instrumental trust.** See Ministerial Trusts, *infra*.

**Involuntary trust.** "Involuntary" or "constructive" trusts embrace all those instances in which a trust is raised by the doctrines of equity, for the purpose of working out justice in the most efficient manner, when there is no intention of the parties to create a trust relation. This class of trusts may usually be referred to fraud, either actual or constructive, as an essential element. Bank v. Kimball Milling Co., 1 S.D. 388, 47 N.W. 402, 36 Am.St.Rep. 739.

**Massachusetts or business trusts.** See "Trust Estates as Business Companies."

**Ministerial trusts.** (Also called "instrumental trusts.") Those which demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; as to convey an estate. They are a species of special trusts, distinguished from discretionary trusts, which necessarily require much exercise of the understanding. 2 Bouv.Inst. no. 1896.

**Naked trust.** A dry or passive trust; one which requires no action on the part of the trustee, beyond turning over money or property to the *cestui que trust*. Cerri v. Akron-People's Telephone Co., D.C.Ohio, 219 F. 285, 292.

**Passive trust.** A trust as to which the trustee has no active duty to perform. Holmes v. Walter, 118 Wis. 409, 95 N.W. 380, 62 L.R.A. 986; Dixon v. Dixon, 123 Me. 470, 124 A. 198, 199.

**Precatory trust.** Where words employed in a will or other instrument do not amount to a positive command or to a distinct testamentary dis-

## TRUST

position, but are terms of entreaty, request, recommendation, or expectation, they are termed "precatory words," and from such words the law will raise a trust, called a "precatory trust," to carry out the wishes of the testator or grantor. See *Bohon v. Barrett*, 79 Ky. 378; *Hunt v. Hunt*, 18 Wash. 14, 50 P. 578; *Aldrich v. Aldrich*, 172 Mass. 101, 51 N.E. 449.

**Private trust.** One established or created for the benefit of a certain designated individual or individuals, or a known person or class of persons, clearly identified or capable of identification by the terms of the instrument creating the trust, as distinguished from trusts for public institutions or charitable uses. See *Pennoyer v. Wadhams*, 20 Or. 274, 25 P. 720, 11 L.R.A. 210; *Doyle v. Whalen*, 87 Me. 414, 32 A. 1022, 31 L.R.A. 118; *Brooks v. Belfast*, 90 Me. 318, 38 A. 222; *Bauer v. Myers*, C.C.A.Kan., 244 F. 902, 911.

**Proprietary trust.** In Scotch law, a naked, dry, or passive trust. See *supra*.

**Public trust.** One constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description; public trusts and charitable trusts may be considered in general as synonymous expressions. *Lewin, Trusts*, 20; *Bauer v. Myers*, C.C.A.Kan., 244 F. 902, 911.

**Resulting trust.** One that arises by implication of law, or by the operation and construction of equity, and which is established as consonant to the presumed intention of the parties as gathered from the nature of the transaction. It arises where the legal estate in property is disposed of, conveyed, or transferred, but the intent appears or is inferred from the terms of the disposition, or from the accompanying facts and circumstances, that the beneficial interest is not to go or be enjoyed with the legal title. *Lafkowitz v. Jackson*, C.C.A.Mo., 13 F.2d 370, 372. See *Sanders v. Steele*, 124 Ala. 415, 26 So. 882. *Farwell v. Wilcox*, 73 Okl. 230, 175 P. 936, 938, 4 A.L.R. 156; *Cummings v. Cummings*, 55 Cal.App. 433, 203 P. 452, 455.

**Savings bank trust.** A Totten trust.

**Secret trusts.** Where a testator gives property to a person, on a verbal promise by the legatee or devisee that he will hold it in trust for another person. *Sweet*.

**Shifting trust.** An express trust which is so settled that it may operate in favor of beneficiaries additional to, or substituted for, those first named, upon specified contingencies. *Civ.Code Ga.* 1910, § 3734.

**Simple trust.** A simple trust corresponds with the ancient use, and arises where property is simply vested in one person for the use of another, and the nature of the trust, not being qualified by the settlor, is left to the construction of law. *Perkins v. Brinkley*, 133 N.C. 154, 45 S.E. 541; *Dodson v. Ball*, 60 Pa. 500, 100 Am.Dec. 586.

**Special trust.** One in which a trustee is interposed for the execution of some purpose particularly pointed out, and is not, as in case of a simple trust, a mere passive depository of the estate, but is required to exert himself actively in the execution of the settlor's intention; as, where a conveyance is made to trustees upon trust to reconvey, or to sell for the payment of debts. *Lew.Tr.* 3, 16.

Special trusts have been divided into (1) ministerial (or instrumental) and (2) discretionary. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment. 2 *Bouv.Inst.* no. 1896; *Perkins v. Brinkley*, 133 N.C. 154, 45 S.E. 541.

**Spendthrift trust.** See *Spendthrift*.

**Totten trust.** A trust created by the deposit by one person of his own money in his own name as a trustee for another and it is a tentative trust revocable at will until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration such as delivery of the pass book or notice to the beneficiary and if the depositor dies before the beneficiary without revocation or some decisive act or declaration of disaffirmance the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor. *Murray v. Brooklyn Sav. Bank*, 258 App.Div. 132, 15 N.Y.S.2d 915, 917; *In re Totten*, 179 N.Y. 112, 71 N.E. 748, 70 L.R.A. 711, 1 *Ann. Cas.* 900.

**Transgressive trust.** A name sometimes applied to a trust which transgresses or violates the rule against perpetuities. See *Pulitzer v. Livingston*, 89 Me. 359, 36 A. 635.

**Trust allotments.** Allotments to Indians, in which a certificate or trust patent is issued declaring that the United States will hold the land for a designated period in trust for the allottee. *U. S. v. Bowling*, 41 S.Ct. 561, 562, 256 U.S. 484, 65 L.Ed. 1054.

**Trust company.** A corporation formed for the purpose of taking, accepting, and executing all such trusts as may be lawfully committed to it, and acting as testamentary trustee, trustee under deeds of settlement or for married women, executor, guardian, etc. To these functions are sometimes (but not necessarily) added the business of acting as fiscal agent for corporations, attending to the registration and transfer of their stock and bonds, serving as trustee for their bond or mortgage creditors, and transacting a general banking and loan business. See *Venner v. Farmers' L. & T. Co.*, 54 App.Div. 271, 66 N.Y.Supp. 773; *Mercantile Nat. Bank v. New York*, 7 S.Ct. 826, 121 U.S. 138, 30 L.Ed. 895; *Loudoun Nat. Bank of Leesburg v. Continental Trust Co.*, 164 Va. 536, 180 S. E. 548, 551.

**Trust deed.** (1) A species of mortgage given to a trustee for the purpose of securing a numerous class of creditors, as the bondholders of a railroad corporation, with power to foreclose and sell on failure of the payment of their bonds, notes, or

other claims. (2) In some of the states, and in the District of Columbia, a trust deed or deed of trust is a security resembling a mortgage, being a conveyance of lands to trustees to secure the payment of a debt, with a power of sale upon default, and upon a trust to apply the net proceeds to paying the debt and to turn over the surplus to the grantor. *Dean v. Smith*, 53 N.D. 123, 204 N.W. 987, 994; *Guaranty Title & Trust Co. v. Thompson*, 93 Fla. 983, 113 So. 117, 120.

A "trust deed" on real estate as security for a bond issue is, in effect, a mortgage on property executed by the mortgagor to a third person as trustee to hold as security for the mortgage debt as evidenced by the bonds, for the benefit of the purchasers of the bonds as lenders. *Marden v. Elks Club*, 138 Fla. 707, 190 So. 40, 42.

**Trust deposit.** Where money or property is deposited to be kept intact and not commingled with other funds or property of bank and is to be returned in kind to depositor or devoted to particular purpose or requirement of depositor or payment of particular debts or obligations of depositor. Also called "special deposit". *Maurello v. Broadway Bank & Trust Co. of Paterson*, 114 N.J.L. 167, 176 A. 391, 394. See, also "Deposit."

**Trust estate.** This term may mean either the estate of the trustee,—that is, the legal title,—or the estate of the beneficiary, or the corpus of the property which is the subject of the trust. See *Cooper v. Cooper*, 5 N.J.Eq. 9; *Farmers' L. & T. Co. v. Carroll*, 5 Barb. (N.Y.) 643.

**Trust ex delicto.** Trust ex maleficio, which title see, *infra*.

**Trust ex maleficio.** A species of constructive trust arising out of some fraud, misconduct, or breach of faith on the part of the person to be charged as trustee, which renders it an equitable necessity that a trust should be implied. See *Rogers v. Richards*, 67 Kan. 706, 74 P. 255; *Kent v. Dean*, 128 Ala. 600, 30 So. 543; *Chanowsky v. Friedman*, Tex.Civ.App., 108 S.W.2d 752, 754. See, also, *Constructive Trust*, *supra*.

**Trust fund.** A fund held by a trustee for the specific purposes of the trust; in a more general sense, a fund which, legally or equitably, is subject to be devoted to a particular purpose and cannot or should not be diverted therefrom. In this sense it is often said that the assets of a corporation are a "trust fund" for the payment of its debts. See *Henderson v. Indiana Trust Co.*, 143 Ind. 561, 40 N.E. 516; *In re Beard's Estate*, 7 Wyo. 104, 50 Pac. 226, 38 L.R.A. 860, 75 Am.St. Rep. 882; *Spencer v. Smith*, C.C.A.Colo., 201 F. 647, 652; *Terhune v. Weise*, 132 Wash. 208, 231 P. 954, 955, 38 A.L.R. 94.

**Trust fund doctrine.** In substance, that where corporation transfers all its assets with a view to going out of business and nothing is left with which to pay debts, transferee is charged with notice of the circumstances of the transaction, and takes the assets subject to an equitable lien for the unpaid debts of the transferring company; the property of a corporation being a fund subject

to be first applied to the payment of debts. *Meikle v. Export Lumber Co.*, C.C.A.Or., 67 F.2d 301, 304.

Under such doctrine, if insolvent corporation's assets are distributed among its stockholders before its debts are paid, each stockholder is liable to creditors for full amount received by him. *Scott v. Commissioner of Internal Revenue*, C.C.A.8, 117 F.2d 36, 39.

**Trust in invitum.** A constructive trust imposed by equity, contrary to the trustee's intention and will, upon property in his hands. *Sanford v. Hamner*, 115 Ala. 406, 22 So. 117.

**Trust legacy.** See *Legacy*.

**Trust receipt.** Document in which is expressed security transaction, whereunder the lender having no prior title in the goods on which the lien is to be given, and not having possession which remains in the borrower, lends his money to the borrower on security of the goods, which the borrower is privileged to sell clear of the lien on agreement to pay all or part of the proceeds of the sale to the lender. *In re Boswell*, C.C.A.Cal., 96 F.2d 239, 242.

A term specifically applied to a written instrument whereby banker having advanced money for purchase of imported merchandise and having taken title in his own name, delivers possession to importer on agreement in writing to hold merchandise in trust for banker till he is paid. *Simons v. Northeastern Finance Corporation*, 271 Mass. 285, 171 N.E. 643, 644.

**Voluntary trust.** An obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another, as distinguished from an "involuntary" trust, which is created by operation of law. Civ.Code Cal. §§ 2216, 2217. According to another use of the term, "voluntary" trusts are such as are made in favor of a volunteer, that is, a person who gives nothing in exchange for the trust, but receives it as a pure gift; and in this use the term is distinguished from "trusts for value," the latter being such as are in favor of purchasers, mortgagees, etc. A "voluntary trust" is an equitable gift, and in order to be enforceable by the beneficiaries must be complete. *Cameron v. Cameron*, 96 Okl. 98, 220 P. 889, 890; *Logan v. Ryan*, 68 Cal.App. 448, 229 P. 993, 996.

The difference between a "gift inter vivos" and a "voluntary trust" is that, in a gift, the thing itself with title passes to the donee, while, in a voluntary trust, the actual title passes to a *cestui que trust* while the legal title is retained by the settlor, to be held by him for the purposes of the trust or is by the settlor transferred to another to hold for the purposes of the trust. *Allen v. Hendrick*, 104 Or. 202, 206 P. 733, 740.

**Voting trust.** See that title.

## 2. Constitutional and Statutory Law

An association or organization of persons or corporations having the intention and power, or the tendency, to create a monopoly, control production, interfere with the free course of trade or transportation, or to fix and regulate the supply and the price of commodities.

## TRUST

In the history of economic development, the "trust" was originally a device by which several corporations engaged in the same general line of business might combine for their mutual advantage, in the direction of eliminating destructive competition, controlling the output of their commodity, and regulating and maintaining its price, but at the same time preserving their separate individual existence, and without any consolidation or merger. This device was the erection of a central committee or board, composed, perhaps, of the presidents or general managers of the different corporations, and the transfer to them of a majority of the stock in each of the corporations, to be held "in trust" for the several stockholders so assigning their holdings. These stockholders received in return "trust certificates" showing that they were entitled to receive the dividends on their assigned stock, though the voting power of it had passed to the trustees. This last feature enabled the trustees or committee to elect all the directors of all the corporations, and through them the officers, and thereby to exercise an absolutely controlling influence over the policy and operations of each constituent company, to the ends and with the purposes above mentioned. Though the "trust," in this sense, is now seldom if ever resorted to as a form of corporate organization, having given place to the "holding corporation" and other devices, the word has become current in statute laws as well as popular speech, to designate almost any form of combination of a monopolistic character or tendency. See Black, Const. Law (3d Ed.) p. 428; Northern Securities Co. v. U. S., 193 U.S. 197, 24 Sup.Ct. 436, 48 L.Ed. 679; MacGinniss v. Mining Co., 29 Mont. 428, 75 P. 89; Georgia Fruit Exchange v. Turnipseed, 9 Ala.App. 123, 62 So. 542, 546; Mallinckrodt Chemical Works v. State of Missouri, 35 S.Ct. 671, 673, 238 U.S. 41, 59 L.Ed. 1192.

In a looser sense the term "trust" is applied to any combination of establishments in the same line of business for securing the same ends by holding the individual interests of each subservient to a common authority for the common interests of all. Mallinckrodt Chemical Works v. State of Missouri, 35 S.Ct. 671, 673, 238 U.S. 41, 59 L.Ed. 1192.

### TRUST ESTATES AS BUSINESS COMPANIES.

A practice originating in Massachusetts of vesting a business or certain real estate in a group of trustees, who manage it for the benefit of the beneficial owners; the ownership of the latter is evidenced by negotiable (or transferable) shares. The trustees are elected by the shareholders, or, in case of a vacancy, by the board of trustees. Provision is made in the agreement and declaration of trust to the effect that when new trustees are elected, the trust estate shall vest in them without further conveyance. The declaration of trust specifies the powers of the trustees. They have a common seal; the board is organized with the usual officers of a board of trustees; it is governed by by-laws; the officers have the usual powers of like corporate officers; so far as practicable, the trustees in their collective capacity, are to carry on the business under a specified name. The trustees may also hold shares as beneficiaries. Provision may be made for the alteration or amendment of the agreement or declaration in a specified manner. In *Elliot v. Freeman*, 31 Sup.Ct. 360, 220 U.S. 178, 55 L.Ed. 424, it was held that such a trust was not within the corporation tax provisions of the tariff act of Aug. 5, 1909. See also *Zonne v. Minneapolis Syndicate*, 31 S.Ct. 361, 220 U.S. 187, 55 L.Ed. 428.

**TRUSTEE.** The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or

implied agreement to administer or exercise it for the benefit or to the use of another called the cestui que trust. *Pioneer Mining Co. v. Tyberg, C.C.A. Alaska*, 215 F. 501, 506, L.R.A.1915B, 442; *Kaehn v. St. Paul Co-op. Ass'n*, 156 Minn. 113, 194 N.W. 112; *Catlett v. Hawthorne*, 157 Va. 372, 161 S.E. 47, 48. Person who holds title to res and administers it for others' benefit. *Reinecke v. Smith, Ill.*, 53 S.Ct. 570, 289 U.S. 172, 77 L.Ed. 1109.

In a strict sense, a "trustee" is one who holds the legal title to property for the benefit of another, while, in a broad sense, the term is sometimes applied to anyone standing in a fiduciary or confidential relation to another, such as agent, attorney, bailee, etc. *State ex rel. Lee v. Sartorius*, 344 Mo. 912, 130 S.W.2d 547, 549, 550.

"Trustee" is also used in a wide and perhaps inaccurate sense, to denote that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the interests of the other. In this sense, directors of companies are said to be "trustees for the shareholders." *Sweet*.

### Conventional Trustee

One appointed by a decree of court to execute a trust, as distinguished from one appointed by the instrument creating the trust. *Gilbert v. Kolb*, 85 Md. 627, 37 Atl. 423.

### Joint Trustees

Two or more persons who are intrusted with property for the benefit of one or more others.

### Judicial Trustee

A "judicial trustee," as distinguished from a conventional trustee, is an officer of a chancery court whose acts are generally limited and defined by familiar and settled rules and procedure. *Kramme v. Mewshaw*, 147 Md. 535, 128 A. 468, 472.

### Public Trustee

An act of 1906 referring to England and Wales provides for the appointment of a public trustee to administer estates of small value, to act as custodian trustee, or as ordinary trustee or judicial trustee, or to administer the property of a convict under the Forfeiture Act.

### Quasi Trustee

A person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee. *Lewin, Trusts* (4th Ed.) 592, 638.

### Testamentary Trustee

A trustee appointed by or acting under a will; one appointed to carry out a trust created by a will. The term does not ordinarily include an executor or an administrator with the will annexed, or a guardian, except when they act in the execution of a trust created by the will and which is separable from their functions as executors, etc. See *In re Hazard*, 51 Hun, 201, 4 N.Y.Supp. 701; *In re Valentine's Estate*, 1 Misc. 491, 23 N.Y. Supp. 289; *In re Hawley*, 104 N.Y. 250, 10 N.E. 352.

**Trustee Acts**

The statutes 13 & 14 Vict. c. 60, passed in 1850, and 15 & 16 Vict. c. 55, passed in 1852, enabling the court of chancery, without bill filed, to appoint new trustees in lieu of any who, on account of death, lunacy, absence, or otherwise, are unable or unwilling to act as such; and also to make vesting orders by which legal estates and rights may be transferred from the old trustee or trustees to the new trustee or trustees so appointed. Mozley & Whitley.

**Trustee Ex Maleficio**

A person who, being guilty of wrongful or fraudulent conduct, is held by equity to the duty and liability of a trustee, in relation to the subject-matter, to prevent him from profiting by his own wrong. *Rice v. Braden*, 243 Pa. 141, 89 A. 877, 880. *Alabama Water Co. v. City of Anniston*, 227 Ala. 579, 151 So. 457, 458.

**Trustee in Bankruptcy**

A person in whom the property of a bankrupt is vested in trust for the creditors.

**Trustee Process**

The name given, in the New England states, to the process of garnishment or foreign attachment.

**Trustee Relief Acts**

The statute 10 & 11 Vict. c. 96, passed in 1847, and statute 12 & 13 Vict. c. 74, passed in 1849, by which a trustee is enabled to pay money into court, in cases where a difficulty arises respecting the title to the trust fund. Mozley & Whiteley.

**TRUSTER.** In Scotch law. The maker or creator of a trust.

**TRUSTIS.** In old European law. Trust; faith; confidence; fidelity.

**TRUSTOR.** One who creates a trust. Also called settlor. *Ulmer v. Fulton*, 129 Ohio St. 323, 195 N.E. 557, 564, 97 A.L.R. 1170.

**TRUTH.** There are three conceptions as to what constitutes "truth": Agreement of thought and reality; eventual verification; and consistency of thought with itself. *Memphis Telephone Co. v. Cumberland Telephone & Telegraph Co.*, C.C.A. Tenn., 231 F. 835, 842.

For "Fact" and "truth" distinguished, see Fact.

**TRY.** To examine judicially; to examine and investigate a controversy, by the legal method called "trial," for the purpose of determining the issues it involves.

**TSAR.** The better, though perhaps less common spelling of "czar" (*q. v.*).

**TUAS RES TIBI HABETO.** Lat. Have or take your things to yourself. The form of words by which, according to the old Roman law, a man divorced his wife. Calvin.

**TUB.** In mercantile law. A measure containing sixty pounds of tea, and from fifty-six to eighty-six pounds of camphor. Jacob.

**TUB-MAN.** In English law. A barrister who has a preaudience in the exchequer, and also one who has a particular place in court, is so called. Brown.

**TUCHAS.** In Spanish law. Objections or exceptions to witnesses. White, *New Recop.* b. 3, tit. 7, c. 10.

**TUCKER ACT.** The act of March 3, 1887, relating to the jurisdiction of the court of claims. *Garl. & Ralston*, Fed. Pr. 413.

**TUERTO.** In Spanish law. Tort. *Las Partidas*, pt. 7, tit. 6, 1, 5.

**TUG.** A steam vessel built for towing; synonymous with "tow-boat."

**TUITION.** The act or business of teaching the various branches of learning. *State ex rel. Veeder v. State Board of Education*, 97 Mont. 121, 33 P.2d 516, 522.

**TULLIANUM.** Lat. In Roman law. That part of a prison which was under ground. Supposed to be so called from Servius Tullius, who built that part of the first prison in Rome. *Adams*, Rom. Ant. 290.

**TUMBREL.** A castigatory, trebucket, or ducking-stool, anciently used as a punishment for common scolds.

**TUMULTUOUS PETITIONING.** Under St. 13 Car. II. St. 1, c. 5, this was a misdemeanor, and consisted in more than twenty persons signing any petition to the crown or either house of parliament for the alteration of matters established by law in church or state, unless the contents thereof had been approved by three justices, or the majority of the grand jury at assizes or quarter sessions. No petition could be delivered by more than ten persons. 4 Bl.Comm. 147; *Mozley & Whitley*.

**TUN.** A measure of wine or oil, containing four hogsheads.

**TUNING.** The term as used with reference to signaling by electro-magnetic waves, or wireless telegraphy, means the bringing of two or more electrical circuits into resonance, or the adjustment of capacity and inductance to secure the time-period vibration or wave length desired. The wave length assigned to a station might be called its "tune." *National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States*, C.C.A.Pa., 208 F. 679, 695.

**TUNGREVE.** A town-reeve or bailiff. Cowell.

**TUNNAGE.** A duty in England anciently due upon all wines imported, over and above the prisage and butlerage. 2 Steph.Com. 628.



## TURBA

**TURBA.** Lat. In the civil law. A multitude; a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least. Calvin.

**TURBARY.** Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground. Brown.

**TURF AND TWIG.** A piece of turf, or a twig or a bough, were delivered by the feoffer to the feoffee in making livery of seisin. 2 Bla.Com. 315.

**TURN, or TOURN.** The great court-leet of the county, as the old county court was the court-baron. Of this the sheriff is judge, and the court is incident to his office; wherefore it is called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred. Wharton.

**TURN KEY JOB.** In oil drilling industry a job wherein driller of oil well undertakes to furnish everything and does all work required to complete well, place it on production, and turn it over ready to turn the key and start oil running into tanks. Retsal Drilling Co. v. Commissioner of Internal Revenue, C.C.A.Tex., 127 F.2d 355, 357.

**TURNED TO A RIGHT.** This phrase means that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action, either possessory or droitual. Mozley & Whiteley.

**TURNKEY.** A person, under the superintendence of a jailer, who has the charge of the keys of the prison, for the purpose of opening and fastening the doors.

**TURNOUT.** A short side-track on a railroad which may be occupied by one train while another is passing on the main track; a siding. Philadelphia v. R. Co., 133 Pa. 134, 19 A. 356; Indiana Rys. & Light Co. v. City of Kokomo, 183 Ind. 543, 108 N.E. 771, 772.

**TURNPIKE.** A gate set across a road, to stop travelers and carriages until toll is paid for the privilege of passage thereon.

**TURNPIKE ROADS.** These are roads on which parties have by law a right to erect gates and bars, for the purpose of taking toll, and of refusing the permission to pass along them to all persons who refuse to pay. Northam Bridge Co. v. London Ry. Co., 6 Mees. & W. 428. A public highway, established by public authority for public use, and is to be regarded as a public easement, and not as private property. The only difference between this and a common highway is that, instead of being made at the public expense in the first instance, it is authorized and laid out by public authority, and made at the expense of individuals in the first instance; and the cost of construction and maintenance is reimbursed by a toll, levied by public authority for the purpose. Com. v. Wilkinson, 16 Pick. (Mass.) 175, 26 Am. Dec. 654.

**TURNABLE DOCTRINE.** Also termed attractive nuisance doctrine. This doctrine requires the owner of premises not to attract or lure children into unsuspected danger or great bodily harm, by keeping thereon attractive machinery or dangerous instrumentalities in an exposed and unguarded condition, and where injuries have been received by a child so enticed the entry is not regarded as unlawful, and does not necessarily preclude a recovery of damages; the attractiveness of the machine or structure amounting to an implied invitation to enter. Heller v. New York N. H. & H. R. Co., C.C.A.N.Y., 265 F. 192, 194. It imposes a liability on a property owner for injuries to a child of tender years, resulting from something on his premises that can be operated by such a child and made dangerous by him, and which is attractive to him and calculated to induce him to use it, where he fails to protect the thing so that a child of tender years cannot be hurt by it. Barnhill's Adm'r v. Mt. Morgan Coal Co., D.C. Ky., 215 F. 608, 609.

Doctrine is that who maintains or creates upon his premises or upon the premises of another in any public place an instrumentality or condition which may reasonably be expected to attract children of tender years and to constitute a danger to them is under duty to take the precautions that a reasonably prudent person would take under similar circumstance, to prevent injury to such children. Schock v. Ringling Bros. and Barnum & Bailey Combined Shows, 5 Wash.2d 599, 105 P.2d 838, 843.

The dangerous and alluring qualities of a railroad turntable gave the "attractive nuisance rule" the name of "Turntable Doctrine." Louisville & N. R. Co. v. Vaughn, 292 Ky. 120, 166 S.W.2d 43, 46.

**TURPIS.** Lat. In the civil law. Base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons. Calvin.

**TURPIS CAUSA.** A base cause; a vile or immoral consideration; a consideration which, on account of its immorality, is not allowed by law to be sufficient either to support a contract or found an action; *e. g.*, future illicit intercourse.

**TURPIS CONTRACTUS.** An immoral or iniquitous contract.

**TURPIS EST PARS QUÆ NON CONVENIT CUM SUO TOTO.** The part which does not agree with its whole is of mean account, [entitled to small or no consideration.] Plowd. 101; Shep. Touch. 87.

**TURPITUDE.** In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals. State v. Anderson, 117 Kan. 117, 230 P. 315, 317; Hughes v. State Board of Medical Examiners, 162 Ga. 246, 134 S.E. 42, 46. An action showing gross depravity. Traders & General Ins. Co. v. Russell, Tex.Civ.App., 99 S.W.2d 1079, 1084.

### Moral Turpitude

A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general,

it means neither more nor less than "turpitude," *i. e.*, anything done contrary to justice, honesty, modesty, or good morals. In *re Williams*, 64 Okl. 316, 167 P. 1149, 1152; In *re Humphrey*, 174 Cal. 290, 163 P. 60, 62. Indeed, it is sometimes candidly admitted that the word "moral" in this phrase does not add anything to the meaning of the term other than that emphasis which may result from a tautological expression. *Hughes v. State Board of Medical Examiners*, 162 Ga. 246, 134 S.E. 42, 46. It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between a man and man. *Moore v. State*, 12 Ala. App. 243, 67 So. 789, 791; *United States v. Uhl*, C.C.A.N.Y., 210 F. 860, 862.

Although a vague term, it implies something immoral in itself, regardless of its being punishable by law. *Pippin v. State*, 197 Ala. 613, 73 So. 340, 342; *Coykendall v. Skrmetta*, C.C.A.Ga., 22 F.2d 120; Thus excluding unintentional wrong, or an improper act done without unlawful or improper intent. *Drazen v. New Haven Taxicab Co.*, 95 Conn. 500, 111 A. 861, 863. It is also said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind. *Bartos v. United States District Court for District of Nebraska*, C.C.A.Neb., 19 F.2d 722, 724.

**TURPITUDO.** Lat. Baseness; infamy; immorality; turpitude.

**TUTA EST CUSTODIA QUÆ SIBIMET CREDITUR.** Hob. 340. That guardianship is secure which is intrusted to itself alone.

**TUTELA.** Lat. In the civil law. Tutelage; that species of guardianship which continued to the age of puberty; the guardian being called "tutor," and the ward, "pupillus." 1 Dom. Civil Law, b. 2, tit. 1, p. 260. A power given by the civil law over a free person to defend him when by reason of his age he is unable to defend himself. A child under the power of his father was not subject to tutelage, because not a free person, *caput liberum*.

**TUTELA LEGITIMA.** Legal tutelage; tutelage created by act of law, as where none had been created by testament. Inst. 1, 15, pr.

**TUTELA TESTAMENTARIA.** Testamentary tutelage or guardianship; that kind of tutelage which was created by will. Calvin.

**TUTELÆ ACTIO.** Lat. In the civil law. An action of tutelage; an action which lay for a ward or pupil, on the termination of tutelage, against the *tutor* or guardian, to compel an account. Calvin.

**TUTELAGE.** Guardianship; state of being under a guardian. See Tutela.

**TUTELAM REDDERE.** Lat. In the civil law. To render an account of tutelage. Calvin. *Tutelam reposcere*, to demand an account of tutelage.

**TUTEUR.** In French law. A kind of guardian.

**TUTEUR OFFICIEUX.** A person over fifty years of age may be appointed a tutor of this sort to a

child over fifteen years of age, with the consent of the parents of such child, or, in their default, the *conseil de famille*. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one. Brown.

**TUTEUR SUBROGÉ.** The title of a second guardian appointed for an infant under guardianship. His functions are exercised in case the interests of the infant and his principal guardian conflict. Code Nap. 420; Brown.

**TUTIUS ERRATUR EX PARTE MITIORE.** 3 Inst. 220. It is safer to err on the gentler side [or on the side of mercy].

**TUTIUS SEMPER EST ERRARE ACQUIETANDO, QUAM IN PUNIENDO, EX PARTE MISERICORDIÆ QUAM EX PARTE JUSTITIÆ.** It is always safer to err in acquitting than punishing, on the side of mercy than on the side of justice. Branch, Princ.; 2 Hale, P. C. 290; Broom, Max. 326; Com. v. York, 9 Metc. (Mass.) 116, 43 Am.Dec. 373.

**TUTOR.** One who teaches, usually a private instructor. State ex rel. *Veeder v. State Board of Education*, 97 Mont. 121, 33 P.2d 516, 522.

In the civil law. This term corresponds nearly to "guardian," (*i. e.*, a person appointed to have the care of the person of a minor and the administration of his estate,) except that the guardian of a minor who has passed a certain age is called "curator," and has powers and duties differing somewhat from those of a tutor. See *Washington Bank and Trust Co. v. Magee*, 187 Miss. 198, 192 So. 438.

**TUTOR ALIENUS.** In English law. The name given to a stranger who enters upon the lands of an infant within the age of fourteen, and takes the profits. He may be called to an account by the infant and be charged as guardian in socage. Littleton, § 124; Co.Litt. 89b, 90a.

**TUTOR PROPRIUS.** The name given to one who is rightly a guardian in socage, in contradistinction to a *tutor alienus*.

**TUTORSHIP.** The office and power of a tutor. The power which an individual, *sui juris*, has to take care of the person of one who is unable to take care of himself.

There are four sorts of tutorships: Tutorship by nature; tutorship by will; tutorship by the effect of the law; tutorship by the appointment of the judge. Civ.Code La. art. 247.

**TUTORSHIP BY NATURE.** Upon the death of either parent, the tutorship of minor children belongs of right to the other. Upon divorce or judicial separation from bed and board of parents, the tutorship of each minor child belongs of right to the parent under whose care he or she has been placed or to whose care he or she has been entrusted. All those cases are called tutorship by nature. Civ.Code La. art. 250.

## TUTORSHIP

**TUTORSHIP BY WILL.** The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This is called "tutorship by will," because generally it is given by testament; but it may likewise be given by any declaration by the surviving father or mother, executed before a notary and two witnesses. Civ.Code La. art. 257.

**TUTRIX.** A female tutor.

**TWA NIGHT GEST.** In Saxon law. A guest on the second night. By the laws of Edward the Confessor it was provided that a man who lodged at an inn, or at the house of another, should be considered, on the first night of his being there, a stranger, (*uncuth*;) on the second night, a guest; on the third night, a member of the family. This had reference to the responsibility of the host or entertainer for offenses committed by the guest.

**TWELFHINDI.** The highest rank of men in the Saxon government, who were valued at 1200s. If any injury were done to such persons, satisfaction was to be made according to their worth. Cowell.

**TWELVE TABLES.** The earliest statute or code of Roman law, framed by a commission of ten men, B.C. 450, upon the return of a commission of three who had been sent abroad to study foreign laws and institutions. The Twelve Tables consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. They formed the source and foundation for the whole later development of Roman jurisprudence. They exist now only in fragmentary form. See 1 Kent, Comm. 520. These laws were substantially a codification, and not merely an incorporation, of the customary law of the people. There were Greek elements in them, but still they were essentially Roman. Hunter, Rom.L. 16. See Stephenson, Hist.Rom.L. 120; Sohm's Inst.Rom.L.

**TWELVE-DAY WRIT.** A writ issued under the St. 18 & 19 Vict. c. 67, for summary procedure on bills of exchange and promissory notes, abolished by rule of court in 1880. Wharton.

**TWELVEMONTH.** This term (in the singular number), includes all the year; but *twelve months* are to be computed according to twenty-eight days for every month. 6 Coke, 62.

**TWELVE-MONTH BOND.** "Twelve-month bond," under statute effective Jan. 20, 1837 (Hartley's Dig. art. 1277), had a double character, first as an obligation known to the Spanish civil law, and second, as a summary statutory judgment, with the force and effect of any other judgment of a court of competent jurisdiction; it being also a consent judgment. Clements v. Texas Co., Tex.Civ.App., 273 S.W. 993, 1001.

**TWENTY PER CENT RULE.** In election contests is that votes of entire precinct will be thrown out when such large proportion of votes cast was illegal, and it is impossible to determine for whom

illegal votes were cast. Johnson v. Caddell, 251 Ky. 14, 64 S.W.2d 441.

**TWENTY-FOUR CALENDAR MONTHS.** Two years; a period of exactly 730 days. Carey v. Deems, 101 N.J.L. 419, 129 A. 191, 193.

**TWICE IN JEOPARDY.** See Jeopardy; Once in Jeopardy.

**TWISTING.** Colloquially, in insurance, the misrepresentation or misstatements of fact or incomplete comparison of policies to induce the insured to give up a policy in one company for the purpose of taking insurance in another. Brandt v. Beha, 217 App.Div. 644, 216 N.Y.S. 178, 179.

**TWO ISSUE RULE.** Error in charge dealing exclusively with one of two or more complete and independent issues required to be presented to jury in civil action will be disregarded, if charge in respect to another independent issue which will support verdict is free from prejudicial error, unless it is disclosed that verdict is in fact based upon issue to which erroneous instruction related. Asteri v. City of Youngstown, Ohio App., 121 N.E.2d 143, 145.

**TWO YEARS.** A period of exactly 730 days; identical with twenty-four calendar months. Carey v. Deems, 101 N.J.L. 419, 129 A. 191, 193. Thus, it is held that an accusation filed on March 16, 1912, and charging the commission of an offense on March 16, 1910, was not filed "within two years" after the commission of the offense. McLendon v. State, 14 Ga.App. 274, 80 S.E. 692.

**TWYHINDI.** The lower order of Saxons, valued at 200s. in the scale of pecuniary mulcts inflicted for crimes. Cowell. See Twelfthindi.

**TYBURN TICKET.** In English law. A certificate which was given to the prosecutor of a felon to conviction. By the 10 & 11 Will. III. c. 23, the original proprietor or first assignee of such certificate is exempted from all parish and ward offices within the parish or ward where the felony was committed. Bacon, Abr. *Constable* (C).

**TYHTLAN.** In Saxon law. An accusation, impeachment, or charge of any offense.

**TYING.** A term which, as used in a contract of lease of patented machinery means that the lessee has secured only limited rights of use, and that if he exceeds such limited rights by agreeing not to use the machines of others he may lose his lease. United States v. United Shoe Machinery Co. of New Jersey, D.C.Mass., 222 F. 349, 388, 394.

**TYING WIRE.** In concrete construction, No. 16 black fencing wire used to fasten the steel together. Soule v. Northern Const. Co., 33 Cal.App. 300, 165 P. 21, 22.

**TYLWITH.** Brit. A tribe or family branching or issuing out of another. Cowell.

**TYMBRELLA.** In old English law, a tumbrel, castigatory, or ducking stool, anciently used as an instrument of punishment for common scolds.

**TYPEWRITING.** The process of printing letter by letter by the use of a typewriter, Acme Coal

Co. v. Northrup Nat. Bank of Iola, Kan., 23 Wyo. 66, 146 P. 593, L.R.A.1915D, 1084, an instrument operated by hand, and used largely in business requiring much correspondence with others, or in connection with commercial transactions. Hooper v. Kennedy, 100 Vt. 314, 137 A. 194, 196. Typewriting, for certain purposes and under different statutes, is sometimes deemed to be included within the term "writing," and sometimes within the term "printing."

**TYRANNY.** Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmental powers.

**TYRANT.** A despot; a sovereign or ruler, legitimate or otherwise, who uses his power unjustly and arbitrarily, to the oppression of his subjects.

**TYROTOXICON.** In medical jurisprudence. A poisonous ptomaine produced in milk, cheese, cream, or ice-cream by decomposition of albuminous constituents.

**TYRRA, or TOIRA.** A mount or hill. Cowell.

**TYTHE.** Tithe, or tenth part.

**TYTHING.** A company of ten; a district; a tenth part. See Tithing.

**TZAR, TZARINA.** Formerly, the emperor and empress of Russia. See Czar.