

# M

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

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

This letter was sometimes put on the face of treasury notes of the United States, and signified that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest. *U. S. v. Hardyman*, 38 U.S. (13 Pet.) 176, 10 L.Ed. 113.

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

Chemical liquid which, when sprayed in face of person, causes dizziness and immobilization.

**Macedonian decree** /mæsədówniyan dækríy/. In Roman law, this was the *Senatus-consultum Macedonianum*, a decree of the Roman senate, first given under Claudius, and renewed under Vespasian by which it was declared that no action should be maintained to recover a loan of money made to a child who was under the *patria potestas*. It was intended to strike at the practice of usurers in making loans, on unconscionable terms, to family heirs who would mortgage their future expectations from the paternal estate. The law is said to have derived its name from that of a notorious usurer.

**Mace-greff** /méysgréf/. In old English law, one who buys stolen goods, particularly food, knowing it to have been stolen.

**Mace-proof.** Secure against arrest.

**Machination** /mæknéyshən/mæsh<sup>o</sup>/. The act of planning or contriving a scheme for executing some purpose, particularly an evil purpose; an artful design formed with deliberation.

**Mactator** /mæktéydər/. L. Lat. In old European law, a murderer.

**Maculare** /mækylériy/. In old European law, to wound.

**Made.** Filed. *St. Louis Law Printing Co. v. Aufderheide*, 226 Mo.App. 680, 45 S.W.2d 543, 545. Produced or manufactured artificially. *United States v. Anderson*, D.C.Cal., 45 F.Supp. 943, 946. To have required or compelled. *Dickinson v. Minge*, 191 Ark. 946, 88 S.W.2d 807, 809. Executed. *Lone Star Gas Co. v. Coastal States Gas Producing Co.*, 388 S.W.2d 251, 255.

**Made known.** Where a process or other legal paper has been actually served upon a defendant, the proper return is that its contents have been "made known" to him. A crime is "made known" to an officer when facts which come to knowledge of the officer are such as to indicate to him that it is his official duty to act or to see that an investigation of the alleged crime is instituted within his jurisdiction. See also **Notice**.

**Madman.** This is not a technical term either of medicine or the law, and because of this it is incapable of being applied with scientific precision; as such, is no longer in use. See **Insanity**.

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

**Mæc-burgh** /mækbərg/. In Saxon law, kindred; family.

**Mæg** /mæg/. A kinsman.

**Mægbote** /mægbówt/. In Saxon law, a recompense or satisfaction for the slaying or murder of a kinsman.

**Magic.** In English statutes, witch-craft and sorcery.

**Magis de bono quam de malo lex intendit** /mэйjəs díy bównow kwæm díy mælow léks anténdat/. The law favors a good rather than a bad construction. Where the words used in an agreement are susceptible of two meanings, the one agreeable to, the other against, the law, the former is adopted. Thus, a bond conditioned "to assign all offices" will be construed to apply to such offices only as are assignable.

**Magis dignum trahit ad se minus dignum** /mэйjəs dígnəm trэй(h)ət æd síy máynəs dígnəm/. The more worthy draws to itself the less worthy.

- Magister.** Lat. *Civil law.* A title of several offices under the Roman Empire.
- English law.* A master or ruler; a person who has attained to some eminent degree in science.
- Magister ad facultates** /májístar æd fækaltéydiy/. In English ecclesiastical law, the title of an officer who grants dispensations; as to marry, to eat meat on days prohibited and the like.
- Magister bonorum vendendorum** /májístar banóræm vëndændóræm/. In Roman law, a person appointed by judicial authority to inventory, collect, and sell the property of an absent or absconding debtor for the benefit of his creditors. He was generally one of the creditors, and his functions corresponded generally to those of a receiver or an assignee for the benefit of creditors under modern bankruptcy practice.
- Magister cancellariæ** /májístar kæn(t)salériiy/. In old English law, master of the chancery; master in chancery. These officers were said to be called "*magistri*," because they were priests.
- Magisterial** /mæjéstiriya/. Relating or pertaining to the character, office, powers, or duties of a magistrate or of the magistracy.
- Magisterial precinct.** In some American states, a local subdivision of a county, defining the territorial jurisdiction of justices of the peace and constables; also called magisterial district.
- Magister libellorum** /májístar lâybélóræm/. Master of requests. A title of office under the Roman Empire.
- Magister litis** /májístar láydæs/. Master of the suit; the person who controls the suit or its prosecution, or has the right so to do.
- Magister navis** /májístar néyvæs/. In the civil law, the master of a ship or vessel. He to whom the care of the whole vessel is committed.
- Magister palatii** /májístar pələyshiya/. Master of the palace or of the offices. An officer under the Roman Empire bearing some resemblance to the modern lord chamberlain.
- Magister rerum usus** /májístar ríræm yúwsæs/. Use is the master of things. Usage is a principal guide in practice.
- Magister rerum usus; magistra rerum experientia** /májístar ríræm yúwsæs, májístræ ríræm ækspiriyénsh(iy)ə/. Use is the master of things; experience is the mistress of things.
- Magister societatis** /májístar səsáyətéydas/. In the civil law, the master or manager of a partnership; a managing partner or general agent; a manager specially chosen by a firm to administer the affairs of the partnership.
- Magistracy** /mæjéstrosiy/. This term may have a more or less extensive signification according to the use and connection in which it occurs. In its widest sense it includes the whole body of public functionaries, whether their offices be legislative, judicial, executive, or administrative. In a more restricted (and more usual) meaning, it denotes the class of officers who are charged with the application and execution
- of the laws. In a still more confined use, it designates the body of judicial officers of the lowest rank, and more especially those who have jurisdiction for the trial and punishment of petty misdemeanors or the preliminary steps of a criminal prosecution, such as police judges and justices of the peace. The term also denotes the office of a magistrate. *Golden v. Golden*, 41 N.M. 356, 68 P.2d 928, 930. See also **Magistrate**.
- Magistralia brevia** /mæjəstréyl(i)yə bríyv(i)yə/. In old English practice, magisterial writs; writs adapted to special cases, and so called from being framed by the masters or principal clerks of the chancery.
- Magistrate.** The term in its generic sense refers to a person clothed with power as a public civil officer, or a public civil officer invested with executive or judicial power. *Ex parte Noel*, Ky., 338 S.W.2d 903, 907. Minor officials or officers with limited judicial authority; e.g. justices of the peace, judges of police courts, mayor's courts, or magistrate's courts. In a general sense, a "magistrate" is a public officer, possessing such power, legislative, executive, or judicial, as government appointing him may ordain, although in a narrow sense he is regarded as an inferior judicial officer. *Shadwick v. City of Tampa, Fla.*, 250 So.2d 4, 5.
- U.S. Magistrates.* A judicial officer, appointed by judges of federal district courts, having some but not all of the powers of a judge. In the federal district courts magistrates may conduct many of the preliminary or pre-trial proceedings in both civil and criminal cases. In addition, U.S. Magistrates have jurisdiction to try minor offenses. The procedure in such trials is governed by the "Rules for Minor Offenses Before U.S. Magistrates." 18 U.S.C.A. §§ 3401, 3402; 28 U.S.C.A. § 631 *et seq.* United States Magistrates have generally taken over the duties formerly performed by U.S. Commissioners.
- For Chief magistrate; Committing magistrate; Police magistrate; and Stipendiary magistrates, see those titles.
- Magistrate's courts.** The jurisdiction of these courts of limited jurisdiction differs from state to state. Such may be divisions of courts of general jurisdiction, and, may have concurrent jurisdiction with other courts. Commonly their jurisdiction is restricted to the handling of minor offenses, small claims or preliminary hearings.
- Magistratus** /mæjəstréydæs/. Lat. In the civil law, a magistrate. A judicial officer who had the power of hearing and determining causes, but whose office properly was to inquire into matters of law, as distinguished from fact.
- Magna assisa** /mægnə əsáyzə/. In old English law, the grand assize.
- Magna assisa eligenda** /mægnə əsáyzə éljéndə/. An ancient writ to summon four lawful knights before the justices of assize, there to choose twelve others, with themselves to constitute the *grand assize* or great jury, to try the matter of right. The trial by grand assize was instituted by Henry II, in parliament, as an alternative to the dual in a writ of right. Abolished by 3 & 4 Wm. IV, c. 27.

**Magna centum** /mægnə séntəm/. The great hundred, or six score.

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

**Magna Charta et Charta de Foresta sont appelés les "deux grandes charters"** /mægnə kárdə èy kárdə diy fàrèstə sówn əpéley lèy dyúw gránd chàrdərz/. *Magna Charta* and the Charter of the Forest are called the "two great charters."

**Magna componere parvis** /mægnə kəmpównəriy párvəs/. To compare great things with small things.

**Magna culpa** /mægnə kálpə/. Great fault; gross negligence.

**Magna negligentia** /mægnə nègləjénsh(iy)ə/. In the civil law, great or gross negligence.

**Magna negligentia culpa est; magna culpa dolus est** /mægnə nègləjénsh(iy)ə kálpə èst; mægnə kálpə dówlas èst/. Gross negligence is fault; gross fault is fraud.

**Magnuson-Moss Warranty Act.** Federal statute (15 U.S.C.A. § 2301 et seq.) requiring that written warranties as to consumer products must fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty, including whether the warranty is a full or limited warranty according to standards set forth in the Act.

**Magnus rotulus statutorum** /mægnəs rót(y)ələs stətyuwtórəm/. The great statute roll. The first of the English statute rolls, beginning with *Magna Charta*, and ending with Edward III.

**Maiden.** A young unmarried woman. In an indictment for adultery, not necessarily a virgin.

**Maiden assize** /méydən əsáyz/. In English law, originally an assize at which no person was condemned to die; later a session of a criminal court at which there were no prisoners to be tried.

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

**Maihem** /méy(h)əm/. See **Mayhem**; **Maim**.

**Maihematus** /méy(h)əmédəs/. Maimed or wounded.

**Maihemium** /mèyhíym(i)yəm/. In old English law, mayhem (q.v.).

**Maihemium est homicidium inchoatum** /mèyhíym(i)yəm èst hóməsáyð(i)yəm inkowéydəm/. Mayhem is incipient homicide.

**Maihemium est inter crimina majora minimum, et inter minora maximum** /mèyhíym(i)yəm èst întər kriməna məjórə mínəməm, èd întər mənórə mæksəməm/. Mayhem is the least of great crimes, and the greatest of small.

**Maihemium est membri mutilatio, et dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum** /mèyhíym(i)yəm èst mémbray myúw-daléysh(iy)ow, èt dáysay pódarət, yúwbay əlækwis in əlækwa párdiy syúway kórpərəs əféktəs sid inyúwdələs əd pəgnændəm/. Mayhem is the mutilation of a member, and can be said to take place when a man is injured in any part of his body so as to be useless in fight.

**Mail.** See **Mailed**; **Registered mail**.

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

**Mailed.** A letter, package, or other mailable matter is "mailed" when it is properly addressed, stamped with the proper postage, and deposited in a proper place for receipt of mail. *Texas Cas. Ins. Co. v. McDonald*, *Tex.Civ.App.*, 269 S.W.2d 456, 457.

Under rules practice in some jurisdictions, an action is deemed commenced when the complaint and appropriate entry fee is deposited in the mails under either certified or registered mail procedure; e.g. *Mass.R.Civ.P.* 3.

**Mail fraud.** The use of the mails to defraud is a federal offense requiring the government to prove a knowing use of the mails to execute the fraudulent scheme. *U. S. v. Dondich* (C.A.Cal.), 506 F.2d 1009. Elements of "mail fraud" are a scheme to defraud and the mailing of a letter for the purpose of executing the scheme. *U. S. v. Scoblick*, D.C.Pa., 124 F.Supp. 881, 887. See 18 U.S.C.A. §§ 1341, 1342. See **Using mail to defraud**.

**Mail order divorce.** Divorce obtained by parties who are not physically present nor domiciled in the jurisdiction which purports to grant divorce (e.g. Mexican divorce). Such divorces are not recognized because of the complete absence of the usual bases for divorce jurisdiction. *Unruh v. Industrial Commission*, 81 Ariz. 118, 301 P.2d 1029.

**Maim.** To cripple or mutilate in any way. To inflict upon a person any injury which deprives him of the use of any limb or member of the body, or renders him lame or defective in bodily vigor. To inflict bodily injury; to seriously wound or disfigure; disable. *State v. Thomas*, 157 Kan. 526, 142 P.2d 692, 693; *Phillips v. State*, 140 Tex.Cr.R. 84, 143 S.W.2d 591, 592. See also **Mayhem**.

At common law, to deprive a person of a member or part of the body, the loss of which renders him less capable of fighting, or of defending himself; to commit mayhem (q.v.).

**Main.** Principal, leading, primary, chief. Most important in size, extent, rank, importance, strength or utility.

**Mainad** /méynəd/. In old English law, a false oath; perjury. Probably from Sax. "manath" or "mainath" a false or deceitful oath.

**Main-a-main.** Immediately.

**Main channel.** The main channel of a river is that bed over which the principal volume of water flows. The deeper or more navigable channel of river.

**Maine-port.** In old English law, a small tribute, commonly of loaves of bread, which in some places the parishioners paid to the rector in lieu of small tithes.

**Mainly.** Principally, chiefly, in the main.

**Mainour** /méynər/. An article stolen, when found in the hands of the thief. A thief caught with the stolen goods in his possession is said to be taken "with the mainour," that is, with the property *in manu*, in his hands. 4 Bl.Comm. 307.

**Mainovre, or mainœuvre** /mənúvvr/. A trespass committed by hand.

**Mainpernable** /méynpərnəbəl/. Capable of being bailed; bailable; admissible to bail on giving surety by mainpernors.

**Mainpernor** /méynpərnər/. In old practice, a surety for the appearance of a person under arrest, who is delivered out of custody into the hands of his bail.

**Mainprise.** In old English law, the delivery of a person into the custody of *mainpernors* (q.v.). Also the name of a writ (now obsolete) commanding the sheriff to take the security of mainpernors and set the party at liberty. "Mainpernors" differ from "bail" in that a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. Bail are only sureties that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3 Bl.Comm. 128. Other distinctions are made in the old books.

**Main purpose doctrine.** The Statute of Frauds requires contracts to answer for the debt, default or misdoing of another to be in writing to be enforceable. However, if the main purpose of the promisor's undertaking is his own benefit or protection, such promise need not be in writing. *MacDonald v. Stack*, 345 Mass. 709, 189 N.E.2d 221. The "main purpose rule" is that whenever the main purpose and object of promisor is not to answer for another but to subserve some purpose of his own, his promise is not within statute of frauds, although it may be in form a promise to pay debt of another and although performance of promise may incidentally have effect of extinguishing liability of another. *Cooper Petroleum v. La Gloria Oil & Gas Co.*, Tex.Civ.App., 423 S.W.2d 645, 655.

**Main-rent.** Vassalage.

**Main sea.** See *Sea*.

**Mainsworn** /méynswòrn/. Forsworn, by making false oath with *hand* (*main*) on book. Used in the north of England.

**Maintain.** The term is variously defined as acts of repairs and other acts to prevent a decline, lapse or cessation from existing state or condition; bear the expense of; carry on; commence; continue; furnish means for subsistence or existence of; hold; hold or keep in an existing state or condition; hold or preserve in any particular state or condition; keep from change; keep from falling, declining, or ceasing; keep in existence or continuance; keep in force; keep in good order; keep in proper condition; keep in repair; keep up; preserve; preserve from lapse, decline, failure, or cessation; provide for; rebuild; repair; replace; supply with means of support; supply with what is needed; support; sustain; uphold. Negatively stated, it is defined as not to lose or surrender; not to suffer or fail or decline. *El Paso County Water Imp. Dist. No. 1 v. City of El Paso*, D.C.Tex., 243 F.2d 927, 931.

To "maintain" an action is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect. *George Moore Ice Cream Co. v. Rose, Ga.*, 289 U.S. 373, 53 S.Ct. 620, 77 L.Ed. 1265. To maintain an action or suit may mean to commence or institute it; the term imports the existence of a cause of action. Maintain, however, is applied to actions already brought, but not yet reduced to judgment. *Smallwood v. Gallardo*, 275 U.S. 56, 48 S.Ct. 23, 72 L.Ed. 152. In this connection it means to continue or preserve in or with; to carry on.

The words "maintains" and "maintaining" in statutes prohibiting maintenance of a liquor nuisance denote continuous or recurrent acts approaching permanence. The term "maintaining government" means providing money to enable government to perform duties which it is required by law to perform.

See also **Maintenance**; **Repair**.

**Maintained.** Carried on; kept possession and care of; kept effectively; commenced and continued.

**Maintainor.** In criminal law, one that maintains or seconds a cause pending in suit between others, either by disbursing money or otherwise giving assistance. One who is guilty of *maintenance* (q.v.).

**Maintenance.** Act of maintaining, keeping up, supporting; livelihood; means of sustenance. *Federal Land Bank of St. Louis v. Miller*, 184 Ark. 415, 42 S.W.2d 564, 566. The upkeep, or preserving the condition of property to be operated. See also **Maintain**.

Sustenance; support; assistance; aid. The furnishing by one person to another, for his support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child, or husband and wife. *State ex rel. Blume v. State Board of Education of Montana*, 97 Mont. 371, 34 P.2d 515, 519. The supplying of the necessities of life. *Federal Land Bank of St. Louis v. Miller*, 184 Ark. 415, 42 S.W.2d 564, 566. Term "maintenance" means primarily food, clothing and shelter, but it does include such items as reasonable and necessary transportation or automobile expenses, medical and drug expenses, utilities and household expenses. *Hughes v. Hughes*, La.App., 303 So.2d 766, 769. See also **Support**.

**Assets.** Expenditures undertaken to preserve an asset's service potential for its originally-intended life; these expenditures are treated as period expenses or product costs. Contrast with **Improvement**. See also **Maintain; Repair**.

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

**Seamen.** See **Maintenance and cure**.

**Suits.** An officious intermeddling in a suit which in no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it. *Schnabel v. Taft Broadcasting Co., Inc.*, Mo.App., 525 S.W.2d 819, 823. See also **Champerty**.

**Maintenance and cure.** Contractual form of compensation given by general maritime law to seaman who falls ill while in service of his vessel. *McCorpen v. Central Gulf S. S. Corp.*, C.A.Tex., 396 F.2d 547, 548. A shipowner is liable to a seaman under articles for illness and injury whether or not they arise out of his shipboard duties, and to this extent such benefits are broader than workmen's compensation. The seaman who accepts such benefits is not deemed to have waived his right to sue the shipowner for negligence under the Jones Act. *Pacific S.S. Co. v. Peterson*, 278 U.S. 130, 49 S.Ct. 75, 73 L.Ed. 220.

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

**Malor** /mé(ya)r/. An old form of "mayor."

**Maister** /méystar/. An old form of "master."

**Maitre** /méytrə/. Fr. In French maritime law, master; the master or captain of a vessel.

**Majestas** /majéstās/. Lat. In Roman law, the majesty, sovereign authority, or supreme prerogative of the state or prince. Also a shorter form of the expression "*crimen majestatis*," or "*crimen læsæ majestatis*," an offense against sovereignty, or against the safety or organic life of the Roman people; *i.e.*, high treason.

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

**Major.** A person of full age; one who is no longer a minor; one who has attained the management of his own concerns and the enjoyment of his civic rights. See also **Adult; Legal age; Majority**.

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

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

**Major and minor fault rule.** Vessel guilty of gross fault has burden of showing that other vessel committed a plain fault. *General Seafoods Corporation v. J. S. Packard Dredging Co.*, C.C.A.Mass., 120 F.2d 117, 119, 120. Where fault on part of one vessel is established by uncontradicted testimony and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to

management of other vessel and any reasonable doubt with regard to propriety of conduct of such other vessel should be resolved in its favor. *Intagliata v. Shipowners & Merchants Towboat Co.*, 26 Cal.2d 365, 159 P.2d 1, 10; *General Seafoods Corporation v. J. S. Packard Dredging Co.*, C.C.A.Mass., 120 F.2d 117, 119, 120.

**Major annus** /méyjar énas/. The greater year; the bissextile year, consisting of 366 days.

**Majora regalia** /majórə rəgéyl(i)yə/. The king's dignity, power, and royal prerogative, as opposed to his revenue, which is comprised in the *minora regalia*.

**Major crimes.** A loose classification of serious crimes such as murder, rape, armed robbery, etc.

**Major dispute.** Major disputes within Railway Labor Act are those concerned with formation of collective bargaining agreements or with efforts to secure such agreements and look to acquisition of rights of future rather than to rights which vested in past and "minor disputes" are those arising where there is existing agreement and there has been no effort to bring about formal change in terms or to create new agreement but dispute relates to application of particular provision. *Railway Exp. Agency, Inc. v. Gulf Dept., Dist. Bd. of Adjustment, Broth. of Ry., Airline and S. S. Clerks, Freight Handlers, Exp. and Station Emp.*, D.C.Ga., 306 F.Supp. 1243, 1246. See also **Minor dispute**.

**Majore pœna affectus quam legibus statuta est, non est infamis** /majóriy píyna éféktas kwæm líyjabas statyúwdə èst, nón èst anféymas/. One affected with a greater punishment than is provided by law is not infamous.

**Majores** /majóriyz/. In old English law, greater persons; persons of higher condition or estate.

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

**Major general.** An officer next in rank above a brigadier general, and next below a lieutenant general, and who usually commands a division or an army corps.

**Major hæreditas venit unicuique nostrum a jure et legibus quam a parentibus** /méyjar hæredatæs víynət yúwnək(yuw)áykwíy nóstrəm èy júry èt líyjabas kwæm èy pæréntabəs/. A greater inheritance comes to every one of us from right and the laws than from parents.

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

The greater number. The number greater than half of any total.

**Majority of qualified electors.** Refers to those who actually vote on election day. *Harris v. Baden*, 154 Fla. 373, 17 So.2d 608, 609. See **Majority rule; Majority vote**.

**Majority opinion.** The opinion of an appellate court in which the majority of its members join. May also

refer to a view of a legal principle in which most jurisdictions concur. See also **Opinion**.

**Majority rule.** Rule by the choice of the majority of those who actually vote, irrespective of whether a majority of those entitled participate. *N. L. R. B. v. Standard Lime & Stone Co., C.C.A.Va., 149 F.2d 435, 437.* See also **Majority vote**.

**Majority vote.** Vote by more than half of voters for candidate or other matter on ballot. When there are only two candidates, he who receives the greater number of the votes cast is said to have a majority; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a *plurality*, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined.

As regards voting by stockholders, means majority per capita when the right to vote is per capita, and a majority of stock when each share of stock is entitled to a vote, each particular case being determined by provisions of charter regulating voting. *Simon Borg & Co. v. New Orleans City R. Co., D.C.La., 244 F. 617, 619.*

**Major numerus in se continet minorem** /mējýr n(y)úwmaras in síy kóntanət mənórəm/. The greater number contains in itself the less.

**Majus dignum trahit ad se minus dignum** /mējýs dīgnəm tréy(h)əd əd síy máynəs dīgnəm/. The more worthy draws to itself the less worthy.

**Majus est delictum seipsum occidere quam alium** /mējýs ɛst dəlɪktəm seɪpsəm ɔksɪdərɪy kwəm əy-lɪyəm/. It is a greater crime to kill one's self than another. See **Suicide**.

**Majus jus** /mējýs jəs/. In old practice, greater right or more right. A plea in the old real actions. *Majus jus merum*, more mere right.

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

**Majus Latium** /mējýs léysh(ɪy)əm/. See **Jus Latium**.

**Make.** To cause to exist. *United States v. Giles, 300 U.S. 41, 57 S.Ct. 340, 344, 81 L.Ed. 493.* To form, fashion, or produce. To do, perform, or execute; as to make an issue, to make oath, to make a presentment. To do in form of law; to perform with due formalities; to execute in legal form; as to make answer, to make a return or report.

To execute as one's act or obligation; to prepare and sign; to issue; to sign, execute, and deliver; as to make a conveyance, to make a note. To conclude, determine upon, agree to, or execute; as to make a contract.

To cause to happen by one's neglect or omission; as to make default. To make acquisition of; to procure; to collect; as to make the money on an execution or to make a loan. To have authority or influence; to support or sustain; as in the phrase, "This precedent makes for the plaintiff."

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

**Make an award.** To form and publish a judgment on the facts.

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

**Maker.** One who makes, frames, or ordains; as a "law-maker." One who makes or executes; as the maker of a promissory note. One who signs a note to borrow. One who signs a check; in this context, synonymous with drawer. See **Draft**.

*Accommodation maker.* See **Accommodation**.

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

Term may also refer to a court decision that establishes new law on a particular matter or subject.

**Making record.** The preparation of an appellate record. May also refer to the process of trying a case with a view towards an eventual appeal in which the record of the trial is important. In the later instance care is taken during trial to make all appropriate objections so that such become part of the record on appeal.

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

**Mala** /mælə/. Lat. Bad; evil; wrongful.

**Maladministration** /mælədminəstréyshən/. This term is used interchangeably with *misadministration*, and both words mean "wrong administration."

**Mala fides** /mælə fáydɪyʒ/. Bad faith. The opposite of *bona fides* (q.v.). *Malâ fide*, in bad faith. *Malæ fidei* possessor, a possessor in bad faith.

**Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est** /mælə grəmædəkə nɔn vɪshɪyət kárdəm sɛd in ɛkspəzɪshɪyównɪy ɪnstrəməntórəm mælə grəmædəkə kwówæd fáyray pósəd ɛvətənda síʃ/. Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided.

**Mala in se** /mælə in síy/. Wrongs in themselves; acts morally wrong; offenses against conscience.

**Malandrinus** /mæləndrəynəs/. In old English law, a thief or pirate.

**Malapportionment.** An improper or unconstitutional apportionment of legislative districts. See **Gerrymander**; **Legislative apportionment**.

**Mala praxis** /mælə præksəs/. Malpractice; unskillful management or treatment. Particularly applied to the neglect or unskillful management of a physician, surgeon, or apothecary. See **Malpractice**.

**Mala prohibita** /mælə prəhɪbədə/. Prohibited wrongs or offenses; acts which are made *offenses* by positive laws, and *prohibited* as such. Acts or omissions which are made criminal by statute but which, of

themselves, are not criminal. Generally, no criminal intent or mens rea is required and the mere accomplishment of the act or omission is sufficient for criminal liability. Term is used in contrast to mala in se which are acts which are wrongs in themselves such as robbery.

**Malconduct** /mælkóndækt/. Ill conduct, especially dishonest conduct, maladministration, or, as applied to officers, official misconduct. See **Malfeasance**; **Misfeasance**.

**Male** /méyl/. Of the masculine sex.

**Male creditus** /mæliy krédædas/. In old English law, unfavorably thought of; in bad repute or credit.

**Maledicta est expositio quæ corrumpit textum** /mæladikta èst èkspøzish(iy)ow kwiy køræmpøt tékstəm/. That is a cursed interpretation which corrupts the text.

**Malediction** /mæladikshən/. A curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate thier rights.

**Malefaction** /mæləfækshən/. A crime; an offense.

**Malefactor** /mæləfæktər/. He who is guilty, or has been convicted, of some crime or offense.

**Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquenti** /mæləfish(iy)ə nòn débənt riymanəriy impyúwnədə; èd impyúwnətæs kántinyuwəm əfèktəm trībyuwət dèlənkwéntay/. Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.

**Maleficia propositis distinguuntur** /mæləfish(iy)ə prəpözədəs distingwántər/. Evil deeds are distinguished from evil purposes, or by their purposes.

**Maleficium** /mæləfish(iy)əm/. In the civil law, waste; damage; tort; injury.

**Maleson**, or **malison** /mæləsən/°zən/. A curse.

**Malesworn**, or **malsworn** /méylswörn/. Forsworn.

**Malfeasance** /mælfiyzən(t)s/. Evil doing; ill conduct. The commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. State ex rel. Knabb v. Frater, 198 Wash. 675, 89 P.2d 1046, 1048. Malfeasance is a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has no right, or has contracted not, to do. Daugherty v. Ellis, 142 W.Va. 340, 97 S.E.2d 33, 42. It differs from "misfeasance" and "non-feasance" (q.v.).

**Mal gree** /mæl gríy/. L. Fr. Against the will; without the consent. Hence the single word "*malgre*," and more modern "*maugre*" (q.v.).

**Malice**. The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent. A condition of mind which prompts a person to do a wrongful act willfully, that is, on purpose, to the injury of another, or to do intentionally a wrongful act toward another without justification or excuse. A conscious violation of the law (or the prompting of the mind to commit it) which operates to the prejudice of another person. A condition of the mind showing a heart regardless of social duty and fatally bent on mischief. Cockrell v. State, 135 Tex.Cr.R. 218, 117 S.W.2d 1105, 1109, 1110.

In murder, that condition of mind which prompts one to take the life of another without just cause or provocation. A willful or corrupt intention of the mind. It includes not only anger, hatred and revenge, but also every other unlawful and unjustifiable motive. State v. Scherr, 243 Wis. 65, 9 N.W.2d 117, 119.

Malice in law is not necessarily personal hate or ill will, but it is that state of mind which is reckless of law and of the legal rights of the citizen.

In libel and slander, as to privileged communications, "malice" involves an evil intent or motive arising from spite or ill will; personal hatred or ill will; or culpable recklessness or a willful and wanton disregard of the rights and interests of the person defamed. In a libel case it consists in intentionally publishing, without justifiable cause, any written or printed matter which is injurious to the character of another. Becker v. Brinkop, 230 Mo.App. 871, 78 S.W.2d 538, 541. Malice may be defined, insofar as defamation is concerned, as acting in bad faith and with knowledge of falsity of statements. Rice v. Winkelman Bros. Apparel, Inc., 13 Mich.App. 281, 164 N.W.2d 417, 420. In the context of a libel suit brought by a public figure, it consists in publishing the false defamation knowing it to be false or with a reckless disregard of whether it is true or false. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686. See also **Libel**; **Slander**.

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

**Actual malice**. Express malice, or malice in fact. Eteenpain Co-op. Soc. v. Lillback, C.C.A.Mass., 18 F.2d 912, 917.

**Constructive malice**. Implied malice; malice inferred from acts; malice imputed by law; malice which is not shown by direct proof of an intention to do injury (express malice), but which is inferentially established by the necessarily injurious results of the acts shown to have been committed. See also **Implied malice**, *infra*.

**Express malice**. Actual malice; malice in fact; ill will or wrongful motive. A deliberate intention to commit an injury, evidenced by external circumstances. Sparf v. U. S., 156 U.S. 51, 15 S.Ct. 273, 39 L.Ed. 343. See also **Express malice**.

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

**Legal malice.** See **Legal malice**.

**Particular malice.** Malice directed against a particular individual. Ill will; a grudge; a desire to be revenged on a particular person. See also *Special malice, below*.

**Preconceived malice.** Malice prepense or aforethought. See **Malice aforethought**; **Premeditation**.

**Premeditated malice.** An intention to kill unlawfully, deliberately formed in the mind as the result of a determination meditated upon and fixed before the act. See **Malice aforethought**; **Premeditation**.

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

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

**Malice aforethought.** A predetermination to commit an act without legal justification or excuse. *Harrison v. Commonwealth*, 279 Ky. 510, 131 S.W.2d 454, 455. A malicious design to injure. *State v. Thomas*, 157 Kan. 526, 142 P.2d 692, 693. The intentional doing of an unlawful act which was determined upon before it was executed. *State v. Lane, Mo.*, 371 S.W.2d 261, 263. An intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life; but "malice aforethought" does not necessarily imply any ill will, spite or hatred towards the individual killed. See also **Premeditation**.

**Malice in fact.** Express or actual malice. It implies desire or intent to injure, while "malice in law," or "implied malice," means wrongful act done intentionally, without just cause or excuse, and jury may infer it as a deduction from want of probable cause.

**Malice in law.** The intentional doing of a wrongful act without just cause or excuse. *Lyons v. St. Joseph Belt Ry. Co.*, 232 Mo.App. 575, 84 S.W.2d 933, 944. Implied, inferred, or legal malice. As distinguished from malice in fact, it is presumed from tortious acts, deliberately done without just cause, excuse, or justification, which are reasonably calculated to injure another or others.

**Malice prepense.** Malice aforethought; deliberate, predetermined malice.

**Malicious** /mal'ishas/. Characterized by, or involving, malice; having, or done with, wicked or mischievous intentions or motives; wrongful and done intentionally without just cause or excuse. See also **Malice**; **Willful**.

**Malicious abandonment.** In criminal law, the desertion of a wife or husband without just cause.

**Malicious abuse of legal process.** Wilfully misapplying court process to obtain object not intended by law. The wilful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ; the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured; not including cases where the process was procured maliciously but not abused or misused after its issuance. The tort of "malicious abuse of process" requires a perversion of court process to accomplish some end which the process was not designed to accomplish, and does not arise from a regular use of process, even with ulterior motives. *Capital Elec. Co. v. Cristaldi*, D.C.Md., 157 F.Supp. 646, 648. See also **Abuse (Process)**; **Malicious use of process**.

**Malicious accusation.** Procuring accusation or prosecution of another from improper motive and without probable cause. See **Malicious prosecution**.

**Malicious act.** A wrongful act intentionally done without legal justification or excuse; an unlawful act done willfully or purposely to injure another.

**Malicious assault with deadly weapon.** Form of aggravated assault in which the victim is threatened with death or serious bodily injury from the defendant's use of a deadly weapon. The element of malice can be inferred from the nature of the assault and the selection of the weapon.

**Malicious injury.** An injury committed against a person at the prompting of malice or hatred towards him, or done spitefully or wantonly. The wilful doing of an act with knowledge it is liable to injure another and regardless of consequences. Injury involving element of fraud, violence, wantonness and willfulness, or criminality. An injury that is intentional, wrongful and without just cause or excuse, even in the absence of hatred, spite or ill will. *Panchula v. Kaya*, 59 Ohio App. 556, 18 N.E.2d 1003, 1005, 13 O.O. 301. Punitive damages may be awarded to plaintiff for such injury.

**Malicious killing.** Any intentional killing without a legal justification or excuse and not within the realm of voluntary manslaughter. *State v. Cope*, 78 Ohio App. 429, 67 N.E.2d 912, 920, 34 O.O. 171.

**Maliciously.** Imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and may consist in direct intention to injure, or in reckless disregard of another's rights. See also **Malice**; **Malicious**.

**Malicious mischief.** Willful destruction of personal property, from actual ill will or resentment towards its owner or possessor. Though only a trespass at the common law, it is now, by most statutes, made severely penal.

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



**Malicious prosecution.** One begun in malice without probable cause to believe the charges can be sustained. An action for damages brought by person, against whom civil suit or criminal prosecution has been instituted maliciously and without probable cause, after termination of prosecution of such suit in favor of person claiming damages. *Beurline v. Smith*, Tex.Civ.App., 426 S.W.2d 295, 298.

One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if: (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and (b) except when they are *ex parte*, the proceedings have terminated in favor of the person against whom they are brought. Restatement, Second, Torts, § 674.

Elements of a cause of action for malicious prosecution are: (1) commencement of prosecution of proceedings against present plaintiff; (2) its legal causation by present defendant; (3) its termination in favor of present plaintiff; (4) absence of probable cause for such proceedings; (5) presence of malice therein; and (6) damage to plaintiff by reason thereof. *Palermo v. Cottom*, Mo.App., 525 S.W.2d 758, 764.

In addition to the tort remedy for malicious criminal proceedings, the majority of states also permit tort actions for malicious institution of civil actions.

See also **Advice of counsel**.

**Malicious trespass.** The act of one who maliciously or mischievously injures or causes to be injured any property of another or any public property.

**Malicious use of process.** Exists where plaintiff proceeds maliciously and without probable cause to execute object which law intends process to subserve. See also **Abuse (Process)**; **Malicious abuse of legal process**.

**Malignare** /mælnəriy/. To malign or slander; also to maim.

**Malingering** /mæliŋgər/. To feign sickness or any physical disablement or mental lapse or derangement, especially for the purpose of escaping the performance of a task, duty, or work. Person who consciously feigns or simulates mental or physical illness for gain.

**Mallitia** /mæliš(iy)ə/. Lat. Actual evil design; express malice.

**Mallitia est acida; est mali animi affectus** /mæliš(iy)ə est æsada, est mælay ænəmay æfektəs/. Malice is sour; it is the quality of a bad mind.

**Mallitia præcogitata** /mæliš(iy)ə priykojətédə/. Malice aforethought.

**Mallitia supplet ætatem** /mæliš(iy)ə sêpləd ætédəm/. Malice supplies [the want of] age.

**Mallitias hominum est obviandum** /mælišiyəs hómənəm est òbviændəm/. The wicked or malicious designs of men must be thwarted.

**Malleable** /mæliyəbəl/. Capable of being drawn out and extended by beating; capable of extension by hammering; reducible to laminated form by beating.

**Mallory Rule.** Rule derived from case of the same name in which the court held that a confession given by one who had been detained an unreasonable time before being brought before magistrate was inadmissible though it was otherwise voluntary and trustworthy. *Mallory v. U. S.*, 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed.2d 1479. Also known as **McNabb-Mallory Rule**.

**Mallum.** In old European law, a court of the higher kind in which the more important business of the county was dispatched by the count or earl. A public national assembly.

**Malo animo** /mælow ænəməw/. Lat. With an evil mind; with a bad purpose or wrongful intention; with malice.

**Malo grato** /mælow grédow/. Lat. In spite; unwillingly.

**Maloney Act.** Amendment passed in 1938 to Securities Exchange Act requiring registration of brokers in over-the-counter securities.

**Malpractice.** Professional misconduct or unreasonable lack of skill. This term is usually applied to such conduct by doctors, lawyers, and accountants. Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those entitled to rely upon them. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. *Matthews v. Walker*, 34 Ohio App.2d 128, 296 N.E.2d 569, 571, 63 O.O.2d 208. See also **Discovery rule**; **Standard of care**.

**Legal malpractice.** Consists of failure of an attorney to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in performance of tasks which they undertake, and when such failure proximately causes damage it gives rise to an action in tort. *Neel v. Magana, Olney, Levy, Cathcart and Gelfand*, 6 Cal.3d 176, 98 Cal.Rptr. 837, 838, 491 P.2d 421.

**Medical malpractice.** In medical malpractice litigation, negligence is the predominant theory of liability. In order to recover for negligent malpractice, the plaintiff must establish the following elements: (1) the existence of the physician's duty to the plaintiff, usually based upon the existence of the physician-patient relationship; (2) the applicable standard of care and its violation; (3) a compensable injury; and, (4) a causal connection between the violation of the standard of care and the harm complained of. *Kosberg v. Washington Hospital Center, Inc.*, 129 U.S.App.D.C. 322, 394 F.2d 947, 949. See also **Captain of ship doctrine**; **Discovery rule**; **Maltreatment**.

**Maltreatment.** In reference to the treatment of his patient by a surgeon, this term signifies improper or unskillful treatment; it may result either from ignorance, neglect, or willfulness; but the word does not necessarily imply that the conduct of the surgeon, in his treatment of the patient, is either willfully or grossly careless. See also **Malpractice (Medical)**.

**Malum** /mæləm/, *adj.* Lat. Wrong; evil; wicked; reprehensible.

**Malum in se** /mæləm in sý/. A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law. *Grindstaff v. State*, 214 Tenn. 58, 377 S.W.2d 921, 926; *State v. Shedoudy*, 45 N.M. 516, 118 P.2d 280, 287. An act is said to be *malum in se* when it is inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state. Such are most or all of the offenses cognizable at common law (without the denouncement of a statute); as murder, larceny, etc.

**Malum non habet efficientem, sed deficientem, causam** /mæləm nòn hæbəd əfís(h)iyéntəm sèd dəfís(h)iyéntəm kózəm/. Evil has not an efficient, but a deficient, cause.

**Malum non præsumentur** /mæləm nòn prəz(y)úwmədər/. Wickedness is not presumed.

**Malum prohibitum** /mæləm prəhíbədəm/. A wrong prohibited; a thing which is wrong *because* prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law. Contrasted with *malum in se*.

**Malum quo communius eo pejus** /mæləm kwòw kəmyúwn(i)yəs fyow píjəs/. The more common an evil is, the worse it is.

**Malus usus abolendus est** /mæləs yúwsəs əbəléndəs èst/. A bad or invalid custom is [ought] to be abolished.

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

**Malveis procurors** /mælvey prəkyúrərz/. L. Fr. Such as used to pack juries, by the nomination of either party in a cause, or other practice.

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

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

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

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

**Manacles**. Chain for the hands; shackles.

**Manage**. To control and direct, to administer, to take charge of. To conduct; to carry on the concerns of a business or establishment. Generally applied to affairs that are somewhat complicated and that involve skill and judgment.

**Management**. Government, control, superintendence, physical or manual handling or guidance; act of managing by direction or regulation, or administration, as

management of family, or of household, or of servants, or of great enterprises, or of great affairs. *Branch v. Veterans' Administration*, 189 Ark. 662, 74 S.W.2d 800, 804. Discretionary power of direction.

**Manager**. One who has charge of corporation and control of its business, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment. *Braniff v. McPherren*, 177 Okl. 292, 58 P.2d 871, 872. A person chosen or appointed to manage, direct, or administer the affairs of another person or of a corporation or company. The designation of "manager" implies general power and permits reasonable inferences that the employee so designated is invested with the general conduct and control of his employer's business. *U. S. Auto Ass'n v. Alexander Film Co.*, D.C.Mun.App., 93 A.2d 770, 771. See also **General manager**.

Also one of the persons appointed on the part of the House of Representatives to prosecute impeachments before the Senate.

**Managers of a conference**. In England, members of the houses of parliament appointed to represent each house at a conference between the two houses. It is an ancient rule that the number of commons named for a conference should be double those of the lords.

**Managing agent**. See **Agent**.

**Managium** /mənəj(iy)əm/. A mansion-house or dwelling-place.

**Manas mediæ** /mənəs mídyiy/. Men of a mean condition, or of the lowest degree.

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

**Manca, mancus, or mancusa** /mænka/mænkas(ə)/. A square piece of gold coin, commonly valued at thirty pence.

**Manceps** /mæn(t)səps/. Lat. In Roman law, a purchaser; one who took the article sold in his hand; a formality observed in certain sales. A farmer of the public taxes.

**Manche-present** /mónsh prèyzón/. A bribe; a present from the donor's own hand.

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

**Mancipate** /mæn(t)səpèyt/. To enslave; to bind; to tie.

**Mancipatio** /mæn(t)səpéysh(iy)ow/. Lat. In Roman law, a certain ceremony or formal process anciently required to be performed, to perfect the sale or conveyance of *res mancipi* (land, houses, slaves, horses, or cattle).

The parties were present (vendor and vendee), with five witnesses and a person called "*libripens*," who held a balance or scales. A set form of words was repeated on either side, indicative of transfer of ownership, and certain prescribed gestures made, and the

vendee then struck the scales with a piece of copper, thereby symbolizing the payment, or weighing out, of the stipulated price.

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

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

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

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

To form a clear conception of the true import of the word in the Roman jurisprudence, it is necessary to advert to the four distinct powers which were exercised by the *pater familias*, viz.; the *manus*, or marital power; the *mancipium*, resulting from the *mancipatio*, or *alienatio per æs et libram*, of a freeman; the *dominica potestas*, the power of the master over his slaves, and the *patria potestas*, the paternal power. When the *pater familias* sold his son, *venum dare*, *mancipare*, the paternal power was succeeded by the *mancipium*, or the power acquired by the purchaser over the person whom he held in *mancipio*, and whose condition was assimilated to that of a slave. What is most remarkable is, that on the emancipation from the *mancipium* he fell back into the paternal power, which was not entirely exhausted until he had been sold three times by the *pater familias*. *Si pater filium ter venum dat, filius a patre liber esto*. Gaius speaks of the *mancipatio* as *imaginaria quædam venditio*, because in his times it was only resorted to for the purpose of adoption or emancipation.

**Mancomunal** /mæŋkomuwnəl/. In Spanish law, an obligation is said to be *mancomunal* when one person assumes the contract or debt of another, and makes himself liable to pay or fulfill it.

**Mancus** /mæŋkəs/. See **Manca**.

**Mandamiento** /mændamyéntow/. In Spanish law, commission; authority or power of attorney. A contract of good faith, by which one person commits to the gratuitous charge of another his affairs, and the latter accepts the charge.

**Mandamus** /mændéyməs/. Lat. We command. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. A writ issuing from a court of competent jurisdiction, commanding an inferior tribunal, board, corporation, or person to perform a purely ministerial duty imposed by law. *Nebel v. Nebel*, 241 N.C. 491, 85 S.E.2d 876, 882. Extraordinary writ which lies to compel performance of ministerial act or mandatory duty where there is a clear legal right in plaintiff, a corresponding duty in defendant, and a want of any other appropriate and adequate remedy. *Cohen v. Ford*, 19 Pa. Cmwlth. 417, 339 A.2d 175, 177.

The U.S. District Courts have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff. 28 U.S.C.A. § 1361.

Mandamus has traditionally issued in response to abuses of judicial power. Thus, where a district judge refuses to take some action he is required to take or takes some action he is not empowered to take, mandamus will lie. *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 384, 74 S.Ct. 145, 98 L.Ed. 106. The Supreme Court may issue a writ of mandamus in aid of the appellate jurisdiction that might otherwise be defeated by the unauthorized action of the court below. *McClellan v. Carland*, 217 U.S. 268, 30 S.Ct. 501, 503, 54 L.Ed. 762.

The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. *Will v. United States*, 389 U.S. 90, 95, 88 S.Ct. 269, 273, 19 L.Ed.2d 305; *Banker's Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-385, 74 S.Ct. 145, 147-149, 98 L.Ed. 106; *Ex parte Fahey*, 332 U.S. 258, 259, 67 S.Ct. 1558, 1559, 91 L.Ed. 2041. The writ has traditionally been used in the federal courts only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Will v. United States*, 389 U.S., at 95, 88 S.Ct., at 273, quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185.

**Pleading**. Like most of the extraordinary writs, the writ of mandamus has been abolished under rules practice in favor of a complaint in the nature of mandamus which accomplishes the same object; e.g. *Mass.R.Civ.P.* 81(b).

**Mandans** /mændænz/. Lat. In the civil law, the employing party in a contract of mandate. One who gives a thing in charge to another; one who requires, requests, or employs another to do some act for him.

**Mandant** /mændənt/. In French and Scotch law, the employing party in the contract of *mandatum*, or mandate.

**Mandataire** /mændatér/. Fr. In French law, a person employed by another to do some act for him; a mandatary.

**Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensam** /mændéyðə lísədə rəsípiyǝnt stríktǝm íntǝrprətéyshiyównǝm, sèd əlísədə léydǝm ɛd əkstén(t)sǝm/. Lawful commands receive a strict interpretation, but unlawful commands a broad and extended one.

**Mandatarius terminos sibi positos transgredi non potest** /mændatériyǝs tǝrminǝs síbay pózədows trǝn(d)zgríyday nǝn pówdèst/. A mandatory cannot exceed the limits assigned him.

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

**Mandate**. A command, order, or direction, written or oral, which court is authorized to give and person is bound to obey. *Silverman v. Seneca Realty Co.*, 154 Misc. 35, 276 N.Y.S. 466. A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree. A precept or order issued upon the decision of an appeal or writ of error, directing action to be taken, or disposition to be made of case, by inferior court. Official mode of communicating judgment of appellate court to lower court, directing action to be taken or disposition to be made of cause by trial court. *Tierney v. Tierney*, Fla.App., 290 So.2d 136, 137. See also **Decree**; **Order**.

A bailment of property in regard to which the bailee engages to do some act without payment. Agreement to perform services for another without pay.

A contract by which a lawful business is committed to the management of another, and by him undertaken to be performed gratuitously. The mandatory is bound to the exercise of slight diligence, and is responsible for gross neglect. *Williams v. Conger*, 125 U.S. 397, 8 S.Ct. 933, 31 L.Ed. 778.

A mandate, procuration, or letter of attorney is an act by which one person gives power to another to transact for him and in his name one or several affairs. See also **Power of attorney**.

**Mandato** /mandátow/. In Spanish law, the contract of mandate.

**Mandator** /mændéydǝr/. The person employing another to perform a mandate.

**Mandatory** /mændət(ə)riy/. *adj.* Containing a command; preceptive; imperative; preemptory; obligatory.

**Mandatory injunction** /mændət(ə)riy injǝn(k)shǝn/. See **Injunction**.

**Mandatory instructions**. See **Jury instructions**.

**Mandatory sentencing**. See **Sentence**.

**Mandatory statutes**. Generic term describing statutes which require and not merely permit a course of action. They are characterized by such directives as "shall" and not "may."

A "mandatory" provision in a statute is one the omission to follow which renders the proceedings to which it relates void, while a "directory" provision is

one the observance of which is not necessary to validity of the proceeding. It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory, *Kavanaugh v. Fash*, C.C.A.Okla., 74 F.2d 435, 437; otherwise, when it relates to form and manner, and where an act is incident, or after jurisdiction acquired, it is directory merely.

Mandatory statutory provision is one which must be observed, as distinguished from "directory" provision, which leaves it optional with department or officer to which addressed to obey it or not. *State ex rel. Dworken v. Court of Common Pleas of Cuyahoga County*, 131 Ohio St. 23, 1 N.E.2d 138, 139, 5 O.O. 291.

**Mandatum** /mændéydǝm/. Lat. In the civil law, the contract of mandate (*q.v.*).

**Mandatum nisi gratuitum nullum est** /mændéydǝm náysay grǝchúwədǝm nálǝm ɛst/. Unless a mandate is gratuitous, it is not a mandate.

**Mandavi ballivo** /mændéyvay bǝlǝvow/. (I have commanded or made my mandate to the bailiff.) In English practice, the return made by a sheriff, where the bailiff of a liberty has the execution of a writ, that he has commanded the bailiff to execute it.

**Manerium** /mǝniriyǝm/. In old English law, a manor.

**Manerium dicitur a manendo, secundum excellentiam, sedes magna, fixa, et stabillis** /mǝniriyǝm dísdǝr ɛy mǝnéndow, sǝkǝndǝm ɛkslǝnsh(iy)ǝm, síydiyz mǝgna, fíksǝm, ɛt stéybalǝs/. A manor is so called from *manendo*, according to its excellence, a seat, great, fixed, and firm.

**Mangonare** /mǝngǝnériy/. In old English law, to buy in a market.

**Manhood**. The status of one who has reached his legal majority which in most jurisdictions is 18. Formerly, it was the age of 21. When this status is achieved, a person may act sui juris. See also **Legal age**; **Majority**.

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

**Mania** /mǝyniyǝ/. See **Insanity**.

**Manic**. Phase of manic-depressive psychosis in which the mood of the patient is overactive and expansive; characterized by excessive ego valuation and over-estimation of personal importance. Manic mood may include boisterousness, joviality, anger, joyousness.

**Manifest**. Evident to the senses, especially to the sight, obvious to the understanding, evident to the mind, not obscure or hidden, and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, evident, and self-evident. In evidence, that which is clear and requires no proof; that which is notorious. *Houston v. Leyden Motor Coach Co.*, 102 Ill.App.2d 348, 243 N.E.2d 293, 296; *Graf v. Ford Motor Co.*, 102 Ill.App.2d 390, 243 N.E.2d 337, 341; *Little v. Scheu*, 99 Ill.App.2d 421, 241 N.E.2d 702, 706.

The word "manifest", in rule that appellate court cannot substitute its opinion for that of trial court as to facts unless trial court's finding is manifestly against the weight of the evidence, means clearly evidence, clear, plain, or indisputable, and requires that an opposite conclusion be clearly evident. *Levin v. Siver*, 27 Ill.App.2d 134, 169 N.E.2d 156.

Document used in shipping and warehousing containing a list of the contents, value, origin, carrier and destination of the goods to be shipped or warehoused. A written document required to be carried by merchant vessels, containing an account of the cargo, with other particulars, for the facility of the customs officers. *The Sylvia II*, D.C.Mass., 28 F.2d 215, 216. List of passengers and cargo kept by vessel and aircraft.

**Manifesta probatione non indigent** /mænəfəstə prɒb-əshiyówniy nɒn ɪndəjənt/. Things manifest do not require proof.

**Manifestation of intention.** In trusts and wills, the external expression of intention as distinguished from the undisclosed internal intention. Restatement of Trusts, Second, § 2, comment g.

**Manifest law.** See *Lex manifesta*, s. v. *Lex*.

**Manifest necessity.** Doctrine of "manifest necessity" which will authorize granting of mistrial in criminal case, and preclude defendant from successfully raising plea of former jeopardy, contemplates a sudden and overwhelming emergency beyond control of court and unforeseeable, and it does not mean expediency. *Fonseca v. Judges of Family Court of Kings County*, 59 Misc.2d 492, 299 N.Y.S.2d 493, 498.

**Manifesto** /mænəfəstow/. A formal written declaration, promulgated by a sovereign, or by the executive authority of a state or nation, proclaiming its reasons and motives for declaring a war, or for any other important international action. Public declaration or proclamation of political or social principals.

**Manipulation.** Series of transactions involving the buying or selling of a security for the purpose of creating a false or misleading appearance of active trading or to raise or depress the price to induce the purchase or sale by others.

**Mankind.** The race or species of human beings. In law, females, as well as males, are included under this term.

**Mann Act.** Federal statute (White Slave Traffic Act, 18 U.S.C.A. § 2421) making it a crime to transport a woman or girl in interstate or foreign commerce for the purpose of prostitution or debauchery, or for any other immoral purpose.

**Manner.** A way, mode, method of doing anything, or mode of proceeding in any case or situation. See also *Custom and Usage*.

**Manner and form; modo et forma.** In common law pleading, formal words introduced at the conclusion of a traverse. Their object is to put the party whose pleading is traversed not only to the proof that the matter of fact denied is, in its general effect, true as alleged, but also that the manner and form in which

the fact or facts are set forth are also capable of proof.

**Manning.** A day's work of a man. A summoning to court.

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

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

**Man of straw.** See *Men of Straw*.

**Manor.** A house, dwelling, seat, or residence.

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

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

**Manorial extent** /mənóriyəl ɛkstént/. In old English law, a survey of a manor made by a jury of tenants, often of unfree men sworn to sit for the particulars of each tenancy, and containing the smallest details as to the nature of the service due. These manorial extents were made in the interest of the lords, who were anxious that all due services should be done; but they imply that other and greater services were not due, that the customary tenants, even though they be unfree men, owed these services for their tenements, no less and no more. Statements that the tenants were not bound to do services of a particular kind were not very uncommon. The "extents" of manors are descriptions which give the numbers and names of the tenants, the size of their holdings, the legal kind of their tenure and the kind and amount of their service.

**Manorial system.** A medieval system of land ownership by lords of the manor for whom serfs and some freemen toiled in the soil in return for protection from the lord. See also *Manor*.

**Manqueller** /mænkwèlɚ/°kílɚ/. In Saxon law, a murderer.

**Manse** /mæn(t)s/. In old English law, a habitation or dwelling, generally with land attached. A residence or dwelling-house for the parish priest; a parsonage or vicarage house.

**Manser** /mæn(t)sər/. A bastard.

**Manslo** /mæns(h)ow/. In Anglo-Saxon times the amount of land which would support a man and his family, called by various names.

**Mansion-house**. In the law of burglary, etc., any species of dwelling-house.

**Manslaughter**. The unlawful killing of another without malice, either express or implied. Such may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. The unlawful killing of a human without any deliberation, which may be involuntary, in the commission of a lawful act without due caution and circumspection. *Wallace v. U. S.*, 162 U.S. 466, 16 S.Ct. 859, 40 L.Ed. 1039.

The unlawful killing of a human without malice and without premeditation and deliberation. *State v. Winger*, 238 N.C. 485, 78 S.E.2d 303, 307. It is of two kinds: voluntary—upon a sudden quarrel or heat of passion; and, involuntary—in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death. 18 U.S.C.A. § 1112.

Criminal homicide constitutes manslaughter when: (a) it is committed recklessly; or (b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be. Model Penal Code, § 210.3.

The heat of passion, which will reduce a murder to manslaughter, must be such passion as would be aroused naturally in the mind of the ordinary reasonable person under the same or similar circumstances, as shown by the evidence in the case.

See also Adequate cause; Assault with intent to commit manslaughter; Hot blood; Negligent manslaughter; Sudden heat of passion.

There are various degrees of manslaughter recognized by different states:

**Involuntary manslaughter**. Such exists where a person in committing an unlawful act not felonious or tending to great bodily harm, or in committing a lawful act without proper caution or requisite skill, unguardedly or undesignedly kills another. Model Penal Code, § 210.3(1)(a).

**Voluntary manslaughter**. Manslaughter committed voluntarily upon a sudden heat of the passions; as if, upon a sudden quarrel, two persons fight, and one of them kills the other. Model Penal Code, § 210.3(1)(b). It is the unlawful taking of human life under circumstances falling short of willful or deliberate intent to kill and approaching too near thereto to be justifiable homicide.

The absence of intention to kill or to commit any unlawful act which might reasonably produce death

or great bodily harm is the distinguishing feature between voluntary and involuntary homicide.

**Manstealing**. A word sometimes used synonymously with "kidnapping" (q.v.).

**Mansuetæ naturæ** /mænswiydi netyúriy/. Tamed and domesticated animals.

**Mansuetus** /mænswiýdəs/. Lat. Tame; as though accustomed to come to the hand.

**Mantheoff** /mænθiyf/. In Saxon law, a horse-stealer.

**Manticate** /mæntikylæyt/. To pick pockets.

**Mantle children** /mæntəl childrən/. See **Pallio cooperire**.

**Manual**. Of, or pertaining to, the hand or hands; done, made, or operated by or used with the hand or hands; or as manual labor. Performed by the hand; used or employed by the hand; held in the hand. See also **Manual labor**.

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

**Manual gift**. The manual gift, that is, the giving of corporeal movable effects, accompanied by a real delivery; such is not subject to any formality.

**Manualis obedientia** /mænyuwéyləs əbiydiénsh(iy)ə/. Sworn obedience or submission upon oath.

**Manual labor**. Work done with the hand. *State v. Ash*, 53 Ariz. 197, 87 P.2d 270, 272. Labor performed by hand or by the exercise of physical force, with or without the aid of tools, machinery or equipment, but depending for its effectiveness chiefly upon personal muscular exertion rather than upon skill, intelligence or adroitness.

**Manu brevi** /mæn(y)uw briyvay/. Lat. With a short hand. A term used in the civil law, signifying shortly; directly; by the shortest course; without circuitry.

**Manu captio** /mænyuwkæpsh(iy)ow/. In old English practice, a writ which lay for a man taken on suspicion of felony, and the like, who could not be admitted to bail by the sheriff, or others having power to let to mainprise.

**Manu captors** /mænyuwkæptərz/. Same as mainperners (q.v.).

**Manufacture, v.** From Latin words manus and factura, literally, put together by hand. Now it means the process of making products by hand or machinery. *United States v. Anderson*, D.C. Cal., 45 F.Supp. 943, 946. Meaning of word "manufacture," which is defined as the making of goods or wares by manual labor or by machinery, especially on a large scale, has expanded as workmanship and art have advanced, so that now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery, are commonly designated as "manufactured."

**Manufacture, n.** The process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labor or machine. *Cain's Coffee Co. v. City of Muskogee*, 171 Okl. 635, 44 P.2d 50, 52.

In patent law, any useful product made directly by human labor, or by the aid of machinery directed and controlled by human power, and either from raw materials, or from materials worked up into a new form. Also the process by which such products are made or fashioned.

**Manufacturer.** One who by labor, art, or skill transforms raw material into some kind of a finished product or article of trade. *Henry v. Markesan State Bank*, C.C.A.Minn., 68 F.2d 554, 557. Any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, or produces goods.

**Manufacturers liability doctrine.** The foundation for the liability under this doctrine is knowledge of the danger attending use of manufactured or assembled product and negligence in failing to give appropriate warning, or negligence in failing to discover and appreciate the danger, and the probable consequences that injury will proximately result from the use of such product for the purposes for which it was intended. See **Strict liability**.

**Manufacturing corporation.** A corporation engaged in the production of some article, thing, or object, by skill or labor, out of raw material, or from matter which has already been subjected to artificial forces, or to which something has been added to change its natural condition.

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

**Manu forti** /mæn(y)uw fórdáy/. Lat. With strong hand. A term used in old writs of trespass. *Manu forti et cum multitudine gentium*, with strong hand and multitude of people.

**Manu longa** /mæn(y)uw lóngə/. Lat. With a long hand. A term used in the civil law, signifying indirectly or circuitously.

**Manumission** /mænyəmíshən/. The act of liberating a slave from bondage and giving him freedom. In a wider sense, releasing or delivering one person from the power or control of another. Enfranchisement.

**Manumittere idem est quod extra manum vel postestatem ponere** /mænyəmidəriy áydam èst kwód èkstrə mænəm vél pòwdəstéydam pównəriy/. To manumit is the same as to place beyond hand and power.

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

**Manu opera** /mæn(y)uw ópərə/. Lat. Cattle or implements of husbandry; also stolen goods taken from a thief caught in the fact.

**Manupes** /mænyəpiyz/. In old English law, a foot of full and legal measure.

**Manupretium** /mænyəpriysh(iy)əm/. Lat. In Roman law, the hire or wages of labor; compensation for labor or services performed.

**Manurable** /mən(y)úrəbəl/. In old English law, capable of being had or held in hand; capable of manual occupation; capable of being cultivated; capable of being touched; tangible; corporeal.

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

**Manus** /mænəs/. Lat. A hand.

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

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

**Manuscript.** An author's work product which is submitted to the publisher either in his own hand or typewritten. Lit., written by hand. A writing; a paper written with the hand; a writing that has not been printed.

**Manus mortua** /mænəs mórchuwə/. A dead hand; mortmain.

**Manutenentia** /mænyətənénsh(iy)ə/. The old writ of maintenance.

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

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

**Map.** A representation of the earth's surface, or of some portion of it, showing the relative position of the parts represented, usually on a flat surface. See also **Plat map**.

**Mapp v. Ohio.** Landmark Supreme Court case decided in 1961 in which it was ruled that evidence illegally obtained by state officers is not admissible in a state trial if appropriate motions are filed to suppress. The rationale for the rule is that the 4th Amendment (U.S.Const.) protection against unreasonable search and seizure is applicable to the states under and through the 14th Amendment. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081.

**Mar.** To make defective; to damage greatly; to impair, spoil, ruin; to do physical injury to, especially by cutting off or defacing a part; to mutilate; mangle; disfigure; deface.

**Mara** /mérə/. In old records, a mere or moor; a lake, pool, or pond; a bog or marsh that cannot be drained.

**Marajuana.** See **Marihuana**.

**Maraud.** To rove about in search of booty; to pillage or plunder. To invade another's domain to pillage or to loot.

**Marbury v. Madison.** Landmark case decided in 1803 in which the Supreme Court established the right of the judicial branch to pass on the constitutionality of an act of Congress, thereby establishing the functions and prerogatives of the judiciary in its relation to the legislative branch. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60.

**Marcatus** /markéydəs/. The rent of a mark by the year anciently reserved in leases, etc.

**Marchandises avariees.** In French mercantile law, damaged goods.

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

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

**Marcheta** /markéyda/. In old English law, a fine paid for leave to marry, or to bestow a daughter in marriage.

**Marchioness** /márshənès/. A dignity in a woman answerable to that of marquis in a man, conferred either by creation or by marriage with a marquis.

**Mare** /méry/. Lat. The sea.

**Marescallus** /mæ̀rskæ̀ləs/. In old English law, a marshal; a master of the stables; an officer of the exchequer; a military officer of high rank, having powers and duties similar to those of a constable. See also **Marshal**.

**Mareschal** /mæ̀rəshæl/. L. Fr. Marshal; a high officer of the royal household.

**Marettum** /mæ̀rédəm/. Marshy ground overflowed by the sea or great rivers.

**Margin.** The edge or border; the edge of a body of water where it meets the land. As applied to a boundary line of land, the "margin" of a river, creek, or other watercourse means the center of the stream. But in the case of a lake, bay, or natural pond, the "margin" means the line where land and water meet.

A sum of money, or its equivalent, placed in the hands of a stockbroker by the principal or person on whose account a purchase or sale is to be made, as a security to the former against losses to which he may be exposed by subsequent fluctuations in the market value of the stock. The amount paid by the customer when he uses his broker's credit to buy a security. See also **Margin account**; **Margin transaction**.

In commercial transactions the difference between the purchase price paid by a middleman or retailer and his selling price. Also called gross margin. See also **Profit**.

**Margin account.** Securities industry's method of extending credit to customers. Under such practice customer purchases specified amount of stock from securities firm by advancing only portion of purchase price, with brokerage firm extending credit or making loan for balance due, and firm maintains such stock as collateral for loan and charges interest on balance of purchase price. *Stephens v. Reynolds Securities, Inc.*, D.C.Ala., 413 F.Supp. 50.

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

**Margin call.** A demand by a broker to put up money or securities upon purchase of a stock, or, if the stock is already owned on margin, to increase the money or securities in the event the price of the stock has fallen since purchase. The last process is remargining.

**Margin list.** List of Federal Reserve Board which limits the loan value of a bank's stock to a certain per cent (e.g. 50%) of its market value. When a bank is not on the margin list, no limit is placed on the value of its stock for use as collateral.

**Margin profit.** See **Margin**; **Profit**.

**Margin trading.** See **Margin**; **Margin account**; **Margin transaction**.

**Margin transaction.** The purchase of a stock or commodity with payment in part in cash (called the margin) and in part by a loan. Usually the loan is made by the broker effecting the purchase. See also **Margin account**.

**Marihuana, mariguana, marijuana** /mæ̀rə(h)wónə/. An annual herb, *cannabis sativa*, having angular rough stem and deeply lobed leaves. The bast fibres of *cannabis* are the hemp of commerce. A drug prepared from "*cannabis sativa*," designated in technical dictionaries as "*cannabis*" and commonly known as marijuana, marihuana, marajuana, maraguana, or marihuana. *State v. Navaro*, 83 Utah 6, 26 P.2d 955.

"Marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. Uniform Controlled Substances Act, § 101(n). See also **Cannabis**.

Marihuana is also commonly referred to as "pot", "grass", "tea", "weed" or "Mary-Jane"; and in cigarette form as a "joint" or "reefer".

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

**Marine.** Naval; relating or pertaining to the sea; native to or formed by the sea, such as marine life; transacted at sea; doing duty or service on the sea.



The mercantile and naval shipping of a country. Concerned with navigation and commerce of the sea; *i.e.* maritime matters. Member of U.S. Marine Corps. See also **Maritime**.

**Marine belt.** That portion of the main or open sea, adjacent to the shores of a given country, over which the jurisdiction of its municipal laws and local authorities extends. Territorial waters, defined by international law as extending out three miles from the shore. See also **Territorial waters**.

**Marine carrier.** By statutes of several states this term is applied to carriers plying upon the ocean, arms of the sea, the Great Lakes, and other navigable waters within the jurisdiction of the United States.

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

**Marine court in the city of New York.** Formerly, a local court of New York City, originally created as a tribunal for the settlement of causes between seamen. It was the predecessor of the City Court of the city of New York.

**Marine insurance.** See **Insurance**.

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

**Marine league** /məriyn liy/. A measure of distance commonly employed at sea, being equal to one-twentieth part of a degree of latitude, or three geographical or nautical miles.

**Mariner.** A seaman or sailor; one engaged in navigating vessels upon the sea; persons employed aboard ships or vessels.

**Marine risk.** The perils of the sea; the perils necessarily incident to navigation.

**Mariner's will.** A nuncupative or oral will permitted in some jurisdictions for the sailor who is actually at sea at the time of making the will. Generally, such will affects personal property only.

**Maris et feminae conjunctio est de jure naturæ** /mæras èt fèmaniy kənjəŋksh(iy)ow èst diy júriy nəchúriy/. The connection of male and female is by the law of nature.

**Maritagio amisso per defaultam** /mæratéyj(iy)ow əmísov pə dæfóltəm/. An obsolete writ for the tenant in frank-marriage to recover lands, etc., of which he was forced.

**Maritagium** /mæratéyj(iy)əm/. The portion which is given with a daughter in marriage. Also the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.

**Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic data quietata sit et libera ab omni seculari servitio.** A marriage portion is either free or bound to service; it is called "frank-marriage" when the giver wills that land thus given be exempt from all secular service.

**Maritagium habere** /mæratéyj(iy)əm hæbiri/. To have the free disposal of an heiress in marriage.

**Marital** /mæradəl/mæraydəl/. Relating to, or connected with, the status of marriage; pertaining to a husband; incident to a husband.

**Marital agreements.** Contracts between parties who are either on the threshold of marriage or on the verge of separation, though, in general, the term refers to all agreements between married people. Such agreements are primarily concerned with the division and ownership of marital property. In some jurisdictions, the contract must be made through a third person if the law does not permit the spouses to contract directly with each other. See also **Antenuptial settlements**; **Equitable distribution**; **Marriage settlement**; **Postnuptial agreement**.

**Marital communications privilege.** In most jurisdictions private communications between the spouses during the marriage are privileged at the option of the witness spouse and hence inadmissible in a trial. In some jurisdictions the communications are disqualified, and hence not admissible, even with the consent of the witness spouse. This privilege is subject to certain limitations; *e.g.* prosecutions for crimes committed by one spouse against the other or against the children of either. See also **Husband-wife privilege**.

**Marital deduction.** A deduction allowed upon the transfer of property from one spouse to another. The deduction is allowed under the Federal gift tax for lifetime (*i.e.*, *inter vivos*) transfers and also under the Federal estate tax for testamentary transfers. I.R.C. §§ 2056, 2523. See also **Pecuniary formulas**.

**Minimum deduction.** Under the Tax Reform Act of 1976, a minimum marital deduction of \$250,000 is allowed for death tax purposes if this amount of qualifying property passes to the surviving spouse. The previous limitation of 50% of the deceased spouse's adjusted gross estate continues to be in effect when the marital deduction exceeds \$250,000. The minimum marital deduction for gift tax purposes is the first \$100,000 passing from one spouse to the other spouse. To the extent that the marital deduction allowed for gift tax purposes exceeds one-half of the value of the property transferred, there is a dollar-for-dollar offset to the estate's allowable minimum marital deduction (or the marital deduction computed in accordance with the 50% of the adjusted gross estate rule).

**Marital deduction trust.** In estate planning, a device in the form of a trust utilized to gain the maximum benefit of the marital deduction by dividing the property in half. Commonly, one half of the property is transferred to the marital deduction trust and the other half is disposed of in a trust or like arrangement with a view towards having it escape taxation in the estate of the surviving spouse.

**Marital portion.** In Louisiana, the name given to that part of a deceased husband's estate to which the widow is entitled.

**Marital privileges.** Those rights, immunities and advantages which attach to the state of marriage such as the right to conjugal relations and the right to hold property as husband and wife. See also **Marital communications privilege**.

**Marital property.** Property purchased by persons while married to each other and which, in some jurisdictions, on dissolution of the marriage is divided in proportions as the court deems fit. *Claunch v. Claunch*, Mo.App., 525 S.W.2d 788, 790. See **Community property**; **Equitable distribution**.

**Marital rights and duties.** Those arising from marriage contract and constituting its object, and therefore embracing what the parties agree to perform towards each other and to society. Rights of husband and wife to a specified share of other's personal estate upon death of other. In re *Dean's Estate*, 350 Mo. 494, 166 S.W.2d 529, 534, 535.

**Maritima Angliae** /*mərɪdəmæ æŋglijɪy*/. In old English law, the emolument or revenue coming to the king from the sea, which the sheriffs anciently collected, but which was afterwards granted to the admiral.

**Maritima incrementa** /*mərɪdəmæ ɪŋkrəməntə*/. In old English law, marine increases. Lands gained from the sea.

**Maritime.** Pertaining to navigable waters, *i.e.* to the sea, ocean, great lakes, navigable rivers, or the navigation or commerce thereof.

All work occurring on navigable waters is "maritime" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *St. Julien v. Diamond M Drilling*, D.C.La., 403 F.Supp. 1256, 1259.

See also **Federal Maritime Commission**; **Maritime court**; **Navigable waters**.

**Maritime Administration.** An agency within the Department of Commerce which promotes and regulates the activities of the U.S. merchant marine, directs emergency operations related to merchant marine activities, establishes specifications for shipbuilding and design, determines routes, and manages other areas of merchant operations. See also **Maritime Commission**.

**Maritime belt.** That part of the sea which, in contradistinction to the open sea, is under the sway of the riparian states. *Louisiana v. Mississippi*, 202 U.S. 1, 26 S.Ct. 408, 50 L.Ed. 913. See also **Marine belt**; **Territorial waters**.

**Maritime bills.** See **Bill (Maritime Law)**.

**Maritime cause.** A case arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof. *The Thomas Jefferson*, 23 U.S. (10 Wheat.) 428, 6 L.Ed. 358; and *Peyroux v. Howard*, 32 U.S. (7 Pet.) 324, 8 L.Ed. 700. An action based upon an injury to a passenger of a vessel while on navigable waters and caused by negligence comes within scope of "maritime cause of action" within original jurisdiction of federal District Court. *Cuozzo v. Italian Line, Italia-Societa Per Azioni Di Navigazione-Genoa*, D.C.N.Y., 168 F.Supp. 304, 306. See also **Maritime law**; **Maritime tort**; **Navigable waters**.

**Maritime Commission.** The Federal Maritime Commission regulates the waterborne foreign and domestic offshore commerce of the United States, assures that United States international trade is open to all nations on fair and equitable terms, and guards against unauthorized monopoly in the waterborne commerce of the United States. This is accomplished through

maintaining surveillance over steamship conferences and common carriers by water; assuring that only the rates on file with the Commission are charged; approving agreements between persons subject to the Shipping Act; guaranteeing equal treatment to shippers and carriers by terminal operators, freight forwarders, and other persons subject to the shipping statutes; and ensuring that adequate levels of financial responsibility are maintained for indemnification of passengers or oil spill cleanup. See also **Maritime Administration**.

**Maritime contract.** A contract relating to business of navigation. *Massman Const. Co. v. Bassett*, D.C.Mo., 30 F.Supp. 813, 815. A contract whose subject-matter has relation to the navigation of the seas or to trade or commerce to be conducted by navigation or to be done upon the sea or in ports. One having reference to maritime services or maritime transactions. *Marubeni-Iida (America), Inc. v. Nippon Yusen Kaisha*, D.C.N.Y., 207 F.Supp. 418, 419.

**Maritime court.** A court exercising jurisdiction in maritime causes; one which possesses the powers and jurisdiction of a court of admiralty. See **Admiralty Court**; **Maritime jurisdiction**.

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

**Maritime jurisdiction.** Jurisdiction over maritime causes is granted to Federal district courts. 28 U.S.C.A. § 1333. Procedure in maritime actions is governed by the Fed.R.Civil P. and Supp. Admiralty Rules. See **Admiralty Court**.

**Maritime law.** That which the Congress has enacted or the Federal courts, sitting in admiralty, or in the exercise of their maritime jurisdiction, have declared and would apply. *J. B. Effenson Co. v. Three Bays Corp.*, C.A.Fla., 238 F.2d 611, 615. That system of law which particularly relates to marine commerce and navigation, to business transacted at sea or relating to navigation, to ships and shipping, to seamen, to the transportation of persons and property by sea, and to marine affairs generally. The law relating to harbors, ships, and seamen, divided into a variety of subject areas, such as those concerning harbors, property of ships, duties and rights of masters and seamen, contracts of affreightment, average, salvage, etc. It extends to civil marine torts and injuries, illegal dispossession or withholding of possession from the owners of ships, municipal seizures of ships, etc.

Substantively, in the United States, it is federal law, and jurisdiction to administer it is vested in the federal courts, though not to the entire exclusion of the courts of the states. *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 63 S.Ct. 488, 87 L.Ed. 596. See **Maritime jurisdiction**.

**Maritime lien.** A privileged claim on a vessel for some service rendered to it to facilitate its use in navigation, or an injury caused by it in navigable waters, to be carried into effect by legal process in the admiralty court. *The Westmoor*, D.C.Or., 27 F.2d 886, 887. A special property right in a ship given to a creditor by law as security for a debt or claim subsisting from the moment the debt arises with right to have the ship sold and debt paid out of proceeds. Such a lien is a

proprietary interest or right of property in the vessel itself, and not a cause of action or demand for personal judgment against the owner. The lien is enforced by a direct proceeding against the vessel or other property in which it exists.

Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel. Federal Maritime Lien Act, § 971.

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

**Maritime prize.** See **Prize.**

**Maritime service.** In admiralty law, a service rendered upon the seas, ocean, great lakes, or a navigable river, and which has some relation to commerce or navigation,—some connection with a vessel employed in trade, with her equipment, her preservation, or the preservation of her cargo or crew.

**Maritime state.** In English law, consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by act of parliament.

**Maritime tort.** Civil wrongs committed on navigable waters. *Pierside Terminal Operators, Inc. v. M/V Floridian*, D.C.Va., 374 F.Supp. 27, 30.

See **Jones Act; Longshoremen's and Harbor Workers' Compensation Act.**

**Maritus** /məráydəs/mærədəs/. Lat. A husband; a married man.

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

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

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

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

A weight used in several parts of Europe, and for several commodities, especially gold and silver.

Monetary unit, e.g. German *Deutsche mark*.

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

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

See also **Bench mark; Certification mark; Collective mark.**

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

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

**Trademark.** See **Trade-mark.**

**Marked money.** Term used to describe money given by undercover agent who buys contraband or gives bribe in money, or ransom money given to kidnapper, or money given to bank robber, which bears a tell-tale mark for use in identifying and connecting the money to the perpetrator of the crime.

**Market.** Place of commercial activity in which articles are bought and sold. *Zemel v. Commercial Warehouses*, 132 N.J.L. 341, 40 A.2d 642, 643. The region in which any commodity can be sold; the geographical or economic extent of commercial demand. A public time and appointed place of buying and selling; also purchase and sale. It differs from the *forum*, or market of antiquity, which was a public marketplace on one side only, or during one part of the day only, the other sides being occupied by temples, theaters, courts of justice, and other public buildings.

In a limited sense, "market" is the range of bid and asked prices reported by brokers making the market in over-the-counter securities. *Opper v. Hancock Securities Corp.*, D.C.N.Y., 250 F.Supp. 668, 675.

By the term "market" is also understood the demand there is for any particular article; as, "the cotton market is depressed." Is also an abbreviated term for "stock" or "commodity" markets.

See also **Common market; Current market value.**

**Clerk of the market.** See **Clerk of the market.**

**Geographic market.** In antitrust context, that geographic area in which a product is sold and in which there is or is not competition. It generally implies agreement allocating different areas to each competitor with the understanding that the other competitors will not sell in those areas. *Timken Roller Bearing Co. v. U. S.*, 341 U.S. 593, 71 S.Ct. 971, 95 L.Ed. 1199. A relevant "geographic market" for purposes of assessing monopoly power is the territorial area in which businessmen effectively compete. *Telex Corp. v. International Business Machines Corp.*, D.C.Okl., 367 F.Supp. 258, 336. Within broad geographic market, well-defined submarkets may exist which, in themselves, constitute "geographic markets" for anti-

trust purposes. *U. S. Steel Corp. v. F. T. C., C.A. Ohio, 426 F.2d 592, 596.* See also *Product market; Relevant market, infra.*

**Listed market securities.** The market value of a security as reflected by transactions of that security on the floor of an exchange.

**Open market.** A market wherein supply and demand are expressed in terms of a price.

**Product market.** In antitrust context, a market in which competitors agree among themselves to limit the manufacture or sales of products so as to prevent competition among themselves. *Hartford Empire Co. v. U. S., 323 U.S. 386, 65 S.Ct. 373, 89 L.Ed. 322.*

**Public market.** A market which is not only open to the resort of the general public as purchasers, but also available to all who wish to offer their wares for sale, stalls, stands, or places being allotted to those who apply, to the limits of the capacity of the market, on payment of fixed rents or fees.

**Relevant market.** In antitrust context, it may refer to geographic area in which competitors agree to respect the rights of others to sell a product. It may also refer to product markets in which competitors agree among themselves to limit the manufacture or sales of products so as to prevent or limit competition among themselves. *Hartford Empire Co. v. U. S., 323 U.S. 386, 65 S.Ct. 373, 89 L.Ed. 322.* See also **Relevant market.**

**Marketability.** Salability. The probability of selling property at a specific time, price, and terms.

**Marketable.** Salable. Such things as may be sold in the market; those for which a buyer may be found; merchantable.

**Marketable securities.** Stocks and bonds held of other companies that can be readily sold on stock exchanges or over-the-counter markets and that the company plans to sell as cash is needed. Classified as current liquid assets and as part of working capital.

**Marketable title.** A title which is free from encumbrances and any reasonable doubt as to its validity, and such as a reasonably intelligent person, who is well informed as to facts and their legal bearings, and ready and willing to perform his contract, would be willing to accept in exercise of ordinary business prudence. *Sinclair v. Weber, 204 Md. 324, 104 A.2d 561, 565.* Such a title as is free from reasonable doubt in law and in fact; not merely a title valid in fact, but one which readily can be sold or mortgaged to a reasonably prudent purchaser or mortgagee; one acceptable to a reasonable purchaser, informed as to the facts and their legal meaning, willing to perform his contract, in the exercise of that prudence which businessmen usually bring to bear on such transactions; one under which a purchaser may have quiet and peaceful enjoyment of the property; one that is free from material defects, or grave doubts, and reasonably free from litigation. *Myrick v. Austin, 141 Kan. 778, 44 P.2d 266, 268.*

Marketable title is one which is free from reasonable doubt and will not expose party who holds it to hazards of litigation. *Tri-State Hotel Co. v. Sphinx Investment Co., 212 Kan. 234, 510 P.2d 1223, 1230.*

One that may be freely made the subject of resale. *Krulee v. F. C. Huyck & Sons, 121 Vt. 299, 156 A.2d 74, 77.*

A marketable title to land is such a title as a court, when asked to decree specific performance of the contract of sale, will compel the vendee to accept as sufficient. It is said to be not merely a defensible title, but a title which is free from plausible or reasonable objections.

See also **Merchantable title.**

**Marketable Title Acts.** Many states have adopted Marketable Title Acts the purpose of which is to simplify land title transactions through making it possible to determine marketability by limited title searches over some reasonable period of the immediate past (e.g. 40 yrs.) and thus avoid the necessity of examining the record back into distant time for each new transaction.

**Market geld.** The toll of a market.

**Marketing contract.** An agreement between a cooperative and its members in which the members agree to sell their products through the cooperative and the cooperative agrees to obtain their price. *Hiroshi Kaneko v. Jones, 192 Or. 523, 235 P.2d 768.*

**Market making.** Regarding securities in over the counter trading, the process consisting of bid and ask quotations which results in the establishment of a market for such securities. *Opper v. Hancock Securities Corp., D.C.N.Y., 250 F.Supp. 668, 671.*

**Market order.** An order to buy or sell on a stock or commodity exchange at the current price when the order reaches the floor of the exchange.

**Market overt.** In English law, an open and public market. The market-place or spot of ground set apart by custom for the sale of particular goods is, in the country, the only market overt; but in London every shop in which goods are exposed publicly to sale is market overt, for such things only as the owner professes to trade in.

**Market price.** The price at which a seller is ready and willing to sell and a buyer ready and willing to buy in the ordinary course of trade. The price actually given in current market dealings; the actual price at which given stock or commodity is currently sold, or has recently been sold in open market, that is, not at forced sale, but in the usual and ordinary course of trade and competition between sellers and buyers equally free to bargain, as established by records of late sales. In the case of a security, market price is usually considered the last reported price at which the stock or bond sold.

Market price is synonymous with market value, and means the price actually given in current market dealings, or the price at which the supply and demand are equal. *Public Service Commission of State v. Montana-Dakota Utilities Co., N.D., 100 N.W.2d 140, 146.* The point of intersection of supply and demand in the market.

See also **Market value.**

**Market quotations.** The latest (most current) prices at which securities or commodities have been bought and sold on an exchange or other market. Board of

Trade of Chicago v. L. A. Kinsey Co., C.A.Ind., 130 F. 507, aff'd 198 U.S. 236, 25 S.Ct. 637, 49 L.Ed. 1031.

**Market share.** The percentage of a market that is controlled by a firm. A 20 percent share of market means that the firm has captured 20 percent of the actual sales in the market.

**Market structure.** Refers to the broad organizational characteristics of a market. The major characteristics are seller concentration, product differentiation, and barriers to entry.

**Market value.** The price property would command in the market. The highest price a willing buyer would pay and a willing seller accept, both being fully informed, and the property being exposed for a reasonable period of time. The market value may be different from the price a property can actually be sold for at a given time (market price). The market value of an article or piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular article or piece of property. *U. S. v. Certain Property in Borough of Manhattan, City, County and State of New York*, C.A.N.Y., 403 F.2d 800, 802. See also Actual market value; Clear market value; Fair cash market value; Fair market value.

**Marking up.** The process wherein a legislative committee goes through a bill section by section, revising its language and amending the bill as desired. Extensive revision may lead to the introduction of a clean bill under a new number. May also refer to procedure by which a case is placed on the trial calendar; e.g. "marking up for trial."

**Markon.** An amount originally added to cost to obtain list price. Usually expressed as a percentage of cost. Further increases in list price are called markups; decreases are called markdowns. See also **Markup**.

**Marksman.** In practice and conveyancing, one who makes his mark; a person who cannot write, and one who makes his mark in executing instruments.

**Markup.** An amount originally added to cost. Usually expressed as a percentage of selling price. Also refers to an increase above an originally-established retail price. See **Markon**.

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

**Marque and reprisal, letters of** /lédərz əv márk ən rapráyzəl/. These words, "marque" and "reprisal," are frequently used as synonymous, but, taken in

their strict etymological sense, the latter signifies a "taking in return;" the former, the passing the frontiers (*marches*) in order to such taking. Letters of marque and reprisal are grantable, by the law of nations, whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs; and the party to whom these letters are granted may then seize the bodies or the goods of the subjects of the state to which the offender belongs, until satisfaction be made, wherever they happen to be found. Reprisals are to be granted only in case of a clear and open denial of justice. At the present day, in consequence partly of treaties and partly of the practice of nations, the making of reprisals is confined to the seizure of commercial property on the high seas by public cruisers, or by private cruisers specially authorized thereto. Article I, Sec. 8, of U.S.Const. grants Congress the power to grant Letters of Marque and Reprisal.

**Marque, law of** /l6 əv márk/. A sort of law of reprisal, which entitles him who has received any wrong from another and cannot get ordinary justice to take the shipping or goods of the wrongdoer, where he can find them within his own bounds or precincts, in satisfaction of the wrong.

**Marquis, or marquess** /márkíy/márkwəs/. In English law, one of the second order of nobility; next in order to a duke.

**Marquisate** /márkwəsət/˚zət/. The seigniorship of a marquis.

**Marriage.** Legal union of one man and one woman as husband and wife. *Singer v. Hara*, 11 Wash.App. 247, 522 P.2d 1187, 1193. Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex. A contract, according to the form prescribed by law, by which a man and woman capable of entering into such contract, mutually engage with each other to live their whole lives (or until divorced) together in state of union which ought to exist between a husband and wife. The word also signifies the act, ceremony, or formal proceeding by which persons take each other for husband and wife.

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

See also Avail of marriage; Banns of matrimony; Common-law marriage; Consensual marriage; Restraint of marriage; Voidable marriage; Void marriage.

**Ceremonial marriage.** Marriage which follows all the statutory requirements of blood tests, license, waiting period, and which has been solemnized before an official (religious or civil) capable of presiding at the marriage.

**Informal marriage.** A marriage in which promises are exchanged between the parties without an official ecclesiastical representative present. In most cases,

the law requires consummation of the marriage to consider such valid. See **Consensual marriage**.

**Jactitation of marriage.** See **Jactitation**.

**Manus marriage.** A form of marriage in early Rome; it formed a relation called *manus* (hand) and brought the wife into the husband's power, placing her as to legal rights in the position of a daughter.

**Marriage in jest.** A marriage in jest is subject to annulment for lack of requisite consent and intention to marry.

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

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

**Plural marriage.** In general, any bigamous or polygamous union, but particularly, a second or subsequent marriage of a man who already has one wife living under system of polygamy. Such marriages are prohibited.

**Proxy marriage.** Marriage contracted or celebrated by one or more agents rather than by the parties themselves.

**Putative marriage.** One contracted in good faith and in ignorance of some existing impediment on the part of at least one of the contracting parties. *U. S. Fidelity & Guaranty Co. v. Henderson, Tex.Civ.App., 53 S.W.2d 811.* Such marriages are recognized in very few jurisdictions.

**Marriage Act, Royal.** An English act of 12 Geo. III, c. 1 (1772), by which members of the royal family are forbidden to marry without the king's (or queen's) consent, or except on certain onerous conditions.

**Marriage articles.** Articles of agreement between parties contemplating marriage, intended as preliminary to a formal marriage settlement, to be drawn after marriage.

**Marriage broker.** One who for a consideration brings a woman and man together in marriage. Such activity is void and illegal as against public policy.

**Marriage ceremony.** The form, religious or civil, for the solemnization of a marriage.

**Marriage certificate.** An instrument which certifies a marriage, and is executed by the person officiating at the marriage; it is not intended to be signed by the parties, but is evidence of the marriage.

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

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

**Marriage per verba de praesenti /mæraj pər vərba dij prəzəntaj/. To constitute such a marriage, there must be an agreement to become husband and wife immediately from the time when the mutual consent is given. *Pitney v. Pitney, 151 Kan. 848, 101 P.2d 933, 935.***

**Marriage portion.** Dowry; a sum of money or other property which is given to or settled on a woman on her marriage.

**Marriage promise.** Betrothal; engagement to intermarry with another.

**Marriage records.** Those documents kept by a state, city or town official which are permanent records of marriages and which include the names of the spouses, the maiden name of the wife, their addresses and the date of the marriage. From these documents certificates of marriages are prepared.

**Marriage settlement.** An agreement in contemplation of marriage in which each party agrees to release or modify property rights which would otherwise arise from the marriage. A written agreement in the nature of a conveyance, called a "settlement," which is made in contemplation of a proposed marriage and in consideration thereof, either by the parties about to marry, or one of them, or by a parent or relation on their behalf, by which the title to certain property is settled, *i.e.*, fixed or limited to a prescribed course of succession; the object being, usually, to provide for the wife and children. Thus, the estate might be limited to the husband and issue, or to the wife and issue, or to husband and wife for their joint lives, remainder to the survivor for life, remainder over to the issue, or otherwise. Such settlements may also be made after marriage, in which case they are called "postnuptial." See also; **Antenuptial agreement; Marital agreements; Palimony; Postnuptial agreement.**

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

**Marshal.** The President is required to appoint a U.S. Marshal to each judicial district. It is the responsibility of U.S. marshals to execute all lawful writs, process and orders issued under authority of the United States. In executing the laws of the United States within a state, the marshal may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof. 28 U.S.C.A. §§ 561, 569, 570.

Also, in some of the states, this is the name of a law officer in certain cities having powers and duties corresponding generally to those of a constable or sheriff. Administrative head of city police or fire department.

See also **Provost-Marshal**.

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

**Marshaling.** Arranging, ranking, or disposing in order; particularly, in the case of a group or series of conflicting claims or interests, arranging them in such an order of sequence, or so directing the manner of their satisfaction, as shall secure justice to all persons concerned and the largest possible measure of satisfaction to each. Equitable doctrine of "marshaling" rests upon principle that creditor having two funds to satisfy his debt may not, by his application of them to his demand, defeat another creditor, who may resort to only one of the funds. *Columbia Bank for Cooperatives v. Lee, C.A.N.C., 368 F.2d 934, 939.* Under the doctrine of "marshaling", one claiming a lien against two or more classes of property, one of which is also subject to a junior lien, is required to exact satisfaction from the property not subject to the junior lien; thus, the junior lien is preserved where other assets exist sufficient to satisfy the senior lien. *In re Einhorn Bros., Inc., D.C.Pa., 171 F.Supp. 655, 660.* See sub-titles *infra*.

**Marshaling assets.** In equity, the arranging or ranking of assets in the due order of administration. Such an arrangement of the different funds under administration as shall enable all the parties having equities therein to receive their due proportions, notwithstanding any intervening interests, liens, or other claims of particular persons to prior satisfaction out of a portion of these funds. *In re Van Zandt's Estate, 142 Misc. 663, 255 N.Y.S. 359, 366.* The arrangement or ranking of assets in a certain order towards the payment of debts. The arrangement of assets or claims so as to secure the proper application of the assets to the various claims; especially when there are two classes of assets, and some creditors can enforce their claims against both, and others against only one, and the creditors of the former class are compelled to exhaust the assets against which they alone have a claim before having recourse to other assets, thus providing for the settlement of as many claims as possible. Equitable rule of "marshaling assets" is that where one claimant has two funds to which he may resort to answer his demand, and another claimant has interest in only one of such funds, he can compel former to take satisfaction out of fund in which latter has no lien. *In re Creem's Will, Sur., 147 N.Y.S.2d 634, 636.*

**Marshaling liens.** The ranking or ordering of several estates or parcels of land, for the satisfaction of a judgment or mortgage to which they are all liable, though successively conveyed away by the debtor. The rule is that, where lands subject to the lien of a judgment or mortgage have been sold or incumbered by the owner at different times to different purchas-

ers, the various tracts are liable to the satisfaction of the lien in the inverse order of their alienation or incumbrance, the land last sold being first chargeable.

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

**Marshaling securities.** An equitable practice, which consists in so ranking or arranging classes of creditors, with respect to the assets of the common debtor, as to provide for satisfaction of the greatest number of claims. The process is this: where one class of creditors have liens or securities on two funds, while another class of creditors can resort to only one of those funds, equity will compel the doubly-secured creditors to first exhaust that fund which will leave the single security of the other creditors intact.

**Marshal of the queen's bench.** An officer who had the custody of the queen's bench prison. The St. 5 & 6 Vict., c. 22, abolished this office, and substituted an officer called "keeper of the queen's prison."

**Marshalsea** /márshəlsiy/. In English law, a prison belonging to the king's bench. It was subsequently consolidated with others, under the name of the "King's Prison."

**Marshalsea, court of** /kórd əv márshəlsiy/. In English law, the court or seat of the marshal. A court originally held before the steward and marshal of the king's house, instituted to administer justice between the king's domestic servants. It had jurisdiction of all trespasses committed within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. It was abolished by 12 & 13 Vict., c. 101, § 13.

**Mart.** A place of public traffic or sale. See also **Market**.

**Marte suo decurrere** /márdiy s(y)úwəw dəkəhrəriy/. Lat. To run by its own force. A term applied in the civil law to a suit when it ran its course to the end without any impediment.

**Martial law** /márshəl ló/. Exists when military authorities carry on government or exercise various degrees of control over civilians or civilian authorities in domestic territory. *Ochikubo v. Bonesteel, D.C.Cal., 60 F.Supp. 916, 928, 929, 930.* Such may exist either in time of war or when civil authority has ceased to function or has become ineffective. A system of law, obtaining only in time of actual war and growing out of the exigencies thereof, arbitrary in its character, and depending only on the will of the commander of an army, which is established and administered in a place or district of hostile territory held in belligerent possession, or, sometimes, in places occupied or pervaded by insurgents or mobs, and which suspends all

existing civil laws, as well as the civil authority and the ordinary administration of justice. See also **Military government**; **Military law**.

**Mary Carter agreement.** The term "Mary Carter Agreement" arises from the agreement popularized by the case of *Booth v. Mary Carter Paint Co.*, Fla.App.1967, 202 So.2d 8, and now is used rather generally to apply to any agreement between the plaintiff and some, but less than all, defendants whereby the parties place limitations on the financial responsibility of the agreeing defendants, the amount of which is variable and usually in some inverse ratio to the amount of recovery which the plaintiff is able to make against the nonagreeing defendant or defendants. Such agreements are held to be void as against public policy in certain states, while in others are permissible if disclosed to the jury.

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

**Masochism** /mæsəkízám/. [From Leopold von Sacher-Masoch, a nineteenth-century Austrian novelist and historian.] A form of perversion in which sexual pleasure is heightened when one is beaten and maltreated at the hands of the other party; the opposite of sadism. Sexual perversion, in which a member of one sex takes delight in being dominated, even to the extent of violence or cruelty, by one of the other sex.

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

**Massa** /mæsa/. In the civil law, a mass; an unwrought substance, such as gold or silver, before it is wrought into cups or other articles.

**Massachism.** See **Masochism**.

**Massachusetts ballot.** The office-block type of Australian ballot in which, under each office, the names of candidates, with party designations, are printed in alphabetical order.

**Massachusetts rule.** As regards sending out checks through banks for collection, the "Massachusetts rule" is that each bank that receives the item acts as an agent for the depositor; but in some other states, the "New York rule" prevails, under which only the bank first receiving the item is responsible to, or is the agent of, the depositor, the other banks being the agent of the bank, in the process of the collection.

**Massachusetts trust.** A business organization wherein property is conveyed to trustees and managed for benefit of holders of certificates like corporate stock certificates. A "Massachusetts business trust" is an unincorporated association organized under Massa-

chusetts law for purpose of investing in real estate in much the same manner as a mutual fund invests in corporate securities. *Kusner v. First Pa. Corp.*, D.C. Pa., 395 F.Supp. 276, 281.

**Masses.** Religious ceremonies or observances of the Roman Catholic Church.

**Master.** A principal who employs another to perform service in his affairs and who controls or has right to control physical conduct of other in performance of the service. Restatement, Second, Agency, § 2. A "master" is one standing to another in such a relation that he not only controls the results of the work of that other but also may direct the manner in which such work shall be done. *Matonti v. Research-Cottrell, Inc.*, D.C.Pa., 202 F.Supp. 527, 532.

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

One who has reached the summit of his trade and who has the right to hire apprentices and journeymen.

Fed.R.Civil P. 53, and analogous state rules, provide for the appointment by the court of a master to assist it in specific judicial duties as may arise in a case. The master's powers and duties depend upon the terms of the order of reference and the controlling court rule, and may include taking of testimony, discovery of evidence and other acts or measures necessary for the performance of his duties specified in the order of reference. The master is required to prepare a report of his proceedings for the court. In the federal courts the appointment of a master is the "exception rather than the rule", while under money state rules, the court has more liberal powers to appoint such. See also **Reference**.

**Special master.** A master appointed to act as the representative of the court in some particular act or transaction, as, to make a sale of property under a decree. *Pewabic Min. Co. v. Mason*, 145 U.S. 349, 12 S.Ct. 887, 36 L.Ed. 732.

**Master agreement.** The omnibus labor agreement reached between a union and the leaders of the industry or a trade association. It becomes the pattern for labor agreements between the union and individual employers.

**Master and servant.** The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labor for an agreed period. The relation exists where the employer has the right to select the employee, the power to remove and discharge him and the right to direct both what work shall be done and the manner in which it shall be done. *Matonti v. Research-Cottrell, Inc.*, D.C.Pa., 202 F.Supp. 527, 532. Such term has generally been replaced by "employer and employee".

**Master at common law.** The title of officers of the English superior courts of common law appointed to record the proceedings of the court to which they belong; to superintend the issue of writs and the formal proceedings in an action; to receive and account for the fees charged on legal proceedings, and moneys paid into court.



**Master deed or lease.** Conveyancing document used by owners or lessees of condominiums.

**Master in chancery.** An officer of a court of chancery who acts as an assistant to the judge or chancellor. His duties are to inquire into such matters as may be referred to him by the court, examine causes, take testimony, take accounts, compute damages, etc., reporting his findings to the court in such shape that a decree may be made; also to take oaths and affidavits and acknowledgments of deeds. In modern practice, many of the functions of a master are performed by clerks, commissioners, auditors, and referees, and in those states that have merged law and equity courts in adopting Rules of Civil Procedure the office has been superseded. See **Master**.

**Master in lunacy.** In old English law, the masters in lunacy were judicial officers appointed by the lord chancellor for the purpose of conducting inquiries into the state of mind of persons alleged to have been lunatics. Such inquiries usually took place before a jury.

**Master of a ship.** In maritime law, the commander of a merchant vessel, who has the chief charge of her government and navigation and the command of the crew, as well as the general care and control of the vessel and cargo, as the representative and confidential agent of the owner. He is commonly called the "captain."

**Master of the Crown Office.** In England, the Queen's coroner and attorney in the criminal department of the court of Queen's bench, who prosecutes at the complaint or relation of some private person or common informer, the crown being the nominal prosecutor. He is an officer of the Supreme Court.

**Master of the Faculties.** In English law, an officer under the archbishop, who grants licenses and dispensations, etc.

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

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

**Master of the Ordnance.** In English law, a great officer, to whose care all the royal ordnance and artillery were committed.

**Master of the rolls.** In English law, an assistant judge of the court of chancery, who held a separate court ranking next to that of the lord chancellor, and had the keeping of the rolls and grants which passed the great seal, and the records of the chancery. He was originally appointed only for the superintendence of the writs and records appertaining to the common-law department of the court, and is still properly the chief of the masters in chancery. Under the act constituting the Supreme Court of Judicature, the

master of the rolls became a judge of the high court of justice and *ex officio* a member of the court of appeal. The same act, however, provided for the abolition of this office, under certain conditions, when the next vacancy occurs.

**Master plan.** Term used in land use control law, zoning and urban redevelopment to describe the omnibus plan of a city or town for housing, industry and recreational facilities and their impact on environmental factors. See also **Planned unit development**.

**Master policy.** An insurance policy which covers a group of persons as in health or life insurance written as group insurance. Generally, there is only one master policy and the participants have only certificates evidencing their participation.

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

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

The document filed with the court after a master has heard the evidence and made his findings. The report should contain his findings and conclusions of law where necessary. Fed.R.Civil P. 53(e).

**Mast-selling.** In old English law, the practice of selling the goods of dead seamen at the mast.

**Mate.** A spouse. The officer second in command on a merchant vessel. In Navy, petty officer who is assistant to warranty officer.

**Matelotage** /mætlowtáz/. In French law, the hire of a ship or boat.

Seamanship; seaman's wages, pay.

**Mater-familias** /méydər fəml(i)yəs/. Lat. In civil law, the mother or mistress of a family. A chaste woman, married or single.

**Materia** /mætir(i)yə/. Lat. In Civil law, materials; as distinguished from *species*, or the *form* given by labor and skill.

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

**Material.** Important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form. Representation relating to matter which is so substantial and important as to influence party to whom made is "material." See **Material fact**.

**Material allegation.** An allegation is said to be material when it forms a substantive part of the case presented by the pleading. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

**Material alteration.** A material alteration in any written instrument is one which changes its tenor, or its

legal meaning and effect; one which causes it to speak a language different in effect from that which it originally spoke. A material alteration of a deed is one which effects a change in its legal effect. *Boys v. Long*, Okl., 268 P.2d 890, 893.

Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in: (a) the number or relations of the parties; or (b) an incomplete instrument, by completing it otherwise than as authorized; or (c) the writing as signed, by adding to it or by removing any part of it. U.C.C. § 3-407(1).

**Material evidence.** That quality of evidence which tends to influence the trier of fact because of its logical connection with the issue. Evidence which has an effective influence or bearing on question in issue is "material". *Barr v. Dolphin Holding Corp.*, Sup., 141 N.Y.S.2d 906, 908. "Materiality" of evidence refers to pertinency of the offered evidence to the issue in dispute. *Vine Street Corp. v. City of Council Bluffs*, Iowa, 220 N.W.2d 860, 863.

Material evidence is evidence which is material to question in controversy, and which must necessarily enter into the consideration of the controversy, and which by itself or in connection with other evidence is determinative of the case. *Camurati v. Sutton*, 48 Tenn.App. 54, 342 S.W.2d 732, 739.

See also **Evidence**; **Relevancy**; **Relevant evidence**.

**Material fact. Contracts.** One which constitutes substantially the consideration of the contract, or without which it would not have been made. See also **Reliance**.

**Insurance.** A fact which, if communicated to the agent or insurer, would induce him either to decline the insurance altogether, or not accept it unless a higher premium is paid. One which necessarily has some bearing on the subject-matter. A fact which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium. Any fact the knowledge or ignorance of which would naturally influence the insurer in making or refusing the contract, or in estimating the degree and character of the risk, or in fixing the rate.

**Pleading and practice.** One which is essential to the case, defense, application, etc., and without which it could not be supported. One which tends to establish any of issues raised. The "material facts" of an issue of fact are such as are necessary to determine the issue. Material fact is one upon which outcome of litigation depends. *Amant v. Pacific Power & Light Co.*, 10 Wash.App. 785, 520 P.2d 481, 484.

**Securities.** To be a "material" fact within the Securities Act of 1933, it must concern information about which an average prudent investor ought reasonably be informed before purchasing a security. *Gridley v. Sayre & Fisher Co.*, D.C.S.D., 409 F.Supp. 1266, 1270. With respect to securities fraud violations, a material fact is one that a reasonable man would attach importance to in determining his choice of action in the transaction in question. *List v. Fashion Park, Inc.*, C.A.N.Y., 340 F.2d 457; *Gilbert v. Nixon*, C.A.Kan., 429 F.2d 348. An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.

*TSC Industries, Inc. v. Northway Inc.*, 426 U.S. 438, 96 S.Ct. 2126, 48 L.Ed.2d 757. See also **Reliance**; **Rule 10b-5**.

**Summary judgment.** In determining what constitutes a genuine issue as to any material fact for purposes of summary judgment, an issue is "material" if the facts alleged are such as to constitute a legal defense or are of such nature as to affect the result of the action. *Austin v. Wilder*, 26 N.C.App. 229, 215 S.E.2d 794, 796. See Fed.R.Civil P. 56(c).

A fact is "material" and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of a cause of action or defense asserted by the parties, and would necessarily affect application of appropriate principle of law to the rights and obligations of the parties. *Johnson v. Soulis, Wyo.*, 542 P.2d 867, 872.

**Materialman.** A person who has furnished materials or supplies used in the construction or repair of a building, structure, etc.

**Materialman's lien.** By statute in most states, a person who furnishes material for the construction, improvement or alteration of a building or other structure has a priority for payment of his claim based on his lien as a supplier of such materials. See also **Mechanic's lien**.

**Material representation.** In law of deceit, a statement or undertaking of sufficient substance and importance as to be the foundation of an action if such representation is false. See also **Material fact**; **Representation**.

**Material witness.** A person who can give testimony no one else, or at least very few, can give. In an important criminal case, a material witness may sometimes be held by the government against his or her will. He may be the victim or an eye witness. See also **Witness**.

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

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

**Maternal property.** That which comes from the mother of the party, and other ascendants of the maternal stock.

**Materna maternis /mâtérnə mâtérnəs/. Lat.** A maxim of the French law, signifying that property of a decedent acquired by him through his mother descends to the relations on the mother's side.

**Maternity.** The character, relation, state, or condition of a mother.

**Matertera /mâtérdərə/. Lat.** In civil law, a maternal aunt; a mother's sister.

**Matertera magna /mâtérdərə méagnə/. A great aunt; a grandmother's sister (avia soror).**

**Matertera major /mâtérdərə méyjer/. A greater aunt; a great-grandmother's sister (proavia soror); a father's**

or mother's great-aunt (*patris vel matris matertera magna*).

**Matertera maxima** /mætərdərə məksəmə/. A greatest aunt; a great-great-grandmother's sister (*abaviæ soror*); a father's or mother's greater aunt (*patris vel matris matertera major*).

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

**Matima.** A godmother.

**Matricide** /mætrəsəyd/. The murder of a mother; or one who has slain his mother.

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

**Matriculate** /mætrikyləyt/. To enroll; to enter in a register; specifically, to enter or admit to membership in a body or society, particularly in a college or university, by enrolling the name in a register; to go through the process of admission to membership, as by examination and enrollment, in a society or college.

**Matrimonia debent esse libera** /mætrəmówn(i)yə débənt ésiy libərə/. Marriages ought to be free. A maxim of the civil law.

**Matrimonial.** Of or pertaining to matrimony or the estate of marriage.

**Matrimonial action.** The term "matrimonial action" includes actions for a separation, for an annulment or dissolution of a marriage, for a divorce, for a declaration of the nullity of a void marriage, for a declaration of the validity or nullity of a foreign judgment of divorce and for a declaration of the validity or nullity of a marriage. New York C.P.L.R. § 105. See also **Annulment**; **Custody**; **Divorce**; **Equitable distribution**; **Separation of Spouses**.

**Matrimonial cohabitation.** The living together of a man and woman ostensibly as husband and wife. Also the living together of those who are legally husband and wife, the term carrying with it, in this sense, an implication of mutual rights and duties as to sharing the same habitation.

**Matrimonial domicile.** Place where parties live together as husband and wife either actually or constructively.

**Matrimonial res** /mætrəmówn(i)yəl ríyz/. The marriage state. *Usen v. Usen*, 136 Me. 480, 13 A.2d 738, 749.

**Matrimonium** /mætrəmówn(i)yəm/. Lat. In Roman law, a legal marriage, contracted in strict accordance with the forms of the older Roman law, *i.e.*, either with the *farreum*, the *coemptio*, or by *usus*. This was allowed only to Roman citizens and to those neighboring peoples to whom the right of *connubium* had been conceded. The effect of such a marriage was to

bring the wife into the *manus*, or marital power, of the husband, and to create the *patria potestas* over the children.

**Matrimonium subsequens tollit peccatum præcedens** /mætrəmówn(i)yəm sábsəkwən(d)z tólat pəkéydəm præsýdèn(d)z/. Subsequent marriage cures preceding criminality.

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

**Matrix** /méytrəks/. In civil law, the protocol or first draft of a legal instrument, from which all copies must be taken.

**Matrix ecclesia** /méytrəks əklízyiə/. Lat. A mother church. This term was anciently applied to a cathedral, in relation to the other churches in the same see, or to a parochial church, in relation to the chapels or minor churches attached to it or depending on it.

**Matron.** A married woman; an elderly woman. The female superintendent of an establishment or institution, such as a hospital, an orphan asylum, etc., is often so called.

**Matrons, jury of.** Jury impaneled to determine if a woman condemned to death is pregnant. In common-law practice, a jury of twelve matrons or discreet women, impaneled upon a writ *de ventre inspiciendo*, or where a female prisoner, being under sentence of death, pleaded her pregnancy as a ground for staying execution. In the latter case, such jury inquired into the truth of the plea.

**Matter.** Substantial facts forming basis of claim or defense; facts material to issue; substance as distinguished from form; transaction, event, occurrence; subject-matter of controversy. See **Issue**; **Material fact**; **Matter in issue**; **Subject-matter**.

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

**Matter in deed.** In English law, such matter as may be proved or established by a deed or specialty. Matter of fact, in contradistinction to matter of law. See also **Matter of record**.

**Matter in issue.** That matter on which plaintiff proceeds by his action, and which defendant controverts by his pleadings. *MacKenzie v. Union Guardian Trust Co.*, 262 Mich. 563, 247 N.W. 914. Not including facts offered in evidence to establish the matters in issue. That ultimate fact or state of facts in dispute upon which the verdict or finding is predicated. See also **Matter in controversy, or in dispute**.

**Matter in ley ne serra mise in boutche del jurors** /mædər in léy nə sərə míyz in búsh dèl júrz/. Matter of law shall not be put into the mouth of the jurors.

**Matter in pais** /mædər in péy/. Matter of fact that is not in writing; thus distinguished from matter in

deed and matter of record; matter that must be proved by parol evidence.

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

**Matter of fact.** That which is to be ascertained by the senses, or by the testimony of witnesses describing what they have perceived. Distinguished from matter of law and matter of opinion. See also **Fact**.

**Matter of form.** See **Form**.

**Matter of law.** Whatever is to be ascertained or decided by the application of statutory rules or the principles and determinations of the law, as distinguished from the investigation of particular facts, is called "matter of law."

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

**Matter of record, estoppel by.** See **Record, estoppel by**.

**Matter of substance.** That which goes to the merits. The opposite of matter of form.

**Matters of subsistence for man.** This phrase comprehends all articles or things, whether animal or vegetable, living or dead, which are used for food, and whether they are consumed in the form in which they are bought from the producer or are only consumed after undergoing a process of preparation, which is greater or less, according to the character of the article.

**Matured claim.** Claim which is unconditionally due and owing. See **Liquidated claim**.

**Maturity.** The date at which an obligation, such as the principal of a bond or a note, becomes due.

**Maturity value.** The amount which is due and payable on the maturity date of an obligation.

**Maugre** /mógər/. L. Fr. In spite of; against the will of.

**Maxim** /mæksəm/. Maxims are but attempted general statements of rules of law and are law only to extent of application in adjudicated cases. *Swetland v. Curtiss Airports Corporation*, D.C.Ohio, 41 F.2d 929, 936. An established principle or proposition. A principle of law universally admitted as being a correct statement of the law, or as agreeable to reason. Principles invoked in equity jurisdiction; e.g. "equity treats as done what ought to be done."

The various maxims of law appear in alphabetical order throughout this dictionary.

**Maxime paci sunt contraria vis et injuria** /mæksəmiy péysay sánt kontrériyə vis èd ənjúriyə/. The greatest enemies to peace are force and wrong.

**Maximum.** The highest or greatest amount, quality, value, or degree.

**Maximus erroris populus magister** /mæksəməs ərəʊs pópələs məjístər/. The people is the greatest master of error.

**May.** An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency. *U. S. v. Lexington Mill & E. Co.*, 232 U.S. 399, 34 S.Ct. 337, 340, 58 L.Ed. 658. Regardless of the instrument, however, whether constitution, statute, deed, contract or whatever, courts not infrequently construe "may" as "shall" or "must" to the end that justice may not be the slave of grammar. However, as a general rule, the word "may" will not be treated as a word of command unless there is something in context or subject matter of act to indicate that it was used in such sense. *Bloom v. Texas State Bd. of Examiners of Psychologists*, Tex.Civ.App., 475 S.W.2d 374, 377. In construction of statutes and presumably also in construction of federal rules word "may" as opposed to "shall" is indicative of discretion or choice between two or more alternatives, but context in which word appears must be controlling factor. *U. S. v. Cook*, C.A.Ill., 432 F.2d 1093, 1098.

**Mayhem** /méy(h)əm/. Mayhem at common law required a type of injury which permanently rendered the victim less able to fight offensively or defensively; it might be accomplished either by the removal of (dismemberment), or by the disablement of, some bodily member useful in fighting. Today, by statute, permanent disfigurement has been added; and as to dismemberment and disablement, there is no longer a requirement that the member have military significance. See also **Maim**.

**Mayn** /méyn/. L. Fr. A hand; handwriting.

**Maynover** /mèynóvvər/mənuvvər/. L. Fr. A work of the hand; a thing produced by manual labor.

**Mayor.** A governmental figure who is generally the principal administrative officer of a city or other municipal area. The position of mayor varies from city to city. In some cities the mayor is essentially a ceremonial figure, while in others he is a major executive official. In some instances he is popularly elected and in others, such as in the commission plan, he is selected from within the administrative council to serve as a presiding officer and ceremonial figure. Duties of mayor are usually prescribed by statute or municipal charter.

**Mayoralty** /méy(ə)rəltiy/. The office or dignity of a mayor.

**Mayorazgo** /màyorásgow/. In Spanish law, the right to the enjoyment of certain aggregate property, left with the condition thereon imposed that they are to pass in their integrity, perpetually, successively to the eldest son.

**Mayor's court.** A court established in some cities, in which the mayor sits with the powers of a police judge or committing magistrate in respect to offenses committed within the city (e.g. traffic or ordinance violations) and sometimes with civil jurisdiction in small causes, or other special statutory powers.

**McCarran Act.** A federal statute which permits a state to regulate and to tax foreign insurance companies

which do business within the state. 15 U.S.C.A. § 1011 *et seq.* See also **Internal security acts.**

**McNabb-Mallory Rule.** The rule which requires that a suspect be promptly brought before a magistrate or else incriminating statements made by him during the illegal detention will be suppressed. *McNabb v. U. S.*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819, and *Mallory v. U. S.*, 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed.2d 1479. "McNabb Rule" is that there must be reasonable promptness in taking prisoner before committing magistrate, or confession obtained during period between arrest and commitment is inadmissible in prosecution of party arrested, and that rule applies to voluntary as well as involuntary confessions. *Muldrow v. U. S.*, C.A.Cal., 281 F.2d 903, 906.

**McNaghten Rule.** See **M'Naghten Rule.**

**M.D.** An abbreviation for "Middle District," in reference to the division of the United States into judicial districts; e.g. U.S. District Court for middle district of Ohio. Also an abbreviation for "Doctor of Medicine" or "Medical Doctor."

**Meadow.** A tract of low or level land producing grass which is mown for hay. A tract which lies above the shore, and is overflowed by spring and extraordinary tides only, and yields grasses which are good for hay.

**Mean, or mesne.** A middle between two extremes, whether applied to persons, things, or time. Average, having an intermediate value between two extremes or between the several successive values of variable quantity during one cycle of variation. *Western & Southern Life Ins. Co. v. Huwe*, C.C.A. Ohio, 116 F.2d 1008, 1009.

**Meander** /miyændər/. To meander means to follow a winding or flexuous course; and when it is said, in a description of land, "thence with the meander of the river," it must mean a meandered line,—a line which follows the sinuosities of the river,—or, in other words, that the river is the boundary between the points indicated.

This term is used in some jurisdictions with the meaning of surveying and mapping a stream according to its meanderings, or windings and turnings. See **Meander lines.**

**Meander lines.** Lines run in surveying particular portions of the public lands which border on navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, and shows that the watercourse, and not the meander line as naturally run on the ground, is the boundary. *Niles v. Cedar Point Club*, 175 U.S. 300, 20 S.Ct. 124, 44 L.Ed. 171.

**Mean high tide.** The "mean high tide" or "ordinary high tide" is a mean of all the high tides, and the average to be used should be, if possible, the average of all the high tides over a period of 18.6 years. *O'Neill v. State Highway Dept.*, N.J., 50 N.J. 307, 235 A.2d 1, 9.

**Meaning.** That which is, or is intended to be, signified or denoted by act or language; signification; sense; import. See also **Construction.**

**Mean lower low tide.** The average of lower low tides over a fixed period of time. *State v. Edwards*, 188 Wash. 467, 62 P.2d 1094, 1095.

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

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

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

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

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

**Measure.** That by which extent or dimension is ascertained, either length, breadth, thickness, capacity, or amount. The rule by which anything is adjusted or proportioned. See **Land measure; Metes and bounds; Survey.**

**Measure of damages.** The rule, or rather the system of rules, governing the adjustment or apportionment of damages as a compensation for injuries in actions at law. See **Damages.**

**Measure of value.** In the ordinary sense of the word, "measure" would mean something by comparison with which we may ascertain what is the value of anything. When we consider, further, that value itself is relative, and that two things are necessary to constitute it, independently of the third thing, which is to measure it, we may define a "measure of value" to be something by comparing with which any two other things we may infer their value in relation to one another. See **Value.**

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

**Mechanical equivalent.** If two devices do the same work in substantially the same way, and accomplish substantially the same result, they are "mechanical equivalents." *Wire Tie Machinery Co. v. Pacific Box Corporation*, C.C.A.Cal., 107 F.2d 54, 56. A device which may be substituted or adopted, instead of another, by any person skilled in the particular art from his knowledge of the art, and which is competent to perform the same functions or produce the same result, without introducing an original idea or changing the general idea of means. The test of equivalen-

cy is whether the substituted element operates in substantially the same way to produce substantially the same result. See also **Equivalent**.

**Mechanical process.** See **Process**.

**Mechanic's lien.** A claim created by state statutes for the purpose of securing priority of payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure, and as such attaches to the land as well as buildings and improvements erected thereon. In re Louisville Daily News & Enquirer, D.C.Ky., 20 F.Supp. 465, 466. Such lien covers materialmen, tradesmen, suppliers, and the like, who furnish services, labor, or materials on construction or improvement of property. See also **Commence** (*Commencement of building improvement*); **Lien waiver**.

**Mechanic's lienor.** The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. I.R.C. § 6323(h).

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

**Media annata** /méyōiya anáta/mýdyiə anéyda/. In Spanish law, half-yearly profits of land.

**Media concludendi** /mýdyiə kōŋkluwdénday/. The steps of an argument. Thus "a judgment is conclusive as to all the *media concludendi*." Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039. The theory or basis of facts upon which a legal conclusion is reached, per Holmes, C. J., in Hoseason v. Keegen, 178 Mass. 247, 59 N.E. 627. Grounds for asserting the right known when the suit was brought. Mendez v. Baetjer, C.C.A.Puerto Rico, 106 F.2d 163, 166.

**Media et infirmæ manus homines** /mýdyiy ēd infármiy mánas hómāniyz/. Men of a middle and base condition.

**Media nox** /mýdyiə nōks/. In old English law, midnight. *Ad mediam noctem*, at midnight.

**Medianus homo** /mýdyiyénas hōwmow/. A man of middle fortune.

**Mediate datum** /mýdyiyédyiy déydəm/. A fact from whose existence may be rationally inferred the existence of ultimate facts. The Evergreens v. Nunan, C.C.A.N.Y., 141 F.2d 927, 928.

**Mediate descent.** See **Descent**.

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

**Mediate testimony.** Secondary evidence (q.v.).

**Mediation.** Intervention; interposition; the act of a third person in intermediating between two contending parties with a view to persuading them to adjust or settle their dispute. Settlement of dispute by action of intermediary (neutral party). See also **Arbitration**; **Conciliation**.

Also, the friendly interference of a neutral nation in the controversies of others, for the purpose, by its influence and by adjusting their difficulties, of keeping the peace in the family of nations.

**Mediation and Conciliation Service.** An independent department of the federal government charged with trying to settle labor disputes by conciliation and mediation. 29 U.S.C.A. § 172 *et seq.*

The Federal Mediation and Conciliation Service represents the public interest by promoting the development of sound and stable labor-management relationships; preventing or minimizing work stoppages by assisting labor and management to settle their disputes through mediation; advocating collective bargaining, mediation, and voluntary arbitration as the preferred processes for settling issues between employers and representatives of employees; developing the art, science, and practice of dispute resolution; and fostering constructive joint relationships of labor and management leaders to increase their mutual understanding and solution of common problems. See also **National Mediation Board**.

**Mediator.** One who interposes between parties at variance for purpose of reconciling them.

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

**Medicaid.** A form of public assistance sponsored jointly by the federal and state governments providing medical aid for people whose income falls below a certain level. See also **Medicare**.

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

**Medical care.** The term "medical care" is defined broadly in the Internal Revenue Code (I.R.C. § 213) and more comprehensively in the regulations. It includes expenses for doctors, nurses and other medical services, as well as payments for operations, hospitals, institutional care and transportation necessary to obtain medical care. The basic test for the allowance of medical deductions is whether the expense was incurred and paid primarily for the prevention or alleviation of a physical or mental defect or illness. Edward A. Harvey, 12 T.C. 409 (1949). See also **Medical expenses**.

**Medical deduction.** See **Medical care**.

**Medical evidence.** Evidence furnished by doctors, nurses, and other medical personnel testifying in their professional capacity as experts, or by standard treat-

tises on medicine or surgery. Fed.Evid.R. 702, 703. See **Expert witness**.

**Medical examiner.** Public officer charged with responsibility of investigating all sudden, unexplained, unnatural or suspicious deaths reported to him, including the performance of autopsies and assisting the state in criminal homicide cases. Term may also include a physician who conducts examinations for insurance companies and other institutions. The medical examiner has replaced the coroner in many states. See also **Coroner**.

**Medical expenses.** Medical expenses of an individual and his dependents are allowed as an itemized deduction to the extent that such amounts (less insurance reimbursements) exceed 3 percent of adjusted gross income. Special rules are provided for medicines and drugs and health insurance premiums. I.R.C. § 213.

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

**Medical malpractice.** See **Malpractice**.

**Medicare.** Federal Act to provide hospital and medical insurance for aged under Social Security Act. See also **Medicaid** (state provided medical assistance).

**Medicine.** The science and art dealing with the prevention, cure and alleviation of diseases; in a narrower sense that part of the science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician. *Burke v. Kansas State Osteopathic Ass'n*, C.C. A.Kan., 111 F.2d 250, 253. The term is not limited to substances supposed to possess curative or remedial properties. *People v. Kabana*, 321 Ill.App. 158, 52 N.E.2d 320.

**Forensic medicine.** Another name for medical jurisprudence. See **Forensic medicine**.

**Schools of medicine.** See **Osteopathy**; **Psychotherapy**.

**Medico-legal.** Relating to the law concerning medical questions. See **Forensic medicine**.

**Medietas linguae** /mədáyætæs língwiy/. In old practice, moiety of tongue; half-tongue. Applied to a jury impaneled in a cause consisting the one half of natives, and the other half of foreigners. See **De medietate linguae**.

**Medio acquietando** /míydiyow əkwáyætəndow/. A judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him.

**Mediterranean passport.** A pass issued by the admiralty of Great Britain under various treaties with the Barbary States in the eighteenth century. They were granted to British built ships and were respected by the Barbary pirates. They were also issued by the United States.

**Medium of exchange.** Anything which serves to facilitate the exchange of things by providing a common basis of measurement such as money, checks, drafts, etc. See **Legal tender**.

**Medium tempus** /míydiyəm témpəs/. In old English law, meantime; mesne profits.

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

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

**Medsceat** /médzchiyt/. In old English law, a bribe; hush money.

**Meeting.** A coming together of persons; an assembly. Particularly, in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest; *e.g.* in corporate law, a meeting of the Board of Directors or of the stockholders.

**Called meeting.** In the law of corporations, a meeting not held at a time specially appointed for it by the charter or by-laws, but assembled in pursuance of a "call" or summons proceeding from some officer, committee or group of stockholders, or other persons having authority in that behalf.

**Family meeting.** See **Family**.

**General meeting.** A meeting of all the stockholders of a corporation, all the creditors of a bankrupt, etc.

**Regular meeting.** In the law of public and private corporations, a meeting (of directors, trustees, stockholders, etc.) held at the time and place appointed for it by statute, by-law, charter or other positive direction.

**Special meeting.** In the law of corporations, a meeting called for special purposes; one limited to particular business; a meeting for those purposes of which the parties have had special notice.

**Stated meeting.** A meeting held at a stated or duly appointed time and place; a regular meeting (*q.v.*).

**Town meeting.** See **Town**.

**Meeting of creditors.** Under federal bankruptcy law, at the first meeting of creditors the bankrupt is examined, claims may be allowed or disallowed and a trustee appointed. There may also be interim meetings of creditors to consider the affairs of the bankrupt and a final meeting when the affairs are to be closed. 11 U.S.C.A. § 341.

**Meeting of minds.** Mutual agreement and assent of parties to contract to substance and terms. The "meeting of the minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which from all the circumstances should be known. *McClintock v. Skelly Oil Co.*, 232 Mo.App. 1204, 114 S.W.2d 181, 189.

- Megalomania** /mègələméyniə/. See *Insanity*.
- Megalopolis**. Heavily populated continuous urban area including many cities.
- Megbote** /mègbòwt/. In Saxon law, a recompense for the murder of a relation.
- Meigne**, or **mainsnader** /míyn/. In old English law, a family.
- Mellicke system**. Consists of computing fractions on the basis of a 30-day month, and does not charge interest for the 31st day of any month. *Swistak v. Personal Finance Co.*, 175 Misc. 791, 24 N.Y.S.2d 80, 81.
- Meindre age** /míndər éyj/°əzh/. L. Fr. Minority; lesser age.
- Melny**, **meine**, or **meinie** /míyn(iy)/. In old English law, a household; staff or suite of attendants; a retinue; particularly, the royal household.
- Melancholia** /mèlənkwóliyə/. A kind of mental unsoundness characterized by extreme depression of spirits, ill-grounded fears, delusions, and brooding over one particular subject or train of ideas. Depressed phase of manic-depressive psychosis, the intensity and duration of which is out of proportion to any apparent precipitating factors. See *Insanity*.
- Meldfeoh** /mèldfíy/. In Saxon law, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the "promoter's [i.e., informer's] fee."
- Mellor** /míyl(i)yər/. Lat. Better; the better. *Mellor res*, the better (best) thing or chattel.
- Mellorations** /míyl(i)yéréyshən(d)z/. In Scottish law, improvements of an estate, other than mere repairs; betterments. Occasionally used in English and American law in the sense of valuable and lasting improvements or betterments.
- Meliorem conditionem ecclesie sue facere potest praelatus, deterioorem nequaquam** /míyl(i)yórəm kəndishiyównəm əklífyziyí s(y)úwíy fəysəriy pówdəst prələydəs, dətəriyórəm nəkwéykwəm/. A bishop can make the condition of his own church better, but by no means worse.
- Mellorem conditionem suam facere potest minor, deterioorem nequaquam** /míyl(i)yórəm kəndishiyównəm s(y)úwəm fəysəriy pówdəst máynər, dətəriyórəm nəkwéykwəm/. A minor can make his own condition better, but by no means worse.
- Mellor est causa possidentis** /míyl(i)yər èst kóza pòsədéntəs/. The cause of the possessor is preferable.
- Mellor est conditio defendentis** /míyl(i)yər èst kəndish(iy)ow dəfəndéntəs/. The condition of the party in possession is the better one, i.e., where the right of the parties is equal.
- Mellor est conditio possidentis, et rei quam actoris** /míyl(i)yər èst kəndish(iy)ow pòsədéntəs èt ríyay kwəm əktórəs/. The condition of the possessor is the better, and the condition of the defendant is better than that of the plaintiff.
- Mellior est conditio possidentis ubi neuter jus habet** /míyl(i)yər èst kəndish(iy)ow pòsədéntəs yúwbay n(y)úwdər jəs héybət/. The condition of the possessor is the better where neither of the two has a right.
- Mellior est justitia vere praveniens quam severe puniens** /míyl(i)yər èst jəstish(iy)ə víry prəvíyn(i)yən(d)z kwəm səvíry pyúwniən(d)z/. That justice which absolutely prevents [a crime] is better than that which severely punishes it.
- Mellius est in tempore occurrere, quam post causam vulneratum remedium quaerere** /míyl(i)yəs èst in témpəriy əkəhrəriy, kwəm pòst kózəm vəlneréydam rəmíyd(i)yəm kwírariy/. It is better to meet a thing in time than after an injury inflicted to seek a remedy.
- Mellius est jus deficiens quam jus incertum** /míyl(i)yəs èst jəs dəfíshiyən(d)z kwəm jəs ənsərdəm/. Law that is deficient is better than law that is uncertain.
- Mellius est omnia mala pati quam malo consentire** /míyl(i)yəs èst ómniyə mələ pədəy kwəm məlow kònsentáryry/. It is better to suffer every ill than to consent to ill.
- Mellius est petere fontes quam sectari rivulos** /míyl(i)yəs èst pədəryí fóntiyz kwəm sèktéray rívyəlow/. It is better to go to the fountain head than to follow little streamlets.
- Mellius est recurrere quam malo currere** /míyl(i)yəs èst rəkəhrəriy kwəm məlow kəhrəriy/. It is better to run back than to run badly; it is better to retrace one's steps than to proceed improperly.
- Mellius inquirendum** /míyl(i)yəs inkwérəndəm/. To be better inquired into.  
In old English law, the name of a writ commanding a further inquiry respecting a matter; as, after an imperfect inquisition in proceedings in outlawry, to have a new inquest as to the value of lands.
- Member**. One of the persons constituting a family, partnership, association, corporation, guild, court, legislature, or the like.  
A part or organ of the body; especially a limb or other separate part. *California Casualty Indemnity Exchange v. Industrial Accident Commission*, Cal. App., 82 P.2d 1115, 1116.
- Member bank**. A bank which has become affiliated with (i.e. purchased stock in) one of the Federal Reserve banks. See **Federal Reserve System**.
- Member firm**. In securities and commodities trading, a brokerage firm that is a member of a particular exchange (e.g. member of New York Stock Exchange).
- Member of Congress**. A member of the Senate or House of Representatives of the United States. In popular usage, particularly the latter.
- Member of Parliament**. One having the right to sit in either house of the British parliament.
- Membrana** /mèmbréynə/. Lat. In old Civil and English law, a skin of parchment. The ancient rolls usually consist of several of these skins, and the word "membrana" is used, in citations to them, in the same way as "page" or "folio," to distinguish the particular skin referred to.



**Membrum** /mémbrəm/. A slip or small piece of land.

**Mémoire** /mémwóhr/mémwóhr/. In French law, a document in the form of a petition, by which appeals to the court of cassation are initiated.

**Memorandum** /mémərændəm/. Lat. To be remembered; be it remembered. A formal word with which the body of a record in the Court of King's Bench anciently commenced.

An informal note or instrument embodying something that the parties desire to fix in memory by the aid of written evidence, or that is to serve as the basis of a future formal contract or deed. A brief written statement outlining the terms of an agreement or transaction. Informal interoffice communication.

Under portion of statute of frauds providing that a contract not to be performed within a year is invalid unless the contract, or some memorandum of the contract, is in writing and subscribed by the party to be charged or his agent, the word "memorandum" implies something less than a complete contract, and the "memorandum" functions only as evidence of the contract and need not contain every term, so that a letter may be a sufficient "memorandum" to take a case out of the statute of frauds. *Kerner v. Hughes Tool Co.*, 128 Cal.Rptr. 839, 845, 56 C.A.3d 924.

This word is used in the statute of frauds as the designation of the written agreement, or note or evidence thereof, which must exist in order to bind the parties in the cases provided. The memorandum must be such as to disclose the parties, the nature and substance of the contract, the consideration and promise, and be signed by the party to be bound or his authorized agent. See U.C.C. § 2-201. See also **Contract**.

**Memorandum articles**. In the law of marine insurance, this phrase designates the articles of merchandise which are usually mentioned in the memorandum clause (*q.v.*), and for which the underwriter's liability is thereby limited.

**Memorandum check**. See **Check**.

**Memorandum clause**. In a policy of marine insurance the memorandum clause is a clause inserted to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature, and for minor damages. It might begin, for example, as follows: "N. B. Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded,"—meaning that the underwriters are not to be liable for damage to these articles caused by seawater or the like.

**Memorandum decision**. A court's decision that gives the ruling (what it decides and orders done), but no opinion (reasons for the decision). Memorandum decision is not judgment nor decision of court but merely announcement of court's intended decision and is not appealable order. In *re Pieper's Estate*, 224 C.A.2d 670, 37 Cal.Rptr. 46, 50.

**Memorandum in error**. A document alleging error in fact, accompanied by an affidavit of such matter of fact.

**Memorandum of alteration**. Formerly, in England, where a patent was granted for two inventions, one

of which was not new or not useful, the whole patent was bad, and the same rule applied when a material part of a patent for a single invention had either of those defects. To remedy this the statute 5 & 6 Wm. IV, c. 83, empowers a patentee (with the fiat of the attorney general) to enter a disclaimer (*q.v.*) or a memorandum of an alteration in the title or specification of the patent, not being of such a nature as to extend the exclusive right granted by the patent, and thereupon the memorandum is deemed to be part of the letters patent or the specification.

**Memorandum of association**. In England, a document to be subscribed by seven or more persons associated for a lawful purpose, by subscribing which, and otherwise complying with the requisitions of the companies' acts in respect of registration, they may form themselves into an incorporated company, with or without limited liability. See also **Articles of association**; **Articles of incorporation**.

**Memorandum sale**. See **Sale**.

**Memorial**. A document presented to a legislative body, or to the executive, by one or more individuals, containing a petition or a representation of facts.

In practice, a short note, abstract, memorandum, or rough draft of the orders of the court, from which the records thereof may at any time be fully made up.

In English law, that which contains the particulars of a deed, etc., and is the instrument registered, as in the case of an annuity which must be registered.

**Memoriter** /mémórədar/. Lat. From memory; by or from recollection. Thus, *memoriter* proof of a written instrument is such as is furnished by the recollection of a witness who had seen and known it.

**Memory**. The word as used in Blackstone and other ancient authorities, appeared to be synonymous with "mind", whereas the word "memory" in modern times is used in a more restricted sense of recollection of past events rather than the general state of one's mental power.

Mental capacity; the mental power to review and recognize the successive states of consciousness in their consecutive order.

This word, as used in jurisprudence to denote one of the psychological elements necessary in the making of a valid will or contract or the commission of a crime, implies the mental power to conduct a consecutive train of thought, or an orderly planning of affairs, by recalling correctly the past states of the mind and past events, and arranging them in their due order of sequence and in their logical relations with the events and mental states of the present. See also **Mind and memory**.

The phrase "sound and disposing mind and memory" means not merely distinct recollection of the items of one's property and the persons among whom it may be given, but entire power of mind to dispose of property by will. See **Capacity**.

The reputation and name, good or bad, which a man leaves at his death.

**Legal memory**. An ancient usage, custom, supposed grant (as a foundation for prescription) and the like, are said to be immemorial when they are really or fictitiously of such an ancient date that "the memory

- of man runneth not to the contrary," or, in other words, "beyond legal memory." And legal memory or "time out of mind," according to the rule of the common law, commenced from the reign of Richard I, A.D. 1189. But under the statute of limitation of 32 Hen. VIII this was reduced to 60 years, and again by that of 2 & 3 Wm. IV, c. 71, to 20 years. In the American states, by statute, the time of legal memory is generally fixed at a period corresponding to that prescribed for actions for the recovery of real property, usually about 20 years.
- Menace.** A threat; the declaration or show of a disposition or determination to inflict an evil or injury upon another.
- Men of straw.** Men who used in former days to ply about courts of law, so called from their manner of making known their occupation (*i.e.*, by a straw in one of their shoes), recognized by the name of "straw-shoes." An advocate or lawyer who wanted a convenient witness knew by these signs where to meet with one, and the colloquy between the parties was brief. "Don't you remember?" said the advocate; to which the ready answer was, "To be sure I do." "Then come into court and swear it." And straw-shoes went into court and swore. Athens abounded in straw-shoes. See also **Straw man**.
- Mens** /mén(d)z/. Lat. Mind; intention; meaning; understanding; will.
- Mensa et thoro** /mén(t)sə èt ðórow/. From bed and board. See **Divorce**.
- Mensalia** /mén(t)séyl(i)yə/. Parsonages or spiritual livings united to the tables of religious houses, and called "mensal benefices" amongst the canonists.
- Mensis** /men(t)səs/. Lat. In the civil and old English law, a month. *Mensis vetitus*, the prohibited month; fence-month (*q.v.*).
- Mens legis** /mén(d)z líyǰəs/. The mind of the law; that is, the purpose, spirit, or intention of a law or the law generally.
- Mens legislatoris** /mén(d)z lèjəslátórəs/. The intention of the law-maker.
- Mensor** /mén(t)sòr/. In civil law, a measurer of land; a surveyor.
- Mens rea** /mén(d)z ríyə/. A guilty mind; a guilty or wrongful purpose; a criminal intent. Guilty knowledge and wilfulness. *United States v. Greenbaum*, C.C.A.N.J., 138 F.2d 437, 438. See also **Knowledge**.
- Mens testatoris in testamentis spectanda est** /mén(d)z tèstátórəs in tèstaméntas spektàndə èst/. The intention of the testator is to be regarded in wills.
- Mensularius** /mén(t)salériyəs/. In civil law, a money-changer or dealer in money.
- Mensura** /mens(y)úra/. In old English law, a measure.
- Mensura domini regis** /mens(y)úra dómənay ríyǰəs/. "The measure of our lord the king," being the weights and measures established under King Richard I, in his parliament at Westminster, 1197.
- Mental.** Relating to or existing in the mind; intellectual, emotional, or psychic, as distinguished from bodily or physical.
- Mental alienation.** A phrase sometimes used to describe insanity (*q.v.*).
- Mental anguish.** When connected with a physical injury, this term includes both the resultant mental sensation of pain and also the accompanying feelings of distress, fright, and anxiety. In other connections, and as a ground for divorce or for damages or an element of damages, it includes the mental suffering resulting from the excitation of the more poignant and painful emotions, such as grief, severe disappointment, indignation, wounded pride, shame, public humiliation, despair, etc. See also **Mental cruelty**.
- Mental capacity or competence.** Term contemplates the ability to understand the nature and effect of the act in which a person is engaged and the business he or she is transacting. *Jones v. Traders & General Ins. Co.*, Tex.Civ.App., 144 S.W.2d 689, 694. Such a measure of intelligence, understanding, memory, and judgment relative to the particular transaction (*e.g.* making of will) as will enable the person to understand the nature of his act. *Conley v. Nailor*, 118 U.S. 127, 6 S.Ct. 1001, 30 L.Ed. 112. See also **Capacity**; **Insanity**.
- Mental cruelty.** A course of conduct on the part of one spouse toward the other spouse which can endanger the mental and physical health and efficiency of the other spouse to such an extent as to render continuance of the marital relation intolerable. Such conduct is normally a ground for divorce. *Steele v. Steele*, Fla.App., 177 So.2d 873. See also **Indignity**; **Mental anguish**.
- Mental disease or defect.** See **Insanity**.
- Mental incapacity; mental incompetency.** Such is established when there is found to exist an essential privation of reasoning faculties, or when a person is incapable of understanding and acting with discretion in the ordinary affairs of life. See **Incapacity**; **Insanity**.
- Mental reservation.** A silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject. But the word has been applied to an exception existing in the mind of the one party only, and has been degraded to signify a dishonest excuse for evading or infringing a promise.
- Mental state.** Capacity or condition of one's mind in terms of ability to do or not do a certain act. See **Mental capacity**.
- Mental suffering.** See **Mental anguish**; **Mental cruelty**.
- Mente captus** /méntiy káptəs/. Persons who are habitually insane. *Clanton v. Shattuck*, 211 La. 750, 30 So.2d 823, 824.
- Mentiri** /mèntáyray/. Lat. To lie; to assert a falsehood.
- Mentition** /mèntíshan/. The act of lying; a falsehood.
- Mera noctis** /míрэ nóktəs/. Midnight.

**Mercable** /márkæbəl/. Merchantable; to be sold or bought.

**Mercantant** /márkəntənt/már°/. A foreign trader.

**Mercantile** /márkəntəyl/°əl/. Of, pertaining to, or characteristic of, merchants, or the business of merchants; having to do with trade or commerce or the business of buying and selling merchandise; trading; commercial; conducted or acting on business principles.

**Mercantile agencies.** See **Credit bureau**.

**Mercantile law.** An expression substantially equivalent to commercial law. It designates the system of rules, customs, and usages generally recognized and adopted by merchants and traders, and which, either in its simplicity or as modified by common law or statutes, constitutes the law for the regulation of their transactions and the solution of their controversies. The Uniform Commercial Code is the general body of law governing commercial or mercantile transactions.

**Mercantile Law Amendment Acts.** The statutes 19 & 20 Vict., cc. 60, 97, passed mainly for the purpose of assimilating the mercantile law of England, Scotland, and Ireland.

**Mercantile paper.** See **Commercial paper**; **Negotiable instruments**.

**Mercative** /márkədəv/. Belonging to trade.

**Mercatum** /mørkéydəm/. Lat. A market. A contract of sale. Supplies for an army (*commeatus*).

**Mercature** /márkəchər/. The practice of buying and selling.

**Mercedary** /mársədəry/. A hirer; one that hires.

**Mercenarius** /mársənəriyəs/. A hiring or servant.

**Mercen-lage** /mársənlò/. The law of the Mercians. One of the three principal systems of laws which prevailed in England about the beginning of the eleventh century. It was observed in many of the midland counties, and those bordering on the principality of Wales. 1 Bl.Comm. 65.

**Mercēs** /mársiyz/. Lat. In the civil law, reward of labor in money or other things. As distinguished from "*pensio*," it means the rent of farms (*prædia rustici*).

**Merchandise.** All goods which merchants usually buy and sell, whether at wholesale or retail; wares and commodities such as are ordinarily the objects of trade and commerce. But the term is generally not understood as including real estate, and is rarely applied to provisions such as are purchased day by day for immediate consumption (e.g. food).

**Stock of merchandise.** See **Stock**.

**Merchandise broker.** One who negotiates the sale of merchandise without having it in his possession or control, being simply an agent with very limited powers. *Hughes v. Young*, 17 Tenn.App. 24, 65 S.W.2d 858. See **Broker**.

**Merchandise Marks Act, 1862.** The statute 25 & 26 Vict., c. 88, designed to prevent the fraudulent mark-

ing of merchandise and the fraudulent sale of merchandise falsely marked.

**Merchant.** One who is engaged in the purchase and sale of goods; a trafficker; a retailer; a trader. Term commonly refers to person who purchases goods at wholesale for resale at retail; i.e. person who operates a retail business (retailer).

A person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. U.C.C. § 2-104(1).

A man who traffics or carries on trade with foreign countries, or who exports and imports goods and sells them by wholesale. Merchants of this description are commonly known by the name of "shipping merchants."

**Commission merchant.** See **Commission merchant**.

**Law merchant.** See **Commercial law**; **Mercantile law**.

**Statute merchant.** See **Statute**.

**Merchantability** /mərçəntəbəlidiy/. Means that the article sold shall be of the general kind described and reasonably fit for the general purpose for which it shall have been sold, and where the article sold is ordinarily used in but one way, its fitness for use in that particular way is impliedly warranted unless there is evidence to the contrary. See also **Fitness for particular purpose**; **Merchantable**; **Warranty**.

**Merchantable** /mərçəntəbəl/. Goods to be merchantable must be at least such as: pass without objection in the trade under the contract description; and in the case of fungible goods, are of fair average quality within the description; and are fit for the ordinary purposes for which such goods are used; and run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and are adequately contained, packaged, and labeled as the agreement may require; and conform to the promises or affirmations of fact made on the container or label if any. U.C.C. § 2-314(2).

Goods, to be "merchantable," must be fit for the ordinary purposes for which such goods are to be used. *Consolidated Supply Co. v. Babbitt*, 96 Idaho 636, 534 P.2d 466, 468. Within § 2-314 of the U.C.C. creating implied warranty of merchantability, term "merchantable" implies that the goods sold conform to ordinary standards of care and that they are of average grade, quality and value of similar goods sold under similar circumstances. *Woodruff v. Clark County Farm Bureau Co-op Ass'n*, 153 Ind.App. 31, 286 N.E.2d 188, 194.

**Merchantable title.** A good and marketable title in fee simple, free from litigation, palpable defects, and grave doubts, a title which will enable the owner not only to hold it in peace but to sell it to a person of reasonable prudence. *Overboe v. Overboe*, N.D., 160 N.W.2d 650, 654. Good record title acceptable to a knowledgeable buyer not being under duress to pur-

chase. One that can be held without reasonable apprehension of being assailed and readily transferable in market. *Crow Creek Gravel & Sand Co. v. Dooley*, 182 Ark. 1009, 33 S.W.2d 369, 370. See also **Marketable title**; **Warranty** (*Warranty of title*).

**Merchant appraiser.** See **Appraiser**.

**Merchantman** /márchantmæn/. A ship or vessel employed in foreign or domestic commerce or in the merchant service.

**Merchants' accounts.** Accounts between merchant and merchant, which must be current, mutual, and unsettled, consisting of debts and credits for merchandise.

**Merchant seaman.** A sailor employed in a private vessel, as distinguished from one employed in the navy or public ships.

**Merchant Shipping Acts.** Certain English statutes, beginning with the St. 16 & 17 Vict., c. 131, whereby a general superintendence of merchant shipping is vested in the board of trade. See **Maritime Commission**.

**Merchet** /márchet/már°/. In feudal law, a fine or composition paid by inferior tenants to the lord for liberty to dispose of their daughters in marriage. The same as *marcheta* (*q.v.*).

**Merciament** /márs(h)yámənt/. An amercement, penalty, or fine (*q.v.*).

**Mercimoniatus Angliæ** /mársəməwniyéydəs ængliiy/. In old records, the impost of England upon merchandise.

**Mercis appellatio ad res mobiles tantum pertinet** /mársəs æpələysh(iy)ow æd ríyz mówbəliyz tæntam párdənt/. The term "merchandise" belongs to movable things only.

**Mercis appellatone homines non contineri** /mársəs æpələyshiyówniy hómaniyz nòn kòntənráy/. Men are not included under the denomination of "merchandise."

**Mercna lagu** /márknə láguw/. See **Lagu**; **Mercen-lage**.

**Mercy.** In old English practice, the arbitrament of the king or judge in punishing offenses not directly censured by law. So, "to be in mercy" signifies to be amerced or fined for bringing or defending an unjust suit, or to be liable to punishment in the discretion of the court.

In criminal law, the discretion of a judge, within the limits prescribed by law, to remit altogether the punishment to which a convicted person is liable, or to mitigate the severity of his sentence; as when a jury recommends the prisoner to the *mercy* of the court.

**Mercy killing.** Euthanasia. The affirmative act of bringing about immediate death allegedly in a painless way and generally administered by one who thinks that the dying person wishes to die because of a terminal or hopeless disease or condition. See also **Brain death**; **Death** (*Natural Death Acts*).

**Mere** /mér/. L. Fr. Mother. *Æ* *Ele, mere, fille*, grandmother, mother, daughter. *En ventre sa mere*, in its mother's womb.

**Mere evidence rule.** In search and seizure, it was once the rule that in a lawful search the officer had a right to seize instrumentalities and fruits of the crime but no right to seize other items (e.g. clothing of the suspect) which are mere evidence. This rule no longer prevails. *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782.

**Mere licensee.** One who enters upon the land or property of another without objection, or by the mere permission, sufferance, or acquiescence of the owner or occupier. *Mann v. Des Moines Ry. Co.*, 232 Iowa 1049, 7 N.W.2d 45, 50. See **License**.

**Merely.** Without including anything else; purely; only; solely; absolute; wholly. In *re Plymouth Motor Corporation, Cust. & Pat.App.*, 46 F.2d 211, 212.

**Mere motion.** The free and voluntary act of a party himself, done without the suggestion or influence of another person, is said to be done of his mere motion, *ex mero motu* (*q.v.*).

The phrase is used of an interference of the courts of law, who will, under some circumstances, of their own motion, object to an irregularity in the proceedings, though no objection has been taken to the informality by the plaintiff or defendant in the suit.

**Mere right.** The mere right of property in land; the *jus proprietatis*, without either possession or even the right of possession. The abstract right of property.

**Mere-stone.** In old English law, a stone for bounding or dividing lands.

**Meretricious** /mèhrətrishəs/. Of the nature of unlawful sexual connection. The term is descriptive of the relation sustained by persons who contract a marriage that is void by reason of legal incapacity.

**Merger.** The fusion or absorption of one thing or right into another; generally spoken of a case where one of the subjects is of less dignity or importance than the other. Here the less important ceases to have an independent existence.

**Contract law.** The extinguishment of one contract by its absorption into another, and is largely a matter of intention of the parties. *Caranas v. Jones, Tex.Civ. App.*, 437 S.W.2d 905, 910.

**Corporations.** The absorption of one company by another, latter retaining its own name and identity and acquiring assets, liabilities, franchises, and powers of former, and absorbed company ceasing to exist as separate business entity. *Morris v. Investment Life Ins. Co.*, 27 Ohio St.2d 26, 272 N.E.2d 105, 108, 109, 56 O.O.2d 14. It differs from a consolidation wherein all the corporations terminate their existence and become parties to a new one.

The antitrust laws seek not only to control existing monopolies but also to discourage the acquisition of market power. Historically, mergers have provided an important route to positions of market dominance. Therefore, Congress has required all mergers, whether vertical, horizontal, or conglomerate, to be scrutinized under the provisions of section 7 of the Clayton Act. 15 U.S.C.A. § 18. See also **Kefauver-Celler Act**.

**Accounting methods.** See **Pooling of interests**; **Purchase method of accounting**.

**Conglomerate merger.** Merger of corporations which are neither competitors nor potential or actual customers or suppliers of each other. *U. S. v. General Dynamics Corp.*, D.C.N.Y., 258 F.Supp. 36, 56. One in which there are no economic relationships between the acquiring and the acquired firm. *Kennecott Copper Corp. v. F. T. C.*, C.A.Colo., 467 F.2d 67, 75. A *conglomerate* merger is one that is neither vertical nor horizontal and can be any of three types. A *geographic extension* merger occurs when the acquiring firm, by merger, extends its dominance to an adjacent geographic market. See, e.g., *United States v. Marine Bancorporation*, 418 U.S. 602, 94 S.Ct. 2856, 41 L.Ed.2d 978. A *product extension* merger occurs when the merger joins firms in related product markets. See, e.g., *FTC v. Procter & Gamble Co. (Clorox)*, 386 U.S. 568, 87 S.Ct. 1224, 18 L.Ed.2d 303. A "pure" conglomerate merger occurs when the two merging firms operate in unrelated markets having no functional economic relationship. See, e.g., *United States v. International Tel. & Tel. Corp.*, 324 F.Supp. 19. These categories are not mutually exclusive: for example, a merger may have both horizontal and vertical aspects. See, e.g., *Brown Shoe Co. v. United States*, 370 U.S. 294, 82 S.Ct. 1502, 8 L.Ed.2d 510.

**Horizontal merger.** Merger between business competitors, such as manufacturers of the same type products or distributors selling competing products in the same market area. See also **Vertical merger**.

**Short form merger.** A number of states provide special rules for the merger of a subsidiary corporation into its parent where the parent owns substantially all of the shares of the subsidiary. This is known as a "short-form" merger. Short-form mergers under such special statutes may generally be effected by: (a) adoption of a resolution of merger by the parent corporation, (b) mailing a copy of the plan of merger to all shareholders of record of the subsidiary, and (c) filing the executed articles of merger with the secretary of state and his issuance of a certificate of merger. This type of merger is less expensive and time consuming than the normal type merger.

**Vertical merger.** Union with corporate customer or supplier. *U. S. v. General Dynamics Corp.*, D.C. N.Y., 258 F.Supp. 36, 56.

**Criminal law.** When a man commits a major crime which includes a lesser offense, or commits a felony which includes a tort against a private person, the latter is merged in the former.

**Divorce law.** Substitution of rights and duties under judgment or decree for those under property settlement agreement. *Roesbery v. Roesbery*, 88 Idaho 514, 401 P.2d 805, 807.

**Judgments.** A valid and personal judgment merges the original claim in the judgment and thereafter suit is brought on the judgment and not on the original claim. *Restatement of Judgments* § 45, comment a.

**Law and equity.** Under Rules of Civil Procedure, there is now only one form of action, the "civil action," in which the parties may be given both legal and equitable relief. *Fed.R.Civil P.* 2.

**Property interests.** It is a general principle of law that where a greater estate and a less coincide and

meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or, in the law phrase, is said to be *merged*; that is, sunk or drowned, in the greater. Thus, if there be tenant for years, and the reversion in fee-simple descends to or is purchased by him, the term of years is *merged* in the inheritance, and shall never exist any more. Similarly, a lesser interest in real estate merges into a greater interest when lessee purchases leased property.

**Rights.** This term, as applied to rights, is equivalent to "*confusio*" in the Roman law, and indicates that where the qualities of debtor and creditor become united in the same individual, there arises a confusion of rights which extinguishes both qualities; whence, also, merger is often called "extinguishment."

**Rights of action.** In the law relating to rights of action, when a person takes or acquires a remedy or security of a higher nature, in legal estimation, than the one which he already possesses for the same right, then his remedies in respect of the minor right or security merge in those attaching to the higher one; as, for example, where a claim is merged in the judgment recovered upon it.

**Sentences.** If a defendant is charged in two duplicitous indictments with commission of two crimes, he may be sentenced on conviction of the more serious crime but not on both indictments, e.g. possession of marihuana and possession of the same marihuana at the same time and place with intent to sell. *Kuklis v. Com.*, 361 Mass. 302, 280 N.E.2d 155.

**Merger clause.** A provision in a contract to the effect that the written terms may not be varied by prior or oral agreements because all such agreements have been merged into the written document. See *U.C.C.* § 2-202.

**Meridians.** These are imaginary north and south lines which are used in the Governmental Survey System. These intersect the base line to form a starting point for the measurement of land under that system.

**Meritorious** /mèhrətór(i)yəs/. Possessing or characterized by "merit" in the legal sense of the word. See **Merits**.

**Meritorious cause of action.** This description is sometimes applied to a person with whom the ground of action, or the consideration, originated or from whom it moved. For example, where a cause of action accrues to a woman while single, and is sued for, after her marriage, by her husband and herself jointly, she is called the "meritorious cause of action."

**Meritorious consideration.** One founded upon some moral obligation; a valuable consideration in the second degree.

**Meritorious defense.** See **Defense**.

**Merits.** The word "merit" as a legal term is to be regarded as referring to the strict legal rights of the parties. *Mink v. Keim*, 266 App.Div. 184, 41 N.Y. S.2d 769, 771.

**Merit system.** System used by federal and state governments for hiring and promoting governmental employees to civil service positions on basis of competence. See also **Civil service**.

**Mero motu** /mírow mówduw/. See *Ex mero motu*; **Mere motion**.

**Merton, statute of** /stæchuwd əv mártan/. An old English statute, relating to dower, legitimacy, wardships, procedure, inclosure of common, and usury. It was passed in 1235 (20 Hen. III), and was named from Merton, in Surrey, where parliament sat that year.

**Merum** /mírəm/. In old English law, mere; naked or abstract. *Merum jus*, mere right.

**Merx** /márks/. Lat. Merchandise; movable articles that are bought and sold; articles of trade.

**Merx est quicquid vendi potest** /márks èst kwí(d)kwíð vénday pówdást/. Merchandise is whatever can be sold.

**Mescreautes** /méscriyònts/mískriyònts/. L. Fr. Apostates; unbelievers.

**Mescroyant** /méscriyònt/mískriyònt/. A term used in the ancient books to designate an infidel or unbeliever.

**Mese** /míys/. A house and its appurtenance.

**Mesnalty**, or **mesnality** /míynáltiy/míynælédíy/. A manor held under a superior lord. The estate of a mesne.

**Mesne** /míyn/. Intermediate; intervening; the middle between two extremes, especially of rank or time.

In feudal law, an intermediate lord; a lord who stood between a tenant and the chief lord; a lord who was also a tenant.

As to mesne "Conveyance" and "Process," see those titles.

**Mesne assignment**. If A. grant a lease of land to B., and B. assign his interest to C., and C. in his turn assign his interest therein to D., in this case the assignments so made by B. and C. would be termed "mesne assignments;" that is, they would be assignments intervening between A.'s original grant and the vesting of D.'s interest in the land under the last assignment.

**Mesne incumbrance**. An intermediate charge, burden, or liability; an incumbrance which has been created or has attached to property between two given periods.

**Mesne lord**. In old English law, a middle or intermediate lord; a lord who held of a superior lord. 2 Bl.Comm. 59. More commonly termed a "mesne" (q.v.).

**Mesne process**. See **Process**.

**Mesne profits**. Intermediate profits; i.e., profits which have been accruing between two given periods. *Dumas v. Ropp*, 98 Idaho 61, 558 P.2d 632, 633. Value of use or occupation of land during time it was held by one in wrongful possession and is commonly measured in terms of rents and profits. See also **Profit**.

**Mesne, writ of**. An ancient and abolished writ, which lay when the lord paramount distrained on the tenant paravail. The latter had a writ of mesne against the mesne lord.

**Message**. Any notice, word, or communication, no matter the mode and no matter how sent, from one person to another.

**President's message**. An annual communication from the president of the United States to Congress, made at or near the beginning of each session, embodying his views on the state and exigencies of national affairs, suggestions and recommendations for legislation, and other matters. U.S.Const. art. 2, § 3.

**Message from the crown**. In old English law, the method of communicating between the sovereign and the house of parliament. A written message under the royal sign-manual was brought by a member of the house, being a minister of the crown or one of the royal household. Verbal messages were also sometimes delivered.

**Messarius** /mésériyəs/. In old English law, a chief servant in husbandry; a bailiff.

**Messenger**. One who bears messages or errands; a ministerial officer employed by executive officers, legislative bodies, and courts of justice, whose service consists principally in carrying verbal or written communications or executing other orders.

**Messuage**. Dwelling-house with the adjacent buildings and curtilage. Term formerly had a more extended signification.

**Meta** /míyda/. Lat. A goal, bound, or turning-point. In old English law, the term was used to denote a bound or boundary line of land; a landmark; a material object, as a tree or a pillar, marking the position or beginning of a boundary line.

**Metabolism**. The sum total of all processes of the human body by which food is transformed into chemicals which are absorbed into blood stream and lymphatic system for purpose of so nourishing body that it can continue to function. *United States v. 62 Packages, More or Less, of Marmola Prescription Tablets*, C.C.A.Wis., 142 F.2d 107, 109.

**Metachronism** /matækronízəm/. An error in computation of time.

**Metallum** /matæləm/. Lat. In Roman law, metal; a mine. Labor in mines, as a punishment for crime.

**Metatus** /matéydas/. In old European law, a dwelling; a seat; a station; quarters; the place where one lives or stays.

**Metayer system** /matéyar°/mèdáyéy°/matéyèy sís-təm/. A system of agricultural holdings, under which the land is divided, in small farms, among single families, the landlord generally supplying the stock which the agricultural system of the country is considered to require, and receiving, in lieu of rent and profit, a fixed proportion of the produce. This proportion, which is generally paid in kind, is usually one-half. The system prevails in some parts of France and Italy.

**Metecorn**. A measure or portion of corn, given by a lord to customary tenants as a reward and encouragement for labor.

**Metegavel** /míytgäval/. A tribute or rent paid in victuals.

**Meter**. An instrument of measurement; as a coal-meter, a gas-meter, a land-meter.

The basic metric unit of length; equivalent to 39.37 inches. See also **Metric system**.

**Meter rate**. Rate applied to charge for utility services based upon quantity used; e.g. kilowatt hours of electricity.

**Metes and bounds** /míyts ən báwndz/. The boundary lines of land, with their terminal points and angles. A way of describing land by listing the compass directions and distances of the boundaries. It is often used in connection with the Government Survey System. See also **Land measure**.

**Metewand, or meteyard** /míytwönd/míytyärd/. A staff of a certain length wherewith measures are taken.

**Methadone**. A synthetic opiate of approximately the same strength as morphine.

**Methamphetamine**. A synthetic drug, closely related to amphetamines and producing prominent central stimulant reactions without peripheral effects.

**Methel** /méθəl/. Sax. Speech; discourse. *Mathlian*, to speak; to harangue.

**Method**. The mode of operating, or the means of attaining an object. In patent law, "engine" and "method" mean the same thing, and may be the subject of a patent. Method, properly speaking, is only placing several things, or performing several operations, in the most convenient order, but it may signify a contrivance or device.

**Metric system**. A decimal system of weights and measures based on the meter as a unit length and the kilogram as a unit mass. Derived units include the liter for liquid volume, the stere for solid volume, and the are for area.

**Metropolitan** /mètrəpólədən/. Of or pertaining to a city or metropolis and the cluster of towns surrounding it.

**Metropolitan council**. Official or quasi-official body appointed or elected by voters in the city and towns which comprise the metropolitan area. The powers and duties of such council are set by statute. Created to provide unified administration of functions and services common to cities and towns within metropolitan area; e.g. sewage disposal, public transportation, water supply.

**Metropolitan district**. A special district embracing parts or the whole of several contiguous cities or other areas, created by a State to provide unified administration of one or more functions; e.g., sewage disposal, water supply, metropolitan transit.

**Metteshep, or mettenschep** /míytsəp/. In old English law, an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.

**Metus** /míydas/. Lat. Fear; terror. In a technical sense, a reasonable and well-grounded apprehension

of some great evil, such as death or mayhem, and not arising out of mere timidity, but such as might fall upon a man of courage. Fear must be of this description in order to amount to duress avoiding a contract.

**Meubles** /myúwblə/. In French law, the movables of English law. Things are *meubles* from either of two causes: (1) From their own nature, e.g., tables, chairs; or (2) from the determination of the law, e.g., obligations.

**Meum est promittere, non dimittere** /míyəm èst prámídaríy nòn dämídaríy/. It is mine to promise, not to discharge.

**Mexican divorce**. Term used to describe divorce decree in Mexico either by mail order or by the appearance of one spouse who never acquires a Mexican domicile. In both cases, the divorce is not entitled to recognition in the United States. *Bethune v. Bethune*, 192 Ark. 811, 94 S.W.2d 1043.

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

**Miche, or mich** /mích/. O. Eng. To practice crimes requiring concealment or secrecy; to pilfer articles secretly. *Micher*, one who practices secret crime.

**Michel-gemot** /míkəlgəməwt/. One of the names of the general council immemorially held in England. The *Witenagemote*.

One of the great councils of king and noblemen in Saxon times.

**Michel-synoth** /míkəlsínəd/. Great council. One of the names of the general council of the kingdom in the times of the Saxons.

**Michery** /míchəriy/. In old English law, theft; cheating.

**Mid-channel**. In international law and by the usage of European nations, the terms "middle of the stream" and "mid-channel" of a navigable river are synonymous and interchangeably used.

**Middle line of main channel**. The equidistant point in the main channel of the river between the well-defined banks on either shore.

**Middleman**. One who merely brings parties together in order to enable them to make their own contracts.

An agent between two parties; an intermediary who performs the office of a broker or factor between seller and buyer, producer and consumer, land-owner and tenant, etc. One who has been employed as an agent by a principal, and who has employed a sub-agent under him by authority of the principal, either express or implied.

A person who is employed both by the seller and purchaser of goods, or by the purchaser alone, to receive them into his possession, for the purpose of doing something in or about them. One who buys at one price from a manufacturer for resale at a higher price. *Distribu-Dor, Inc. v. Karadanis*, 11 Cal.App.3d 463, 90 Cal.Rptr. 231, 235.

See also **Broker**; **Finder**; **Jobber**.

- Middle of the river.** The phrases "middle of the river" and "middle of the main channel" are equivalent expressions, and both mean the main line of the channel or the middle thread of the current.
- Middle term.** A phrase used in logic to denote the term which occurs in both of the premises in the syllogism, being the means of bringing together the two terms in the conclusion.
- Middle thread.** The middle thread of a stream is an imaginary line drawn lengthwise through the middle of its current.
- Midnight deadline.** Midnight deadline with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later. U.C.C. § 4-104(h).
- Midshipman.** A kind of naval cadet, whose business is to second or transmit the orders of the superior officers and assist in the necessary business of the vessel, but understood to be in training for a commission. A *passed* midshipman is one who has passed an examination and is a candidate for promotion to the rank of lieutenant. U. S. v. Cook, 128 U.S. 254, 9 S.Ct. 108, 32 L.Ed. 464. Cadet at U.S. Naval Academy.
- Midsummer-day.** The summer solstice, which is about June Twenty-Second, and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A.D. 400. It was generally a quarter-day for the payment of rents, etc.
- Midway.** See *Thalweg*.
- Midwife.** A woman who assists at childbirth; an *accoucheuse*.
- Might, v.** The past tense of the word "may". Equivalent to "had power" or "was possible" or "have the physical or moral opportunity to be contingently possible." In *re Weidberg's Estate*, 172 Misc. 524, 15 N.Y.S.2d 252, 257.
- Migrans jura amittat ac privilegia et immunitates domicilii prioris /máýgræn(d)z júrə smíðət æk prívélíjy(iy)ə èd əmyùwnátéydiy z dômasíliyay prayóras/. One who emigrates will lose the rights, privileges, and immunities of his former domicile.**
- Migration.** Movement from one place to another; from one country or region to another country or region.
- Migratory divorce.** Term used to describe a divorce secured by a spouse who leaves his domicile and moves to, or resides temporarily in, another state or country for purpose of securing the divorce. See also *Mexican divorce*.
- Migratory game.** Generally applied to birds which move from one place to another in season.
- Mile.** A measure of length or distance, containing 8 furlongs, or 1,760 yards, or 5,280 feet; or 1,609 kilometers. This is the measure of an ordinary or statute mile; but the nautical or geographical mile contains 6,080 feet. See *Land measure*.
- Mileage.** Allowance for traveling expenses at certain rate per mile. Especially to members of legislative bodies, witnesses, sheriffs, and bailiffs.
- Mileage tax.** License tax imposed upon intrastate business of transportation for compensation on public roads of state.
- Miles /máýliy z/. Lat. In civil law, a soldier.**  
In old English law, a knight, because military service was part of the feudal tenure. Also a tenant by military service, not a knight. 1 Bl.Comm. 404.
- Milestones.** Stones set up to mark the miles on a road or railway.
- Militare /milétéry/. To be knighted.**
- Military.** Pertaining to war or to the army; concerned with war. Also the whole of military forces, staff, etc. under the Department of Defense.
- Military appeals.** See *Court of Military Appeals*.
- Military base.** See *Base*.
- Military boards.** A military board is a body of persons appointed to act as a fact finding agency or as an advisory body to the appointing authority. A military board may be appointed to investigate, advise, administer or adjudicate. Military boards may act as investigating committees to determine the cause of property damage, injury, or death, or to inquire into loss or misappropriation of property or funds. Boards may also act as administrative tribunals to examine the applicable facts, hear evidence, and make determination concerning personnel matters such as promotion, separation, and retirement.
- Military bounty land.** See *Bounty*.
- Military commissions.** Courts whose procedure and composition are modeled upon courts-martial, being the tribunals by which alleged violations of martial law are tried and determined. The membership of such commissions is commonly made up of civilians and army officers. They are probably not known outside of the United States, and were first used by General Scott during the Mexican war.
- Military courts.** Courts convened subject to the Code of Military Justice (10 U.S.C.A. § 801 *et seq.*); e.g. Courts-martial, Court of Military Review, U.S. Court of Military Appeals.
- Military feuds.** See *Feud*.
- Military government.** Exercised by military commander under direction of President in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels. *Hammond v. Squier*, D.C. Wash., 51 F.Supp. 227, 230. See *Martial law*.
- Military jurisdiction.** There are under the Constitution, three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the Unit-



ed States or during rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under "military law" and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as "military government" superseding, as far as may be deemed expedient the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated "martial law", and is called into action by Congress, or temporarily when the action of Congress cannot be invited, and in the face of justifying or excusing peril, by the President in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights. *United States v. Minoru Yasui*, D.C.Or., 48 F.Supp. 40, 46, 47.

**Military justice.** See *Code of Military Justice; Court Martial; Court of Military Appeals.*

**Military law.** A system of regulations for the government of armed forces. That branch of the laws which respects military discipline and the government of persons employed in the military service. Military law is distinct from martial law, in that it applies only to persons in the military or naval service of the government; whereas, martial law, when once established, applies alike to citizens and soldiers and supersedes civil law. See *Code of Military Justice.*

**Military offenses.** Those offenses which are cognizable by the military courts, as insubordination, sleeping on guard, desertion, etc. See *Code of Military Justice.*

**Military office.** See *Office.*

**Military officer.** See *Officer.*

**Military Review, Courts of.** Each armed service has a Court of Military Review which reviews courts-martial decisions. Further appeal is to the U.S. Court of Military Appeals.

**Military tenures.** The various tenures by knight-service, grand-serjeanty, cornage, etc., were frequently called "military tenures," from the nature of the services which they involved.

**Military testament.** See *Testament.*

**Milites** /mīlēdiyz/. Lat. Knights.

**Militia** /mēlishə/. The body of citizens in a state, enrolled for discipline as a military force, but not engaged in actual service except in emergencies, as distinguished from regular troops or a standing army.

**Militiamen** /mēlishəmən/. Comprehends every temporary citizen-soldier who in time of war or emergency enters active military service of the country. *Critchlow v. Monson*, 102 Utah 378, 131 P.2d 794, 798.

**Mill.** One-tenth of one cent. Many states use a mill rate to compute property taxes.

**Milled money.** This term means merely coined money; and it is not necessary that it should be marked or rolled on the edges.

**Miller Act.** Federal statute which requires the posting of performance and payment bonds before an award may be made for a contract beyond a certain amount for construction, alteration or repair of a public building or public work of the U.S. government. 40 U.S.C.A. §§ 270a-270f.

**Miller-Tydings Act.** Federal Act (15 U.S.C. § 1) granting anti-trust exemption to State laws which permitted resale price maintenance agreements (fair trade laws). This exemption was repealed in 1975.

**Milling in transit.** A special privilege allowable at certain designated points, whereby the carrier, having transported grain to a shipper's mill, agrees that the shipper may reship the meal without charge and for which extra compensation is usually exacted by interstate carriers under control of the Interstate Commerce Commission.

**Mill power.** An expression designating a unit of water power. It is the descriptive term used to rate water power for the purpose of renting it. It indicates the amount of power due to a stated quantity of water used on the particular fall. It is a term of practical convenience in defining the quantity and weight of water available for use by the lessee. The actual amount of horse power developed may vary with the efficiency of the water wheels and other appliances supplied by the lessee.

**Mill privilege.** The right of a riparian proprietor to erect a mill on his land and to use the power furnished by the stream for the purpose of operating the mill, with due regard to the rights of other owners above and below him on the stream.

**Millrate.** See *Mill.*

**Mill site.** A parcel of land on or contiguous to a water-course, suitable for the erection and operation of a mill operated by the power furnished by the stream. Specifically, in mining law, a parcel of land constituting a portion of the public domain, located and claimed by the owner of a mining claim under the laws of the United States (or purchased by him from the government and patented), not exceeding five acres in extent, not including any mineral land, not contiguous to the vein or lode, and occupied and used for the purpose of a mill or for other uses directly connected with the operation of the mine; or a similar parcel of land located and actually used for the purpose of a mill or reduction plant, but not by the owner of an existing mine nor in connection with any particular mining claim. See 30 U.S.C.A. § 42.

**Mina** /māynə/. In old English law, a measure of corn or grain.

**Minage** /māynəj/. A toll or duty paid for selling corn by the mina.

**Minare** /mənəriy/. In old records, to mine or dig mines. *Minator*, a miner.

**Minatur innocentibus qui parcit nocentibus** /mənériyər inəséntəbəs kwāy pārsət nəséntəbəs/. He threatens the innocent who spares the guilty.

**Mind.** In its legal sense, "mind" means only the ability to will, to direct, to permit, or to assent.

**Mind and memory.** A phrase applied to testators, denoting the possession of mental capacity to make a will. In other words, one ought to be capable of making his will, with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them. See also **Capacity**.

**Mind, state of.** Evidence is admissible to show a person's state of mind when this issue is material and relevant to the case; e.g. statements indicating despair may be admissible on issue of suicide. Fed. Evid.R. 803(3). See also **Mental state**.

**Mine.** An excavation in the earth from which ores, coal, or other mineral substances are removed by digging or other mining methods, and in its broader sense it denotes the vein, lode, or deposit of minerals. *Atlas Milling Co. v. Jones*, C.C.A.Okla., 115 F.2d 61, 63. It may include open cut, strip, or hydraulic methods of mining. *Rudd v. Hayden*, 265 Ky. 495, 97 S.W.2d 35, 37.

**Mineral, adj.** Relating to minerals or the process and business of mining; bearing or producing valuable minerals.

**Mineral, n.** Any valuable inert or lifeless substance formed or deposited in its present position through natural agencies alone, and which is found either in or upon the soil of the earth or in the rocks beneath the soil.

Any natural constituent of the crust of the earth, inorganic or fossil, homogeneous in structure, having a definite chemical composition and known crystallization. The term includes all fossil bodies or matters dug out of mines or quarries, whence anything may be dug, such as beds of stone which may be quarried.

The word is not a definite term and is susceptible of limitations or extensions according to intention with which it is used. Standing alone it might by itself embrace the soil, hence include sand and gravel, or, under a strict definition, it might be limited to metallic substances. *Puget Mill Co. v. Duecy*, 1 Wash.2d 421, 96 P.2d 571, 573, 574. The term "mineral" as it is used in the public land laws is more restricted than it is when used in some other respects. Its definition has presented many difficulties. It has been held that for purposes of mining laws, a mineral is whatever is recognized as mineral by the standard authorities on the subject. *United States v. Toole*, D.C.Mont., 224 F.Supp. 440, 444.

**Mineral deed.** A realty conveyance involving a severance from fee of present title to minerals in place, either effecting such severance in first instance or conveying part of such mineral ownership previously severed from the fee. *Hickey v. Dirks*, 156 Kan. 326, 133 P.2d 107, 109, 110.

**Mineral district.** A term occasionally used in acts of congress, designating in a general way those portions or regions of the country where valuable minerals are mostly found, or where the business of mining is chiefly carried on, but carrying no very precise meaning and not a known term of the law.

**Mineral land entry.** See **Entry**.

**Mineral lands.** Lands containing deposits of valuable, useful, or precious minerals in such quantities as to justify expenditures in the effort to extract them, and which are more valuable for the minerals they contain than for agricultural or other uses. *Northern Pac. R. Co. v. Soderberg*, 188 U.S. 526, 23 S.Ct. 365, 47 L.Ed. 575; *Deffebach v. Hawke*, 115 U.S. 392, 6 S.Ct. 95, 29 L.Ed. 423. Lands on which metals or minerals have been discovered in rock in place. Such lands include not merely metaliferous lands, but all such as are chiefly valuable for their deposits of mineral character, which are useful in arts or valuable for purposes of manufacture, *Dunbar Lime Co. v. Utah-Idaho Sugar Co.*, C.C.A.Utah, 17 F.2d 351, 354; and embrace not only those which the lexicon defines as "mineral", but, in addition, such as are valuable for deposits of marble, slate, petroleum, asphaltum, and even guano. *United States v. Northern Pac. R. Co.*, 311 U.S. 317, 61 S.Ct. 264, 284, 85 L.Ed. 210.

**Mineral lease.** An agreement permitting use of land to explore, and then, if mineral is discovered, giving right to take mineral either for definite term or so long as it can be produced in paying quantities upon reserved royalty. *Gordon v. Empire Gas & Fuel Co.*, C.C.A.Tex., 63 F.2d 487, 488. A mineral lease so characterized as a real right, is merely a contract which permits the lessee to explore for minerals on the land of the lessor in consideration of the payment of a rental and/or bonuses. *Prestridge v. Humble Oil & Refining Co.*, La.App., 131 So.2d 810, 820. See also **Mining lease**.

**Mineral lode.** A mineral bed of rock with definite boundaries in a general mass of the mountain and also any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

**Mineral right.** An interest in minerals in land, with or without ownership of the surface of the land. A right to take minerals or a right to receive a royalty. *Missouri pac. R. Co. v. Strohacker*, 202 Ark. 645, 152 S.W.2d 557, 561; *Sheppard v. Stanolind Oil & Gas Co.*, Tex.Civ.App., 125 S.W.2d 643, 648.

**Mineral royalty.** Income received from lessees of mineral land. *Logan Coal & Timber Ass'n v. Helvering*, C.C.A.Pa., 122 F.2d 848, 850. The term is distinguished from mineral interest. *Maddox v. Butchee*, 203 La. 299, 14 So.2d 4, 9. See also **Mineral lease**; **Royalty**.

**Mineral servitude.** The right to exploit or develop. *Frost Lumber Industries v. Republic Production Co.*, C.C.A.La., 112 F.2d 462, 466.

**Minerator** /mínarèydär/. In old records, a miner.

**Miner's inch.** See **Inch**.

**Minimal contacts.** That doctrine of jurisdiction which provides that before a foreign corporation is subject to suit in a state such corporation's activity within the state must meet basic activity requirements. *International Shoe Co. v. State of Wash.*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95. For nonresident to be subject to state's personal jurisdiction, he must have certain minimum contacts with state such that maintenance of suit does not offend traditional notions of

fair play and substantial justice, and this is the "minimum contacts principle." *Lichina v. Futura, Inc.*, D.C.Colo., 260 F.Supp. 252, 254. See also **Doing business**.

**Minima pœna corporalis est major qualibet pecuniaria** /mínãmã píynã kœrpæréylas ést méyjar kwéylabæt pœkúwñnyériyã/. The smallest corporal punishment is greater than any pecuniary one.

**Mini-maxi**. An underwriting arrangement with a broker requiring the broker to sell the minimum on an all-or-none basis and the balance on a best-efforts basis.

**Minimum**. The least quantity assignable, admissible or possible in given case and is opposed to maximum. *Board of Ed. of City of Rockford v. Page*, 33 Ill.2d 372, 211 N.E.2d 361, 363.

**Minimum contacts**. See **Minimal contacts**.

**Minime mutanda sunt quæ certam habuerunt interpretationem** /mínæmiy myuwtændã sânt kwiy sârdãm hæbyuwirânt æntârpætèyshiýównãm/. Things which had had a certain interpretation [whose interpretation has been settled, as by common opinion] are not to be altered.

**Miniment** /mínãmæt/. An old form of muniment (*q.v.*).

**Minimum charge**. The lowest tariff which may be charged to a customer of a public utility or common carrier regardless of the amount of service rendered.

**Minimum est nihilo proximum** /mínãmãm ést náy-(h)ælow prœksãmãm/. The smallest is next to nothing.

**Minimum fee schedules**. Schedules of fees which may be charged by lawyers and published generally by bar associations for guidance of the members of the local bar. The trend has been to abolish such schedules as being in violation of the anti-trust laws. *Goldfarb v. Virginia State Bar Ass'n*, 421 U.S. 773, 95 S.Ct. 2004, 44 L.Ed.2d 572.

**Minimum royalty clause**. Provision in royalty agreement which prescribes a fixed obligation of the licensee regardless of whether the invention is used or not.

**Minimum sentence**. The least severe sentence which a judge may impose.

**Minimum wage**. Such an amount as will maintain a normal standard of living, including the preservation of the health and efficiency of the worker. The least wage on which an ordinary individual can be self-sustaining and obtain the ordinary requirements of life. *Associated Industries of Oklahoma v. Industrial Welfare Commission*, 185 Okl. 177, 90 P.2d 899, 913. Such minimum wages are set and required by federal statutes of employers engaged in businesses which affect interstate commerce. See **Fair Labor Standards Act**.

**Mining**. The process or business of extracting from the earth the precious or valuable metals, either in their native state or in their ores.

**Mining claim**. A parcel of land, containing precious metal in its soil or rock, and appropriated by an individual, according to established rules, by the

process of "location." *St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636, 26 L.Ed. 875. 30 U.S.C.A. § 21 *et seq.*

A mining claim on public lands is a possessory interest in land that is mineral in character and as respects which discovery within the limits of the claim has been made. *Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 83 S.Ct. 379, 382, 9 L.Ed.2d 350.

See also **Mining location**; **Placer claim**.

**Mining district**. A section of country usually designated by name and described or understood as being confined within certain natural boundaries, in which the precious metals (or their ores) are found in paying quantities, and which is worked therefor, under rules and regulations prescribed or agreed upon by the miners therein. See also **Mining location**.

**Mining lease**. A lease of a mine or mining claim or a portion thereof, to be worked by the lessee, usually under conditions as to the amount and character of work to be done, and reserving compensation to the lessor either in the form of a fixed rent or a royalty on the tonnage of ore mined, and which (as distinguished from a license) conveys to the lessee an interest or estate in the land, and (as distinguished from an ordinary lease) conveys not merely the temporary use and occupation of the land, but a portion of the land itself, that is, the ore in place and unsevered and to be extracted by the lessee. See also **Mineral lease**.

**Mining location**. The act of appropriating and claiming, according to certain established rules and local customs, a parcel of land of defined area, upon or in which one or more of the precious metals or their ores have been discovered, and which constitutes a portion of the public domain, with the declared intention to occupy and work it for mining purposes under the implied license of the United States. Also the parcel of land so occupied and appropriated. *St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636, 26 L.Ed. 875. Essential to any valid location is the discovery of a valuable mineral deposit. Upon making a valid location the locator has vested rights in the land which are property in the true sense of the word. *Cole v. Ralph*, 252 U.S. 286, 295, 40 S.Ct. 321, 325, 64 L.Ed. 567. Once the land is patented, the land is private property. See also **Location (Mining law)**.

**Mining partnership**. An association of several owners of a mine for co-operation in working the mine. *Kahn v. Central Smelting Co.*, 102 U.S. 645, 26 L.Ed. 266; *Kimberly v. Arms*, 129 U.S. 512, 9 S.Ct. 355, 32 L.Ed. 764. Generally, where the parties co-operate in developing a lease for oil and gas, each agreeing to pay his part of the expenses and to share in the profits or losses, a "mining partnership" exists. *Continental Supply Co. v. Dickson Oil Co.*, 194 Okl. 660, 153 P.2d 1017, 1019. A special type of partnership different in many respects from ordinary or trading partnerships. *Meister v. Farrow*, 109 Mont. 1, 92 P.2d 753, 757, 758, 760, 761.

**Mining rent**. Consideration given for a mining lease, whether such lease creates a tenancy, conveys a fee, or grants an incorporeal right or a mere license.

**Minister**. Person acting as agent for another in performance of specified duties or orders. A person

ordained according to the usages of some church or associated body of Christians for the preaching of the gospel and filling the pastoral office. In England, holder of government office; e.g. Prime Minister.

**Foreign minister.** An ambassador, minister, or envoy from a foreign government.

**International law.** An officer appointed by the government of one nation as a mediator or arbitrator between two other nations who are engaged in a controversy, with their consent, with a view to effecting an amicable adjustment of the dispute.

A general name given to the diplomatic representatives sent by one state to another, including ambassadors, envoys, and residents.

**Public law.** One of the highest functionaries in the organization of civil government, standing next to the sovereign or executive head, acting as his immediate auxiliary, and being generally charged with the administration of one of the great bureaus or departments of the executive branch of government. In England, otherwise called a "cabinet minister," "secretary of state," or "secretary of a department". See also **Ministry**.

**Public minister.** A general term comprehending all the higher classes of diplomatic representatives,—as ambassadors, envoys, residents,—but not including the commercial representatives, such as consuls.

**Ministerial** /mínastír(i)yəl/. That which is done under the authority of a superior; opposed to *judicial*. That which involves obedience to instructions, but demands no special discretion, judgment, or skill. *State Tax Commission of Utah v. Katsis*, 90 Utah 406, 62 P.2d 120, 123; *Arrow Exp. Forwarding Co. v. Iowa State Commerce Commission*, Iowa, 130 N.W.2d 451, 453. Official's duty is "ministerial" when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts. *Long v. Seabrook*, 260 S.C. 562, 197 S.E.2d 659, 662.

**Ministerial act.** One which a person or board performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority without regard to or the exercise of his or their own judgment upon the propriety of the act being done. *State Tax Commission of Utah v. Katsis*, 90 Utah 406, 62 P.2d 120, 123; *Gibson v. Winterset Community School Dist.*, 258 Iowa 440, 138 N.W.2d 112, 115.

**Ministerial duty.** One regarding which nothing is left to discretion—a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist.

**Ministerial function.** A function as to which there is no occasion to use judgment or discretion. *Hood Motor Co., Inc. v. Lawrence*, La., 320 So.2d 111, 115.

**Ministerial office.** See **Office**.

**Ministerial officer.** One whose duties are purely ministerial, as distinguished from executive, legislative, or judicial functions, requiring obedience to the mandates of superiors and not involving the exercise of judgment or discretion.

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**Ministerial power.** See **Power**.

**Ministerial trust.** See **Trust**.

**Ministers plenipotentiary** /mínastarz plènapótén(t)-shary/°shiyèhriy/. *Ministers plenipotentiary* possess full powers, and are of much greater distinction than simple ministers. These are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary.

**Ministrant** /mínastrànt/. The party cross-examining a witness was so called, under the old system of the ecclesiastical courts.

**Ministri regis** /mónistray ríyəs/. Lat. In old English law, ministers of the king, applied to the judges of the realm, and to all those who hold ministerial offices in the government.

**Ministry.** The term as used in England is wider than Cabinet and includes all the holders of public office who come in and go out with the Prime Minister. In this respect it may be contrasted with the Permanent Civil Service, whose tenure is independent of public changes. The first English Ministry as now understood was formed after the general election of 1696.

"Ecclesiastical functions," or "duties." *Rector*, etc., of St. George's Church in City of New York v. *Morgan*, 88 Misc. 702, 152 N.Y.S. 497, 498.

**Minor.** An infant or person who is under the age of legal competence. A term derived from the civil law, which described a person under a certain age as *less than* so many years. In most states, a person is no longer a minor after reaching the age of 18. See also **Delinquent child**; **Infancy**; **Juvenile**; **Legal age**; **Majority**.

Also, less; of less consideration; lower; a person of inferior condition.

**Minor ætas** /máynær íytàs/. Lat. Minority or infancy. Literally, lesser age.

**Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque ætatem; sed non cadit breve** /máynær æntiy témpəs éjariy nòn pówdəst in kéys(y)uw prəpráyətéydas nék éshiyəm kónvənáyriy; difəriyðər áskwiy átéyðəm; sèd nòn kéydat bríyviy/. A minor before majority cannot act in a case of property, nor even agree; it should be deferred until majority; but the writ does not fail.

**Minora regalia** /mánóra rægél(i)yə/. In English law, the lesser prerogatives of the crown, including the rights of the revenue.

**Minor deviation rule.** Under "minor deviation rule" for determining when the deviation from purpose and use for which permission to drive insured vehicle is granted will preclude coverage under omnibus clause of policy, if bailee's use is not gross, substantial, or major violation, even though it may have amounted to deviation, protection is still afforded to bailee under omnibus clause. *James v. Aetna Life & Cas.*, 1148, 26 Ariz.App. 137, 546 P.2d 1146.

**Minor dispute.** A "major dispute" is one which arises over the formation of collective agreements or where there is no such agreement while a "minor dispute"

contemplates the existence of collective agreement, no effort is made to bring about a new agreement and the dispute arises over the meaning of the agreement or the proper application of the agreement. *Piedmont Aviation, Inc. v. Air Line Pilots Ass'n, Intern., D.C.N.C., 347 F.Supp. 363, 365, 367.* See also *Major dispute*.

**Minor fact.** In the law of evidence, a relative, collateral, or subordinate fact; a circumstance.

**Minority.** The state or condition of a minor; infancy. Opposite of "majority." See *Minor*.

The smaller number of votes of a deliberative assembly; opposed to majority (*q.v.*).

**Minority opinion.** See *Opinion*.

**Minority stockholder.** Those stockholders of a corporation who hold so few shares in relation to the total outstanding that they are unable to control the management of the corporation or to elect directors.

**Minor jurare non potest** /máynar jæreriy nòn pówdæst/. A minor cannot make oath. An infant cannot be sworn on a jury.

**Minor minorem custodire non debet, alios enim præsumitur male regere qui seipsum regere nescit** /máynar mænóræm kæstædyriy nòn débæt, éyliyows íynæm præz(y)úwædær mæliy réjæriy kwây siyípsæm réjæriy nést/. A minor ought not to be guardian to a minor, for he who knows not how to govern himself is presumed to be unfit to govern others.

**Minor non tenetur respondere durante minori ætate, nisi in causa dotis, propter favorem** /máynar nòn tænydær ræspóndæriy d(y)æræntiy mænóræy ætédyiy, náysay ín dôwdæ, próptær fævóræm/. A minor is not bound to reply during his minority, except as a matter of favor in a cause of dower.

**Minor offenses.** See *Petty offense*.

**Minor qui infra ætatem 12 annorum fuerit uteagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliqua, nec in decenna** /máynar kwây ínfæ ætéydæm d(y)uwódæsam ænóræm fyúwæræd ætlægæray nòn pówdæst, nèk ékstræ líyjæm pównay, kwâyæ æntiy téylæm ætéydæm, nòn èst sæb líyjiy ælækwæ nèk ín dæséna/. A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because before such age he is not under any law, nor in a decennary.

**Minor septemdecim annis non admittitur fore executorem** /máynar séptæmdésæm ænas nòn ædmídædær fóriy ægzékýstóráæm/. A person under seventeen years is not admitted to be an executor. A rule of ecclesiastical law.

**Minors' estates.** Property of those who have not reached their legal majority and which must be administered after their death or during their lives under a court appointed fiduciary.

**Mint.** The place designated by law where bullion is coined into money under authority of the government.

**Mintage** /míntaj/. The charge or commission taken by the mint as a consideration for coining into money

the bullion which is brought to it for that purpose; the same as "seigniorage."

Also that which is coined or stamped as money; the product of the mint.

**Mint-mark.** The masters and workers of the English mint, in the indentures made with them, agreed "to make a privy mark in the money they make, of gold and silver, so that they may know which moneys were of their own making." After every trial of the pix, having proved their moneys to be lawful, they were entitled to their *quietus* under the great seal, and to be discharged from all suits or actions.

**Mint-master.** One who manages the coinage.

**Minus** /máynæs/. Lat. In the civil law, less; less than. The word had also, in some connections, the sense of "not at all." For example, a debt remaining wholly unpaid was described as "*minus solutum*."

**Minus Latium** /máynæs léyshæm/. See *Jus Latium*.

**Minus solvit, qui tardius solvit** /máynæs sólvæt kwây tárdiyæs sólvæt/. He does not pay who pays too late.

**Minute.** In measures of time or circumference, a minute is the sixtieth part of an hour or degree.

**Minutes.** Memoranda or notes of a transaction or proceeding. Thus, the record of the proceedings at a meeting of directors or shareholders of a company is called the "minutes."

A memorandum of what takes place in court, made by authority of the court.

**Minutes book.** A book kept by the clerk or prothonotary of a court for entering memoranda of its proceedings. A record of all actions authorized at corporate board of directors' or stockholders' meeting.

**Minutio** /mæn(y)úwsh(iy)ow/. Lat. In the civil law, a lessening; diminution or reduction.

**Miranda hearing.** A pre-trial proceeding to determine whether there has been compliance with the requirements of the *Miranda Rule* (*q.v.*). The outcome will decide whether the prosecution will be permitted to introduce into evidence statements of the defendant made during custodial interrogation. See *Miranda Rule*.

**Miranda Rule** /mærænda rúw/. Prior to any custodial interrogation (that is, questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his freedom in any significant way) the person must be warned: 1. That he has a right to remain silent; 2. That any statement he does make may be used as evidence against him; 3. That he has a right to the presence of an attorney; 4. That if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.

Unless and until these warnings or a waiver of these rights are demonstrated at the trial, no evidence obtained in the interrogation may be used against the accused. *Miranda v. Arizona*, 384 U.S. 436, 444, 478, 479, 86 S.Ct. 1602, 1612, 1630, 16 L.Ed.2d 694.

**Mis.** An inseparable particle used in composition, to mark an ill sense or deprecation of the meaning; as

"miscomputation" or "misaccounting," *i.e.*, false reckoning.

**Misa** /máyzə/. In old English law, the mise or issue in a writ of right; a compact or agreement; a form of compromise.

**Misadventure.** A mischance or accident; a casualty caused by the act of one person inflicting injury upon another. Homicide "by misadventure" occurs where a man, doing a lawful act, without any intention of hurt, unfortunately kills another.

**Misallege** /misələj/. To cite falsely as a proof or argument.

**Misapplication.** Improper, illegal, wrongful, or corrupt use of application of funds, property, etc. See also **Misappropriation**.

**Misappropriation.** The act of misappropriating or turning to a wrong purpose; wrong appropriation; a term which does not necessarily mean speculation, although it may mean that. Term may also embrace the taking and use of another's property for sole purpose of capitalizing unfairly on good will and reputation of property owner. *Pocket Books, Inc. v. Dell Pub. Co.*, 49 Misc.2d 252, 267 N.Y.S.2d 269, 272.

**Misbehavior.** Ill conduct; improper or unlawful behavior. So as to support contempt conviction is conduct inappropriate to particular role of actor, be he judge, juror, party, witness, counsel or spectator. *U. S. v. Seale*, C.A.Ill., 461 F.2d 345, 366.

**Misbranding.** False or misleading labeling. *People v. Rosenbloom*, 119 Cal.App. 759, 2 P.2d 228, 231. Such practices are prohibited by federal and state statutes; *e.g.* Fair Packaging and Labeling Act.

**Miscarriage** /mɪskæɪrɪdʒ/. Poor management or administration; mismanagement.

**Miscarriage of justice.** Decision or outcome of legal proceeding that is prejudicial or inconsistent with substantial rights of party.

As used in constitutional standard of reversible error, "miscarriage of justice" means a reasonable probability of more favorable outcome for the defendant. *People v. Lopez*, 251 Cal.App.2d 918, 60 Cal. Rptr. 72, 76. A miscarriage of justice, warranting reversal, should be declared only when the court, after examination of entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to appealing party would have been reached in absence of the error. *People v. Bernhardt*, 222 C.A.2d 567, 35 Cal.Rptr. 401, 419.

Miscarriage of justice from erroneous charge to jury, under statute declaring that no judgment shall be set aside or new trial granted on basis of error which does not result in such miscarriage, results only when an erroneous charge is reasonably calculated to confuse or mislead. *Marley v. Saunders*, Fla., 249 So.2d 30, 35.

**Miscegenation** /mɪsɛjənəjʃən/. Mixture of races; marriage between persons of different races, as between a white person and a Negro.

**Mischarge.** An erroneous charge; a charge, given by a court to a jury, which involves errors for which the judgment may be reversed.

**Mischief.** In legislative parlance, the word is sometimes used to signify the evil or danger which a statute is intended to cure or avoid.

In the phrase "malicious mischief," (*q.v.*) it imports a wanton or reckless injury to persons or property.

A person is guilty of criminal mischief if he: (a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means, or (b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or (c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat. Model Penal Code, § 220.3.

**Misconduct.** A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. *People v. Sigal*, 249 C.A.2d 299, 57 Cal.Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *Wilson v. Brown*, La.App., 147 So.2d 27, 29. See also **Wanton misconduct**.

**Misconduct in office.** Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. See also **Malfeasance**; **Misfeasance**.

**Miscontinuance.** In practice, an improper continuance; want of proper form in a continuance; the same with "discontinuance."

**Miscreant** /mɪskriːənt/. In old English law, an apostate; an unbeliever; one who totally renounced Christianity. 4 Bl.Comm. 44.

**Misdate.** A false or erroneous date affixed to a paper or document.

**Misdelivery.** Delivery of mail, freight, goods, or the like, to person other than authorized or specified recipient. The delivery of property by a carrier or warehouseman to a person not authorized by the owner or person to whom the carrier or warehouseman is bound by his contract to deliver it.

**Misdemeanant** /mɪsdəmiːnənt/. A person guilty of a misdemeanor; one sentenced to punishment upon conviction of a misdemeanor.

**Misdemeanor** /mɪsdəmiːnər/. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. Under federal law, and most state laws, any offense other than a

felony is classified as a misdemeanor. 18 U.S.C.A. § 1. Certain states also have various classes of misdemeanors (e.g. Class A, B, etc.). See also **Infraction**; **Petty offense**.

**Misdescription.** An error or falsity in the description of the subject-matter of a contract which deceives one of the parties to his injury, or is misleading in a material or substantial point. See also **Misrepresentation**.

**Misdirection.** An error made by a judge in instructing the jury upon the trial of a cause.

**Mise** /máyz/mýz/. In common law pleading, the issue in a writ of right. When the tenant in a writ of right pleads that his title is better than the demandant's, he is said to join the *mise* on the mere right.

Also expenses; costs; disbursements in an action.

**Mise-money.** In old English law, money paid by way of contract or composition to purchase any liberty, etc.

**Miserable depositum** /mizərəybəliy dəpózədam/. Lat. In the civil law, the name of an involuntary deposit, made under pressing necessity; as, for instance, shipwreck, fire, or other inevitable calamity.

**Misera est servitus, ubi jus est vagum aut incertum** /mizərə èst sàrvədas yúwbay jàs èst véygəm öd ənsàrdəm/. It is a wretched state of slavery which subsists where the law is vague or uncertain.

**Miserere** /mizəríry/. The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy; whence it is also called the "psalm of mercy."

**Misericordia** /mizərəkórd(i)yə/. Lat. Mercy; a fine or americiament; an arbitrary or discretionary amerement.

**Misericordia communis** /mizərəkórd(i)yə kəmyúwnəs/. In old English law, a fine set on a whole county or hundred.

**Misfeasance** /misfíyzən(t)s/. The improper performance of some act which a man may lawfully do. "Nonfeasance" means the omission of an act which a person ought to do; "misfeasance" is the improper doing of an act which a person might lawfully do; and "malfeasance" is the doing of an act which a person ought not to do at all.

**Misfeazance.** See **Misfeasance**.

**Misfortune.** An adverse event, calamity, or evil fortune, arising by accident (or without the will or concurrence of him who suffers from it), and not to be foreseen or guarded against by care or prudence. In its application to the law of homicide, this term always involves the further idea that the person causing the death is not at the time engaged in any unlawful act. See also **Accident**.

**Misjoinder.** See **Joinder**.

**Miskenning** /mískəniŋ/. In Saxon and old English law, an unjust or irregular summoning to court; to speak unsteadily in court; to vary in one's plea.

**Mislaid property.** See **Property**.

**Mislay.** To deposit in a place not afterwards recollect-ed; to lose anything by forgetfulness of the place where it was laid.

**Misleading.** Delusive; calculated to lead astray or to lead into error. A Judge's instructions which are of such a nature as to be misunderstood by the jury, or to give them a wrong impression, are said to be "misleading." See also **Misrepresentation**.

**Misnomer.** Mistake in name; giving incorrect name to person in accusation, indictment, pleading, deed or other instrument. Under rules practice in some states, such is ground for dismissal by motion. In most states, however, as well as in the federal courts, such misnomer can be corrected by amendment of the pleadings.

When a misnomer occurs in a deed, the normal procedure is to prepare and record a correction deed. Commonly, a quit claim deed is used for this purpose.

**Mispleading.** Pleading incorrectly, or omitting anything in pleading which is essential to the support or defense of an action, is so called; as in the case of a plaintiff not merely stating his title in a defective manner, but setting forth a title which is essentially defective in itself; or if, to an action of debt, the defendant pleads "not guilty" instead of *nil debet*. Rules of Civil Procedure (in effect in the federal and many state courts) permit liberal amendment of incorrect or deficient pleadings. See Fed.R.Civil P. 15.

**Misprision.** A word used to describe an offense which does not possess a specific name. *United States v. Perlstein, C.C.A.N.J., 126 F.2d 789, 798.* But more particularly and properly the term denotes either: (1) a contempt against the sovereign, the government, or the courts of justice, including not only contempts of court, properly so called, but also all forms of seditious or disloyal conduct and leze-majesty; (2) maladministration of public office; neglect or improper performance of official duty, including speculation of public funds; (3) neglect of light account made of a crime, that is, failure in the duty of a citizen to endeavor to prevent the commission of a crime, or, having knowledge of its commission, to fail to reveal it to the proper authorities.

**Concealment of crime.** See **Misprision of felony**.

**Negative misprision.** The concealment of something which ought to be revealed; that is, misprision in the third of the specific meanings given above.

**Positive misprision.** The commission of something which ought not to be done; that is, misprision in the first and second of the specific meanings given above.

**Misprision of felony.** The offense of concealing a felony committed by another, but without such previous concert with or subsequent assistance to the felon as would make the party concealing an accessory before or after the fact. *United States v. Perlstein, C.C.A. N.J., 126 F.2d 789, 798.*

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States,

is guilty of the federal crime of misprision of felony. 18 U.S.C.A. § 4.

**Misprision of treason.** The bare knowledge and concealment of an act of treason or treasonable plot by failing to disclose it to the appropriate officials; that is, without any assent or participation therein, for if the latter elements be present the party becomes a principal. 18 U.S.C.A. § 2382.

**Misreading.** Reading a deed or other instrument to an illiterate or blind man (who is a party to it) in a false or deceitful manner, so that he conceives a wrong idea of its tenor or contents.

**Misrecital** /misrəsáyðəl/. The erroneous or incorrect recital of a matter of fact, either in an agreement, deed, or pleading.

**Misrepresentation.** Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead.

In a limited sense, an intentional false statement respecting a matter of fact, made by one of the parties to a contract, which is material to the contract and influential in producing it. A "misrepresentation," which justifies the rescission of a contract, is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

See also **Deceit; Fraud; Material fact; Reliance.**

**Insurance law.** A statement of something as a fact which is untrue and material to the risk, and which assured states knowing it to be untrue and with intent to deceive, or which insured states positively as true, not knowing it to be true, and which has a tendency to mislead. One that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance. See also **Material fact.**

**Missilia** /məsáyl(i)yə/. In Roman law, gifts or liberalities, which the prætors and consuls were in the habit of throwing among the people.

**Missing ship.** In maritime law, a vessel is so called when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year.

**Missions.** In church parlance, the establishment of churches and schools and relief depots through which are taught the principles of Christianity, the afflicted cared for, and the needy supplied.

**Missura** /mís(y)úrə/. The ceremonies used in a Roman Catholic church to recommend and dismiss a dying person.

**Mistake.** Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. A mistake exists when a person,

under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done or omitted. It may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence. *Salazar v. Steelman*, 22 Cal.App.2d 402, 71 P.2d 79, 82. See also **Error; Ignorance.**

**Mistake of fact** is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in (1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or (2) belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed.

A **mistake of law** happens when a party, having full knowledge of the facts, comes to an erroneous conclusion as to their legal effect. It is a mistaken opinion or inference, arising from an imperfect or incorrect exercise of the judgment, upon facts, *Page v. Provines*, 179 Okl. 391, 66 P.2d 7, 10; and necessarily presupposes that the person forming it is in full possession of the facts. The facts precede the law, and the true and false opinion alike imply an acquaintance with them. The one is the result of a correct application of legal principles, which every man is presumed to know, and is called "law;" the other, the result of a faulty application, and is called a "mistake of law."

**Mutual mistake** is where the parties have a common intention, but it is induced by a common or mutual mistake. "Mutual" as used in the expression mutual mistake of fact expresses a thought of reciprocity and distinguishes it from a mistake which is a common mistake of both parties. There is something of the thought of a common mistake because it must affect both parties. Mistake of fact as ground for relief may be neither "mutual" nor common in the strict sense because it may be wholly the mistake of one of the parties, the other being wholly ignorant both of the fact upon the faith of which the other has mistakenly acted and that the other has acted upon such an understanding of the fact situation.

**Mister.** A title of courtesy. A trade, craft, occupation, employment, office.

**Mistery.** A trade or calling.

**Mistrial.** An erroneous, invalid, or nugatory trial. A trial of an action which cannot stand in law because of want of jurisdiction, or a wrong drawing of jurors, or disregard of some other fundamental requisite before or during trial. Trial which has been terminated prior to its normal conclusion. The judge may declare a mistrial because of some extraordinary event (e.g. death of juror, or attorney), for prejudicial error that cannot be corrected at trial, or because of a deadlocked jury.

**Misuser** /misyúwzər/. An unlawful use of a right. Abuse of an office or franchise. 2 Bl.Comm. 153.

**Mitigating circumstances.** Such as do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability. Mitigating circumstances which will reduce degree of homicide to manslaughter are the commission



of the killing in a sudden heat of passion caused by adequate legal provocation. *People v. Morrin*, 31 Mich.App. 301, 187 N.W.2d 434, 438.

Those that affect basis for award of exemplary damages, or reduce actual damages by showing, not that they were never suffered, but that they have been partially extinguished.

In actions for libel and slander, circumstances bearing on defendant's liability for exemplary damages by reducing moral culpability, or on liability for actual damages by showing partial extinguishment thereof. The "mitigating circumstances" which the statute allows defendant in libel action to prove are those which tend to show that defendant in speaking the slanderous words acted in good faith, with honesty of purpose, and not maliciously. *Roemer v. Retail Credit Co.*, 44 C.A.3d 926, 119 Cal.Rptr. 82, 91.

**Mitigation.** Alleviation, reduction, abatement or diminution of a penalty or punishment imposed by law.

**Mitigation of damages.** Doctrine of "mitigation of damages," sometimes called doctrine of avoidable consequences, imposes on injured party duty to exercise reasonable diligence and ordinary care in attempting to minimize his damages after injury has been inflicted and care and diligence required of him is the same as that which would be used by man of ordinary prudence under like circumstances. *Darnell v. Taylor*, La.App., 236 So.2d 57, 61. Mitigation of damages is an affirmative defense and applies when plaintiff fails to take reasonable actions that would tend to mitigate his injuries. *Mott v. Persichetti*, Colo.App., 534 P.2d 823, 825. See Restatement, Contracts § 336(1); U.C.C. § 2-603. See also **Avoidable consequences, doctrine of.**

**Mitigation of punishment.** A judge may reduce or order a lesser sentence in consideration of such factors as the defendant's past good behavior, his family situation, his cooperation with the police and kindred factors.

**Mitior sensus** /míshiyər sən(t)səs/. Lat. The more favorable acceptance.

**Mitius imperanti melius paretur** /míshiyəs ìmpərəntay míyl(i)yəs pəriyər/. The more mildly one commands, the better is he obeyed.

**Mitter.** L. Fr. To put, to send, or to pass; as, *mitter l'estate*, to pass the estate; *mitter le droit*, to pass a right. These words are used to distinguish different kinds of releases.

**Mitter avant** /mídr əvənt/. L. Fr. In old practice, to put before; to present before a court; to produce in court.

**Mittimus** /mídəməs/. The name of a precept in writing, issuing from a court or magistrate, directed to the sheriff or other officer, commanding him to convey to the prison the person named therein, and to the jailer, commanding him to receive and safely keep such person until he shall be delivered by due course of law. *State v. Lenihan*, 151 Conn. 552, 200 A.2d 476, 478. Transcript of minutes of conviction and sentence duly certified by court clerk. *United States ex rel. Chasteen v. Denmark*, C.C.A.Ill., 138 F.2d 289, 291.

**Old English law.** A writ enclosing a record sent to be tried in a county palatine; it derives its name from the Latin word *mittimus*, "we send." It is the jury process of these counties, and commands the proper officer of the county palatine to command the sheriff to summon the jury for the trial of the cause, and to return the record, etc.

**Mixed.** Formed by admixture or commingling; partaking of the nature, character, or legal attributes of two or more distinct kinds or classes.

As to mixed Action; Blood relations (*Mixed blood*); Contract; Government; Jury; Larceny; Marriage; Nuisance; Policy; Presumption; Property; Tithes; and War, see those titles.

**Mixed insurance company.** One which has, at least in part, the nature of both stock and mutual companies, and in which a certain portion of the profits is divided among the stockholders and distribution of other funds is made among the insured. *Ohio Farmers Indemnity Co. v. Commissioner of Internal Revenue*, C.C.A.Ohio, 108 F.2d 665, 667; *Pink v. Town Taxi Co.*, 138 Me. 44, 21 A.2d 656, 658, 659.

**Mixed laws.** A name sometimes given to those which concern both persons and property.

**Mixed question of law and fact.** A question depending for solution on questions of both law and fact, but is really a question of either law or fact to be decided by either judge or jury.

**Mixed questions.** This phrase may mean either those which arise from the conflict of foreign and domestic laws, or questions arising on a trial involving both law and fact.

**Mixed subjects of property.** Such as fall within the definition of things real, but which are attended, nevertheless, with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such as animals *feræ naturæ*, charters and deeds, court rolls, and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armor, with pennons and other ensigns, and especially heirlooms.

**Mixtion** /míks(h)chən/. The mixture or confusion of goods or chattels belonging severally to different owners, in such a way that they can no longer be separated or distinguished; as where two measures of wine belonging to different persons are poured together into the same cask. See also **Commingling; Fungibles.**

**Mixtum imperium** /míktəm ìmpiriyəm/. Lat. In old English law, mixed authority; a kind of civil power. A term applied by Lord Hale to the "power" of certain subordinate civil magistrates as distinct from "jurisdiction."

**M'Naghten Rule.** In the majority of jurisdictions in this country, what is most often referred to as the M'Naghten Rule has long been accepted as the test to be applied for the defense of insanity. Under

M'Naghten test or rule, an accused is not criminally responsible if, at the time of committing the act, he was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong. M'Naghten's Case, 8 Eng.Rep. 718 (1843).

The standard under the "M'Naghten insanity" test to determine whether a person is sane is did the defendant have sufficient mental capacity to know and understand what he was doing, and did he know and understand that it was wrong and a violation of the rights of another; to be "sane" and thus responsible to the law for the act committed, the defendant must be able to both know and understand the nature and quality of his act and to distinguish between right and wrong at the time of the commission of the offense. *People v. Crosier*, 41 Cal.App.3d 712, 116 Cal.Rptr. 467, 471.

See also **Insanity**, *supra*, regarding other tests used by courts in determining criminal responsibility.

**Mob.** An assemblage of many people, acting in a violent and disorderly manner, defying the law, and committing, or threatening to commit, depredations upon property or violence to persons.

The word, in legal use, is practically synonymous with "riot," but the latter is the more correct term.

**Mobilia** /mowbīliya/. Lat. Movables; movable things; otherwise called "*res mobiles*."

**Mobilia non habent situm** /mowbīliya nōn hēybant sāydam/. Movables have no *situs* or local habitation.

**Mobilia sequuntur personam** /mowbīliya sēkwāntēr pērsōwnēm/. Movables follow the [law of the] person.

**Mock.** To deride, to laugh at, to ridicule, to treat with scorn and contempt.

**Modal legacy.** See **Legacy**.

**Mode.** The manner in which a thing is done; as the mode of proceeding, the mode of process.

**Model.** A preliminary pattern or representation of something to be made or something already made. A *facsimile* of something invented, made on a reduced scale, in compliance with the patent laws. Style or design of product or item. See also **Sample**.

**Model act.** Statute proposed by the National Conference of Commissioners of Uniform State Laws for adoption by state legislatures, e.g. Model Business Corporation Act; Model Penal Code; Model Probate Code. Frequently, the state adopting the model act will modify it to some extent to meet its own needs or may adopt only a portion of such.

**Model jury instructions.** See **Jury instructions**.

**Moderamen inculpatæ tutelæ** /mōdōréymān inkālpéydiy tyuwfīlyi/. Lat. In Roman law, the regulation of justifiable defense. A term used to express that degree of force in defense of the person or property which a person might safely use, although it should occasion the death of the aggressor.

**Moderata misericordia** /mōdōréyda mīzōrēkōrd(i)ya/. A writ founded on *Magna Charta*, which lies for him who is amerced in a court, not of record, for any transgression beyond the quality or quantity of the offense. It is addressed to the lord of the court, or his bailiff, commanding him to take a moderate amerement of the parties.

**Moderate castigavit** /mōdōréydiy kāsōgēyvat/. Lat. In old pleading, be moderately chastised. The name of a plea in trespass which justifies an alleged battery on the ground that it consisted in a moderate chastisement of the plaintiff by the defendant, which, from their relations, the latter had a legal right to inflict.

**Moderator.** A chairman or president of an assembly. A person appointed to preside at a popular meeting. The presiding officer of town meetings in New England is so called.

**Modlatio** /mōwdiyéysh(iy)ow/. In old English law, a certain duty paid for every tierce of wine.

**Modica circumstantia facti jus mutat** /mōwdaka sārkmstēnsh(iy)ēm fāktay jās myūwdēt/. A small circumstance attending an act may change the law.

**Modification.** A change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact.

**Modify.** To alter; to change in incidental or subordinate features; enlarge, extend; amend; limit, reduce. Such alteration or change may be characterized, in quantitative sense, as either an increase or decrease. *Johnson v. Three Bays Properties No. 2, Inc.*, Fla. App., 159 So.2d 924, 926. See **Modification**.

**Modius** /mōwd(i)yās/. Lat. A measure. Specifically, a Roman dry measure having a capacity of about 550 cubic inches; but in medieval English law used as an approximate translation of the word "bushel."

**Modius terræ vel agri** /mōwd(i)yā tēhriy vèl āgray/. In old English law, a quantity of ground containing in length and breadth 100 feet.

**Modo et forma** /mōwdow èt fōrma/. Lat. In manner and form. Words used in the old Latin forms of pleadings by way of traverse, and literally translated in the modern precedents, importing that the party traversing denies the allegation of the other party, not only in its general effect, but in the exact *manner and form* in which it is made.

**Modus** /mōwdās/. Lat. In Civil law, manner; means; way.

*Criminal pleading.* The *modus* of an indictment is that part of it which contains the narrative of the commission of the crime; the statement of the mode or manner in which the offense was committed.

*Ecclesiastical law.* A peculiar manner of tithing, growing out of custom.

*Old conveyancing.* Mode; manner; the arrangement or expression of the terms of a contract or conveyance.

Also a consideration; the consideration of a conveyance, technically expressed by the word "*ut*".

A qualification, involving the idea of variance or departure from some general rule or form, either by way of restriction or enlargement, according to the circumstances of a particular case, the will of a donor, the particular agreement of parties, and the like.

**Rank modus.** One that is too large. Rankness is a mere rule of evidence, drawn from the improbability of the fact, rather than a rule of law.

**Modus decimandi** /mówdæs dēsámænday/. In Ecclesiastical law, a manner of tithing; a partial exemption from tithes, or a pecuniary composition prescribed by immemorial usage, and of reasonable amount; for it will be invalid as a *rank modus* if greater than the value of the tithes in the time of Richard I.

**Modus de non decimando** /mówdæs diy nòn dēsámændow/. In Ecclesiastical law, a custom or prescription of entire exemption from the payment of tithes; this is not valid, unless in the case of abbeylands.

**Modus de non decimando non valet** /mówdæs diy nòn dēsámændow nòn vælæt/. A *modus* (prescription) not to pay tithes is void.

**Modus et conventio vincunt legem** /mówdæs èt kævénsh(iy)ow vɪnkənt líjəm/. Custom and agreement overrule law. This maxim forms one of the first principles relative to the law of contracts. The exceptions to the rule here laid down are in cases against public policy, morality, etc.

**Modus habilis** /mówdæs hæbélæs/. A valid manner.

**Modus legem dat donationi** /mówdæs líjəm dæt dænèyshiyównay/. Custom gives law to the gift.

**Modus operandi** /mówdæs òpərəénday/. Method of operating or doing things (M.O.). Term used by police and criminal investigators to describe the particular method of a criminal's activity.

**Modus tenendi** /mówdæs tənénday/. The manner of holding; *i.e.*, the different species of tenures by which estates are held.

**Modus transferendi** /mówdæs trànsfərəénday/. The manner of transferring.

**Modus vacandi** /mówdæs vəkænday/. The manner of vacating. How and why an estate has been relinquished or surrendered by a vassal to his lord might well be referred to by this phrase.

**Moible** /myuwbəl/. L. Fr. Movable. *Biens moibles*, movable goods.

**Moerda** /márdə/. The secret killing of another; murder.

**Mohatra.** In French law, a transaction covering a fraudulent device to evade the laws against usury. It takes place where an individual buys merchandise from another on a credit at a high price, to sell it immediately to the first seller, or to a third person who acts as his agent, at a much less price for cash.

**Moiety** /móyədíy/. The half of anything. Joint tenants are said to hold by moieties. See also **Community property**.

**Moiety acts.** A name sometimes applied to penal and criminal statutes which provide that half the penalty or fine shall inure to the benefit of the informer.

**Molliter manus imposuit** /mólədər mænəs impóz(h)-yuwat/. Lat. He gently laid hands upon. Formal words in the old Latin pleas in actions of trespass and assault where a defendant justified laying hands upon the plaintiff, as where it was done to keep the peace, etc. The phrase is literally translated in the modern precedents, and the original is retained as the name of the plea in such cases.

**Monarchial.** Of or pertaining to a monarchy or government by royalty. See **Monarchy**.

**Monarchy** /mónarkíy/. A government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed "despotic;" where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a "limited" or "constitutional" monarchy. It is hereditary where the regal power descends immediately from the possessor to the next heir by blood, as in England; or elective, as was formerly the case in Poland.

**Moneta** /məníydə/. Lat. Money (*q.v.*).

**Moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum conveniens et justa æstimatio** /məníydə èst jústəm mífydíyəm èt mens(y)úra rírəm kòmíyudəbíl(i)yəm, nàm pər mífydíyəm məníydiy fíd òmniyəm rírəm kævíyn(i)yən(d)z èt jástə èstáméysh(iy)ow/. Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made.

**Monetarium** /mònətéyj(iy)əm/. Mintage, or the right of coining money. Hence, anciently, a tribute payable to a lord who had the prerogative of coining money, by his tenants, in consideration of his refraining from changing the coinage.

**Monetandi jus comprehenditur in regalibus quæ nunquam a regio sceptro abdicantur** /mònətænday jəs kòmpráhéndədər ín rægéyləbəs kwíy nánkwæm èy ríyj(iy)ow séptrow əbdəkəntər/. The right of coining money is comprehended among those royal prerogatives which are never relinquished by the royal scepter.

**Monetary.** The usual meaning is "pertaining to coinage or currency or having to do with money", but it has been held to include personal property. In *re Kipp's Will*, Sur., 37 N.Y.S.2d 541, 543.

**Monetary bequest.** A transfer by will of cash. It is often designated as a pecuniary bequest.

**Money.** In usual and ordinary acceptation it means coins and paper currency used as circulating medium of exchange, and does not embrace notes, bonds, evidences of debt, or other personal or real estate. *Lane v. Railey*, 280 Ky. 319, 133 S.W.2d 74, 79, 81. See also **Currency**; **Current money**; **Flat money**; **Legal tender**; **Near money**; **Scrip**; **Wampum**.

A medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency. U.C.C. § 1-201(24).

**Public money.** Revenue received from federal, state, and local governments from taxes, fees, fines, etc. See **Revenue**.

**Money-bill.** An act by which revenue is directed to be raised, for any purpose or in any shape whatsoever, either for governmental purposes, and collected from the whole people generally, or for the benefit of a particular district, and collected in that district, or for making appropriations. All federal revenue bills must arise in the House of Representatives, but the Senate may propose or concur with amendments as on other bills. Art. I, Sec. 7, U.S.Const.

**Money changers.** A money changer is one whose occupation is the exchanging of kinds or denominations of currency, and the common meaning of the term pertained to those persons who, in early history, engaged in the business of foreign exchange and it includes the business of a banker and buying and selling of uncurrent funds and the exchanging of one kind of money for another. *Arnold v. City of Chicago*, 387 Ill. 532, 56 N.E.2d 795, 799. Such functions are today handled by the international departments of banks.

**Money claims.** In English practice, under the Judicature Act of 1875, claims for the price of goods sold, for money lent, for arrears of rent, etc., and other claims where money is directly payable on a contract express or implied, as opposed to the cases where money is claimed by way of damages for some independent wrong, whether by breach of contract or otherwise. These "money claims" correspond very nearly to the "money counts" or "common counts" formerly in use.

**Money demand.** A claim for a fixed and liquidated amount of money, or for a sum which can be ascertained by mere calculation; in this sense, distinguished from a claim which must be passed upon and liquidated by a jury, called "damages."

**Moneyed corporation.** See **Corporation**.

**Money had and received.** In common law pleading, the technical designation of a form of declaration in *assumpsit*, wherein the plaintiff declares that the defendant *had and received* certain money, etc.

Gist of action for "money had and received" is that defendant has received money which, in equity and good conscience, should have been paid to plaintiff and under such circumstances that he ought to pay it over.

**Money judgment.** A final order, decree or judgment of a court by which a defendant is required to pay a sum of money in contrast to a decree or judgment of equity in which the court orders some other type of relief; e.g. injunction or specific performance. See also **Judgment**. For enforcement of money judgments, see **Execution**.

**Money land.** A phrase descriptive of money which is held upon a trust to convert it into land.

**Money lent.** In common law pleading, the technical name of a declaration in an action of *assumpsit* for which the defendant promised to pay the plaintiff for money lent.

**Money made.** The return made by a sheriff to a writ of execution, signifying that he has collected the sum of money required by the writ.

**Money market.** The financial machinery for dealing in short term paper such as notes and loans in contrast to the capital market which furnishes long term financing.

**Money of adieu.** In French law, earnest money; so called because given at parting in completion of the bargain. *Arrhes* is the usual French word for earnest money; "money of adieu" is a provincialism found in the province of Orleans.

**Money order.** A type of negotiable draft issued by banks, post offices, telegraph companies and express companies and used by the purchaser as a substitute for a check. Form of credit instrument calling for payment of money to named payee, and involving three parties: remitter, payee, and drawee. *Fidelity Bank & Trust Co. v. Fitzimons*, Minn., 261 N.W.2d 586, 589. Money order may encompass nonnegotiable as well as negotiable instruments and may be issued by a governmental agency, a bank, or private person or entity authorized to issue it, but essential characteristic is that it is purchased for purpose of paying a debt or to transmit funds upon credit of the issuer of the money order. *People v. Norwood*, 26 C.A.3d 148, 103 Cal.Rptr. 7, 12.

**Money-order office.** One of the post-offices authorized to draw or pay money orders.

**Money paid.** In common law pleading, the technical name of a declaration in *assumpsit*, in which the plaintiff declares for money paid for the use of the defendant. See also **Money had and received**.

**Money-purchase plan.** A pension plan where the employer contributes a specified amount of cash each year to each employee's pension fund. Benefits ultimately received by the employee are not specifically defined but depend on the rate of return on the cash invested.

**Monger /mɒŋgər/. A dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity; e.g. fishmonger, moneymonger.**

**Moniers, or moneyeers /mɔːniyərz/məniyərz/. Ministers of the mint; also bankers.**

**Moniment /mɒnəmənt/. A memorial, superscription, or record.**

**Monition /məniʃən/. In admiralty, formerly the summons to appear and answer, issued on filing the libel; which was either a simple monition *in personam* or an attachment and monition *in rem*. With the unification of the Admiralty Rules and Federal Rules of Civil Procedure in 1966, the monition was abolished.**

**General monition.** In civil law practice, a monition or summons to all parties in interest to appear and show cause against the decree prayed for.

**Practice.** A monition is a formal order of the court commanding something to be done by the person to whom it is directed, and who is called the "person monished." Thus, when money is decreed to be paid,

a monition may be obtained commanding its payment. In ecclesiastical procedure, a monition is an order monishing or warning the party complained against to do or not to do a certain act "under pain of the law and contempt thereof." A monition may also be appended to a sentence inflicting a punishment for a past offense; in that case the monition forbids the repetition of the offense.

**Monitory letters** /mónæt(ə)riy lédərz/. Communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognizance of his court.

**Monocracy** /månókrəsiy/. A government by one person.

**Monocrat** /månókræt/. A monarch who governs alone; an absolute governor.

**Monogamy** /månógəmiy/. The marriage of one wife only, or the state of such as are restrained to a single wife. The term is used in opposition to "bigamy" and "polygamy."

**Monomachy** /månóməkiy/. A duel; a single combat. It was anciently allowed by law for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil law and canon laws.

**Monopolia dicitur, cum unus solus aliquod genus mercaturæ universum emit, pretium ad suum libitum statuens.** It is said to be a monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.

**Monopolium** /månópól(i)yəm/. The sole power, right, or privilege of sale; monopoly; a monopoly.

**Monopoly** /månóp(ə)ly/. A privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of the whole supply of a particular commodity. A form of market structure in which one or only a few firms dominate the total sales of a product or service.

"Monopoly", as prohibited by Section 2 of the Sherman Antitrust Act, has two elements: possession of monopoly power in relevant market and willful acquisition or maintenance of that power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. U. S. v. Grinnell Corp., 384 U.S. 563, 86 S.Ct. 1698, 1704, 16 L.Ed.2d 778. A monopoly condemned by the Sherman Act is the power to fix prices or exclude competition, coupled with policies designed to use or preserve that power. U. S. v. Otter Tail Power Co., D.C.Minn., 331 F.Supp. 54, 58.

It is "monopolization" in violation of Sherman Antitrust Act for persons to combine or conspire to acquire or maintain power to exclude competitors from any part of trade or commerce, provided they also have such power that they are able, as group, to exclude actual or potential competition and provided that they have intent and purpose to exercise that power. Davidson v. Kansas City Star Co., D.C.Mo., 202 F.Supp. 613, 617.

See also **Market**; **Relevant market**.

**Natural monopoly.** A natural monopoly is one resulting where one firm of efficient size can produce all or more than market can take at remunerative price. Ovitron Corp. v. General Motors Corp., D.C.N.Y., 295 F.Supp. 373, 377. One which is created from circumstances over which the monopolist has no power. For example, a market for a particular product may be so limited that it is impossible to profitably produce such except by a single plant large enough to supply the whole demand. U. S. v. Aluminum Co. of America, C.C.A.N.Y., 148 F.2d 416, 430.

**Monopoly power.** The "monopoly power" which must exist in order to establish a violation of Sherman Antitrust Act may be defined as the power to fix prices, to exclude competitors, or to control the market in the relevant geographical area in question. H. F. & S. Co. v. American Standard, Inc., D.C.Kan., 336 F.Supp. 110, 123. See also **Market**; **Relevant market**.

**Monopsony.** A condition of the market in which there is but one buyer for a particular commodity.

**Monstrans de droit** /mónstrən(d)z də dróyt/. L. Fr. In English law, a showing or manifestation of right; one of the common law methods of obtaining possession or restitution from the crown, of either real or personal property. It is the proper proceeding when the right of the party, as well as the right of the crown, appears upon record, and consists in putting in a claim of right grounded on facts already acknowledged and established, and praying the judgment of the court whether upon these facts the king or the subject has the right. 3 Bl.Comm. 256.

**Monstrans de faits** /mónstrən(d)z də féy(ts)/. L. Fr. In old English practice, a showing of deeds; a species of profert.

**Monstraverunt, writ of** /ríd əv mǝnstrəvǝrənt/. In English law, a writ which lies for the tenants of ancient demesne who hold by free charter, and not for those tenants who hold by copy of court roll, or by the rod, according to the custom of the manor.

**Montes pietatis** /móntiyz pǝtétédəs/. Public pawn-broking establishments; institutions established by government, in some European countries, for lending small sums of money on pledges of personal property. In France they are called "*monts de piété*."

**Month.** Word "month," unless otherwise defined, means "calendar month," or time from any day of any of the months as adjudged in the calendar to corresponding day, if any, if not any, to last day, of next month.

The space of time denoted by this term varies according as one or another of the following varieties of months is intended:

**Astronomical**, containing one-twelfth of the time occupied by the sun in passing through the entire zodiac.

**Calendar, civil, or solar**, which is one of the months in the Gregorian calendar,—January, February, March, etc.,—which are of unequal length.

**Lunar**, being the period of one revolution of the moon, or twenty-eight days.

The word "month," when used in a statute or contract without qualification, meant at common law

a lunar month of 28 days. *State v. White*, 73 Fla. 426, 74 So. 486, 487.

**Monument.** Anything by which the memory of a person, thing, idea, art, science or event is preserved or perpetuated. A tomb where a dead body has been deposited.

In real-property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey. In this sense the term includes not only posts, pillars, stone markers, cairns, and the like, but also fixed natural objects, blazed trees, and even a water-course. Any physical object on ground which helps to establish location of line called for; it may be either natural or artificial, and may be a tree, stone, stake, pipe, or the like. *Delphay v. Savage*, 227 Md. 373, 177 A.2d 249, 251. See also **Natural monument**.

**Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia** /mónyménta kwíy nóws rækórdæ vovkémæs sánt vèhrátéydas èt vèdastéydas vèstij(iy)æ/. Monuments, which we call "records," are the vestiges of truth and antiquity.

**Monung.** See **Manung**.

**Moonshine.** Intoxicating liquor illicitly produced or smuggled into community for beverage purposes, or spirituous liquor, illegally distilled or manufactured. *State v. King*, 331 Mo. 268, 53 S.W.2d 252, 254.

**Moorage.** A sum charged for use of mooring facilities. Act of mooring vessel.

**Mooring.** Anchoring or making fast to the shore or dock. The securing or confining a vessel in a particular station, as by cables and anchors or by a line or chain run to the wharf.

**Moot.** A subject for argument; unsettled; undecided. A moot point is one not settled by judicial decisions.

A case is "moot" when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. *Leonhart v. McCormick*, D.C.Pa., 395 F.Supp. 1073, 1076. Question is "moot" when it presents no actual controversy or where the issues have ceased to exist. *Matter of Lawson's Estate*, 41 Ill.App.3d 37, 353 N.E.2d 345, 347.

Generally, an action is considered "moot" when it no longer presents a justiciable controversy because issues involved have become academic or dead. *Sigma Chi Fraternity v. Regents of University of Colo.*, D.C.Colo., 258 F.Supp. 515, 523. Case in which the matter in dispute has already been resolved and hence, one not entitled to judicial intervention unless the issue is a recurring one and likely to be raised again between the parties, *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 94 S.Ct. 1694, 40 L.Ed.2d 1.

**Moot court.** A court held (normally in law schools) for the arguing of moot or hypothetical cases.

**Moot hill.** Hill of meeting (*gemot*), on which the Britons used to hold their courts, the judge sitting on the eminence; the parties, etc., on an elevated platform below.

**Mooting.** The exercise of arguing questions of law or equity, raised for the purpose. See **Moot court**.

**Moot man.** One of those who used to argue the reader's cases in the inns of court.

**Mora /móre/.** Lat. In the civil law, delay; default; neglect; culpable delay or default.

**Moral.** Pertains to character, conduct, intention, social relations, etc.

1. Pertaining or relating to the conscience or moral sense or to the general principles of right conduct.

2. Cognizable or enforceable only by the conscience or by the principles of right conduct, as distinguished from positive law.

3. Depending upon or resulting from probability; raising a belief or conviction in the mind independent of strict or logical proof.

4. Involving or affecting the moral sense; as in the phrase "moral insanity."

**Moral actions.** Those only in which men have knowledge to guide them, and a will to choose for themselves.

**Moral certainty.** That degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads. A high degree of impression of the truth of a fact, falling short of absolute certainty, but sufficient to justify a verdict of guilty, even in a capital case. Such signifies a probability sufficiently strong to justify action on it; a very high degree of probability, although not demonstrable, as a certainty. It has also been used as indicating a conclusion of the mind established beyond a reasonable doubt. *Gray v. State*, 56 Okl.Cr. 208, 38 P.2d 967.

**Moral consideration.** See **Consideration**.

**Moral duress.** Consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessity or weakness of another. *Lafayette Dramatic Productions v. Ferentz*, 305 Mich. 193, 9 N.W.2d 57, 66. See also **Coercion**; **Duress**.

**Moral evidence.** As opposed to "mathematical" or "demonstrative" evidence, this term denotes that kind of evidence which, without developing an absolute and necessary certainty, generates a high degree of probability or persuasive force. It is founded upon analogy or induction, experience of the ordinary course of nature or the sequence of events, and the testimony of men.

**Moral fraud.** This phrase is one of the less usual designations of "actual" or "positive" fraud or "fraud in fact," as distinguished from "constructive fraud" or "fraud in law." It means fraud which involves actual guilt, a wrongful purpose, or moral obliquity.

**Moral hazard.** See **Hazard**.

**Moral law.** The law of conscience; the aggregate of those rules and principles of ethics which relate to right and wrong conduct and prescribe the standards to which the actions of men should conform in their dealings with each other. See also **Natural law**.

**Moral obligation.** See **Obligation.**

**Moral turpitude.** The act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man. *State v. Adkins*, 40 Ohio App.2d 473, 320 N.E.2d 308, 311, 69 O.O.2d 416. Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. *Lee v. Wisconsin State Bd. of Dental Examiners*, 29 Wis.2d 330, 139 N.W.2d 61, 65. The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita. *People v. Ferguson*, 55 Misc.2d 711, 286 N.Y.S.2d 976, 981. See also **Turpitude.**

**Morandæ solutionis causa** /mørændiy səl(y)üw-shiyównás kóza/. Lat. For the purpose of delaying or postponing payment or performance.

**Mora reprobatu in lege** /mórá réprábéydar in líyji/. Delay is reprobed in law.

**Moratorium** /möhrotór(i)yəm/. A term designating suspension of all or of certain legal remedies against debtors, sometimes authorized by law during financial distress. A period of permissive or obligatory delay; specifically, a period during which an obligor has a legal right to delay meeting an obligation. *State ex rel. Jensen Livestock Co. v. Hyslop*, 111 Mont. 122, 107 P.2d 1088, 1092. Delay or postponement of an action or proceeding. See **Injunction**; **Restraining order.**

**More favorable terms clause.** A provision in a labor-management contract by which the union agrees not to make more favorable agreements with other and competing employers.

**More or less.** About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. The words are intended to cover slight or unimportant inaccuracies in quantity, *Carter v. Finch*, 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred.

**Moreover.** In addition thereto, also, furthermore, likewise, beyond this, besides this.

**Morganatic-marriage.** See **Marriage.**

**Morgangina, or morgangiva** /morgánjana/ °jəvə/. A gift on the morning after the wedding; dowry; the husband's gift to his wife on the day after the wedding.

**Morgue** /mórg/. A place where the bodies of persons found dead are kept for a limited time and exposed to view, to the end that their relatives or friends may identify them.

**Mormon.** A member of the Church of Jesus Christ of Latter-day Saints. The Church was organized in 1830 at Seneca, New York, by Joseph Smith, and today its headquarters are in Salt Lake City, Utah.

**Morning loan.** An unsecured loan to permit the borrower, generally a stockbroker, to carry on his business for the day.

**Moron.** A term indicating a mentally defective person usually having a mental age of eight to twelve years and an I.Q. of 50 to 70.

**Morphinomania, or morphinism** /mòrfənaméyn(i)yə /mòrfənizəm/. The opium habit. An excessive desire for morphia.

**Morris Plan Company.** An industrial bank which accepts money from the public for investment in investment certificates which draw interest periodically payable to the investor, and which bank lends money principally to steadily employed salaried people who are required to secure repayment with the endorsement of two other employed salaried people, the contract calling for installment payments over a one year period. Other secured loans are also made. *Board of Com'rs of Tulsa County v. Remedial Finance Corporation*, 186 Okl. 648, 100 P.2d 240, 242.

**Mors** /mórz/. Lat. Death. *State v. Logan*, 344 Mo. 351, 126 S.W.2d 256, 259.

**Mors dicitur ultimum supplicium** /mórz dísedər áltəməm sɔplish(i)yəm/. Death is called the "last punishment," the "extremity of punishment."

**Morsellum, or morsellus, terræ** /morséləm téhriy /°læs°. In old English law, a small parcel or bit of land.

**Mors omnia solvit** /mórz ómniya sólvət/. Death dissolves all things. Applied to the case of the death of a party to an action.

**Mortal.** Destructive to life; causing or occasioning death; exposing to or deserving death, especially spiritual death; deadly; fatal, as, a mortal wound, or mortal sin; of or pertaining to time of death.

**Mortality.** The relative incidence of death.

**Mortality tables.** A means of ascertaining the probable number of years any man or woman of a given age and of ordinary health will live. A mortality table expresses, on the basis of the group studied, the probability that, of a number of persons of equal expectations of life who are living at the beginning of any year, a certain number of deaths will occur within that year. *National Life & Acc. Ins. Co. v. U. S.*, D.C.Tenn., 381 F.Supp. 1034, 1037.

Such tables are used by insurance companies to determine the premium to be charged for those in the respective age groups.

**Mort civile** /mór(t) səviyl/. In French law, civil death, as upon conviction for felony. It was nominally abolished in 1854, but something very similar to it, in effect at least, still remains. Thus, the property of the condemned, possessed by him at the date of his conviction, goes and belongs to his successors (*héritiers*), as in case of an intestacy; and his future acquired property goes to the state by right of its prerogative (*par droit de déshérence*), but the state may, as a matter of grace, make it over in whole or in part to the widow and children.

**Mort d'ancestor** /mórt dənsəstər/. An ancient and now almost obsolete remedy in the English law. An assize of *mort d'ancestor* was a writ which lay for a person whose ancestor died seised of lands in fee-

simple, and after his death a stranger abated; and this writ directed the sheriff to summon a jury or assize, who should view the land in question and recognize whether such ancestor were seised thereof on the day of his death, and whether the demandant were the next heir.

**Mortgage /mórgaj/.** A mortgage is an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt.

At common law, an estate created by a conveyance absolute in its form, but intended to secure the performance of some act, such as the payment of money, and the like, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. The mortgage operates as a conveyance of the legal title to the mortgagee, but such title is subject to defeasance on payment of the debt or performance of the duty by the mortgagor.

The above definitions are applicable to the common-law (i.e. estate or title) conception of a mortgage. Such conception is still applicable in certain states. But in many other states, a mortgage is regarded as a mere lien, and not as creating a title or estate. *Zeigler v. Sawyer*, Tex.Civ.App., 16 S.W.2d 894, 896. It is a pledge or security of particular property for the payment of a debt or the performance of some other obligation, whatever form the transaction may take, but is not now regarded as a conveyance in effect, though it may be cast in the form of a conveyance. Still other states have adopted a hybrid or intermediate theory or category of mortgage.

See also Assumption of mortgage; Balloon mortgage; Bulk mortgage; Chattel mortgage; Collateral mortgage; Corporate mortgage trust; Deed (*Deed of trust*); Due on sale clause; In rem mortgage; Potomac mortgages; Release (*Release of mortgage*); Ship Mortgage Act; Submortgage; Tacit mortgage; Trust (*Trust deed*); Union mortgage clause. For "bona fide mortgage," see *Bona fide*.

**Amortized mortgage.** One in which the mortgagor pays the current interest charge as well as a portion of principal in his periodic payment.

**Blanket mortgage.** One which conveys title to or creates a lien on all the borrower's assets or a substantial portion of them rather than on a specific asset.

**Closed-end mortgage.** One in which neither the property mortgaged nor the amount borrowed may be altered during the term of the mortgage.

**Consolidated mortgage.** A single mortgage given to replace or to combine several outstanding mortgages.

**Construction draw mortgage.** Type of mortgage used to finance building construction.

**Conventional mortgage.** The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another, to secure the execution of some engagement, but without divesting himself of possession. It is distinguished from the "legal" mortgage, which is a privilege which the law alone in certain cases gives to a creditor over the property of his debtor, without stipulation of the parties. This last is very much like a general lien at common law, created by the law rather

than by the act of the parties, such as a judgment lien.

**Conventional home mortgage.** The common security device used by those who wish to purchase a home by transferring to the bank or other financial institution a lien or defeasible legal title in return for the price or part of the price of the home. A non-FHA or VA home loan; i.e. not backed by government insurance or security. The mortgage is conventional in that the lender looks only to the credit of the borrower and the security of the property, and not to the additional backing of another such as would be the case with an FHA insured mortgage.

**Equitable mortgage.** A specific lien upon real property to secure the payment of money or the performance of some other obligation, which a court of equity will recognize and enforce, in accordance with the clearly ascertained intent of the parties to that effect, but which lacks the essential features of a legal mortgage, either because it grows out of the transactions of the parties without any deed or express contract to give a lien, or because the instrument used for that purpose is wanting in some of the characteristics of a common-law mortgage, or, being absolute in form, is accompanied by a collateral reservation of a right to redeem, or because an explicit agreement to give a mortgage has not been carried into effect.

**FHA mortgage.** One in which the loan has been insured in whole or in part by the Federal Housing Administration.

**First mortgage.** The first (in time or right) of a series of two or more mortgages covering the same property and successively attaching as liens upon it. Also, in a more particular sense, a mortgage which is a first lien on the property, not only as against other mortgages, but as against any other charges or incumbrances. Also called "senior" mortgage.

**First mortgage bonds.** Bonds the payment of which is secured by a first mortgage on property.

**General mortgage.** Mortgages are sometimes classified as general and special, a mortgage of the former class being one which binds all property, present and future, of the debtor (sometimes called a "blanket" mortgage); while a special mortgage is limited to certain particular and specified property.

**Graduated payment mortgage (GPM).** Type of mortgage financing, offered primarily to aid first-time home buyers, wherein the monthly payments gradually increase over a number of years as the income of the mortgagee increases.

**Joint mortgage.** One which is given to or by two or more mortgagees jointly.

**Judicial mortgage.** In the law of Louisiana, the lien resulting from judgments, whether rendered on contested cases or by default, whether final or provisional, in favor of the person obtaining them. Civ.Code La. art. 3321.

**Junior mortgage.** One which ranks below another mortgage of the same property in the value of the security, and is subordinate to senior mortgages in its rights.

**Leasehold mortgage.** Mortgage secured by lessee's interest in leased property.



**Legal mortgage.** A term used in Louisiana. The law alone in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it. That is called "legal mortgage." It is also called a *tacit mortgage*, because it is established by the law without the aid of any agreement. Civ.Code La. art. 3311.

**Mortgage of goods.** See *Chattel mortgage*.

**Open-end mortgage.** A mortgage permitting the mortgagor to borrow additional money under the same mortgage, with certain conditions, usually as to the assets of the mortgagor.

**Package mortgage.** A package mortgage is used to include not only the real property but many items of personal property incident to the real property, such as stoves, refrigerators, and the like.

**Purchase money mortgage.** Generally, any mortgage given to secure a loan made for the purpose of acquiring the land on which the mortgage is given; more particularly, a mortgage given to the seller of land to secure payment of a portion of the purchase price. A mortgage given, concurrently with a conveyance of land, by the vendee to the vendor, on the same land, to secure the unpaid balance of the purchase price.

**Second mortgage.** One which takes rank immediately after a first mortgage on the same property, without any intervening liens, and is next entitled to satisfaction out of the proceeds of the property. Properly speaking, however, the term designates the second of a series of mortgages, not necessarily the second lien. For instance, the lien of a judgment might intervene between the first and second mortgages; in which case, the second mortgage would be the third lien. Also called "junior" mortgage. See also *Wrap-around mortgage*, below.

**Senior mortgage.** One which ranks ahead of another mortgage in terms of rights in the security. See also *First mortgage*, *supra*.

**Straight mortgage.** One in which the mortgagor is obligated to pay interest during the term of the mortgage and a final payment of principal at the end of the term in contrast to an amortized mortgage.

**Tacit mortgage.** See *Legal mortgage*, *supra*.

**Variable rate mortgage.** A long-term mortgage contract which includes a provision permitting the lending institution to adjust, upward and downward, the contract's interest rate in response to changes in money market rates and the conditions of demand for mortgages.

**Wrap around mortgage.** Method of refinancing whereby a new mortgage to cover a new loan is placed in a secondary position to the existing mortgage on the original loan. The entire loan is treated as a single obligation.

**Mortgage banker.** A person or firm engaged in the business of dealing in mortgages including their placement and refinancing. Normally such banker uses its own funds as opposed to a commercial or savings and loan bank which uses primarily funds of depositors. While some mortgage bankers do provide long term (permanent) financing, the majority specialize in short term and interim financing.

**Mortgage bond.** Bonds for which real estate or personal property is pledged as security that the bond will be paid as stated in its terms. May be first, second, refunding, and so on.

**Mortgage broker.** Person or firm who functions as intermediary between borrower and lender in securing loan.

**Mortgage certificate.** Document evidencing participation in a large mortgage held by the mortgagee for the benefit of the certificate holders.

**Mortgage clause.** Provision in fire insurance policies protecting the mortgagee as his interest may appear.

**Mortgage commitment.** A formal written communication by a lender, agreeing to make a mortgage loan on specific property, specifying the loan's amount, length of time, and conditions.

**Mortgage company.** A firm engaged in the business of originating and closing mortgages which are then assigned or sold to investors.

**Mortgage contingency clause.** Clause in an agreement for sale of real estate conditioning the purchaser's performance on his obtaining a mortgage from a third party.

**Mortgagee** /mɔːrɡeɪj/. He that takes or receives a mortgage.

**Mortgagee in possession.** A mortgagee of real property who is in possession of it with the agreement or assent of the mortgagor, express or implied, and in recognition of his mortgage and because of it, and under such circumstances as to make the satisfaction of his lien an equitable prerequisite to his being dispossessed.

**Mortgage foreclosure.** See *Foreclosure*.

**Mortgage guarantee insurance.** A type of insurance which guarantees to the mortgagee a given portion of the loss if the mortgagee suffers a loss due to nonpayment on the loan. See *Federal Housing Administration; Insurance*.

**Mortgage insurance.** See *Insurance*.

**Mortgage lien.** Lien on property of mortgagor which secures debt obligation. In some states, the mortgagor retains legal title until foreclosure and the mortgagee has a security interest called a lien which is recognized ahead of other claims to the property.

**Mortgage loan.** A loan secured by a mortgage on real estate in which the borrower is the mortgagor and the lender the mortgagee. See *Mortgage*.

**Mortgaging out.** The process by which a mortgagor secures one hundred percent financing of his purchase. He purchases property with no money of his own but entirely with mortgage money.

**Mortgagor** /mɔːrɡəjər/. One who, having all or some part of title to property, by written instrument pledges that property for some particular purpose such as security for a debt. That party to a mortgage who gives legal title or a lien to the mortgagee to secure the mortgage loan.

**Morth.** Sax. Murder, answering exactly to the French "assassinat" or "muertre de guet-apens".

**Morthlaga** /mórðlægyǰa/. A murderer.

**Morthlage** /mórðlæyj/. Murder.

**Mortis causa** /mórdas kóza/. Lat. By reason of death; in contemplation of death. Thus used in the phrase "Donatio mortis causa" (q.v.).

**Mortis momentum est ultimum vitæ momentum** /mórdas mæméntæm èst ðltæmæm váydiy mæméntæm/. The last moment of life is the moment of death.

**Mortmain** /mórtmèyn/. A term applied to denote the alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of "mortmain" to be applied to such alienations. 2 Bl.Comm. 268; Perin v. Carey, 65 U.S. (24 How.) 465, 16 L.Ed. 701.

**Mortmain acts.** These acts had for their object to prevent lands getting into the possession or control of religious corporations, or, as the name indicates, *in mortua manu*. After numerous prior acts dating from the reign of Edward I, it was enacted by the statute 9 Geo. II, c. 36 (called the "Mortmain Act" *par excellence*), that no lands should be given to charities unless certain requisites should be observed.

**Mortuary.** A burial-place. Term applied to undertaking and embalming establishments.

A kind of ecclesiastical heriot, being a customary gift of the second best living animal belonging to the deceased, claimed by and due to the minister in many parishes, on the death of his parishioners, whether buried in the church-yard or not. 2 Bl.Comm. 425.

Term has been sometimes used in a civil as well as in an ecclesiastical sense, and applied to a payment to the lord of the fee.

**Mortuary tables.** See **Actuarial table**; **Mortality tables**.

**Mortuum vadium** /mórchuwæm véydiyæm/. A dead pledge; a mortgage (q.v.); a pledge where the profits or rents of the thing pledged are not applied to the payment of the debt.

**Mortuus** /mórchuwæs/. Lat. Dead. So in sheriff's return. *Mortuus est*, he is dead.

**Mortuus civiliter** /mórchuwæs sævîlædær/. Civil death (q.v.).

**Mortuus exitus non est exitus** /mórchuwæs égzædas nón èst égzædas/. A dead issue is no issue. A child born dead is not considered as issue.

**Mortuus sine prole** /mórchuwæs sáynyî prówliy/. Dead without issue. In genealogical tables often abbreviated to "m.s.p."

**Moslem Law.** One of the two great systems of customary law which the English found in India. It regulated the life and relations of all Moslems, and parts of

it, especially its penal provisions, were applied to both Moslems and Hindus.

**Mos retinendus est fidelissimæ vetustatis** /móws rêtanéndæs èst fáydalisímîy vèðestéyðæs/. A custom of the truest antiquity is to be retained.

**Most favored nation clause.** A clause found in most treaties providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nations. The general design of such clauses is to establish the principle of equality of international treatment. The test of whether this principle is violated by the concession of advantages to a particular nation is not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not of a mere evasion. The United States has generally taken the stand that reciprocal commercial concessions are given for a valuable consideration and are not within the scope of this clause. *Whitney v. Robertson*, 124 U.S. 190, 8 S.Ct. 456, 31 L.Ed. 386. See also **Reciprocal trade agreements**.

A primary effect of "most favored nation" status is lower import tariffs or duties.

**Most suitable use valuation.** For gift and death tax purposes, property that is transferred normally is valued in accordance with its most suitable or highest and best use. Thus, if a farm is worth more as a potential shopping center, this value will control even though the transferee (*i.e.*, the donee or heir) continues to use the property as a farm. For an exception to this rule concerning the valuation of certain kinds of real estate transferred by death, see **Special use valuation**.

**Mote** /mówt/. Sax. A meeting; an assembly. Used in composition, as *burgmote*, *folkmote*, etc.

**Moteer.** A customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege.

**Mother.** A woman who has borne a child. A female parent. The term includes maternity during prebirth period.

**Mother-in-law.** The mother of one's wife or of one's husband.

**Motion.** In parliamentary law, the formal mode in which a member submits a proposed measure or resolve for the consideration and action of the meeting.

An application made to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant. *State v. James*, Mo., 347 S.W.2d 211, 216. It is usually made within the framework of an existing action or proceeding and is ordinarily made on notice, but some motions may be made without notice. One without notice is called an *ex parte* motion. Written or oral application to court for ruling or order, made before (*e.g.* motion to dismiss) during (*e.g.* motion for directed verdict), or after (*e.g.* motion for new trial) trial. For requisite form of motions, see *Fed.R.Civil P. 7(b)*.

See also **Speaking motion**.

**Motion for judgment notwithstanding verdict.** A motion that judgment be entered in accordance with the movant's earlier motion for a directed verdict and notwithstanding the contrary verdict actually returned by the jury. *Huff v. Thornton*, 287 N.C. 1, 213 S.E.2d 198, 204. See Fed.R.Civil P. 50(b).

**Motion for judgment on pleadings.** Under Fed.R.Civil P. 12(c) any party may move after the pleadings are closed for judgment thereon. It is a device for disposing of cases when the material facts are not in dispute and only questions of law remain. See also *Summary Judgment*.

**Motion for more definite statement.** If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement. Fed.R.Civil P. 12(e).

**Motion for new trial.** A request that the judge set aside the judgment and order a new trial on the basis that the trial was improper or unfair due to specified prejudicial errors that occurred. Fed.R.Civil P. 59.

**Motion in bar.** One which, if allowed, will absolutely bar the action; e.g. plea of double jeopardy. U. S. v. *Jorn*, 400 U.S. 470, 91 S.Ct. 547, 27 L.Ed.2d 543.

**Motion in limine.** A written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements. *Robinson v. State*, Ind.App., 309 N.E.2d 833, 854. Purpose of such motion is to avoid injection into trial of matters which are irrelevant, inadmissible and prejudicial and granting of motion is not a ruling on evidence and, where properly drawn, granting of motion cannot be error. *Redding v. Ferguson*, Tex.Civ.App., 501 S.W.2d 717, 724.

**Motion to dismiss.** One which is generally interposed before trial to attack the action on the basis of insufficiency of the pleading, of process, venue, joinder, etc. Fed.R.Civil P. 12(b).

**Motion to strike.** On motion of either party, the court may order stricken from any pleading any insufficient defense, or any redundant, immaterial, impertinent or scandalous matter. Fed.R.Civil P. 12(f).

**Motion to suppress.** Device used to eliminate from the trial of a criminal case evidence which has been secured illegally, generally in violation of the Fourth Amendment (search and seizure), the Fifth Amendment (privilege against self incrimination), or the Sixth Amendment (right to assistance of counsel, right of confrontation etc.), of U.S. Constitution. See Fed.R.Crim.P. 12(b) and 41(f); also *Suppression hearing*.

**Motive.** Cause or reason that moves the will and induces action. An inducement, or that which leads or tempts the mind to indulge a criminal act. *People v. Lewis*, 275 N.Y. 33, 9 N.E.2d 765, 768.

In common usage intent and "motive" are not infrequently regarded as one and the same thing. In law there is a distinction between them. "Motive" is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result. "Motive" is that which incites or stimulates a person to do an act. *People v. Weiss*, 252 App.Div. 463, 300 N.Y.S. 249, 255.

As to criminal motive, see *Criminal*. See also *Intent*.

**Motor Carrier Act.** Federal statute (administered by ICC) which regulates (routes, rates, etc.) motor carriers of freight and passengers in interstate commerce. 49 U.S.C.A. § 301 *et seq.*

**Mouth of river.** By statute in some states, the mouth of a river or creek, which empties into another river or creek, is defined as the point where the middle of the channel of each intersects the other.

**Movable.** That which can be changed in place, as movable property; or in time, as movable feasts or terms of court. Compare *Fixture*.

**Movable estate.** A term equivalent to "personal estate" or "personal property."

**Movable freehold.** A term applied by Lord Coke to real property which is capable of being increased or diminished by natural causes; as where the owner of seashore acquires or loses land as the waters recede or approach.

**Movables.** Things movable; movable or personal chattels which may be annexed to or attendant on the person of the owner, and carried about with him from one place to another. Things which may be carried from one place to another whether they move by themselves or whether they are inanimate objects capable of being moved by extraneous power. *Succession of Young*, La.App., 205 So.2d 791, 796.

**Movant.** One who moves; one who makes a motion before a court; the applicant for a rule or order.

**Move.** To make an application to a court for a rule or order, or to take action in any matter. The term comprehends all things necessary to be done by a litigant to obtain an order of the court directing the relief sought. See *Motion*.

To propose a resolution, or recommend action in a deliberate body.

To pass over; to be transferred, as when the consideration of a contract is said to "move" from one party to the other.

To occasion; to contribute to; to tend or lead to.

**Movent.** An alternative spelling of *movant*.

**Move out.** To vacate; to yield up possession.

**Moving papers.** Such papers as are made the basis of some motion in court proceedings, e.g. a motion for summary judgment with supporting affidavits.

**Mrs.** Title of courtesy prefixed to name of woman to indicate that she is or has been married. *Guide Pub. Co. v. Futrell*, 175 Va. 77, 7 S.E.2d 133, 138.

**Muclana cautlo** /m(y)ũwsiyéynə kósh(iy)ow/. See *Cautlo*.

**Mug book.** Collection of pictures or "mug shots" of suspects in criminal cases kept by police and FBI and displayed to victim or witnesses in order to obtain identification of criminal offender.

**Mugshot.** Pictures taken when person is booked; usually used as an official photograph by police officers.

**Mulatto** /móládow/m(y)uw°/°dæ/. A person that is the offspring of a negress by a white man, or of a white woman by a negro. In a more general sense, a person of mixed Caucasian and negro blood, or Indian and negro blood.

**Mulet** /málkt/. A penalty or punishment imposed on a person guilty of some offense, tort, or misdemeanor, usually a pecuniary fine or condemnation in damages. A forfeit, fine, or penalty. To sentence to a pecuniary penalty or forfeiture as a punishment; fine; hence to fine unjustly; to punish. *Gorton v. Doty*, 57 Idaho 792, 69 P.2d 136, 142.

Formerly, an imposition laid on ships or goods by a company of trade for the maintenance of consuls and the like.

**Mulcta damnū famæ non irrogat** /málkta dæmnəm féymiy nòn íhrəgət/. A fine does not involve loss of character.

**Mulier** /myúwl(i)yər/. Lat. A woman; a wife; a widow; a virgin; a legitimate child.

The term is used always in contradistinction to a bastard, *mulier* being always legitimate.

**Mulieratus** /myúwl(i)yərəydəs/. A legitimate son.

**Mulier puisné** /myúwl(i)yər pyúwniy/°pwíynèy/. L. Fr. When a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné*, and the younger son is *mulier puisné*.

**Mullerty** /myúwliyərdiy/. In old English law, the state or condition of a *mulier*, or lawful issue. The opposite of bastardy.

**Multa** /málta/. A fine or final satisfaction, anciently given to the king by the bishops, that they might have power to make their wills, and that they might have the probate of other men's wills, and the granting of administration. Called, also, *multura episcopi*.

A fine imposed *ex arbitrio* by magistrates on the *praesides provinciarum*.

**Multa conceduntur per obliquum quæ non conceduntur de directo** /málta kònsədántar pər əbláykwm kwiy nòn kònsədántar diy dərəktoʷ/. Many things are allowed indirectly which are not allowed directly.

**Multa fidem promissa levant** /málta fáydəm prəmísə lévənt/. Many promises lessen confidence.

**Multa ignoramus quæ nobis non laterent si veterum lectio nobis fuit familiaris** /málta ignərəyməs kwiy nówbəs nòn lédərənt sáy védərəm léksh(i)yow nówbəs fyúwət familiyérəs/. We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us.

**Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt** /málta in júriy kəmyúwnay kòntərə rəshiyównəm dispyuwətənday, prów kəmyúwnay yuwtilatédydiy intrədákta sánt/. Many things have been introduced into the common law, with a view to the public good, which are inconsistent with sound reason.

**Multa multo exercitatione facilius quam regulis percipies** /málta máltoʷ egzrəsətəyshiyówniy fəsiliyəs

kwəm régyələs pərsípiyiyz/. You will perceive many things much more easily by practice than by rules.

**Multa non vetat lex, quæ tamen tacite damnavit** /málta nòn víydət léks, kwiy téymən təsədiy dæmnéyvat/. The law forbids not many things which yet it has silently condemned.

**Multa transeunt cum universitate quæ non per se transeunt** /málta trənzíyənt kəm yúwnəvərsətédydiy kwiy nòn pər síy trənzíyənt/. Many things pass with the whole which do not pass separately.

**Multicraft union.** A labor union which craftsmen in different trades may join.

**Multidistrict litigation.** When civil actions involving one or more common (and often complex) questions of fact are pending in several different federal district courts, such actions may be transferred to one district for coordinated and consolidated management and trial under a single judge. 28 U.S.C.A. § 1407. The types of cases in which massive filings of multidistrict litigation are reasonably certain to occur include not only civil antitrust actions but also, common disaster (air crash) actions, patent and trademark suits, products liability actions and securities law violation actions, among others. Such cases are assigned and transferred by a Judicial Panel on Multidistrict Litigation, and are governed by the "Manual for Complex Litigation" and "Rules of Procedure of the Judicial Panel on Multidistrict Litigation."

**Multifarious issue.** A multifarious issue is one that inquires about several different facts when each fact should be inquired about in a separate issue. *District Trustees of Campbellton Consol. Common School Dist. No. 16 v. Pleasanton Independent School Dist.*, Tex.Civ.App., 362 S.W.2d 122, 127. See **Multifariousness**.

**Multifariousness** /máltafér(i)yəsənəs/. In equity pleading, the misjoinder of causes of action in a bill. The fault of improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected against one defendant (more commonly called misjoinder of claims), or the demand of several matters of a distinct and independent nature against several defendants, in the same bill. *Essen v. Adams*, 342 Mo. 1196, 119 S.W.2d 773, 777.

This problem does not generally arise in the federal courts or in the majority of state courts, for Rule of Civil Procedure 8(e) permits pleading of inconsistent claims or defenses and Rule 18(a) permits liberal joinder of independent or alternative claims. Civil Rule 18 permits a party to join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as he has against an opposing party.

**Legislation.** The joining, in a single legislative act, of dissimilar and discordant subjects, which, by no fair intendment, can be considered as having a legitimate connection or relation to the subject of the act.

**Multilateral agreement.** An agreement among more than two persons, firms, or governments.

**Multí multa, nemo omnia novit** /málta y málta, níymow ómniyə nóvvət/. Many men have known many things; no one has known everything.

**Multinational.** In a strict sense this term is descriptive of a firm which has centers of operation in many countries in contrast to an "international" firm which does business in many countries but is based in only one country, though the terms are often used interchangeably.

**Multipartite** /mältiypártayt/. Divided into many or several parts.

**Multiple access.** The defense of several lovers in paternity actions. *Yarmark v. Strickland*, Fla.App., 193 So.2d 212.

**Multiple counts.** A civil pleading (e.g. complaint) or a criminal indictment which contains several separate causes of action or crimes within the framework of one pleading. Joinder of multiple claims against opposing party is permitted under Fed.R.Civil P. 18.

**Multiple evidence.** That which is admissible for a specific purpose to which it must be confined and inadmissible to prove a different fact.

**Multiple listing.** An agreement between the owner of real estate and a broker in which the broker will permit other brokers to sell property for a percentage of his commission or on some other basis satisfactory to the brokers. Device used by real estate brokers to give wide exposure to properties listed for sale whereby each cooperating broker informs all other participating brokers of properties listed with him. *Grempler v. Multiple Listing Bureau of Harford County, Inc.*, 258 Md. 419, 266 A.2d 1, 3. See also **Listing**.

**Multiple offenses.** A single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. If there is identity between the two charges, the defendant may not be punished for both, though he may be punished for the more serious. *Com. v. Kuklis*, 361 Mass. 302, 280 N.E.2d 155.

**Multiple-party accounts.** A multiple-party account is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement. Uniform Probate Code, § 6-101(5).

**Multiple sentences.** If a defendant has been found guilty of more than one offense, he may be given consecutive ("on and after") sentences.

**Multiplex et indistinctum parit confusionem; et questiones, quo simpliciores, eo lucidiores** /mältpleks èd indèstíktam párat kanfýüz(h)iyównam èt kwès(h)chíyówníyz, kwòw simplisiyóriyz iyow l(y)uwsidiyóriyz/. Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.

**Multiplicata transgressione crescat poena inflictio** /mältplakéydə trənzgrèshiyówniy kréskət píyniy infliks(h)iyow/. As transgression is multiplied, the infliction of punishment should increase.

**Multiplicity** /mältplísədiy/. A state of being many. That quality of a pleading which involves a variety of matters or particulars. A multiplying or increasing.

**Multiplicity of actions, or suits.** Numerous and unnecessary attempts to litigate the same right. A phrase descriptive of the situation where several different suits or actions are brought upon the same issue. The actions must be against a single defendant. *Prospect Park & C. I. R. Co. v. Morey*, 155 App.Div. 347, 140 N.Y.S. 380, 385. Under Civil Rules practice such claims should properly be joined or maintained as a single class action. Fed.R.Civil P. 23.

Term "multiplicity" refers to the practice of charging the commission of a single offense in several counts. Federal Rules of Criminal Procedure have been drafted to discourage this practice. *U. S. v. Allied Chemical Corp.*, D.C.Va., 420 F.Supp. 122, 123.

See **Collateral estoppel doctrine**; **Final decision rule**; **Res** (*Res judicata*).

**Multitude.** An assemblage of many people.

**Multitudinem decem faciunt** /mältət(y)úwdənəm díysəm féyshiyənt/. Ten makes a multitude.

**Multitudo errantium non parit errori patrocinium** /mältətyúwdow əránsh(iy)əm nòn párad əróray pətrəsiniyəm/. The multitude of those who err furnishes no countenance or excuse for error. It is no excuse for error that it is entertained by numbers.

**Multitudo imperitorum perdit curiam** /mältətyúwdow imperətórəm pərdət kyúriyam/. A great number of unskillful practitioners ruins a court.

**Multo utilius est pauca idonea effundere quam multis inutilibus homines gravari** /máltow yuwtiliyəs èst póka idówniyə əfəndəriy kwəm máltais inyuwtlílbəs hóməniyz grəvéray/. It is more useful to pour forth a few useful things than to oppress men with many useless things.

**Multura episcopi** /mält(y)úrə əpískəpay/. See **Multa**.

**Mummification** /màməfakéyshən/. The complete drying up of the body as the result of burial in a dry, hot soil, or the exposure of the body to a dry, cold atmosphere.

**Mund.** In old English law, peace; whence *mundbryc*, a breach of the peace.

**Mundbyrd, mundeburde** /mándbərd/. A receiving into favor and protection.

**Mundium** /mándiyəm/. In old French law, a tribute paid by a church or monastery to their seignorial *avoués* and *vidames*, as the price of protecting them.

**Munera** /myúwnərə/. In the early ages of the feudal law, the name given to the grants of land made by a king or chieftain to his followers, which were held by no certain tenure, but merely at the will of the lord. Afterwards they became life-estates, and then hereditary, and were called first "benefices," and then "feuds."

**Municeps** /myúwnəsèps/. Lat. In Roman law, eligible to office. A provincial person; a countryman. This was the designation of one born in the provinces or in a city politically connected with Rome, who had come to Rome, and though a Roman citizen, yet was looked down upon as a provincial, and not allowed to hold the higher offices.

In the provinces the term seems to have been applied to the freemen of any city who were eligible to the municipal offices.

**Municipal.** In narrower, more common, sense, it means pertaining to a local governmental unit, commonly, a city or town or other governmental unit. In its broader sense, it means pertaining to the public or governmental affairs of a state or nation or of a people. *Chadwick v. City of Crawfordsville*, 216 Ind. 399, 24 N.E.2d 937, 941, 942. Relating to a state or nation, particularly when considered as an entity independent of other states or nations. *Hammel v. Little*, 66 App.D.C. 356, 87 F.2d 907, 910.

**Municipal action.** Exercise of governmental power by a municipal board, agency, or other body, or by a municipal officer. *Orme v. Atlas Gas & Oil Co.*, 217 Minn. 27, 13 N.W.2d 757, 761.

**Municipal affairs.** A term referring to the internal business affairs of a municipality. *Griffin v. City of Los Angeles*, 134 Cal.App. 763, 26 P.2d 655. The term is frequently used in constitutional and statutory provisions concerning the power to legislate as to the concerns of municipalities. And it has come to include public service activities, such as supplying water to the inhabitants, the construction of a reservoir for their benefit, the sale and distribution of electrical energy, and the establishment and operation of transportation service, which were once regarded as being of a strictly private nature. See also **Municipal function**.

**Municipal aid.** A contribution or assistance granted by a municipal corporation towards the execution or progress of some enterprise, undertaken by private parties, but likely to be of benefit to the municipality; e.g., urban redevelopment projects.

**Municipal authorities.** As used in statutes contemplating the consent of such authorities, the term means the consent by the legislative authorities of the city acting by ordinance; for example, in a town, the members of the town board.

**Municipal bonds.** Evidences of indebtedness issued by cities or other corporate public body, negotiable in form, payable at designated future time, and intended for sale in market with object of raising money for municipal expense, which is beyond immediate resources of reasonable taxation, as distinguished from temporary evidences of debt, such as vouchers, certificates of indebtedness, orders, or drafts drawn by one officer on another and similar devices for liquidating current obligations in anticipation of collection of taxes. A bond issued by a village, town, city, county, state, or other public body. Interest on such bonds is generally exempt from federal income taxes and from some state income taxes. Sometimes referred to as "tax exempts."

**Municipal charter.** A legislative enactment conferring governmental powers of the state upon its local agencies.

**Municipal corporation.** A legal institution formed by charter from sovereign (i.e. state) power erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state. A body corporate consisting of the inhabitants of a designated area created by the legislature with or without the consent of such inhabitants for governmental purposes, possessing local legislative and administrative power, also power to exercise within such area so much of the administrative power of the state as may be delegated to it and possessing limited capacity to own and hold property and to act in purveyance of public conveniences.

Municipal corporation is a body politic and corporate, created to administer the internal concerns of the district embraced with its corporate limits, in matters peculiar to such place and not common to the state at large. *Tribe v. Salt Lake City Corp.*, Utah, 540 P.2d 499, 502. A municipal corporation has a dual character, the one public and the other private, and exercises correspondingly twofold functions and duties—one class consisting of those acts performed by it in exercise of delegated sovereign powers for benefit of people generally, as arm of state, enforcing general laws made in pursuance of general policy of the state, and the other consisting of acts done in exercise of power of the municipal corporation for its own benefit, or for benefit of its citizens alone, or citizens of the municipal corporation and its immediate locality. *Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist.*, Wyo., 490 P.2d 1069, 1070.

**Quasi municipal corporations.** Bodies politic and corporate, created for the sole purpose of performing one or more municipal functions. Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations (such as counties, townships, school districts, drainage districts, irrigation districts, etc.), but not municipal corporations proper, such as cities and incorporated towns.

**Municipal corporation de facto.** One which exists when there is (1) some law under which a corporation with the powers assumed might lawfully have been created; (2) a colorable and bona fide attempt to perfect an organization under such a law; (3) user of the rights claimed to have been conferred by the law.

**Municipal courts.** In the judicial organization of several states, courts are established under this name with territorial authority confined to the city or community in which they are established. Such courts usually have a criminal jurisdiction corresponding to that of a police court, and, in some cases, possess civil jurisdiction in small causes. In certain cities, small claims or traffic courts are under the jurisdiction of the municipal court.

**Municipal domicile.** Sometimes used in contradistinction to "national domicile" and "quasi national domicile" to refer to residence in a county, township, or municipality; called also "domestic domicile."

**Municipal election.** One at which municipal officers are chosen.

**Municipal function.** One created or granted for the special benefit and advantage of the urban community embraced within the corporate boundaries. State ex rel. Gebhardt v. City Council of Helena, 102 Mont. 27, 55 P.2d 671, 673.

Municipal functions are those which specially and peculiarly promote the comfort, convenience, safety and happiness of the citizens of the municipality, rather than the welfare of the general public. Under this class of functions are included, in most jurisdictions, the proper care of streets and alleys, parks and other public places, and the erection and maintenance of public utilities and improvements generally.

**Municipal government.** Instrumentalities of state for purpose of local government. Moore v. State, 159 Tenn. 468, 19 S.W.2d 233. This term, in certain state constitutions, embraces the governmental affairs of counties, and includes all forms of representative municipal government—towns, cities, villages, etc. See also **Municipality**.

**Municipality.** A legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes. A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community. State ex rel. McIntire v. City Council of City of Libby, 107 Mont. 216, 82 P.2d 587, 588. A city, borough, town, township or village. Also, the body of officers taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

Political subdivision or public agency or instrumentality of a State. Bankruptcy Act, § 101(29).

See also **Person**.

**Municipal law.** That which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and international law. City of Louisville v. Babb, C.C.A.Ind., 75 F.2d 162, 165. In its more common and narrower connotation however it means those laws which pertain to towns, cities and villages and their local government. People ex rel. Ray v. Martin, 294 N.Y. 61, 60 N.E.2d 541, 547, 548.

**Municipal lien.** A lien or claim existing in favor of a municipal corporation against a property owner for his proportionate share of a public improvement, made by the municipality, whereby his property is specially and individually benefited.

**Municipal officer.** One who holds an office of a municipality; e.g. mayor, city manager.

**Municipal ordinance.** A law, rule, or ordinance enacted or adopted by a municipal corporation for the proper conduct of its affairs or the government of its inhabitants; e.g. zoning or traffic ordinances, building codes. Particularly a regulation under a delegation of power from the state.

**Municipal purposes.** Public or governmental purposes as distinguished from private purposes. It may com-

prehend all activities essential to the health, morals, protection, and welfare of the municipality.

**Municipal securities.** The evidences of indebtedness issued by cities, towns, counties, townships, school-districts, and other such territorial divisions of a state. They are of two general classes: (1) Municipal warrants, orders, or certificates; (2) municipal bonds.

The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in § 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income. Securities Exchange Act of 1934, § 3.

See **Municipal bonds**; **Municipal warrants**.

**Municipal warrants.** A municipal warrant or order is an instrument drawn by an officer of a municipality upon its treasurer, directing him to pay an amount of money specified therein to the person named or his order, or to bearer.

**Municipium** /myūwnəspīyām/. In Roman law, a foreign town to which the freedom of the city of Rome was granted, and whose inhabitants had the privilege of enjoying offices and honors there. A free town which retained its original right of self-government, but whose inhabitants also acquired certain rights of Roman citizens.

**Muniment-house, or muniment-room.** A house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, etc., purposely made for keeping deeds, charters, writings, etc.

**Muniments of title** /myūwnəmants əv tāydəl/. Documentary evidence of title. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate. See **Deed**.

The records of title transactions in the chain of title of a person purporting to create the interest in land claimed by such person and upon which he relies as a basis for the marketability of his title, commencing with the root of title and including all subsequent transactions.

Under "muniment of title doctrine" when ownership of property has been litigated between individuals and title has been adjudicated in one of the parties, the losing party cannot relitigate the matter with those who rely upon the title of the winning party. Purdes v. Carvel Hall, Inc., D.C.Iowa, 301 F.Supp. 1256, 1264.

**Murder.** The unlawful killing of a human being by another with malice aforethought, either express or implied. State v. Hutter, 145 Neb. 798, 18 N.W.2d 203, 206. Murder is the unlawful killing of a human being, or fetus, with malice aforethought. Cal.Penal Code, § 187. The crime is defined by statute in most states. The Model Penal Code definition is as follows:

Criminal homicide constitutes murder when: (a) it is committed purposely or knowingly; or (b) it is

committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape. Model Penal Code, § 210.2.

See also **Assassination**; **Assault with intent to commit murder**; **Felony murder doctrine**; **Homicide**; **Manslaughter**.

**Degrees of murder.** In most states murder is divided into two degrees, for the purpose of awarding a more severe penalty for some murders than for others. All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbery or burglary, are commonly deemed murder of the first degree; and all other kinds of murder are deemed murder of the second degree. This general pattern has been followed in most of the states although slight changes have been made in a few of these. Some, for example, have omitted any reference to "poison", while a few have added "torture" to "poison". To the felony-murder clause of the statute several have added "mayhem" and sometimes the inclusion of some other felony may be found, such as kidnapping, sodomy or larceny. In certain states there is also the crime of murder in the third degree.

**Depraved heart murder.** Killing of a human being accomplished by extreme atrocity; malice is inferred from the act of atrocity. Extremely negligent conduct, which creates what a reasonable man would realize to be not only an unjustifiable but also a very high degree of risk of death or serious bodily injury to another or to others—though unaccompanied by any intent to kill or do serious bodily injury—and which actually causes the death of another, may constitute murder.

**Murdrum** /márdrəm/. In old English law, the killing of a man in a secret manner.

The fine formerly imposed in England upon a person who had committed homicide *per infortunium* or *se defendendo*.

**Murorum operatio** /myurórəm òpəréysh(iy)ow/. Lat. The service of work and labor done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage* (q.v.).

**Must.** This word, like the word "shall," is primarily of mandatory effect, *State ex rel. McCabe v. District Court of Third Judicial Dist. in and for Deer Lodge County*, 106 Mont. 272, 76 P.2d 634, 637; and in that sense is used in antithesis to "may". But this meaning of the word is not the only one, and it is often used in a merely directory sense, and consequently is a synonym for the word "may" not only in the permissive sense of that word, but also in the mandatory sense which it sometimes has.

**Muster.** To assemble together troops and their arms, whether for inspection, drill, or service in the field.

To take recruits into the service in the army and inscribe their names on the muster-roll or official record. To summon together; to enroll in service. In the latter sense the term implies that the persons mustered are not already in the service.

**Muster-roll.** In maritime law, a list or account of a ship's company, required to be kept by the master or other person having care of the ship, containing the name, age, national character, and quality of every person employed in the ship. At time of war it is of great use in ascertaining the ship's neutrality.

**Mustizo** /mástíyzow/. A name given in a South Carolina Act of 1740 to the issue of an Indian and a negro.

**Mutatio nominis** /myuwtéysh(iy)ow nómanas/. Lat. In the civil law, change of name.

**Mutatis mutandis** /myuwtéydas myuwtændəs/. Lat. With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. *Housman v. Waterhouse*, 191 App.Div. 850, 182 N.Y.S. 249, 251.

**Mute.** Speechless; dumb; that cannot or will not speak.

**Mutilation.** As applied to written documents, such as wills, court records, and the like, this term means rendering the document imperfect by the subtraction from it of some essential part, as, by cutting, tearing, burning, or erasure, but without totally destroying it. See U.C.C. § 3-407. Also, the alteration in the writing, as in a negotiable instrument, so as to make it another and different instrument and no longer evidence of the contract which the parties made. *Clem v. Chapman*, Tex.Civ.App., 262 S.W. 168, 171. See also **Alteration**; **Deface**; **Spoilation**.

In criminal law, the depriving a man of the use of any of those limbs which may be useful to him in fight, the loss of which amounts to *mayhem*. *People v. Bullington*, 27 Cal.App.2d 396, 80 P.2d 1030, 1032. See **Maim**; **Mayhem**.

**Mutinous.** Insubordinate; disposed to mutiny; tending to incite or encourage mutiny.

**Mutiny, v.** To rise against lawful or constituted authority, particularly in the naval or military service.

**Mutiny, n.** In criminal law, an insurrection of soldiers or seamen against the authority of their commanders; a sedition or revolt in the army or navy. One is guilty of mutiny who with intent to usurp or override lawful military authority refuses in concert with any other person or persons to obey orders or otherwise do his duty or creates any violence or disturbance. 10 U.S.C.A. § 894. (Uniform Code of Military Justice, Art 94.) See also **Desertion**.

**Mutiny Act.** In English law, an act of parliament annually passed to punish mutiny and desertion, and for the better payment of the army and their quarters. It was first passed April 12, 1689, and was the only provision for the payment of the army. 1 Bl.Comm. 415.

**Mutual.** Common to both parties. Interchangeable; reciprocal; each acting in return or correspondence



to the other; given and received;—spoken of an engagement or relation in which like duties and obligations are exchanged; e.g., the marital relation.

As to mutual Account; Assent; Combat; Condition; Contract; Covenant; Credits; Debt; Insurance; Insurance (*Mutual insurance*); Mistake; Promise; and Testament, see those titles. See also **Mutuality**.

**Mutual affray.** A fight in which both parties willingly enter and is similar to a duel. *Taylor v. Commonwealth*, 281 Ky. 442, 136 S.W.2d 544.

**Mutual agreement.** A meeting of the minds on a specific subject, and a manifestation of intent of the parties to do or refrain from doing some specific act or acts. See **Agreement**; **Contract**; **Treaty**.

**Mutual benefit association.** One based on reciprocal contracts and requires that a member receive benefits as a matter of right. In *re Henderson's Estate*, 17 Cal.2d 853, 112 P.2d 605, 609. Commonly a fraternal or social organization which provides insurance for its members on an assessment basis.

**Mutual benefit insurance.** Type of insurance offered to members of a mutual benefit association commonly characterized by assessment of members to meet claims. See **Mutual benefit association**.

**Mutual company.** A corporation in which shares are held exclusively by members to whom profits are distributed as dividends in proportion to the business which the members did with the company. One in which the members are both the insurers and the insured. *Pink v. Town Taxi Co.*, 138 Me. 44, 21 A.2d 656, 659.

**Mutual demands.** Those between the same parties and due in the same capacity or right. *Thompson v. Prince*, Tex.Civ.App., 126 S.W.2d 574, 576.

**Mutual fund.** An investment company that raises money by selling its own stock to the public and investing the proceeds in other securities, with the value of its stock fluctuating with its experience with the securities in its portfolio. Mutual funds are of two types: "open-end," in which capitalization is not fixed and more shares may be sold at any time, and "closed-end," in which capitalization is fixed and only the number of shares originally authorized may be sold.

See also **Investment company**; **Open-end investment company**.

**Load fund.** Type of open-end investment trust in which a charge is made at time of purchase of shares to cover administrative and commission expenses.

**No-load fund.** A mutual fund that has no service charge for buying its shares.

**Mutual insurance company.** Type of insurance company in which there is no capital stock and in which the policyholders are the owners. See also **Insurance** (*Mutual insurance*).

**Mutuality.** Reciprocation; interchange. An acting by each of two parties; an acting in return. "Mutuality of contract" means that obligation rests on each party to do or permit doing of something in consideration of other party's act or promise; neither party being bound unless both are bound. *Aden v. Dalton*,

341 Mo. 454, 107 S.W.2d 1070, 1073. Called, also, mutuality of obligation. *United Appliance Corporation v. Boyd*, Tex.Civ.App., 108 S.W.2d 760, 764.

As to mutuality of "Assent," "Mistake," etc., see those titles.

**Mutuality doctrine.** Doctrine in equity to the effect that equitable relief will be denied a party to a contract on a showing that the plaintiff is not bound to the same extent as the defendant in fulfilling the contract. In another context, it refers to the obligation of a meeting of the minds before a contract can be found.

**Mutuality of obligation.** Mutuality of obligation requires that unless both parties to a contract are bound, neither is bound. *Sala & Ruthe Realty, Inc. v. Campbell*, 89 Nev. 483, 515 P.2d 394, 396. Mutuality of obligation as pertains to executory contract requires that each party to agreement be bound to perform, and if it appears that one party was never bound to do the acts which formed the consideration for promise of the other, there is lack of mutuality of obligation and other party is not bound. *McCandles v. Schick*, 85 Idaho 509, 380 P.2d 893, 898.

**Mutuality of remedy.** In equity, one party to a contract may not have equitable relief if he is not bound by the contract to the same extent as the other party, or if his remedy is not co-extensive. Generally, specific performance will be granted only where there is "mutuality of remedy", which means that right to performance must be mutual. *Burr v. Greenland*, Tex. Civ.App., 356 S.W.2d 370, 375.

**Mutual mistake.** One common to both contracting parties, wherein each labors under same misconception as to past or existing material fact. *Artman v. O'Brien*, Mo.App., 398 S.W.2d 24, 27. Mutual mistake with regard to contract exists where there has been a meeting of the minds of the parties and an agreement actually entered into but the agreement in its written form does not express what was really intended by the parties. *Sierra Blanca Sales Co., Inc. v. Newco Industries, Inc.*, App., 84 N.M. 524, 505 P.2d 867, 873.

**Mutual relief association.** An insurer, chartered under a designated statute, having no capital stock, having relief funds created and sustained by assessments made upon the members, which files reports with insurance commissioner evidencing that it is not conducted for profit of its officers. *State v. Texas Mut. Life Ins. Co. of Texas*, Tex.Civ.App., 51 S.W.2d 405, 412.

**Mutual reserve company.** A company issuing "benefit thrift certificates" containing both savings features and renewable term insurance features, paid for by a single premium, with cash and loan values and limitation upon the expense liable for cost of supervision and management, was a "mutual reserve company".

**Mutual savings bank.** A bank organized by depositors, whose interest is shown by certificates of deposit, for the purpose of furnishing a safe depository for money of members. It need not be incorporated or under supervision unless state law so requires. *A-C Investment Ass'n v. Helvering*, 62 App.D.C. 339, 68 F.2d 386, 387. A banking institution in which the deposi-

tors are the owners and which has no capital stock. See also **Savings and Loan Association**.

**Mutual wills.** Those made as the separate wills of two people which are reciprocal in provision. Or those executed pursuant to agreement or compact between two or more persons to dispose of their property in particular manner, each in consideration of the other. See **Reciprocal wills**.

**Mutuant.** The person who lends chattels in the contract of *mutuum* (*q.v.*).

**Mutuari** /myùwchuwéray/. To borrow; *mutuatus*, a borrowing.

**Mutuary** /myúwchuwèhriy/. A person who borrows personal chattels to be consumed by him and returned to the lender in kind and quantity; the borrower in a contract of *mutuum*.

**Mutuatus** /myúwchuwéydəs/. A loan of money.

**Mutus et surdus** /myúwdəs èt sárdəs/. Lat. In civil and old English law, dumb and deaf.

**Mutuum** /myùwchuwəm/. Lat. A loan for consumption; a loan of chattels, upon an agreement that the borrower may consume them, returning to the lender an equivalent in kind and quantity; as, a loan of corn, wine, or money which is to be used or consumed, and is to be replaced by other corn, wine, or money. In re Ellis' Estate, 24 Del.Ch. 393, 6 A.2d 602, 611. At common law, such a transaction is regarded as a sale or exchange, and not a bailment. See also **Loan for exchange**; **Loan for use**.

**Mysterious disappearance.** Term refers to theft insurance policy provision covering any disappearance or loss under unknown, puzzling or baffling circumstances which arouse wonder, curiosity or speculation, or circumstances which are difficult to understand or explain. Claiborne v. U. S. Fire Ins. Co., La.App., 193 So.2d 315, 317.

**Mystery.** A trade, art, or occupation. Masters frequently bind themselves in the indentures with their apprentices to teach them their art, trade, and *mystery*.