

# W

**W.** As an abbreviation, this letter frequently stands for "William" (king of England), "Westminster," "west," or "western."

**Wacreour.** L. Fr. A vagabond, or vagrant.

**Wadia** /wéyd(i)yə/. A pledge. See **Vadium**; **Fides facta**.

**Waftors** /wæftərz/. Conductors of vessels at sea.

**Waga** /wey(g)ə/. In old English law, a weight; a measure of cheese, salt, wool, etc., containing two hundred and fifty-six pounds avoirdupois.

**Wage.** In old English practice, to give security for the performance of a thing. See also **Wages**.

**Wage and hour laws.** General term describing federal and state laws governing the maximum hours which may be worked and the minimum wage to be paid. In particular, the federal law known as Fair Labor Standards Act of 1938 which regulates wages, hours and other conditions of labor. 29 U.S.C.A. § 201 et seq. See also **Eight hour laws**; **Fair Labor Standards Act**; **Walsh-Healey Act**.

**Wage assignments.** The transfer or assignment in advance of one's wages generally in connection with a debt or judgment. Such assignments are governed by statutes in most states. See also **Assignment (Assignment for benefit of creditors)**.

**Wage earner's plan.** A type of partial bankruptcy in which a person keeps his or her property and pays off a court-established proportion of debt over a period of time and under court supervision. See **Bankruptcy Act Ch. 13, "Adjustment of Debts of An Individual With Regular Income"**.

**Wage garnishment.** See **Garnishment**.

**Wager.** A contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one of them or that they shall gain or lose on the happening of an uncertain event or upon the ascertainment of a fact in dispute, where the parties have no interest in the event except that arising from the possibility of such gain or loss. The word "wagering" is practically synonymous with the words betting and gambling, and the terms are so used in common parlance and in statutory and constitutional enactments. *McDonald v. Bryant*, 238 Ark. 338, 381 S.W.2d 736, 738. See also **Bet**; **Pari-mutuel betting**.

**Wagering contract.** One in which the parties stipulate that they shall gain or lose, upon the happening of an uncertain event, in which they have no interest except that arising from the possibility of such gain or loss. See also **Wager**.

**Wagering gain.** The share of each, where individuals carrying on business in partnership make gains in wagering transactions. *Jennings v. Commissioner of Internal Revenue*, C.C.A.Tex., 110 F.2d 945, 946.

**Wager of battel.** The trial by wager of battel was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that Heaven would give the victory to him who was in the right. 3 Bl.Comm. 337. It was abolished by St. 59 Geo. III, c. 46.

**Wager of law.** In old practice, the giving of *gage* or sureties by a defendant in an action of debt that at a certain day assigned he would *make his law*; that is, would take an oath in open court that he did not owe the debt, and at the same time bring with him eleven neighbors (called "compurgators"), who should avow upon their oaths that they believed in their consciences that he said the truth.

**Wager policy.** See **Policy of insurance**.

**Wages.** A compensation given to a hired person for his or her services. Compensation of employees based on time worked or output of production.

Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. *Ernst v. Industrial Commission*, 246 Wis. 205, 16 N.W.2d 867. Term should be broadly defined and includes not only periodic monetary earnings but all compensation for services rendered without regard to manner in which such compensation is computed. *Ware v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 24 Cal.App.3d 35, 100 Cal.Rptr. 791, 797.

See also **Compensation**; **Current wages**; **Front wages**; **Minimum wage**; **Salary**.

**Wagner Act.** A Federal law, passed in 1935, that established most basic union rights. It prohibited several employer actions (such as attempting to force em-

ployees to stay out of a union) and labeled these actions "unfair labor practices." It also set up the National Labor Relations Board to help enforce the new labor laws. 29 U.S.C.A. § 151 et seq.

**Wagonage** /wægənəj/. Money paid for carriage in a wagon.

**Wagonway**. That part of a street ordinarily used for the passage of vehicles within the curb lines. *Delaware, L. & W. R. Co. v. Chiara, C.C.A.N.J., 95 F.2d 663, 666.*

**Waif** /wéyf/. Waifs are goods found, but claimed by nobody; that of which every one waives the claim. Also, goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. Waifs are to be distinguished from *bona fugitiva*, which are the goods of the felon himself, which he abandons in his flight from justice.

**Wainable** /wéynəbəl/. In old records, that may be plowed or manured; tillable.

**Wainage** /wéynəj/. In old English law, the team and instruments of husbandry belonging to a countryman, and especially to a villein who was required to perform agricultural services.

**Wainagium** /weynéj(iy)əm/. What is necessary to the farmer for the cultivation of his land.

**Wait and see doctrine**. The "wait and see" doctrine is a rule which permits consideration of events occurring after inception of the instruments which are relevant to the vesting of a future interest, so that if the contingency on which the interest is limited actually occurs within the period of the perpetuities rule, the interest is valid. *Three Rivers Rock Co. v. Reed Crushed Stone Co., Inc., Ky., 530 S.W.2d 202, 206.* In determining whether a contingent interest violates the Rule Against Perpetuities, many states have enacted laws which permit the court to look at the condition when the contingency occurs and not, as the Rule prescribes, at the creation of the interest. In some states, the doctrine is called the second look doctrine.

**Waiting clerks**. In old English law, officers whose duty it formerly was to wait in attendance upon the court of chancery. The office was abolished in 1842 by St. 5 & 6 Vict., c. 103.

**Waiting period**. The period during which an insurance policy is not in effect or for which nothing will be paid on the policy. For example, if there is a waiting period of 30 days under a particular disability policy, the insured will have to be disabled for 30 days before a payment is made for loss of earnings.

In labor law, a period following a notice of intention to strike during which a strike may not lawfully take place. See 29 U.S.C.A. § 158(d). See also **Cooling off period**.

In securities law, the period following registration of a security with Securities and Exchange Commission during which the security may not be sold to the public.

**Waive, v.** To abandon, throw away, renounce, repudiate, or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity, or wrong. To give up right or claim voluntarily.

A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it.

In order for one to "waive" a right, he must do it knowingly and be possessed of the facts. *Barnhill v. Rubin, D.C.Tex., 46 F.Supp. 963, 966.*

**Waive, n.** In old English law, a woman outlawed. The term is, as it were, the feminine of "outlaw," the latter being always applied to a man; "waive," to a woman.

**Waiver**. The intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it. The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong. A doctrine resting upon an equitable principle, which courts of law will recognize. *Atlas Life Ins. Co. v. Schrimsher, 179 Okl. 643, 66 P.2d 944, 948.*

Waiver is essentially unilateral, resulting as legal consequence from some act or conduct of party against whom it operates, and no act of party in whose favor it is made is necessary to complete it. *Coleman Production Credit Ass'n v. Mahan, Tex.Civ. App., 168 S.W.2d 903, 904.* And may be shown by acts and conduct and sometimes by nonaction. *Concrete Engineering Co. v. Grande Bldg. Co., 230 Mo. App. 443, 86 S.W.2d 595, 608.*

Terms "estoppel" and "waiver" are not synonymous; "waiver" means the voluntary, intentional relinquishment of a known right, and "estoppel" rests upon principle that, where anyone has done an act, or made a statement, which would be a fraud on his part to controvert or impair, because other party has acted upon it in belief that what was done or said was true, conscience and honest dealing require that he not be permitted to repudiate his act or gainsay his statement. *Peloso v. Hartford Fire Ins. Co., 102 N.J. Super. 357, 246 A.2d 52, 58.*

See also **Abandonment; Estoppel; Forfeiture.**

**Express waiver**. The voluntary, intentional relinquishment of a known right.

**Implied waiver**. A waiver is implied where one party has pursued such a course of conduct with reference to the other party as to evidence an intention to waive his rights or the advantage to which he may be entitled, or where the conduct pursued is inconsistent with any other honest intention than an intention of such waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has incurred trouble or expense thereby. To make out a case of implied "waiver" of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amounting to an estoppel on his part. *Rosenthal v. New York Life Ins. Co., C.C.A.Mo., 99 F.2d 578, 579.*

**Insurance law.** Substance of doctrine of "waiver" in insurance law is that if insurer, with knowledge of facts which would bar existing primary liability, recognizes such primary liability by treating policy as in force, it will not thereafter be allowed to plead such facts to avoid its primary liability.

**Lien waiver.** See that title.

**Waiver by election of remedies, doctrine of.** Doctrine applies if there exist two or more coexisting remedies between which there is right of election, inconsistency as to such available remedies, and actual bringing of action or doing some other decisive act, with knowledge of facts, whereby party electing indicates his choice between such inconsistent remedies. *Hertz v. Mills*, D.C.Md., 10 F.Supp. 979, 981.

**Waiver of exemption.** A clause inserted in a note, bond, lease, etc., expressly waiving the benefit of the laws exempting limited amounts of personal property from levy and sale on judicial process, so far as concerns the enforcement of the particular debt or obligation.

**Waiver of immunity.** A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed to him by constitutions, that no person shall be compelled in any criminal case to be a witness against himself. In re Grae, 282 N.Y. 428, 26 N.E.2d 963, 966. See **Immunity**.

**Waiver of premium clause.** Provision in insurance policy providing for waiver of premium payments upon disability of insured. Commonly such waiver only takes effect after a certain time period of disability; e.g. six months.

**Waiver of protest.** An agreement by the indorser of a note or bill to be bound in his character of indorser without the formality of a protest in case of non-payment, or, in the case of paper which cannot or is not required to be protested, dispensing with the necessity of a demand and notice.

**Waiver of tort.** The election, by an injured party, for purposes of redress, to treat the facts as establishing an implied contract, which he may enforce, instead of an injury by fraud or wrong, for the committing of which he may demand damages, compensatory or exemplary.

**Walapauz.** In old Lombardic law, the disguising the head or face, with the intent of committing a theft.

**Walensis** /wəlén(t)səs/. In old English law, a Welshman.

**Waleschery** /wélsh(ə)riy/. The being a Welshman.

**Walliscus** /wəlískəs/. In Saxon law, a servant, or any ministerial officer.

**Walkers.** Foresters who have the care of a certain space of ground assigned to them.

**Walk out.** An organized withdrawal of employees from their place of employment because of a labor dispute.

**Wall.** An erection of stone, brick, or other material, raised to some height, and intended for purposes of privacy, security or inclosure. In law, this term occurs in such compounds as "ancient wall," "party-wall," "division-wall," etc. See also **Spite fence**.

**Common wall.** A party wall; one which has been built at the common expense of the two owners whose properties are contiguous, or a wall built by one party in which the other has acquired a common right.

**Wallia** /wól(i)yə/. In old English law, a wall; a sea-wall; a mound, bank, or wall erected in marshy districts as a protection against the sea.

**Walsh-Healey Act.** Federal Act (1936) which provides that government contractors should pay not less than the prevailing minimum wage, observe the eight-hour day and the forty-hour week, employ no convict labor and no female under 18 years of age or male under 16 years of age, and allow no hazardous or unsanitary working conditions in their plants. 41 U.S.C.A. §§ 35-45.

**Wampum** /wómpəm/. Unlike France, Britain undertook no coinage for the use of her American colonies. The earliest medium of exchange for the New England settlements was wampum ordered by The General Court of Massachusetts in 1637. The court ordered that "wampampege should passe at 6 a penny for any sum under 12d." Wampum generally consisted of shells, coon pelts and bullets and was offered in lieu of coins, which were almost non-existent. Although wampum served the purpose for average daily transactions, great confusion was experienced where larger sums were involved. With England ignoring the colonists' need for a standard medium of exchange, the General Court in 1652 ordered the first metallic currency for the English Americans.

**Wander.** To ramble here and there without any certain course. In its broad sense, "wander" means to ramble without a definite purpose or objective, roam, rove, or stray, and to go aimlessly, indirectly or casually. *People v. Weger*, 251 C.A.2d 584, 59 Cal.Rptr. 661, 667. See **Transient**.

**Wanlass** /wónlās/. An ancient customary tenure of lands; i.e., to drive deer to a stand that the lord may have a shot.

**Wantage.** In marine insurance, ullage; deficiency in the contents of a cask or vessel caused by leaking.

**Want of consideration.** Term embraces transactions or instances where no consideration was intended to pass. *Ranschenbach v. McDaniel's Estate*, 122 W.Va. 632, 11 S.E.2d 852, 854. For distinction between "failure of consideration" and "want of consideration," see **Failure of consideration**.

**Want of jurisdiction.** Lack of jurisdiction over person or subject matter. A lack of authority to exercise in a particular manner a power which board or tribunal has; the doing of something in excess of authority possessed. *Evans v. Superior Court in and for City and County of San Francisco*, 14 Cal.2d 563, 96 P.2d 107, 116.

**Want of repair.** As to highways, anything in the state or condition of the highway which renders it unsafe or inconvenient for ordinary travel. *Adams v. Town of Bolton, Mass.*, 297 Mass. 459, 9 N.E.2d 562, 565.

**Wanton.** Reckless, heedless, malicious; characterized by extreme recklessness or foolhardiness; recklessly

disregardful of the rights or safety of others or of consequences. In *re Wegner*, C.C.A.Ill., 88 F.2d 899, 902. Means undisciplined, unruly, marked by arrogant recklessness of justice, feelings of others, or the like; willful and malicious. *Lubbock Bail Bond v. Joshua*, Tex.Civ.App., 416 S.W.2d 523, 525. In its ordinarily accepted sense connotes perverseness exhibited by deliberate and uncalled for conduct, recklessness, disregardful of rights and an unjustifiable course of action. *Botto v. Fischesser*, 174 Ohio St. 322, 189 N.E.2d 127, 130, 22 O.O.2d 380. See also **Wantonness**.

**Wanton act.** One done in reckless disregard of the rights of others, evincing a reckless indifference to consequences to the life, or limb, or health, or reputation or property rights of another, and is more than negligence, more than gross negligence, and is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of action, equivalent in its results to wilful misconduct.

**Wanton acts and omissions.** Those of such character or done in such manner or under such circumstances as to indicate that a person of ordinary intelligence actuated by normal and natural concern for the welfare and safety of his fellowmen who might be affected by them could not be guilty of them unless wholly indifferent to their probable injurious effect or consequences. *Pupke v. Pupke*, 102 Colo. 337, 79 P.2d 290, 292.

**Wanton and reckless misconduct.** Occurs when a person, with no intent to cause harm, intentionally performs an act so unreasonable and dangerous that he knows, or should know, that it is highly probable that harm will result. *Donnelly v. Southern Pac. Co.*, 18 Cal.2d 863, 118 P.2d 465, 469, 470.

**Wanton conduct.** Occurs when a person though possessing no intent to cause harm performs an act which is so unreasonable and dangerous that imminent likelihood of harm or injury to another is reasonably apparent. *Schorah v. Carey*, Del.Super., 318 A.2d 610, 612.

**Wanton injury.** Injury produced by conscious and intentional wrongful act, or omission of known duty with reckless indifference to consequences. It must be predicated upon actual knowledge of another's peril and a failure to take available preventative action knowing that such failure will probably result in injury. *Rainey v. State*, 31 Ala.App. 271, 17 So.2d 683, 686.

**Wanton misconduct.** Act or failure to act, when there is a duty to act, in reckless disregard of rights of another, coupled with a consciousness that injury is a probable consequence of act or omission. *Swain v. American Mut. Liability Ins. Co.*, C.C.A.La., 134 F.2d 886, 887. Term refers to intentional act of unreasonable character performed in disregard of risk known to him or so obvious that he must be taken to have been aware of it and so great as to make it highly probable that harm would follow and it is usually accompanied by conscious indifference to the consequences. *Goss v. Baltimore & O. R. Co.*, C.A.Pa., 355 F.2d 649, 651.

**Wanton negligence.** Heedless and reckless disregard for another's rights with consciousness that act or omission to act may result in injury to another. *Craig v. Stagner*, 159 Tenn. 511, 19 S.W.2d 234, 236. See also **Negligence**.

**Wantonness.** Conscious doing of some act or the omission of some duty with knowledge of existing conditions and consciousness that, from the act or omission, injury will likely result to another. *Bedwell v. De Bolt*, 221 Ind. 600, 50 N.E.2d 875, 877. Conscious failure by one charged with a duty to exercise due care and diligence to prevent an injury after the discovery of the peril, or under circumstances where he is charged with a knowledge of such peril, and being conscious of the inevitable or probable results of such failure. *Stout v. Gallemore*, 138 Kan. 385, 26 P.2d 573. A reckless or intentional disregard of the property, rights, or safety of others, implying, actively, a willingness to injure and disregard of the consequences to others, and, passively, more than mere negligence, that is, a conscious and intentional disregard of duty.

**Wapentake** /wápəntèyk/. In English law, a local division of the country; the name is in use north of the Trent to denote a hundred. The derivation of the name is said to be from "weapon" and "take," and indicates that the division was originally of a military character. Also a hundred court.

**War.** Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between citizens in the same nation or state. *Gitlow v. Kiely*, D.C.N.Y., 44 F.2d 227, 233. A contest by force between two or more nations, carried on for any purpose, or armed conflict of sovereign powers or declared and open hostilities, or the state of nations among whom there is an interruption of pacific relations, and a general contention by force, authorized by the sovereign. *West v. Palmetto State Life Ins. Co.*, 202 S.C. 422, 25 S.E.2d 475, 477, 478. War does not exist merely because of an armed attack by the military forces of another nation until it is a condition recognized or accepted by political authority of government which is attacked, either through an actual declaration of war or other acts demonstrating such position. *Savage v. Sun Life Assur. Co. of Canada*, D.C.La., 57 F.Supp. 620, 621.

Term as used in statute proscribing any claim against United States arising out of combatant activity of Military or Naval Forces or Coast Guard during time of war includes an undeclared war as well as a formally declared war. *Morrison v. U. S.*, D.C.Ga., 316 F.Supp. 78, 79.

**Articles of war.** See **Article**.

**Civil war.** An internecine war. A war carried on between opposing citizens of the same country or nation.

**Imperfect war.** See **Perfect war**, *infra*.

**Laws of war.** This term denotes a branch of public international law, and comprises the body of rules and principles observed by civilized nations for the regulation of matters inherent in, or incidental to, the conduct of a public war; such, for example, as the relations of neutrals and belligerents, blockades, captures, prizes, truces and armistices, capitulations,

prisoners, and declarations of war and peace; e.g. Geneva Convention.

**Mixed war.** A mixed war is one which is made on one side by public authority, and on the other by mere private persons.

**Perfect war.** Where whole nation is at war with another whole nation, but when the hostilities are limited as respects places, persons, and things, the war is termed "imperfect war." *Bas v. Tingy*, 4 U.S. (Dall.) 37, 40, 1 L.Ed. 731.

**Private war.** One between private persons, lawfully exerted by way of defense, but otherwise unknown in civil society.

**Public war.** Every contention by force, between two nations, in external matters, under the authority of their respective governments. *Prize Cases*, 2 Black 666, 17 L.Ed. 459.

**Solemn war.** A war made in form by public declaration; a war solemnly declared by one state against another. *Bas v. Tingy*, 4 U.S. (Dall.) 37, 40, 1 L.Ed. 731.

**War clauses.** Art. I, § 8 (Clauses 11–16) U.S.Const., provides, inter alia, that Congress shall have power to declare war, and raise and support military forces. See **War power**.

**War crimes.** Crimes committed by countries in violation of the international laws governing wars. At Nuremberg after World War II, crimes committed by the Nazis were so tried.

**Ward.** Guarding, caring, protecting.

A division of a city or town for elections, police, and other purposes. A person, especially a child, or incompetent, placed by the court under the care of a guardian. A corridor, room, or other division of a prison, hospital, or asylum.

See **Guardian**; **Guardianship**.

**Wardage.** Money paid and contributed to watch and ward.

**Ward-horn.** In old English law, the duty of keeping watch and ward, with a horn to blow upon any occasion of surprise.

**Ward-feh.** Sax. In old records, ward-fee; the value of a ward, or the money paid to the lord for his redemption from wardship.

**Ward-in-chancery.** An infant who is under the superintendence of the chancellor.

**Ward-mote.** In English law, a court kept in every ward in London, commonly called the "ward-mote court," or "inquest."

**Ward-penny.** In old English law, money paid to the sheriff or castellains, for the duty of watching and warding a castle.

**Wardship.** In military tenures, the right of the lord to have custody, as guardian, of the body and lands of the infant heir, without any account of profits, until he was twenty-one or she sixteen. In socage the guardian was accountable for profits; and he was not the lord, but the nearest relative to whom the inheritance could not descend, and the wardship ceased at fourteen. In copyholds, the lord was the guardian,

but was perhaps accountable for profits. See 2 Bl. Comm. 67.

**Wardship in chivalry.** An incident to the tenure of knight-service.

**Wardship in copyholds.** The lord is guardian of his infant tenant by special custom.

**Wards of admiralty.** Seamen are sometimes thus designated, because, in view of their general improvidence and rashness, and though they are not technically incapable of contracting, their contracts are treated like those of fiduciaries and beneficiaries, and if there is any inequality in terms or any disproportion in the bargain or any sacrifice of rights of seamen which are not compensated by extraordinary benefits, the judicial interpretation of the transaction is that the bargain is unjust and that pro tanto, the bargain ought to be set aside as inequitable. See *Garrett v. Moore-McCormack Co.*, Pa., 317 U.S. 239, 63 S.Ct. 246, 251, 87 L.Ed. 239.

**Wards of court.** Infants and persons of unsound mind. *Davis' Committee v. Loney*, 290 Ky. 644, 162 S.W.2d 189, 190. Their rights must be guarded jealously. *Montgomery v. Erie R. Co.*, C.C.A.N.J., 97 F.2d 289, 292. See **Guardianship**.

**Ward-staff.** In old records, a constable's or watchman's staff.

**Ward-wit.** In old English law, immunity or exemption from the duty or service of ward, or from contributing to such service. Exemption from amercement for not finding a man to do ward.

**Warda** /wórdə/. L. Lat. In old English law, ward; guard; protection; keeping; custody. A ward; an infant under wardship.

**Warden.** A guardian; a keeper. Person in primary charge of prison. This is the name given to various officers.

**Warden of the cinque ports** /wórdən əv ðə sɪŋk pórts/. In English law, the title of the governor or presiding officer of the Cinque Ports (*q.v.*).

**Wards and liveries.** In English law, the title of a court of record, established in the reign of Henry VIII. See **Court of Wards and Liveries**.

**Warectare** /wòhrəktériy/. L. Lat. In old English law, to fallow ground; or plow up land (designed for wheat) in the spring, in order to let it lie fallow for the better improvement.

**Warehouse.** Structure used for the reception and storage of goods and merchandise. *Carter v. Bauman*, C.C.A.Cal., 19 F.2d 855, 856. The term may include any structure used to hold goods, stores or wares temporarily or for a length of time. In re *Miller Land & Livestock Co.*, D.C.Mont., 56 F.Supp. 34, 35.

**Warehouse book.** A book used by merchants to contain an account of the quantities of goods received, shipped, and remaining in stock.

**Warehouseman.** One engaged in business of receiving and storing goods of others for compensation or profit; person who receives goods and merchandise to be stored in his warehouse for hire; one who, as a business and for hire, keeps and stores goods of

others. U.C.C. § 7-102. State ex rel. and for Use and Benefit of Cawrse v. American Surety Co. of New York, 148 Or. 1, 35 P.2d 487, 491. The business is public or private as it may be conducted for storage of goods of general public or for those of certain persons. The general commercial laws governing rights and liabilities of warehousemen are provided in U.C.C. § 7-201 *et seq.*

**Warehousemen's lien.** Right of warehouseman to retain possession of goods until storage charges have been paid. See U.C.C. §§ 7-209, 7-210.

**Warehouse receipt.** A receipt issued by a warehouseman for goods received by him on storage in his warehouse. U.C.C. §§ 1-201(45), 7-201. It is evidence of title to goods thereby represented. *Woldson v. Davenport Mill & Elevator Co.*, 169 Wash. 298, 13 P.2d 478, 480. For form and content of warehouse receipt, see U.C.C. § 7-202. As regards altered warehouse receipts, see U.C.C. § 7-208. See also **Field warehouse receipt**.

**Warehouse system.** A system of public stores or warehouses, established or authorized by law, called "bonded warehouses," in which an importer may deposit goods imported, in the custody of the revenue officers, paying storage, but not being required to pay the customs duties until the goods are finally removed for consumption in the home market, and with the privilege of withdrawing the goods from store for the purpose of re-exportation without paying any duties.

**Bonded warehouse.** Special type of private warehouse used to store products on which a federal tax must be paid before they can be sold.

**Warning.** A pointing out of danger. Also a protest against incurring it. The purpose of a "warning" is to apprise a party of the existence of danger of which he is not aware to enable him to protect himself against it, and where the party is aware of the danger, the warning will serve no useful purpose and is unnecessary, and there is no duty to warn against risks which are open and obvious. *Wiseman v. Northern Pac. Ry. Co.*, 214 Minn. 101, 7 N.W.2d 672, 675.

Federal laws require warning labels to be affixed to potentially dangerous products, clothes, drugs, tools, and the like.

See also **Caveat; Caveat emptor.**

Under the old practice of the English court of probate, a warning was a notice given by a registrar of the principal registry to a person who had entered a *caveat*, warning him, within six days after service, to enter an appearance to the *caveat* in the principal registry, and to set forth his interest, concluding with a notice that in default of his doing so the court would proceed to do all such acts, matters, and things as should be necessary. By the rules under the judiciary acts, a writ of summons has been substituted for a warning.

**Warnistura** /wɔrnəst(y)ūrə/. In old English records, garniture; furniture; provision.

**Warnoth.** In old English law, an ancient custom, whereby, if any tenant holding of the Castle of Dover failed in paying his rent at the day, he should forfeit double, and, for the second failure, treble, etc.

**War power.** Power of federal government to wage war successfully. *Brown v. Wright*, C.C.A.W.Va., 137 F.2d 484, 489; *United States v. Maviglia*, D.C.N.J., 52 F.Supp. 946, 947. It embraces every aspect of national defense, including protection of war materials as well as members of armed forces from injury and danger; but direct interference with liberty and property and abridgement of constitutional guaranties of freedom can be justified under the "war power" only where the danger to the government is real, impending and imminent. *Schueler v. Drum*, D.C.Pa., 51 F.Supp. 383, 387.

While Congress has power to declare war (Art. I, § 8, U.S.Const.), the President, as Commander in Chief, has ultimate power over conduct of war including tactics and strategy (Art. II, § 1).

See also **War (War clauses)**.

**Warrant, v.** In contracts, to engage or promise that a certain fact or state of facts, in relation to the subject-matter, is, or shall be, as it is represented to be.

In conveyancing, to assure the title to property sold, by an express covenant to that effect in the deed of conveyance. To stipulate by an express covenant that the title of a grantee shall be good, and his possession undisturbed.

**Warrant, n.** An order by which the drawer authorizes one person to pay a particular sum of money.

An authority issued to a collector of taxes, empowering him to collect the taxes extended on the assessment roll, and to make distress and sale of goods or land in default of payment.

A command of a council, board, or official whose duty it is to pass upon the validity and determine the amount of a claim against the municipality, to the treasurer to pay money out of any funds in the municipal treasury, which are or may become available for the purpose specified, to a designated person whose claim therefor has been duly adjusted and allowed. *Roe v. Roosevelt Water Conservation Dist.*, 41 Ariz. 197, 16 P.2d 967, 970; *State ex rel. Toomey v. State Board of Examiners*, 74 Mont. 1, 238 P. 316, 328. A "warrant" differs from a "bond" in that a bond is a "negotiable instrument", whereas a warrant is nonnegotiable and is subject at all times to the defenses it would be were it in the hands of the original payee, which is not the case with a negotiable bond. *Adams v. McGill*, Tex.Civ.App., 146 S.W.2d 332, 334.

See also **Land warrant; Possessory warrant; Probable cause; Search warrant; Share-warrant to bearer.**

**Arrest warrant.** A written order which is made on behalf of the state and is based upon a complaint issued pursuant to statute and/or court rule and which commands law enforcement officer to arrest a person and bring him before magistrate. *Pillsbury v. State*, 31 Wis.2d 87, 142 N.W.2d 187, 190. See Fed.R. Crim.P. 4.

**Form.** The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate. Fed.R.Crim.P. 4(c).

**Issuance.** If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue. Fed.R.Crim.P. 4(a).

See also **Arrest; Probable cause; Warrantless arrest.**

**Bench warrant.** See **Bench.**

**Death warrant.** A warrant issued generally by the chief executive authority of a state, directed to the sheriff or other proper local officer or the warden of a jail, commanding him at a certain time to proceed to carry into execution a sentence of death imposed by the court upon a convicted criminal.

**Distress warrant.** See **Distress.**

**General warrant.** A process which formerly issued from the state secretary's office in England to take up (without naming any persons) the author, printer, and publisher of such obscene and seditious libels as were specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons on the 22nd April, 1766.

**Interest warrant.** Order drawn by a corporation on its bank directing the bank to pay a bondholder who is entitled to interest.

**Landlord's warrant.** See **Landlord.**

**Land warrant.** See that title.

**Outstanding warrant.** An order for arrest of a person which has not yet been executed.

**Search warrant.** See that title.

**Stock warrant.** A certificate entitling the owner to buy a specified amount of stock at a specified time(s) for a specified price. Differs from a stock option only in that options are granted to employees and warrants are sold to the public. A "warrant" is an instrument issued by a corporation giving holder right to subscribe to capital stock of corporation at fixed price either for limited period or perpetually. *Miller v. General Outdoor Advertising Co.*, D.C.N.Y., 223 F.Supp. 790, 794.

**Warrant creditor.** See **Creditor.**

**Warrant of arrest.** See **Arrest.**

**Warrant of attorney.** An instrument in writing, addressed to one or more attorneys therein named, authorizing them, generally, to appear in any court, or in some specified court, on behalf of the person giving it, and to confess judgment in favor of some particular person therein named, in an action of debt. It usually contains a stipulation not to bring any action, or any writ of error, or file a bill in equity, so as to delay him; such writing usually being given as security for obligation on which judgment was authorized, and in such procedure service of process is not essential. See **Judgment (Confession of judgment).**

**Warrant of commitment.** A written authority committing a person to custody.

**Warrant officers.** In the United States army, navy, coast and geodetic survey, coast guard, marine corps and air force, these are a class of inferior officers who hold their rank by virtue of a written warrant instead of a commission.

**Warrant of merchantability.** Warranty that goods are reasonably fit for general purpose for which sold. *Sperry Flour Co. v. De Moss*, 141 Or. 440, 18 P.2d 242, 243. See also **Warranty.**

**Warrant to sue and defend.** In old English practice, a special warrant from the crown, authorizing a party to appoint an attorney to sue or defend for him. 3 Bl.Comm. 25. A special authority given by a party to his attorney, to commence a suit, or to appear and defend a suit, in his behalf. These warrants are now disused, though formal entries of them upon the record were long retained in practice.

**Warrantee.** A person to whom a warranty is made.

**Warrantia chartæ** /wohrænsh(iy)ə kárdiy/. In old English practice, warranty of charter. A writ which lay for one who, being enfeoffed of lands or tenements, with a clause of warranty, was afterwards impleaded in an assize or other action in which he could not vouch to warranty. In such case, it might be brought against the warrantor, to compel him to assist the tenant with a good plea or defense, or else to render damages and the value of the land, if recovered against the tenant. 3 Bl.Comm. 300.

**Warrantia custodiæ** /wohrænsh(iy)ə kástówdiyiy/. An old English writ, which lay for him who was challenged to be a ward to another, in respect to land said to be holden by knight-service; which land, when it was bought by the ancestors of the ward, was warranted free from such thralldom. The writ lay against the warrantor and his heirs.

**Warrantia diei** /wohrænsh(iy)ə dayíyay/. A writ which lay for a man who, having had a day assigned him personally to appear in court in any action in which he was sued, was in the meantime, by commandment, employed in the king's service, so that he could not come at the day assigned. It was directed to the justices that they might not record him in default for that day.

**Warrantizare** /wòhrəntázériy/. In old English law conveyancing, to warrant; to bind one's self, by covenant in a deed of conveyance, to defend the grantee in his title and possession.

**Warrantizare est defendere et acquietare tenentem, qui warrantum vocavit, in seisinā suā; et tenens de re warranti excambium habebit ad valentiam** /wòhrəntázériy èst daféndəriy èd akwayatériy tanéntam, kwáy wòhrántam vowkéyvəd, in síyzəns(y)úwə; èt ténən(d)z diy ríy wòhrántay ekskæmb(i)yəm həbíybəd æd vlénsh(iy)əm/. To warrant is to defend and insure in peace the tenant, who calls for warranty, in his seisin; and the tenant in warranty will have an exchange in proportion to its value.

**Warrantless arrest.** Arrest of a person without a warrant. It is generally permissible if the arresting offi-

cer has reasonable grounds to believe that the person has committed a felony or if the person has committed a misdemeanor amounting to a breach of the peace in the officer's presence.

**Warrantor.** One who makes a warranty. Any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty. 15 U.S.C.A. § 2301.

**Warrantor potest excipere quod querens non tenet terram de qua petit warrantiam, et quod donum fuit insufficiens** /wohrântor pówdäst äksípëriy kwòd kwíran(d)z nõn ténat téhrəm diy kwéy pédat wohrânsh(iy)əm, èt kwòd dównəm fyúwəd inséfísh(iy)en(d)z/. A warrantor may object that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient.

**Warranty.** A promise that a proposition of fact is true. The Fred Smartley, Jr., C.C.A.Va., 108 F.2d 603, 606. A promise that certain facts are truly as they are represented to be and that they will remain so, subject to any specified limitations. In certain circumstances a warranty will be presumed, known as an "implied" warranty.

#### Commercial Sales

A warranty is a statement or representation made by seller of goods, contemporaneously with and as a part of contract of sale, though collateral to express object of sale, having reference to character, quality, or title of goods, and by which seller promises or undertakes to insure that certain facts are or shall be as he then represents them. *Bell v. Menzies*, 110 Ga.App. 436, 138 S.E.2d 731, 732. A promise or agreement by seller that article sold has certain qualities or that seller has good title thereto. A statement of fact respecting the quality or character of goods sold, made by the seller to induce the sale, and relied on by the buyer.

The general statutory law governing warranties on sales of goods is provided in U.C.C. § 2-312 *et seq.*

See also **Magnuson-Moss Warranty Act; Privity; Promissory warranty; Special warranty.**

**Express warranty.** (1) Express warranties by the seller are created as follows: (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise. (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description. (c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model. (2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. U.C.C. § 2-313.

A written statement arising out of a sale to the consumer of a consumer good pursuant to which the

manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance; or in the event of any sample or model, that the whole of the goods conforms to such sample or model. It is not necessary to the creation of an express warranty that formal words such as "warrant" or "guarantee" be used or that a specific intention to make a warranty be present, but an affirmation merely of the value of the goods or a statement purporting to be merely an opinion or commendation of the goods does not create a warranty. Statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any limitation do not create an express warranty. Calif.Civil Code, § 1791.2.

See also *Written warranty, infra.*

**Full warranty.** A warranty as to full performance covering generally both labor and materials. Under a full warranty, the warrantor must remedy the consumer product within a reasonable time and without charge after notice of a defect or malfunction. 15 U.S.C.A. § 2304. Compare *Limited warranty, infra.*

**Implied warranty.** A promise arising by operation of law, that something which is sold shall be merchantable and fit for the purpose for which the seller has reason to know that it is required. (a) Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale, if the seller is a merchant with respect to goods of that kind. The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale for this purpose. U.C.C. § 2-314(1). (b) Where the seller, at the time of contracting, has reason to know any particular purpose for which the goods are required, and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. U.C.C. § 2-315.

"Implied warranty of fitness" means that when the retailer, distributor, or manufacturer has reason to know any particular purpose for which the consumer goods are required, and further, that the buyer is relying on the skill and judgment of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose. Calif.Civil Code, § 1791.1.

"Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following: (1) Pass without objection in the trade under the contract description; (2) Are fit for the ordinary purposes for which such goods are used; (3) Are adequately contained, packaged, and labeled; (4) Conform to the promises or affirmations of fact made on the container or label. Calif.Civil Code, § 1791.1.

See also **Fitness for particular purpose.**

**Limited warranty.** A written warranty which fails to meet one or more of the minimum standards for a "full" warranty. 15 U.S.C.A. § 2303. See *Full warranty, infra.* Warranty limited to labor or to materials for a specified time, commonly given by automobile dealers in connection with sale of used cars.



*Third party beneficiaries of warranties.* See *Privity*.

*Warranty of title.* An implied promise that the seller owns the item offered for sale. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that (a) the title conveyed shall be good, and its transfer rightful; and (b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge. (2) A warranty under subsection (1) will be excluded or modified only by specified language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have. (3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. U.C.C. § 2-312.

*Written warranty.* Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified period of time, or any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet with the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product. 15 U.S.C.A. § 2301. See also *Express warranty, supra*.

### Insurance

A warranty in the law of insurance consists of a statement by insured upon the literal truth of which the validity of the contract depends. Statement, made in insurance contract by insured, which is susceptible of no construction other than that parties mutually intended that policy should not be binding, unless such statement be literally true. *Brotherhood of Railroad Trainmen v. Wood*, Tex.Civ.App., 79 S.W.2d 665, 668.

A statement, description or undertaking on the part of insured, appearing in the policy or in another instrument properly incorporated in the policy and relating contractually to the risk insured against. *Reid v. Hardware Mut. Ins. Co. of Carolinas*, S. C., 252 S.C. 339, 166 S.E.2d 317, 321.

*Affirmative warranty.* In the law of insurance, warranties may be either affirmative or promissory. Affirmative warranties may be either express or implied, but they usually consist of positive representations in the policy of the existence of some fact or state of things at the time, or previous to the time, of the making of the policy; they are, in general, conditions precedent, and if untrue, whether material to the risk or not, the policy does not attach, as it is not the contract of the insurer.

*Express warranty.* An agreement expressed in a policy, whereby the assured stipulates that certain facts relating to the risk are or shall be true, or certain acts relating to the same subject have been or shall be done.

*Promissory warranty.* In the law of insurance, a warranty which requires the performance or omission of certain things or the existence of certain facts after the beginning of the contract of insurance and during its continuance, and the breach of which will avoid the policy. See also *Promissory warranty*.

### Generally

*Construction warranty.* An undertaking or promise made by seller or building contractor of new home that such home is fit for the purpose intended; i.e. free from structural, electrical, plumbing, etc. defects. Many states have statutes which provide the purchaser with such warranty protection. See *Home Owners Warranty*; also, *Warranty of habitability*, below.

*Continuing warranty.* One which applies to the whole period during which the contract is in force; e.g., an undertaking in a charter-party that a vessel shall continue to be of the same class that she was at the time the charter-party was made.

*Covenant of warranty.* See *Covenant*.

*Cumulation and conflict of warranties.* Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply: (a) Exact or technical specifications displace an inconsistent sample or model or general language of description. (b) A sample from an existing bulk displaces inconsistent general language of description. (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. U.C.C. § 2-317.

*General warranty.* The name of a covenant of warranty inserted in deeds, by which the grantor binds himself, his heirs, etc., to "warrant and forever defend" to the grantee, his heirs, etc., the title thereby conveyed, against the lawful claims of all persons whatsoever. Where the warranty is only against the claims of persons claiming "by, through, or under" the grantor or his heirs, it is called a "special warranty."

*Implied warranty.* Exists when the law derives it by implication or inference from the nature of the transaction or the relative situation or circumstances of the parties. *Great Atlantic & Pacific Tea Co. v. Walker*, Tex.Civ.App., 104 S.W.2d 627, 632. See also this topic under *Commercial Sales* above.

*Lineal warranty.* In old conveyancing, the kind of warranty which existed when the heir derived title to the land warranted either from or through the ancestor who made the warranty.

*Personal warranty.* One available in personal actions, and arising from the obligation which one has contracted to pay the whole or part of a debt due by another to a third person. *Flanders v. Seelye*, 105 U.S. 718, 26 L.Ed. 1217.

**Special warranty.** A clause of warranty inserted in a deed of lands, by which the grantor covenants, for himself and his heirs, to "warrant and forever defend" the title to the same, to the grantee and his heirs, etc., against all persons claiming "by, through, or under" the grantor or his heirs. If the warranty is against the claims of all persons whatsoever, it is called a "general" warranty. See also *Covenant*.

**Warranty deed.** See that title.

**Warranty of fitness.** Warranty by seller that goods sold are suitable for special purpose of buyer. See also *Implied warranty* under *Commercial Sales* above.

**Warranty of habitability.** Every landlord of dwelling unit impliedly warrants that the premises are fit for habitation at time of letting and will remain so during term of tenancy. *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831.

Under "implied warranty of habitability," applicable to new housing, builder-vendor warrants that he has complied with the building code of the area in which the structure is located and that the residence was built in a workmanlike manner and is suitable for habitation. *Duncan v. Schuster-Graham Homes, Inc.*, Colo.App., 563 P.2d 976, 977. See also *Habitability*.

**Warranty deed.** Deed in which grantor warrants good clear title. The usual covenants of title are warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances and defense of title as to all claims.

**Warranty, voucher to.** In old English practice, the calling a warrantor into court by the party warranted (when tenant in a real action brought for recovery of such lands), to defend the suit for him.

**Warren.** A term in English law for a place in which birds, fishes, or wild beasts are kept.

A franchise or privilege, either by prescription or grant from the king, to keep beasts and fowls of warren, which are hares, coney, partridges, pheasants, etc. Also any place to which such privilege extends.

**Free warren.** A franchise for the preserving and custody of beasts and fowls of warren. 2 Bl.Comm. 39, 417. This franchise gave the grantee sole right of killing, so far as his warren extended, on condition of excluding other persons. 2 Bl.Comm. 39.

**War risk insurance.** See *Insurance*.

**Warsaw Convention.** Treaty concluded in Warsaw, Poland in 1929 consisting of rules, including limitation of liability, for international air travel. The United States is a party to such treaty.

**Warscot /wórskót/.** In Saxon law, a customary or usual tribute or contribution towards armor, or the arming of the forces.

**Warth.** In old English law, a customary payment, supposed to be the same with *ward-penny*.

**Wash.** A shallow part of a river or arm of the sea. The sandy, rocky, gravelly, boulder-bestrewn part of a river bottom deposited on level land near mouth of a canyon representing rocks and gravel washed down by a mountain stream.

**Wash bank.** A bank composed of such substance that it is liable to be washed away by the action of the water thereon, so as to become unsafe to travelers on highway.

**Washington, Treaty of.** A treaty signed on May 8, 1871, between Great Britain and the United States of America, with reference to certain differences arising out of the war between the northern and southern states of the Union, the Canadian fisheries, and other matters.

**Washout signal.** In railroad parlance, emergency signal meaning to stop immediately. *Stinson v. Aluminum Co. of America*, C.C.A.Tenn., 141 F.2d 682, 684.

**Wash sale.** The sale and purchase of the same or similar asset within a short time period. For income tax purposes, losses on a sale of stock may not be recognized if equivalent stock is purchased within thirty days before or thirty days after the date of sale. I.R.C. § 1091.

Also a fictitious kind of sale, disallowed on stock and other exchanges, in which a broker who has received orders from one person to buy and from another person to sell a particular amount or quantity of some particular stock or commodity simply transfers the stock or commodity from one principal to the other and pockets the difference, instead of executing both orders separately to the best advantage in each case, as is required by the rules of the different exchanges. *U. S. v. Keough*, D.C.Nev., 48 F.2d 246, 252. See also *Sale*.

**Wash transaction.** See *Wash sale*.

**Waste.** An abuse or destructive use of property by one in rightful possession. Spoil or destruction, done or permitted, to lands, houses, gardens, trees, or other corporeal hereditaments, by the tenant thereof, to the prejudice of the heir, or of him in reversion or remainder. 2 Bl.Comm. 281. *Camden Trust Co. v. Handle*, 132 N.J.Eq. 97, 26 A.2d 865, 869. A destruction or material alteration or deterioration of the freehold, or of the improvements forming a material part thereof, by any person rightfully in possession, but who has not the fee title or the full estate. An unreasonable or improper use, abuse, mismanagement, or omission of duty touching real estate by one rightfully in possession, which results in its substantial injury. Any unlawful act or omission of duty on the part of the tenant which results in permanent injury to the inheritance. Unreasonable conduct by owner of possessory estate that results in physical damage to real estate and substantial diminution in value of estates in which others have an interest. *Pleasure Time, Inc. v. Kuss*, 78 Wis.2d 373, 254 N.W.2d 463, 467. The term implies neglect or misconduct resulting in material damage to or loss of property, but does not include ordinary depreciation of property due to age and normal use over a comparatively short period of time. *First Federal Sav. & Loan Ass'n of Coffeyville v. Moulds*, 202 Kan. 557, 451 P.2d 215, 220. It is the violation of an obligation to treat the premises in such manner that no harm be done to them, and that the estate may revert to those having an underlying interest, undeteriorated by any willful or negligent acts. *Camden Trust Co. v. Handle*, 130 N.J.Eq. 125, 21 A.2d 354, 358.

The early English doctrine was to the effect that anything which changed the character or nature of the land, notwithstanding the fact that it was an improvement thereto, constituted "waste."

The primary distinction between "waste" and "trespass" is that in waste the injury is done by one rightfully in possession. *Camden Trust Co. v. Handle*, 132 N.J.Eq. 97, 26 A.2d 865, 867, 869.

*Old English criminal law.* A prerogative or liberty, on the part of the crown, of committing waste on the lands of felons, by pulling down their houses, extirpating their gardens, plowing their meadows, and cutting down their woods. 4 Bl.Comm. 385.

#### In General

*Ameliorating waste.* Change in the physical characteristics of property by an unauthorized act of the tenant but an act which adds value and improves the property. A tenant is not liable for such waste.

*Commissive waste.* Active or positive waste; waste done by acts of spoliation or destruction, rather than by mere neglect; the same as voluntary waste. See *infra*.

*Double waste.* See *Double*.

*Equitable waste.* Injury to a reversion or remainder in real estate, which is not recognized by the courts of law as waste, but which equity will interpose to prevent or remedy. Otherwise defined as an unconscientious abuse of the privilege of non-impeachability for waste at common law, whereby a tenant for life, without impeachment of waste, will be restrained from committing willful, destructive, malicious, or extravagant waste, such as pulling down houses, cutting timber of too young a growth, or trees planted for ornament, or for shelter of premises.

*Impeachment of waste.* Liability for waste committed, or a demand or suit for compensation for waste committed upon lands or tenements by a tenant thereof who has no right to commit waste. On the other hand, a tenure "without impeachment of waste" signifies that the tenant cannot be called to account for waste committed.

*Nul waste.* "No waste." The name of a plea in an action of waste, denying the commission of waste, and forming the general issue.

*Permissive waste.* That kind of waste which is a matter of omission only, as by suffering a house to fall for want of necessary reparations. 2 Bl.Comm. 281.

*Voluntary waste.* Active or positive waste; waste done or committed, in contradistinction to that which results from mere negligence, which is called "permissive" waste. Voluntary waste is the willful destruction or carrying away of something attached to the freehold, and "permissive waste" is the failure to take reasonable care of the premises. Voluntary or commissive waste consists of injury to the demised premises or some part thereof, when occasioned by some deliberate or voluntary act, as, for instance, the pulling down of a house or removal of floors, windows, doors, furnaces, shelves, or other things affixed to and forming part of the freehold. Contrasted with "permissive" waste.

*Writ of waste.* See that title.

**Waste-book.** A book used by merchants, to receive rough entries or memoranda of all transactions in the

order of their occurrence, previous to their being posted in the journal. Otherwise called a "blotter."

**Wastel** /wóstal/. A standard of quality of bread, made of the finest white flour. *Cocket bread* was slightly inferior in quality. The statute of 1266 mentions seven kinds of bread.

**Waste water.** Water that is actually wasted or not needed by the claimant thereto; water which, after it has served the purpose of the lawful claimant thereto, has been permitted to run to waste or to escape; and water which from unavoidable causes escapes from the ditches, canals, or other works of the lawful claimants. *Rock Creek Ditch & Flume Co. v. Miller*, 93 Mont. 248, 17 P.2d 1074, 1077. But water is not "waste water" so long as it remains on the land of the original appropriator.

**Wasting asset.** A natural resource having a limited useful life and, hence, subject to amortization called depletion. Examples are timberland, oil and gas wells, and ore deposits. See also **Wasting property**.

**Wasting property.** Includes such property as leasehold interests; royalties; patent rights; interests in things the substance of which is consumed, such as mines, oil and gas wells, quarries and timberlands; interests in things which are consumed in the using or are worn out by use, such as machinery and farm implements. In re *Pennock's Will*, 285 N.Y. 475, 35 N.E.2d 177, 178.

**Wasting trust.** A trust in which the trustee may apply a part of the principal to make good a deficiency of income. Trust, the res of which consists in whole or in part of property which is gradually being consumed (*i.e.* consisting of wasting assets).

**Wastors** /wéystarz/. In old statutes, a kind of thieves.

**Watch, v.** To keep guard; to stand as sentinel; to be on guard at night, for the preservation of security, peace and good order.

**Watch, n.** A division of a ship's crew. At sea, the ship's company is divided into two watches, larboard and starboard, with a mate to command each. *O'Hara v. Luckenbach S. S. Co.*, 269 U.S. 364, 46 S.Ct. 157, 160, 70 L.Ed. 313. Also the division of the day into time periods of service of the officers and crew, and, by immemorial Anglo-Saxon maritime custom, the time period of a watch never exceeded four hours. *The Denali*, C.C.A.Wash., 105 F.2d 413, 416. See also **Lookout**.

**Watch and ward.** "Watch" denotes keeping guard during the night; "ward," by day.

**Watchman.** One whose general duties consist of guarding, patrolling, and overseeing a building, group of buildings, or other property.

**Water.** As designating a commodity or a subject of ownership, this term has the same meaning in law as in common speech; but in another sense, and especially in the plural, it may designate a body of water, such as a river, a lake, or an ocean, or an aggregate of such bodies of water, as in the phrases "foreign waters," "waters of the United States," and the like.

See also Flood water; High water line or mark; Implied reservation of water doctrine; Inland waters; Intermittent stream; Low water mark; Waste water.

**Backwater.** See that title.

**Coast waters.** See that title.

**Developed water.** Water which is brought to the surface and made available for use by the party claiming the water.

**Flood waters.** Waters which escape from a water course in great volume and flow over adjoining lands in no regular channel. The fact that such errant waters make for themselves a temporary channel or follow some natural channel, gully, or depression does not affect their character as "flood waters" or give to the course which they follow the character of a natural "water course." *Mogle v. Moore*, Cal.App., 96 P.2d 147, 150, 151; *Everett v. Davis*, Cal.App., 107 P.2d 650, 654, 655. See also **Flood**.

**Foreign waters.** Those belonging to another nation or country or subject to another jurisdiction, as distinguished from "domestic" waters.

**Inland waters.** See **Inland**.

**Navigable waters.** See **Navigable**.

**Percolating waters.** Those which pass through the ground beneath the surface of the earth without any definite channel, and do not form a part of the body or flow, surface or subterranean, of any water-course. They may be either rain waters which are slowly infiltrating through the soil or waters seeping through the banks or the bed of a stream, and which have so far left the bed and the other waters as to have lost their character as a part of the flow of that stream. Those which ooze, seep, or filter, through the soil beneath the surface without a defined channel, or in a course that is unknown and not discoverable from surface indications without excavation for that purpose. *C & W Coal Corp. v. Salyer*, 200 Va. 18, 104 S.E.2d 50, 53.

**Private waters.** Non-navigable streams, or bodies of water not open to the resort and use of the general public, but entirely owned and controlled by one or more individuals.

**Public waters.** Such as are adapted for the purposes of navigation, or those to which the general public have a right of access, as distinguished from artificial lakes, ponds, and other bodies of water privately owned, or similar natural bodies of water owned exclusively by one or more persons.

**Subterranean waters.** Waters which lie wholly beneath the surface of the ground, and which either ooze and seep through the subsurface strata without pursuing any defined course or channel (percolating waters), or flow in a permanent and regular but invisible course, or lie under the earth in a more or less immovable body, as a subterranean lake.

**Surface waters.** As distinguished from the waters of a natural stream, lake, or pond, surface waters are such as diffuse themselves over the surface of the ground, following no defined course or channel, and not gathering into or forming any more definite body of water than a mere bog or marsh. They generally originate in rains and melting snows, but the flood

waters of a river may also be considered as surface waters if they become separated from the main current, or leave it never to return, and spread out over lower ground. Water derived from rains and melting snows that is diffused over surface of the ground, and it continues to be such and may be impounded by the owner of the land until it reaches some well-defined channel in which it is accustomed to, and does, flow with other waters, or until it reaches some permanent lake or pond, whereupon it ceases to be "surface water" and becomes a "water course" or a "lake" or "pond," as the case may be. *State v. Hiber*, 48 Wyo. 172, 44 P.2d 1005, 1008, 1011.

**Surplus water.** Water running off from ground which has been irrigated; water not consumed by the process of irrigation; water which the land irrigated will not take up.

**Territorial waters.** See that title.

**Tide waters.** See **Tide**.

**Water-bayley.** An officer mentioned in the colony laws of New Plymouth, (A.D. 1671,) whose duty was to collect dues to the colony for fish taken in their waters. Probably another form of *water-bailiff*.

**Water course.** See that title, *infra*.

**Water front.** Land or land with buildings fronting on a body of water.

**Water-gage.** A sea-wall or bank to restrain the current and overflowing of the water; also an instrument to measure water.

**Water-gang.** A Saxon word for a trench or course to carry a stream of water, such as are commonly made to drain water out of marshes.

**Water-gavel.** In old records, a gavel or rent paid for fishing in or other benefit received from some river or water.

**Water-logged.** A vessel is "water-logged" when she becomes heavy and unmanageable on account of the leakage of water into the hold.

**Water-mark.** See that title, *infra*.

**Water power.** The water power to which a riparian owner is entitled consists of the fall in the stream when in its natural state, as it passes through his land, or along the boundary of it; or, in other words, it consists of the difference of level between the surface where the stream first touches his land, and the surface where it leaves it. The use of water for power according to common understanding means its application to a water wheel to the end that its energy under the specified head and fall may be utilized and converted into available force. *Holyoke Water Power Co. v. American Writing Paper Co.*, D.C.Mass., 17 F.Supp. 895, 898.

**Water rights.** A legal right, in the nature of a corporate hereditament, to use the water of a natural stream or water furnished through a ditch or canal, for general or specific purposes, such as irrigation, mining, power, or domestic use, either to its full capacity or to a measured extent or during a defined portion of the time. *City of Los Angeles v. City of Glendale*, Cal.App., 132 P.2d 574, 584. A usufruct in a stream consisting in the right to have the water flow so that some portion of it may be reduced to possession and be made private property of individu-

al, and it is therefore the right to divert water from natural stream by artificial means and apply the same to beneficial use. *Ronzio v. Denver & R. G. W. R. Co.*, C.C.A.Utah, 116 F.2d 604, 605. It includes right to change the place of diversion, storage, or use of water if rights of other water users will not be injured. *Lindsey v. McClure*, C.C.A.N.M., 136 F.2d 65, 70. It was also said to be real property which may be sold and transferred separately from land on which it has been used. *Federal Land Bank of Spokane v. Union Cent. Life Ins. Co.*, 54 Idaho 161, 29 P.2d 1009, 1011. See also Artificially developed water; Common enemy doctrine; Drainage rights; Excess or surplus water; Implied reservation of water doctrine; Littoral rights; Mill privilege; Overlying right; Reasonable use theory; Riparian rights.

**Waterscape.** An aqueduct or passage for water.

**Waters of the United States.** All waters within the United States which are navigable for the purposes of commerce, or whose navigation successfully aids commerce, are included in this term. See also **Territorial waters**.

**Water course.** A running stream of water; a natural stream fed from permanent or natural sources, including rivers, creeks, runs, and rivulets. There must be a stream, usually flowing in a particular direction, though it need not flow continuously. It may sometimes be dry. It must flow in a definite channel, having a bed or banks, and usually discharges itself into some other stream or body of water. It must be something more than a mere surface drainage over the entire face of the tract of land, occasioned by unusual freshets or other extraordinary causes. *Leader v. Matthews*, 192 Ark. 1049, 95 S.W.2d 1138, 1139; *Turner v. Big Lake Oil Co.*, Tex.Civ.App., 62 S.W.2d 491, 493.

A water course, in the legal meaning of the word, does not consist merely of the stream as it flows within the banks which form its channel in ordinary stages of water, but the stream still retains its character as a water course when, in times of ordinary high water, the stream extending beyond its own banks, is accustomed to flow down over the adjacent lowlands in a broader but still definable stream. *Atchison, T. & S. F. Ry. Co. v. Hadley*, 168 Okl. 588, 35 P.2d 463, 466.

Water flowing underground in a known and well defined channel is not "percolating water", but constitutes a "water course", and is governed by law applicable to "surface streams", rather than by law applicable to percolating waters. *Bull v. Siegrist*, 169 Or. 180, 126 P.2d 832, 834.

See also **Ancient water course**.

**Natural water course.** A natural stream flowing in a defined bed or channel; one formed by the natural flow of the water, as determined by the general superficies or conformation of the surrounding country, as distinguished from an "artificial" water course, formed by the work of man, such as a ditch or canal.

**Water district.** Official geographical areas which are supplied water under regulation of a body of commissioners or other officials.

**Watered stock.** Stock which is issued by a corporation as fully paid-up stock, when in fact the whole amount

of the par value thereof has not been paid in. Stock issued as bonus or otherwise without consideration or issued for a sum of money less than par value, or issued for labor, services, or property which at a fair valuation is less than the par value.

**Water-mark.** A mark indicating the highest point to which water rises, or the lowest point to which it sinks.

Transparent design or symbol which can be seen when paper is held up to the light and is used to identify the manufacturer of the paper or the genuineness of the document such as a check or stamp.

**High-water mark.** This term is properly applicable to tidal waters, and designates the line on the shore reached by the water at the high or flood tide. With reference to the waters of artificial ponds or lakes, created by dams in unnavigable streams, it denotes the highest point on the shores to which the dams can raise the water in ordinary circumstances. The high-water mark of a river, not subject to tide, is the line which the river impresses on the soil by covering it for sufficient periods to deprive it of vegetation, and to destroy its value for agriculture.

**Low-water mark.** That line on the shore of the sea which marks the edge of the waters at the lowest point of the ordinary ebb tide. The "low-water mark," of a river is the point to which the water recedes at its lowest stage.

**Water ordeal.** See **Ordeal**.

**Waterway.** See **Water course**.

**Waveson** /wéyvsən/. In old records, such goods as, after a wreck, swim or float on the waves. See **Flotsam**.

**Wax scot.** A duty anciently paid twice a year towards the charge of wax candles in churches.

**Way.** A passage, path, road, or street. In a technical sense, a *right* of passage over land. See also **Easement**.

**Private way.** A right which a person has of passing over the land of another. In another sense (chiefly in New England) a private way is one laid out by the local public authorities for the accommodation of individuals and wholly or chiefly at their expense, but not restricted to their exclusive use, being subject, like highways, to the public easement of passage.

**Right of way.** See that title.

**Way of necessity.** Exists where land granted is completely environed by land of the grantor, or partially by his land and the land of strangers. The law implies from these facts that a private right of way over the grantor's land was granted to the grantee as appurtenant to the estate. It is not merely one of convenience, and never exists where person may reach highway over his own land. And it cannot legally exist where neither the party claiming the way nor owner of land over which it is claimed, nor anyone under whom either of them claim, was ever seized of both tracts of land at same time. It is not based on continuous adverse user, but arises by implication of law from necessities of case, and ceases when necessity therefor ceases. The extent of a

"way of necessity" is a way such as is required for complete and beneficial use of land to which the way is impliedly attached. *New York Cent. R. Co. v. Yarian*, 219 Ind. 477, 39 N.E.2d 604, 606.

**Way-bill.** Written document made out by carrier listing point of origin and destination, consignor and consignee, and describing goods included in shipment by railroad or motor carrier. Such constitutes the written description of the shipment in the event of any claim. See also **Bill of lading**.

**Way-going crop.** A crop of grain sown by a tenant for a term certain, during his tenancy, but which will not ripen until after the expiration of his lease. In the absence of an express agreement to the contrary tenant is entitled thereto.

**Wayleave.** A right of way over or through land for the carriage of minerals from a mine or quarry. It is an easement, being a species of the class called "rights of way," and is generally created by express grant or reservation.

**Waynagium** /weynéj(iy)əm/. Implements of husbandry.

**Ways and means.** In a legislative body, the "committee on ways and means" is a committee appointed to inquire into and consider the methods and sources for raising revenue, and to propose means for providing the funds needed by the government. Standing committee of House of Representatives responsible for supervising legislation dealing with financial matters.

**W.D.** An abbreviation for "Western District;" e.g. U.S. District Court for Western District of Kentucky.

**Weald** /wiylɔd/. Sax. A wood; the woody part of a country.

**Wealreaf** /wíylriyf/. In old English law, the robbing of a dead man in his grave.

**Wealth.** Large quantity of possessions, assets, securities, and the like. State of having abundant financial resources and properties. All material objects, capable of satisfying human wants, desires, or tastes, having a value in exchange, and upon which human labor has been expended; i.e., which have, by such labor, been either reclaimed from nature, extracted or gathered from the earth or sea, manufactured from raw materials, improved, adopted, or cultivated. The aggregate of all the things, whether material or immaterial, which contribute to comfort and enjoyment, which cannot be obtained without more or less labor, and which are objects of frequent sale.

**Weapon.** An instrument of offensive or defensive combat, or anything used, or designed to be used, in destroying, defeating or injuring a person. The term is chiefly used, in law, in the statutes prohibiting the carrying of "concealed" or "deadly" weapons. See also **Dangerous weapon**; **Deadly weapon**; **Offensive weapon**.

**Wear, or weir** /wér/wír/. A great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill.

**Wear and tear.** "Natural wear and tear" means deterioration or depreciation in value by ordinary and reasonable use of the subject-matter.

**Wearing apparel.** As generally used in statutes, refers not merely to a person's outer clothing, but covers all articles usually worn, and includes underclothing. *Arnold v. U. S.*, 147 U.S. 494, 13 S.Ct. 406, 37 L.Ed. 253. All articles of dress generally worn by persons in the calling and condition of life and in the locality of the person in question. In *re Steimes' Estate*, 150 Misc. 279, 270 N.Y.S. 339.

**Webb-Pomerene Act.** Federal Act (1918) which provides a qualified exemption for an export association from the prohibitions of the antitrust laws. The Act is administered by the Federal Trade Commission.

**Wed. Sax.** A covenant or agreement. A pledge.

**Wedbedrip.** Sax. In old English law, a customary service which tenants paid to their lords, in cutting down their corn, or doing other harvest duties; as if a *covenant to reap* for the lord at the time of his *bidding* or commanding.

**Wedlock.** State of marriage. As used in the phrase "born out of wedlock" in *Uniform Illegitimacy Act*, means the ceremony or state of marriage or status of husband and wife and is equivalent to matrimony but does not include status of wife and her paramour. *State v. Coliton, N.D.*, 73 N.D. 582, 17 N.W.2d 546, 549.

**Week.** A period of seven consecutive days of time; and, in some uses, the period beginning with Sunday and ending with Saturday. See *Leach v. Burr*, 188 U.S. 510, 23 S.Ct. 393, 47 L.Ed. 567; *Progressive Building and Loan Ass'n v. McIntyre*, 169 Tenn. 491, 89 S.W.2d 336, 337. Words "two weeks" mean fourteen days. *Fisher v. Booher*, 269 Ky. 501, 107 S.W.2d 307, 309.

**Week-work.** In early English times, the obligation of a tenant to work two or three days in every week for his lord, during the greater part of the year, and four or five during the summer months.

**Wehading.** In old European law, the judicial combat, or duel; the trial by *battel*.

**Weighage** /wéyáj/. In English law, a duty or toll paid for weighing merchandise. It is called "*tronage*" for weighing wool at the king's beam, or "*pesage*" for weighing other *avoirdupois* goods.

**Weight.** A measure of heaviness or ponderosity; and in a metaphorical sense influence, effectiveness, or power to influence judgment or conduct. The quantity of heaviness, the quality of being heavy, the degree or extent of downward pressure under the influence of gravity, or the quantity of matter as estimated by the balance or scale.

**Gross weight.** Of packaged goods, the total weight, including contents and packaging.

**Net weight.** Of packaged goods, includes only weight of contained goods. See also **Net weight**.

**Weight of evidence.** The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one

side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief. See also **Preponderance of evidence**.

**Welfare.** Well-doing or well-being in any respect; the enjoyment of health and common blessings of life; exemption from any evil or calamity; prosperity; happiness. See also **General welfare**; **Public welfare**.

**Welfare clause.** Constitutional provision (Art. I, § 8) permitting the federal government to enact laws for the overall general welfare of the people. It is the basis for the exercise of implied powers necessary to carry out the express provisions of the Constitution.

**Well, adj.** In marine insurance, a term used as descriptive of the safety and soundness of a vessel, in a warranty of her condition at a particular time and place; as, "warranted *well* at \_\_\_\_\_ on \_\_\_\_\_."

In old reports, good, sufficient, unobjectionable in law; the opposite of "ill."

**Well, n.** A hole or shaft sunk into the earth in order to obtain a fluid, such as water, oil, brine, or natural gas, from a subterranean supply. Loosely, any shaft or pit dug or bored in earth, or any space so constructed as to suggest or be likened to, a well for water; a pit or hole in the ground or a hollow cylinder built in such hole; or a shaft or excavation in mining. *Seismograph Service Corporation v. Mason*, 193 Okl. 623, 145 P.2d 967, 970.

**Well-born men.** A tribunal in New Amsterdam (New York).

**Well knowing.** A phrase used in pleading as the technical expression in laying a *scienter* (*q.v.*).

**Welshing** /wélshɪŋ/. Receiving a sum of money or valuable thing, undertaking to return the same or the value thereof together with other money, if an event (for example, the result of a horse-race) shall be determined in a certain manner, and at the time of receiving the deposit intending to cheat and defraud the depositor. The crime is larceny at common law.

**Welsh mortgage.** See **Mortgage**.

**Wend.** In old records, a large extent of ground, comprising several *juga*; a perambulation; a circuit.

**Weotuma.** The purchase price of a wife among the heathen Germans.

**Wera, or were** /wír(ə)/. The estimation or price of a man, especially of one slain. In the criminal law of the Anglo-Saxons, every man's life had its value, called a "were," or "*capitis aestimatio*."

**Weregelt thief** /wírgelt-θiyf/. Sax. In old English law, a robber who might be ransomed.

**Weregild, or wergild** /wírgild/wárgild/. This was the price of homicide, or other atrocious personal offense, paid partly to the king for the loss of a subject, partly to the lord for the loss of a vassal, and partly to the next of kin of the injured person. In the Anglo-Saxon

laws, the amount of compensation varied with the degree or rank of the party slain. See **Angild**; **Angylde**.

**Werelada.** A purging from a crime by the oaths of several persons, according to the degree and quality of the accused.

**Werp-geld.** Belg. In European law, contribution for jettison; average.

**Westminster.** A city immediately adjoining London, and forming a part of the metropolis; formerly the seat of the superior courts of the kingdom.

**Westminster Confession.** A document containing a statement of religious doctrine, concocted at a conference of British and continental Protestant divines at Westminster, in the year 1643, which subsequently became the basis of the Scotch Presbyterian Church.

**Westminster the First, Statute of.** The statute 3 Edw. I, A.D. 1275. This statute, which deserves the name of a code rather than an act, is divided into fifty-one chapters. Without extending the exemption of churchmen from civil jurisdiction, it protects the property of the church from the violence and spoliation of the king and the nobles, provides for freedom of popular elections, because sheriffs, coroners, and conservators of the peace were still chosen by the freeholders in the county court, and attempts had been made to influence the election of knights of the shire, from the time when they were instituted. It contains a declaration to enforce the enactment of *Magna Charta* against excessive fines, which might operate as perpetual imprisonment; enumerates and corrects the abuses of tenures, particularly as to marriage of wards; regulates the levying of tolls, which were imposed arbitrarily by the barons and by cities and boroughs; corrects and restrains the powers of the king's escheator and other officers; amends the criminal law, putting the crime of rape on the footing to which it has been lately restored, as a most grievous, but not capital, offense; and embraces the subject of procedure in civil and criminal matters, introducing many regulations to render it cheap, simple, and expeditious. Certain parts of this act are repealed by St. 26 & 27 Vict., c. 125.

**West Saxon Lage.** The laws of the West Saxons, which obtained in the counties to the south and west of England, from Kent to Devonshire. Blackstone supposes these to have been much the same with the laws of Alfred, being the municipal law of the far most considerable part of his dominions, and particularly including Berkshire, the seat of his peculiar residence. 1 Bl.Comm. 65. See **Mercen-lage**.

**Whack.** To divide into shares, apportion, parcel out, make a division settlement, square accounts, or to pay.

**Whale.** A royal fish, the head being the king's property, and the tail the queen's.

**Wharf.** A structure on the margin or shore of navigable waters, alongside of which vessels can be brought for the sake of being conveniently loaded or unloaded, or a space of ground, artificially prepared, for the reception of merchandise from a ship or vessel, so as to promote the discharge of such vessel.

- Private wharf.** One whose owner or lessee has the exclusive enjoyment or use thereof. The M. L. C. No. 10, C.C.A.N.Y., 10 F.2d 699, 702.
- Public wharf.** One to which vessels and the public can resort, either at will or on assignment of a berth by a harbor authority. *Kaflin v. Brooklyn Eastern Dist. Terminal Co.*, 180 App.Div. 858, 168 N.Y.S. 120, 121.
- Wharfage** /*(h)wɔrfəj/*. The money paid for landing goods upon, or loading them from, a wharf. *Manhattan Lighterage Corporation v. Moore McCormack Line*, D.C.N.Y., 45 F.Supp. 271, 273. Charge for use of wharf by way of rent or compensation. *Marine Lighterage Corporation v. Luckenbach S. S. Co.*, 139 Misc. 612, 248 N.Y.S. 71, 72.
- Wharfinger** /*(h)wɔrfənjər/*. The owner or occupier of a wharf; one who for hire receives merchandise on his wharf, either for the purpose of forwarding or for delivery to the consignee on such wharf.
- Wharfing out, right of.** A right to the exclusive use of submerged lands as by the affixing thereto or the establishment thereon of a permanent structure to some point within the navigable body of water, deep and wide enough to dock ocean-going vessels, and it presupposes exclusive use and to that extent may interfere with fishing or navigation. *City of Oakland v. Hogan*, 41 Cal.App.2d 333, 106 P.2d 987, 994.
- Wharton Rule.** In criminal law of conspiracy, the rule that an agreement by two persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to require necessarily the participation of the two persons, e.g. adultery. It is named after the criminal law author, Francis Wharton. *Iannelli v. U. S.*, 420 U.S. 770, 95 S.Ct. 1284, 1288, 43 L.Ed.2d 616.
- Wheel.** An engine of torture used in medieval Europe, on which a criminal was bound while his limbs or bones were broken one by one till he died.
- Wheelage.** Duty or toll paid for vehicles passing over certain ground.
- Whelps** /*(h)wɛlps/*. The young of certain animals of a base nature or *feræ naturæ*.
- When.** At what time; at the time that; at which time; at that time. *Gehrun v. Collister*, 52 Ohio App. 314, 3 N.E.2d 700, 701, 5 O.O. 195. At, during, or after the time that; at or just after the moment that. In *re Morrow's Will*, 41 N.M. 723, 73 P.2d 1360, 1364. In the event that, on condition that, in virtue of the circumstances that. Frequently employed as equivalent to the word "if" in legislative enactments and in common speech.
- When and where.** Technical words in pleading, formerly necessary in making *full defense* to certain actions.
- Whenever.** At whatever time; at what time soever. In any or every instance in which.
- When issued.** Abbreviated term in securities law for "when, as and if issued" in connection with a stock not yet authorized for issuance. The term refers to a conditional transaction in which one indicates a desire to buy when the security is available for sale after its authorization.
- Where.** At or in what place; from what place or source. As used in the statutory language, "where the prosecution is held," the word does not refer to the geographical location of the place of hearing, but rather to the tribunal or official before whom the case is tried. If; in the case of; in the event that.
- Whereas.** When in fact. A "whereas" clause of a contract is but an introductory or prefatory statement meaning "considering that" or "that being the case", and is not an essential part of the operating portions of the contract. *Jones v. City of Paducah*, 283 Ky. 628, 142 S.W.2d 365, 367.
- Whereby.** By or through which; by the help of which; in accordance with which.
- Whereupon.** Upon which; after which.
- While.** Pending or during the time that. Often used adversatively and to imply contrast, and in some constructions introduces a parenthetical clause. *Jackson v. Texas Co.*, C.C.A.Okl., 75 F.2d 549, 553. "While," within provision of accidental death life policy excluding coverage for a loss as result of injury sustained by insured while committing or attempting to commit assault or felony, is word of time and not of causation. *Romero v. Volunteer State Life Ins.*, 10 C.A.3d 571, 88 Cal.Rptr. 820, 824.
- Whim.** Passing fancy; an impulse or caprice. Used in jury instruction in cautioning the jurors to avoid returning a verdict based on anything but the evidence and its strength, not on the personal whim or caprice of the jurors.
- Whiplash injury.** A snapping of the neck when a person gets his head thrown forward or back or from side to side. *Breitenberg v. Parker*, 237 Ark. 261, 372 S.W.2d 828, 832. It is caused by a sudden and unexpected forced movement of the neck of an individual while he is in a relaxed position and against which he cannot protect himself. *Hanover Fire Ins. Co. v. Sides*, C.A.La., 320 F.2d 437, 441. It may result in several types of pathological findings, such as sprain, fracture, dislocation and so forth. *Self v. Johnson*, La.App., 124 So.2d 324, 325; *Luquette v. Bouillion*, La.App., 184 So.2d 766, 768.
- Whipping.** A mode of punishment, by the infliction of stripes, formerly used occasionally in England and in a few of the American states. See Act of February 28, 1839, § 5 (18 U.S.C.A. § 3564).
- Whipping-post.** A post or stake to which a criminal is tied to undergo the punishment of whipping.
- White acre.** A fictitious name given to a piece of land for purposes of illustrating real property transactions.
- Whitecaps.** The name of an unlawful organization against which Tennessee in 1897 enacted a statute (Acts 1897, c. 52) entitled, "An act to prevent and punish the formation or continuance of conspiracies and combinations for certain unlawful purposes," etc., commonly known as the "Law against Whitecaps." Persons guilty of any offense under the act were rendered incompetent for jury service.
- White-collar crimes.** Term usually signifies law violations by corporations or individuals including theft or



fraud and other violations of trust committed in the course of the offender's occupation (e.g., embezzlement, price fixing, antitrust violations, and the like). Non-violent crimes.

**White mule.** Corn whisky; contraband whisky.

**White persons.** As used in Rev.St.U.S. § 2169 (Naturalization Act March 26, 1790, c. 3, 1 Stat. 103, as amended by Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 318 [8 U.S.C.A. § 703]), members of the white or Caucasian race, as distinct from the black, red, yellow, and brown races. Takao Ozawa v. U. S., 260 U.S. 178, 43 S.Ct. 65, 68, 67 L.Ed. 199.

In the legislation of the slave period, persons without admixture of colored blood, whatever the actual complexion might be.

**White rents.** In old English law, rents paid in silver, and called "white rents," or "*redditus albi*," to distinguish them from rents payable in corn, labor, provisions, etc., called "black-rent" or "black-mail." See *Alba firma*.

**White slave.** A term used in the United States statutes and in common talk (though not very appropriately) to indicate a female with reference to whom an offense is committed under the so-called Mann White Slave Traffic Act of June 25, 1910 (18 U.S.C.A. §§ 2421-2424), prohibiting the transportation in interstate and foreign commerce for immoral purposes of women and girls. See *Mann Act*.

**White spurs.** A kind of esquires.

**Whitsun farthings** /(*h*)witsən fārðɪŋz/. Pentecostals (*q.v.*).

**Whittanwaril** /(*h*)witənwériyay/. In old English law, a class of offenders who whitened stolen ox-hides and horse-hides so that they could not be known and identified.

**Whole.** Hale, hearty, strong, sound; also, entire, complete.

**Whole blood.** See **Blood relations**.

**Whole chest.** In the tea trade, a chest containing 100 to 140 pounds or more.

**Whole life insurance.** See **Insurance** (*Life insurance*).

**Wholesale.** Selling to retailers or jobbers rather than to consumers. *Stolze Lumber Co. v. Stratton*, 386 Ill. 334, 54 N.E.2d 554, 558. A sale in large quantity to one who intends to resell.

**Wholesale dealer.** One whose business is the selling of goods in gross to retail dealers, and not by the small quantity or parcel to consumers thereof. *Veazey Drug Co. v. Bruza*, 169 Okl. 418, 37 P.2d 294.

**Wholesale price.** That which retailer pays in expectation of obtaining higher price by way of profit from resale to ultimate consumer. *Guess v. Montague*, D.C.S.C., 51 F.Supp. 61, 65.

**Wholesaler.** One who buys in comparatively large quantities, and then resells, usually in smaller quantities, but never to the ultimate consumer. He sells either to a "jobber," a sort of middleman, or to a "retailer," who in turn sells to the consumer. *Fisch-*

*bach Brewing Co. v. City of St. Louis*, 231 Mo.App. 793, 95 S.W.2d 335, 340. See also **Jobber**.

**Wholesome.** Sound, tending to promote health. *Leonardi v. A. Habermann Provision Co.*, 143 Ohio St. 623, 56 N.E.2d 232, 237, 28 O.O. 511.

**Wholly.** Not partially. In a whole or complete manner; entirely; completely; perfectly. Exclusively; to the exclusion of other things. Equally. Totally; fully. *Chicago & Calumet Dist. Transit Co. v. Mueller*, 213 Ind. 530, 12 N.E.2d 247, 249.

**Wholly and permanently disabled.** Term within disability clause of life policy does not mean "partial" or "temporary," and is not to be construed literally so as to require condition of complete helplessness or utter hopelessness to be entitled to benefits. See also **Disability**; **Total disability**; **Wholly disabled**.

**Wholly dependent.** A person is to be regarded as "wholly dependent" upon a workman, within meaning of compensation acts, when his support is derived wholly from the workman's wages. *Baker v. Western Power & Light Co.*, 147 Kan. 571, 78 P.2d 36, 40; *Central Surety and Insurance Corporation v. Industrial Commission*, 94 Colo. 341, 30 P.2d 253, 255. Person may be "wholly dependent" on workman though he may have some slight savings of his own, or some other slight property, or be able to make something by his own service. *United States Coal & Coke Co. v. Sutton*, 268 Ky. 405, 105 S.W.2d 173, 177.

**Wholly destroyed.** A building is "wholly destroyed" within the meaning of statutes permitting recovery of the full amount of a fire insurance policy, when, although some part remains standing, it can no longer be designated as a building. The words mean totally destroyed as a building, although there is not an absolute extinction of all its parts.

**Wholly disabled.** These words within accident policy do not mean a state of complete physical and mental incapacity or utter helplessness but mean rather inability to do all the substantial and material acts necessary to carry on a certain business or occupation or any business or occupation in a customary and usual manner and which acts the insured would be able to perform in such manner but for the disability. **Total disability**. See also **Disability**; **Total disability**.

**Whore.** A woman who practices illicit sexual intercourse, either for hire or to gratify a depraved passion. A woman given to promiscuous intercourse. A woman who practices unlawful commerce with men, particularly one who does so for hire; a harlot; a concubine; a prostitute.

**Whoremaster.** Ordinarily, one who practices lewdness; also, one who keeps or procures whores for others; a pimp; a procurer.

**Wic.** A place on the sea-shore or the bank of a river.

**Wica.** A country house or farm.

**Wick.** Sax. A village, town, or district. Hence, in composition, the territory over which a given jurisdiction extends. Thus, "bailiwick" is the territorial jurisdiction of a bailiff or sheriff or constable. "Sheriff-wick" was also used in the old books.

**Widen.** To increase in width; to extend.

**Widow.** A woman whose husband is dead, and who has not remarried.

**Widower.** A man who has lost his wife by death and has not married again.

**Widowhood.** The state or condition of being a widow, or, sometimes, a widower. An estate is sometimes settled upon a woman "during widowhood," which is expressed in Latin, "*durante viduitate*."

**Widow's allowance.** The amount of money or property which a widow may claim from her husband's estate, free of all claims. State statutes govern the amount and conditions of the allowance. It is for her support and maintenance.

**Widow's election.** In most states, a widow may either take her share under her husband's will or waive his will and claim her statutory share which commonly is an amount equal to what she would receive if he had died intestate.

**Wifa /wáyfə/. L. Lat.** In old English law, a mark or sign; a mark set up on land, to denote an exclusive occupation, or to prohibit entry.

**Wife.** A woman united to a man by marriage; a woman who has a husband living and undivorced. The correlative term is "husband." See also **Common law wife**.

**Wife's part.** See **Legitime**.

**Wigreve /wígríyv/. In old English law,** the overseer of a wood.

**Wild animals (or animals *feræ naturæ*).** Animals of an untamable disposition; animals in a state of nature.

**Wildcat strike.** A strike called without authorization from the union or in violation of a no-strike clause in the collective bargaining agreement.

**Wild land.** Land in a state of nature, as distinguished from improved or cultivated land.

**Wild's case, rule in.** A devise to B. and his children or issue, B. having no issue at the time of the devise, gives him an estate tail; but, if he have issue at the time, B. and his children take joint estates for life.

**Will, v.** An auxiliary verb commonly having the mandatory sense of "shall" or "must." It is a word of certainty, while the word "may" is one of speculation and uncertainty.

**Will, n.** Wish; desire; pleasure; inclination; choice; the faculty of conscious, and especially of deliberate, action. When a person expresses his "will" that a particular disposition be made of his property, his words are words of command, and the word "will" as so used is mandatory, comprehensive, and dispositive in nature.

A "will" is generally defined as an instrument by which a person makes a disposition of his property, to take effect after his death, and which by its own nature is ambulatory and revocable during his lifetime. In re *Brown's Estate*, Tex.Civ.App., 507 S.W.2d

801, 803. The legal declaration of a man's intentions which he wills to be performed after his death. In re *Cohen's Estate*, 445 Pa. 549, 284 A.2d 754, 756.

The legal expression or declaration of a person's mind or wishes as to the disposition of his property, to be performed or take effect after his death. A revocable instrument by which a person makes disposition of his property to take effect after his death. *Howard's Ex'r v. Dempster*, 246 Ky. 153, 54 S.W.2d 660, 661. A written instrument executed with the formalities required by statutes, whereby a person makes a disposition of his property to take effect after his death.

For competency to make will, see **Competent**.

See also **Codicil**; **Conditional will**; **Duplicate will**; **Last will**; **Lost will**; **Mariner's will**; **Mutual will**; **No contest clause**; **Nuncupative will**; **Publication**; **Reciprocal will**; **Revocation of will**; **Sailor's will**; **Simultaneous death clause**; **Witness (*Witness to will*)**.

**Ambulatory will.** A changeable will (*ambulatoria voluntas*), the phrase merely denoting the power which a testator possesses of altering his will during his life-time.

**Antenuptial will.** See that title.

**Conditional will.** A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or to be defeated. If the happening of an event named in a will is the reason for making the will, it is "unconditional"; but, if the testator intends to dispose of his property in case the event happens, the will is "conditional."

**Conjoint will.** See **Joint will, infra**.

**Counter wills.** Another name for "double," "mutual," or "reciprocal" wills.

**Double will.** Called also a "counter," "mutual," or "reciprocal" will. See **Double**.

**Estate at will.** This estate entitles the grantee or lessee to the possession of land during the pleasure of both the grantor and himself, yet it creates no sure or durable right, and is bounded by no definite limits as to duration. It must be at the reciprocal will of both parties (for, if it be at the will of the lessor only, it is a lease for life), and the dissent of either determines it.

**Holographic will.** One that is entirely written, dated, and signed by the hand of the testator himself. Sometimes spelled "olographic." See **Holograph**.

**Joint and mutual will.** One executed jointly by two persons with reciprocal provisions, which shows on its face that the devises are made one in consideration of the other. Joint will is one in which the same paper is executed by two persons as their respective wills; mutual wills are the separate wills of two persons, more or less reciprocal in their provisions. See also **Mutual will**, below.

**Joint will.** One where the same instrument is made the will of two or more persons and is jointly signed by them. Such wills are usually executed to make testamentary disposition of joint property. A joint or conjoint will is a testamentary instrument executed by two or more persons, in pursuance of a common

intention, for the purpose of disposing of their several interests in property owned by them in common, or of their separate property treated as a common fund, to a third person or persons.

**Living will.** A living will is a short document that basically states: "If the situation should arise in which there is not reasonable expectation of my recovery from physical or mental disability, I request that I be allowed to die and not be kept alive by artificial means or heroic measures." A living will is not considered a legal document in the majority of states.

**Mutual and reciprocal will.** See *Joint and mutual will, supra*; also *Mutual will, infra*.

**Mutual will.** One in which two or more persons make mutual or reciprocal provisions in favor of each other. "Mutual wills" are the separate wills of two persons which are reciprocal in their provisions, and such a will may be both joint and mutual. Sometimes called a "reciprocal," "double," or "counter" will. See also *Joint and mutual will, above*.

**Mystic will.** See *Testament*.

**Non-intervention will.** In some jurisdictions, one authorizing the executor to act without bond and to manage, control, and settle the estate without the intervention of any court whatsoever.

**Nuncupative will.** See that title.

**Reciprocal will.** One in which two or more persons make mutual or reciprocal provisions in favor of each other. Also known as a "mutual," "double," or "counter" will. See *Joint and mutual will; Mutual will, supra*.

**Renunciation of will.** See *Renunciation*.

**Self-proved wills.** A will which eliminates some of the formalities of proof by execution in compliance with statute. It is made self-proved by affidavit of attesting witnesses in the form prescribed by statute. Most statutes provide that, unless contested, such a will may be admitted to probate without testimony of subscribing witnesses. See e.g. Uniform Probate Code, § 2-504.

**Statute of will.** See *Wills Act, infra*.

**Unofficial will.** In the civil law, *testamentum inofficium*. One made in disregard of natural obligations as to inheritance. 2 Bl.Comm. 502. It has no place in the common law.

### Criminal Law

The power of the mind which directs the action of a man. See *Intent; Motive; Willful and wanton act*.

**Willa /wīlə/. In Hindu law, the relation between a master or patron and his freedman, and the relation between two persons who had made a reciprocal testamentary contract.**

**Will contest.** A proceeding sui generis, a suit in rem, having for its purpose determination of questions of construction of will or whether there is or is not a will. *McCrary v. Michael*, 233 Mo.App. 797, 109 S.W.2d 50, 51. Any kind of litigated controversy concerning the eligibility of an instrument to probate as distinguished from validity of the contents of the

will. In re *Hesse's Estate*, 62 Ariz. 273, 157 P.2d 347, 349. Will contests are commonly governed by state statutes; e.g. Uniform Probate Code § 3-407, burden of proof.

**Willful.** Proceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Willful is a word of many meanings, its construction often influenced by its context. *Screws v. United States*, 325 U.S. 91, 101, 65 S.Ct. 1031, 1035, 89 L.Ed. 1495.

The word [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal context it generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely. The word is also employed to characterize a thing done without ground for believing it is lawful or conduct marked by a careless disregard whether or not one has the right so to act. *United States v. Murdock*, 290 U.S. 389, 394, 395, 54 S.Ct. 223, 225, 78 L.Ed. 381.

Whatever the grade of the offense the presence of the word "willful" in the definition will carry with it the implication that for guilt the act must have been done willingly rather than under compulsion and, if something is required to be done by statute, the implication that a punishable omission must be by one having the ability and means to perform. In re *Trombley*, 31 Cal.2d 801, 807, 193 P.2d 734, 739.

A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.

Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

**Willful and malicious injury.** For such to exist there must be an intent to commit a wrong either through actual malice or from which malice will be implied. Such an injury does not necessarily involve hatred or ill will, as a state of mind, but arises from intentional wrong committed without just cause or excuse. In re *Wernecke*, D.C.N.Y., 1 F.Supp. 127, 168. It may involve merely a willful disregard of what one knows to be his duty, an act which is against good morals and wrongful in and of itself, and which necessarily causes injury and is done intentionally.

**Willful and wanton act.** In order to constitute "willful and wanton" misconduct, act or omission must be not only negligent, but exhibit conscious disregard for safety of others. *Turner v. Commonwealth Edison Co.*, 35 Ill.App.3d 331, 341 N.E.2d 488, 493.

**Willful and wanton injury.** To constitute such injury, act producing injury must have been knowingly and intentionally committed, or committed under circumstances evincing reckless disregard of safety of person injured.

**Willful indifference to the safety of others.** Imports an intentional lack of regard concerning the safety of others, or an intentional doing of something with knowledge that serious injury is a probable result. *People v. Murray*, 58 Cal.App.2d 239, 136 P.2d 389, 391.

**Willfully and knowingly.** An act is done willfully and knowingly when the actor intends to do it and knows the nature of the act. Deliberately. See **Willful**.

**Willful misconduct of employee.** Under Workers' Compensation Acts, precluding compensation, means more than mere negligence, and contemplates the intentional doing of something with knowledge that it is likely to result in serious injuries, or with reckless disregard of its probable consequences. "Willful misconduct" disqualifying claimant for unemployment compensation involves: (1) wanton and willful disregard of employer's interest, (2) deliberate violation of rules, (3) disregard of standards of behavior which an employer can rightfully expect from his employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for employer's interests or the employee's duties and obligations. *Wilson v. Com. Unemployment Compensation Bd. of Review*, 15 Pa.Cmwlth. 314, 325 A.2d 500, 501.

**Willful murder.** The unlawful and intentional killing of another without excuse or mitigating circumstances. See also **Murder**; **Premeditation**.

**Willful neglect.** The intentional disregard of a plain or manifest duty, in the performance of which the public or the person injured has an interest.

Willful neglect suggests intentional, conscious, or known negligence—a knowing or intentional mistake. *Puget Sound Painters v. State*, 45 Wash.2d 819, 278 P.2d 302, 303. Within adoption statutes, is neglect that is intentional, deliberate, and without just cause or excuse. In re *Adoption of P. J. K.*, Mo.App., 359 S.W.2d 360, 363.

**Willful negligence.** See **Negligence**.

**Willfulness.** See **Willful**.

**Willful or wanton misconduct.** Failure to exercise ordinary care to prevent injury to a person who is actually known to be or reasonably expected to be within the range of a dangerous act being done. *Georgia Power Co. v. Deese*, 78 Ga.App. 704, 51 S.E.2d 724, 728. Conduct which is either intentional or committed under circumstances exhibiting a reckless disregard for the safety of others, such as a failure, after knowledge of an impending danger, to exercise ordinary care to prevent it or a failure to discover the dangers through recklessness or carelessness when it could have been discovered by the exercise of ordinary care. *Lewandowski v. Bakey*, 32 Ill.App.3d 26, 335 N.E.2d 572, 574. An aggravated form of negligence, differing in quality rather than degree from ordinary lack of care. *Morgan v. Southern Pac.*

*Transp. Co.*, 37 Cal.App.3d 1006, 112 Cal.Rptr. 695, 698.

**Willful or wanton negligence.** Failure to exercise ordinary care to prevent injury to a person who is actually known to be, or reasonably is expected to be, within range of a known danger. *Barall Food Stores v. Bennett*, 194 Okl. 508, 153 P.2d 106, 109, 110. See also **Negligence**.

**Willful tort.** Term implies intent or purpose to injure. It involves elements of intent or purpose and malice or ill will, but malice or ill will may be shown by indifference to safety of others, with knowledge of their danger, or failure to use ordinary care to avoid injury after acquiring such knowledge. *Hillard v. Western & Southern Life Ins. Co.*, 68 Ohio App. 426, 34 N.E.2d 75, 77, 23 O.O. 133.

**Williams Act.** See **Tender offer**.

**Willingly.** Voluntarily; unreluctantly; without reluctance, and of one's own free choice. See **Willful**.

As used in an instruction that one cannot invoke the doctrine of self-defense if he enters a fight willingly, it means voluntarily, aggressively, and without legal excuse.

**Wills Act.** In England, the statute 32 Hen. VIII, c. 1, passed in 1540, by which persons seized in fee-simple of lands holden in socage tenure were enabled to devise the same at their will and pleasure, except to bodies corporate; and those who held estates by the tenure of chivalry were enabled to devise two-third parts thereof.

Also, the statute 7 Wm. IV & 1 Vict., c. 26, passed in 1837, and also called "Lord Langdale's Act." This act permits of the disposition by will of every kind of interest in real and personal estate, and provides that all wills, whether of real or of personal estate, shall be attested by two witnesses, and that such attestation shall be sufficient. Other important alterations are effected by this statute in the law of wills.

**Will substitutes.** Documents which purportedly accomplish what a will is designed to accomplish, e.g. trusts, life insurance, joint ownership of property.

**Winchester measure.** The standard measure of England, originally kept at Winchester. 1 Bl.Comm. 274.

**Winchester, Statute of.** A statute passed in the thirteenth year of the reign of Edward I, by which the old Saxon law of police was enforced, with many additional provisions. It required every man to provide himself with armor to aid in keeping the peace; and if it did not create the offices of high and petty constables, it recognized and regulated them, and charged them with duties answering somewhat to those of our militia officers. The statute took its name from the ancient capital of the kingdom. It was repealed by the Statute of 7 & 8 Geo. IV, c. 27.

**Winding-up acts.** In English law, general acts of parliament, regulating settlement of corporate affairs on dissolution.

**Window.** An opening made in the wall of a building to admit light and air, and to furnish a view or prospect. The use of this word in law is chiefly in connection with the doctrine of ancient lights and other rights of adjacent owners.

**Window tax.** In England, a tax on windows, formerly levied on houses which contained more than six windows, and were worth more than £5 per annum; established by St. 7 Wm. III, c. 18. St. 14 & 15 Vict., c. 36, substituted for this tax a tax on inhabited houses.

**Wind up.** To settle the accounts and liquidate the assets of a partnership or corporation, for the purpose of making distribution and dissolving the concern. See **Liquidation**.

**Wiretapping.** A form of electronic eavesdropping where, upon court order, enforcement officials surreptitiously listen to phone calls. Federal (Crime Control and Safe Streets Act, 18 U.S.C.A. § 2510 et seq.) and state statutes govern the circumstances and procedures under which wiretaps will be permitted. See also **Eavesdropping**.

**Wish.** Eager desire; longing; expression of desire; a thing desired; an object of desire. As used in wills, it is sometimes merely directory or precatory; and sometimes mandatory; being equivalent to "will," to "give" or "devise."

**Wista.** In Saxon law, half a hide of land, or sixty acres.

**Wit.** To know; to learn; to be informed. Used only in the infinitive, *to wit*, which term is equivalent to "that is to say," "namely," or "*videlicet*."

**Witam** /widəm/. The purgation from an offense by the oath of the requisite number of witnesses.

**Witan** /widən/. In Saxon law, wise men; persons of information, especially in the laws; the king's advisers; members of the king's council; the optimates, or principal men of the kingdom.

**Witchcraft.** Under English Sts. 33 Hen. VIII, c. 8, and 1 Jac. I, c. 12, the offense of witchcraft, or supposed intercourse with evil spirits, was punishable with death. These acts were not repealed until 1736. 4 Bl.Comm. 60, 61. In Salem, Massachusetts in 1692, 20 persons were put to death by hanging for such offense. The last victims in England were executed in 1716, and the last in Scotland in 1722.

**Wite** /wáyt/. Sax. A punishment, pain, penalty, mulct, or criminal fine.

An atonement among the early Germans by a wrong-doer to the king or the community. It is said to be the germ of the idea that wrong is not simply the affair of the injured individual, and is therefore a condition precedent to the growth of a criminal law.

**Witekden.** A taxation of the West Saxons, imposed by the public council of the kingdom.

**Witena dom** /widənə dówm/. In Saxon law, the judgment of the county court, or other court of competent jurisdiction, on the title to property, real or personal.

**Witenagemote** /widənægəməwt/. (Spelled, also, *witena-gemot*, *wittenagemot*, *witanagemote*, etc.) "The assembly of wise men." This was the great national council or parliament of the Saxons in England, comprising the noblemen, high ecclesiastics, and other great thanes of the kingdom, advising and aiding the king in the general administration of government.

It was the grand council of the kingdom, and was held, generally, in the open air, by public notice or particular summons, in or near some city or populous town. These notices or summonses were issued upon determination by the king's select council, or the body met without notice, when the throne was vacant, to elect a new king. Subsequently to the Norman Conquest it was called *commune concilium regni*, *curia regis* and finally *parliament*; but its character had become considerably changed. It was a court of last resort, more especially for determining disputes between the king and his thanes, and, ultimately, from all inferior tribunals. Great offenders, particularly those who were members of or might be summoned to the king's court, were here tried. The casual loss of title-deeds was supplied, and a very extensive equity jurisdiction exercised. 1 Bl.Comm. 147. It passed out of existence with the Norman Conquest, and the subsequent Parliament was a separate growth, and not a continuation of the Witenagemot.

**Witens** /widən(d)z/. The chiefs of the Saxon lords or thanes, their nobles, and wise men.

**With.** A word denoting a relation of proximity, contiguity, or association. *White v. White*, 183 Va. 239, 31 S.E.2d 558, 561. Sometimes equivalent to the words, "in addition to," but not synonymous with "including," as in a complaint demanding a specified sum, "with interest." *Halpern v. Langrock Bros. Co.*, 169 App.Div. 464, 155 N.Y.S. 167, 168.

**With all faults.** This phrase, used in a contract of sale, implies that the purchaser assumes the risk of all defects and imperfections, provided they do not destroy the identity of the thing sold. See also **As is**.

**With consent.** Phrase within a constitution providing that Governor shall appoint officers with consent of senate, requires confirmation by senate and appointment under such provision is ineffective until confirmed. *State, ex rel. Nagle v. Stafford*, 97 Mont. 275, 34 P.2d 372, 379. See also **Consent**.

**Withdraw.** To take away what has been enjoyed; to take from. To remove, as deposits from bank, or oneself from competition, candidacy, etc.

**Withdrawal.** Removal of money or securities from a bank or other place of deposit. Withdrawal from a conspiracy requires either making a clean breast to authorities or communicating the abandonment of the conspiracy in manner reasonably calculated to reach co-conspirators. *U. S. v. Mardian*, 546 F.2d 973, 978.

**Withdrawal of charges.** A failure to prosecute by the person preferring charges—distinguished from a dismissal, which is a determination of their invalidity by the tribunal hearing them. See **Nolle prosequi**.

**Withdrawing a juror.** The withdrawing of one of the twelve jurors from the box, with the result that, the jury being now found to be incomplete, no further proceedings can be had in the cause. The withdrawing of a juror is always by the agreement of the parties, and is frequently done at the recommendation of the judge, where it is doubtful whether the action will lie; and in such case the consequence is that each party pays his own costs. It is, however,

no bar to a future action for the same cause. In American practice, it was formerly usually a mere method of continuing a case, for some good reason.

**Withdrawing record.** The withdrawing by a plaintiff of the *nisi prius* or trial record filed in a cause, just before the trial is entered upon, for the purpose of preventing the cause from being tried. This may be done before the jury are sworn, and afterwards, by consent of the defendant's counsel.

**Withernam** /wiðɔrnəm/. A taking by way of reprisal; a taking or a reprisal of other goods, in lieu of those that were formerly taken and eloigned or withholden. A reciprocal distress, in lieu of a previous one which has been eloigned. 3 Bl.Comm. 148.

The name of a writ which issues on the return of *elongata* to an alias or pluries writ of replevin, by which the sheriff is commanded to take the defendant's own goods which may be found in his bailiwick, and keep them safely, not to deliver them to the plaintiff until such time as the defendant chooses to submit himself and allow the distress, and the whole of it to be replevied; and he is thereby further commanded that he do return to the court in what manner he shall have executed the writ.

**Withersake** /wiðɔrsɛyk/. An apostate, or perfidious renegade.

**Withhold.** To retain in one's possession that which belongs to or is claimed or sought by another. To omit to disclose upon request; as, to withhold information. To refrain from paying that which is due.

**Withholding.** Deductions from salaries or wages, usually for income taxes, to be remitted by the employer, in the employee's name, to the taxing authority.

**Withholding of evidence.** It is an obstruction of justice to stifle, suppress or destroy evidence knowing that it may be wanted in a judicial proceeding or is being sought by investigating officers, or to remove records from the jurisdiction of the court, knowing they will be called for by the grand jury in its investigation. *United States v. Perlstein*, 126 F.2d 799; *Commonwealth v. Russo*, 177 Pa.Super. 470, 111 A.2d 359.

**Withholding tax.** Tax collected by deductions from employee's wages as he is paid. See **Withholding**.

**Within.** Into. In inner or interior part of, or not longer in time than. Through. Inside the limits of; during the time of.

When used relative to time, has been defined variously as meaning any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than. *Glenn v. Garrett*, Tex.Civ. App., 84 S.W.2d 515, 516.

**Without.** Outside; beyond; in excess of.

**Without day.** A term used to signify that an adjournment or continuance is indefinite or final, or that no subsequent time is fixed for another meeting, or for further proceedings. See *Sine die*.

**Without delay.** Instantly; at once. Also, within the time allowed by law.

**Without giving compensation therefor.** This phrase within automobile guest statute indicates an intention to exclude application of "guest" designation not only to one who has paid cash or equivalent for his transportation but also to one who pays such recompense as makes it worth the other's while to furnish the ride. *Duclos v. Tashjian*, 32 Cal.App.2d 444, 90 P.2d 140, 143.

**Without her consent.** This phrase, as used in the law of rape, is equivalent to "against the will."

**Without impeachment of waste.** The effect of the insertion of this clause in a lease for life is to give the tenant the right to cut timber on the estate, without making himself thereby liable to an action for waste. When a tenant for life holds the land without impeachment of waste, he is, of course, dispunishable for waste, whether wilful or otherwise. But still this right must not be wantonly abused so as to destroy the estate; and he will be enjoined from committing malicious waste.

**Without notice.** As used of purchasers, etc., such language is equivalent to "in good faith." To be a holder in due course, one must take a bill or note "without notice" that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person. See U.C.C. §§ 3-302(1)(c), 3-304(3). See also **Good faith; Notice**.

**Without prejudice.** Where an offer or admission is made "without prejudice," or a motion is denied or a suit dismissed "without prejudice," it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided. The words "without prejudice" import into any transaction that the parties have agreed that as between themselves the receipt of money by one and its payment by the other shall not of themselves have any legal effect on the rights of the parties, but they shall be open to settlement by legal controversy as if the money had not been paid. *In re Bell*, 344 Pa. 223, 25 A.2d 344, 350.

A dismissal "without prejudice" allows a new suit to be brought on the same cause of action. The words "without prejudice", as used in judgment, ordinarily import the contemplation of further proceedings, and, when they appear in an order or decree, it shows that the judicial act is not intended to be res judicata of the merits of the controversy. *Fiumara v. American Surety Co. of New York*, 346 Pa. 584, 31 A.2d 283, 287.

**Without recourse.** This phrase, used in making a qualified indorsement of a negotiable instrument, signifies that the indorser means to save himself from liability to subsequent holders, and is a notification that, if payment is refused by the parties primarily liable, recourse cannot be had to him. See U.C.C. § 3-414(1).

An indorser "without recourse" specially declines to assume any responsibility for payment. He assumes no contractual liability by virtue of the indorsement itself, and becomes a mere assignor of the title to the paper, but such an indorsement does not indicate that the indorsee takes with notice of defects, or that he does not take on credit of the other parties to the note.

**Without reserve.** A term applied to a sale by auction, indicating that no price is reserved.

**Without stint.** Without limit; without any specified number.

**Without this, that.** In common law pleading, formal words used by way of *traverse*, particularly by way of *special traverse*, importing an express denial of some matter of fact alleged in a previous pleading, including the declaration, plea, replication, etc. The Latin term is *absque hoc*.

**With prejudice.** The term as applied to judgment of dismissal is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff. *Fenton v. Thompson*, 352 Mo. 199, 176 S.W.2d 456, 460.

**With recourse.** Term which may be used in indorsing negotiable instrument and by which the indorser indicates that he remains liable for payment of the instrument. See also **Without recourse**.

**With strong hand.** In common law pleading, a technical phrase indispensable in describing a forcible entry in an indictment. No other word or circumlocution would answer the same purpose.

**Witness, v.** To subscribe one's name to a deed, will, or other document, for the purpose of attesting its authenticity, and proving its execution, if required, by bearing witness thereto. See also **Affirmation; Attest; Jurat; Verification**.

**Witness, n.** In general, one who, being present, personally sees or perceives a thing; a beholder, spectator, or eyewitness. One who testifies to what he has seen, heard, or otherwise observed. *Wigginton v. Order of United Commercial Travelers of America*, C.C.A.Ind., 126 F.2d 659, 666.

A person whose declaration under oath (or affirmation) is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit. Code Civ.Proc.Cal. § 1878.

A person attesting genuineness of signature to document by adding his signature. In *re Gorrell's Estate*, 19 N.J.Misc. 168, 19 A.2d 334, 335.

One who is called upon to be present at a transaction, or the making of a will, that he may thereafter, if necessary, testify to the transaction.

See also **Accomplice witness; Competent witness; Expert witness; Hostile or adverse witness; Lay witness; Prosecuting witness; Subscribing witness; Swift witness; Target witness**.

**Adverse witness.** A witness whose mind discloses a bias hostile to the party examining him. See also **Adverse witness**.

**Attesting witness.** See **Attestation**.

**Credible witness.** See **Credible**.

**Grand jury witness.** A person called to give evidence regarding matters under inquiry by the grand jury. *State v. Hogervorst*, 90 N.M. 580, 566 P.2d 828, 831.

**Material witness.** In criminal trial, a witness whose testimony is crucial to either the defense or prosecution. In most states, he may be required to furnish bond for his appearance and, for want of surety, he

may be confined until he testifies. See also **Material witness**.

**Witness to will.** One who has attested the will by subscribing his name thereto. The trend in state statutes is to require two witnesses to attest to the signing of the will. See *e.g.* Uniform Probate Code § 2-502. See also **Attestation clause**.

**Witness against himself.** The federal constitutional provision that no person shall be compelled in any criminal case, to be a "witness against himself" must be applied in a broad spirit to secure to citizen immunity from self-accusation and provision applies to all proceedings wherein defendant is acting as a witness in any investigation that requires him to give testimony that might tend to show him guilty of crime. 5th Amend., U.S.Const. *United States v. Goodner*, D.C. Colo., 35 F.Supp. 286, 290. See also **Immunity; Self-incrimination**.

**Witnessing part.** In a deed or other formal instrument, is that part which comes after the recitals, or, where there are no recitals, after the parties. It usually commences with a reference to the agreement or intention to be effectuated, then states or refers to the consideration, and concludes with the operative words and parcels, if any. Where a deed effectuates two distinct objects, there are two witnessing parts.

**Wittingly.** With knowledge and by design, excluding only cases which are the result of accident or forgetfulness, and including cases where one does an unlawful act through an erroneous belief of his right.

**Witword** /wítwàrd/. A legally allowed claim, more especially the right to vindicate ownership or possession by one's affirmation under oath.

**Wolf's head.** In old English law, this term was used as descriptive of the condition of an outlaw. Such persons were said to carry a wolf's head (*caput lupinum*); for if caught alive they were to be brought to the king, and if they defended themselves they might be slain and their heads carried to the king, for they were no more to be accounted of than wolves. "Woolferthfod."

**Wong.** Sax. In old records, a field.

**Wood-corn.** In old records, a certain quantity of oats or other grain, paid by customary tenants to the lord, for liberty to pick up dead or broken wood.

**Wood-geld.** In old English law, money paid for the liberty of taking wood in a forest. Immunity from such payment.

**Wood leave.** A license or right to cut down, remove, and use standing timber on a given estate or tract of land.

**Wood-mote.** In forest law, the old name of the court of attachments; otherwise called the "Forty-Days Court." 3 Bl.Comm. 71.

**Wood plea court.** In old English law, a court held twice in the year in the forest of Clun, in Shropshire, for determining all matters of wood and agistments.

**Woods.** A forest; land covered with a large and thick collection of natural forest trees. The old books say

- that a grant of "all his woods" (*omnes boscos suos*) will pass the land, as well as the trees growing upon it.
- Woodwards.** In English law, officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offenses relating to the same.
- Words.** Symbols indicating ideas and subject to contraction and expansion to meet the idea sought to be expressed. Such have been referred to as labels whose content and meaning are continually shifting with the times. *Massachusetts Protective Ass'n v. Bayersdorfer*, C.C.A.Ohio, 105 F.2d 595, 597.
- As used in law, this term generally signifies the technical terms and phrases appropriate to particular instruments, or aptly fitted to the expression of a particular intention in legal instruments. See the subtitles following.
- Words actionable in themselves.** In libel and slander, refer to words which are libelous or slanderous per se. See **Actionable per se**.
- Words of art.** The vocabulary or terminology of a particular art or science, and especially those expressions which are idiomatic or peculiar to it.
- Words of limitation.** See **Limitation**.
- Words of procreation.** To create an estate tail by deed, it is necessary that words of procreation should be used in order to confine the estate to the descendants of the first grantee, as in the usual form of limitation,—"to A. and the heirs of his body."
- Words of purchase.** See **Purchase**.
- Work.** To exert one's self for a purpose; to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty, or the like. The term covers all forms of physical or mental exertions, or both combined, for the attainment of some object other than recreation or amusement. *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, Ala., 321 U.S. 590, 64 S.Ct. 698, 703, 705, 88 L.Ed. 949. See also **Labor**.
- Work and labor.** The name of one of the common counts in actions of *assumpsit*, being for work and labor done and materials furnished by the plaintiff for the defendant.
- Workaway.** Extra man employed on vessel as an accommodation to himself. *The Tashmoo*, D.C.N.Y., 48 F.2d 366, 368.
- Worker.** See **Workman**.
- Workers' Compensation Acts.** See **Workmen's Compensation Acts**.
- Workhouse.** Place of confinement for persons convicted of lesser offenses. Such imprisonment is usually for a relatively short duration.
- Working capital.** Cash and other quick assets. *Crocker v. Waltham Watch Co.*, 315 Mass. 397, 53 N.E.2d 230, 237. In accounting the difference between current assets and current liabilities. In public utilities the amount of cash required by a business to carry on operations.
- Working interest.** See **Royalty**.
- Working papers.** By statute in certain states, such must be filed by one employing a minor.
- Discovery.** See **Work product rule**.
- Workman.** One who labors; one employed to do business for another. One employed in manual labor, skilled or unskilled; an artificer, mechanic, or artisan.
- Workmen's or Workers' Compensation Acts.** State statutes which provide for fixed awards to employees or their dependents in case of employment related accidents and diseases, dispensing with proof of negligence and legal actions. Some of the acts go beyond the simple determination of the right to compensation, and provide insurance systems, either under state supervision or otherwise. The various state acts vary as to extent of workers and employment covered, amount and duration of benefits, etc.
- The effect of most workmen's or workers' compensation acts is to make the employer strictly liable to an employee for injuries sustained by the employee which arise out of and in the course of employment, without regard to the negligence of the employer or that of the employee. Where the Act applies, it has been uniformly held that this remedy is exclusive and bars any common-law remedy which the employee may have had, the compensation scheduled under the act being the sole measure of damage.
- Federal employees are covered by the Federal Employees Compensation Act; seamen by the Jones Act; longshoremen and harbor workers by the Longshoremen's and Harbor Workers' Compensation Act. Additional benefits to disabled workers are provided under Title II of the Social Security Act.
- Workmen's or workers' compensation boards or courts.** Such exist in many states with jurisdiction to review cases arising under workmen's or workers' compensation acts and related rules and regulations.
- Workmen's or workers' compensation insurance.** Insurance coverage purchased by employers to cover risks under workmen's or workers' compensation laws. Such is usually mandated by state acts, unless the employer is self-insured. See also **Insurance**.
- Work of national importance.** Under the Selective Service Act providing that conscientious objectors should be assigned to such work means work of value to the nation for the common defense and general welfare. 50 U.S.C.A. Appendix § 305(g). *United States ex rel. Zucker v. Osborne*, D.C.N.Y., 54 F.Supp. 984, 986, 987.
- Work of necessity.** As excepted from operation of Sunday closing statutes embraces all work reasonably essential to the economic, social or moral welfare of the people, viewed in light of the habits and customs of the age in which they live and of the community in which they reside. *Francisco v. Commonwealth*, 180 Va. 371, 23 S.E.2d 234, 238, 239.
- Work product rule.** A party may obtain discovery of documents and tangible things otherwise discoverable under Rule 26(b)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or



agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Fed.R.Civil P. 26(b)(3). See also *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451.

"Work product" which is protected against discovery covers material prepared by an attorney in anticipation of litigation, including private memoranda, written statements of witnesses and mental impressions of personal recollections prepared or formed by attorney in anticipation of litigation or for trial. *Com. of Puerto Rico v. S S Zoe Colocotroni*, D.C.Puerto Rico, 61 F.R.D. 653, 658.

**Work release program.** Correctional programs which allow an inmate to leave the institution for the purpose of continuing regular employment during the daytime, but reporting back to lockup nights and weekends.

**Works.** Sometimes, a mill, factory, or other establishment for performing industrial labor of any sort; also, a building, structure, or erection of any kind upon land, as in the civil-law phrase "new works."

*New works.* A term of the civil law comprehending every sort of edifice or other structure which is newly commenced on a given estate or lot. Its importance lies chiefly in the fact that a remedy is given ("denunciation of new works") to an adjacent proprietor whose property would be injured or subjected to a more onerous servitude if such a work were allowed to proceed to completion.

*Public works.* Works, whether of construction or adaptation, undertaken and carried out by the national, state, or municipal authorities, and designed to subserve some purpose of public necessity, use, or convenience; such as public buildings, roads, aqueducts, parks, etc. All fixed works constructed for public use. The term usually relates to the construction of public improvements and not to their maintenance or operation.

**Work week.** Within Fair Labor Standards Act, a week during which work is performed. 29 U.S.C.A. § 207.

**World.** This term sometimes denotes all persons whatsoever who may have, claim, or acquire an interest in the subject-matter; as in saying that a judgment *in rem* binds "all the world."

**World Court.** See *International Court of Justice*.

**Worldly.** Of or pertaining to the world or the present state of existence; temporal; earthly; devoted to, interested in, or connected with this present life, and its cares, advantages, or pleasures, to the exclusion of those of a future life. Concerned with enjoyment of this present existence; secular; not religious; spiritual, or holy.

**Worrying cattle or sheep.** Within statutes providing that any one finding a dog, not on the premises of its

owner, who is worrying cattle or sheep, may kill the dog, means to run after; to chase; to bark at. *Failing v. People*, 105 Colo. 399, 98 P.2d 865, 867.

**Worship.** Any form of religious service showing reverence for Divine Being, or exhortation to obedience to or following of the mandates of such Being. Religious exercises participated in by a number of persons assembled for that purpose, the disturbance of which is a statutory offense in many states.

*English law.* A title of honor or dignity used in addresses to certain magistrates and other persons of rank or office.

*Public worship.* This term may mean the worship of God, conducted and observed under public authority; or it may mean worship in an open or public place, without privacy or concealment; or it may mean the performance of religious exercises, under a provision for an equal right in the whole public to participate in its benefits; or it may be used in contradistinction to worship in the family or the closet. In this country, what is called "public worship" is commonly conducted by voluntary societies, constituted according to their own notions of ecclesiastical authority and ritual propriety, opening their places of worship, and admitting to their religious services such persons, and upon such terms, and subject to such regulations, as they may choose to designate and establish. A church absolutely belonging to the public, and in which all persons without restriction have equal rights, such as the public enjoy in highways or public landings, is certainly a very rare institution.

**Wort or worth.** A curtilage or country farm.

**Worth.** The quality or value of a thing which gives it value. Although "worth" in some connections may mean more than pecuniary value, in law it means that sum of valuable qualities which renders a thing valuable and useful expressed in the current medium of the country. Furnishing an equivalent for. See also **Net worth; Value**.

**Worthier title** /wɔːrðiər táydəl/. At common law where testator undertook to devise to an heir exactly same interest in land as such heir would take by descent, descent was regarded as the "worthier title" and heir took by descent rather than by devise. *Jones v. Petrie*, 156 Kan. 241, 132 P.2d 396, 398. Doctrine of worthier title provides that conveyance by grantor with limitation over to grantor's heirs creates reversion in grantor, not remainder interest in heirs, and to take by descent rather than by purchase, is said to create a worthier title. *Hatch v. Riggs Nat. Bank*, D.C.D.C., 284 F.Supp. 396, 397. This doctrine has been abolished in many states.

**Worthiest of blood.** In the English law of descent, a term applied to males, expressive of the preference given to them over females. See 2 Bl.Comm. 234-240.

**Worthless.** Destitute of worth, of no value or use. *Spring City Foundry Co. v. Commissioner of Internal Revenue*, 292 U.S. 182, 54 S.Ct. 644, 78 L.Ed. 1200.

*Worthless check.* A check drawn on a bank account which is no longer open or on an account with funds insufficient to cover the check.

Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft as aforesaid, that the maker or drawer has no deposit in or credits with such bank or depository or has not sufficient funds in, or credits with, such bank or depository for the payment of such check, order or draft in full upon its presentation.

**Worthless securities.** A loss (usually capital) is allowed for a security that becomes worthless during the year. The loss is deemed to have occurred on the last day of the year. Special rules apply to securities of affiliated companies and small business stock. See I.R.C. § 165.

**Worthy.** Having worth; possessing merit; valuable; deserving of honor, or the like; of high station; of high social position; deserved, merited. *Woodstown Nat. Bank and Trust Co. v. Snelbaker*, 136 N.J.Eq. 62, 40 A.2d 222, 227.

**Would.** A word sometimes expressing what might be expected or preferred or desired. Often interchangeable with the word "should," but not with "could."

**Wound, n.** An injury to the body of a person or animal, especially one caused by violence, by which the continuity of the covering, as skin, mucous membrane, or conjunctiva, is broken. *Gasperino v. Prudential Ins. Co. of America*, Mo.App., 107 S.W.2d 819, 827. Any breaking up or dispersion, or disintegration of the natural continuity of a tissue of the body. *Gasperino v. Prudential Ins. Co. of America*, Mo.App., 107 S.W.2d 819, 827. Also injuries of every kind which affect the body, whether they are cuts, lacerations, fractures, or bruises. Any lesion of the body.

**Wound, v.** To inflict a laceration, cut, fracture or bruise.

**Wounded feelings.** Such as result from indignities to self-respect, sensibilities, or pride of a person, as distinguished from usual mental pain and suffering consequent to physical injury. See also **Mental cruelty**.

**Wounding.** An aggravated species of assault and battery, consisting in one person giving another some dangerous hurt. 3 Bl.Comm. 121.

**Wraparound mortgage.** A second mortgage which wraps around or exists in addition to a first or other mortgages. Form of secondary financing typically used on older properties having first mortgages with low interest rates in which a lender assumes the developer's first mortgage obligation and also loans additional money, taking back from developer a junior mortgage in total amount at an intermediate interest rate. *ICM Realty v. Cabot, Cabot & Forbes Land Trust*, D.C.N.Y., 378 F.Supp. 918, 923.

**Wrath.** Not merely anger, but violent anger.

**Wreccum maris significat illa bona quæ naufragio ad terram pelluntur /rékam mæras signifikæt ila bówna kwiy nofréyj(iy)ow æd téhræm pelántår/. A wreck of**

the sea signifies those goods which are driven to shore from a shipwreck.

**Wreck.** To destroy, disable, or seriously damage. To reduce to a wreck or ruinous state by any kind of violence; to overthrow, shatter, or destroy; to cause to crash or suffer ruin, synonymous with ruin, smash, and demolish. Its antonyms are save, salvage, and preserve. Destruction, disorganization, or serious injury of anything, especially by violence. *Houston Printing Co. v. Hunter*, Tex.Civ.App., 105 S.W.2d 312, 317.

Goods cast ashore by the sea, and not claimed by the owner within a year, or other specified period; which, in such case, become the property of the state. The term applies to property cast upon land by the sea; to jetsam, flotsam, and ligan.

**Common law.** Goods cast ashore from a wrecked vessel, where no person has escaped from the wreck alive; and which are forfeited to the crown, or to persons having the franchise of wreck. But if claimed by the true owner within a year and a day the goods, or their proceeds, must be restored to him, by virtue of stat.

**Maritime law.** A ship becomes a wreck when, in consequence of injuries received, she is rendered absolutely unnavigable, or unable to pursue her voyage, without repairs exceeding the half of her value. A "wrecked vessel," however, in common phraseology, includes a sunken vessel. Act March 3, 1899, § 15 (33 U.S.C.A. § 409).

**Wreckfree.** In old English law, exempt from the forfeiture of shipwrecked goods and vessels to the king.

**Wrench.** Violent twist; a sprain and injury by twisting as in a joint. *Traders & General Ins. Co. v. Lincecum*, Tex.Civ.App., 126 S.W.2d 692, 695. See also **Whiplash injury**.

**Wrinkle.** A stria; furrow; channel; hollow; depression; rut; cup; pocket; dimple.

**Writ.** An order issued from a court requiring the performance of a specified act, or giving authority to have it done. A precept in writing, issuing from a court of justice, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done. See also **Order**; **Prerogative writs**; **Process**.

In old English law, an instrument in the form of a letter; a letter or letters of attorney. This is a very ancient sense of the word.

In the old books, "writ" is used as equivalent to "action," hence writs are sometimes divided into real, personal, and mixed.

For the names and description of various particular writs, see the titles below.

**Alias writ.** A second writ issued in the same cause, where a former writ of the same kind has been issued without effect.

**All Writs Act.** Federal Act which permits federal appellate courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and

agreeable to the usages and principles of law." 28 U.S.C.A. § 1651.

*Close writ.* In English law, a name given to certain letters of the sovereign, sealed with his great seal and directed to particular persons and for particular purposes, which, not being proper for public inspection, were closed up and sealed on the outside; also, a writ directed to the sheriff instead of to the lord. 2 Bl. Comm. 346.

*Concurrent writs.* In England, duplicate originals, or several writs running at the same time for the same purpose, for service on or arrest of a person, when it is not known where he is to be found; or for service on several persons, as when there are several defendants to an action.

*Judicial writs.* In English practice, the *capias* and all other writs subsequent to the original writ not issuing out of chancery, but from the court to which the original was returnable. Being grounded on what had passed in that court in consequence of the sheriff's return, they were called *judicial* writs, in contradistinction to the writs issued out of chancery, which were called *original* writs. 3 Bl. Comm. 282. Such writs as issue under the private seal of the courts, and not under the great seal of England, and are tested or witnessed, not in the king's name, but in the name of the chief judge of the court out of which they issue. The word "judicial" is used in contradistinction to "original;" original writs being such as issue out of chancery under the great seal, and are witnessed in the king's name. 3 Bl. Comm. 282.

*Junior writ.* One which is issued, or comes to the officer's hands, at a later time than a similar writ, at the suit of another party, or on a different claim, against the same defendant.

*Original writ.* In English practice, an original writ was the process formerly in use for the commencement of personal actions. It was a mandatory letter from the king, issuing out of chancery, sealed with the great seal, and directed to the sheriff of the county wherein the injury was committed, or was supposed to have been committed, requiring him to command the wrong-doer or accused party either to do justice to the plaintiff or else to appear in court and answer the accusation against him. This writ is now disused, the writ of summons being the process prescribed by the uniformity of process act for commencing personal actions; and under the judicature act, 1873, all suits, even in the court of chancery, are to be commenced by such writs of summons.

*Patent writ.* In old practice, an open writ; one not closed or sealed up.

*Peremptory writ.* An original writ, called from the words of the writ a "*si te fecerit securum*", and which directed the sheriff to cause the defendant to appear in court without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim. The writ was very occasionally in use, and only where nothing was specifically demanded, but only a satisfaction in general; as in the case of writs of trespass on the case, wherein no debt or other specific thing was sued for, but only damages to be assessed by a jury.

*Prerogative writs.* Those issued by the exercise of the extraordinary power of the crown (the court, in modern practice) on proper cause shown; namely, the writs of *procedendo*, *mandamus*, *prohibition*, *quo warranto*, *habeas corpus*, and *certiorari*.

**Writ de bono et malo** /rit diy bównow èt mælow/. See **Assise**; **De Lien et de mal**.

**Writ de ejectione firmæ** /rit diy èjèkshiyówniy férmiy/. See **Ejectione firmæ**.

**Writ de hæretico comburendo** /rit diy hæredækow kómbæréndow/. See **De hæretico comburendo**.

**Writ de homine replegiando** /rit diy hómaniy ræplyjiyændow/. See **De homine replegiando**.

**Writ de odio et atia** /rit diy ówdiyow èd éysh(iy)ə/. See **De odio et atia**.

**Writ de rationabili parte bonorum** /rit diy ràsh(iy)ən-éybəlay párdiy bownrəm/. See **De rationabili parte bonorum**.

**Write-off.** To remove from books of account a debt which has become worthless. The worthless debt itself. See **Bad debt**.

**Writer of the tallies** /ráydər əv ðə tæliyz/. In England, an officer of the exchequer whose duty it was to write upon the tallies the letters of tellers' bills.

**Write-up.** To increase the valuation of an asset in a financial statement to reflect current value.

**Writing.** The expression of ideas by letters visible to the eye. The giving an outward and objective form to a contract, will, etc., by means of letters or marks placed upon paper, parchment, or other material substance.

In the most general sense of the word, "writing" denotes a document, whether manuscript or printed, as opposed to mere spoken words. Writing is essential to the validity of certain contracts and other transactions. Term includes printing, typewriting or any other intentional reduction to tangible form. U.C.C. § 1-201(46).

"Writings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation. Fed.Evid.R. 1001(1).

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof. Calif.Evid.Code.

See also **Ancient writings**; **Instrument**.

**Writing obligatory.** The technical name by which a *bond* is described in pleading.

**Writ of ad quod damnum** /rid əv æd kwòd dæmnəm/. See **Ad quod damnum**.

**Writ of assistance.** The name of a writ which issues from the court of chancery, in aid of the execution of a judgment at law, to put the complainant into possession of lands adjudged to him, when the sheriff

cannot execute the judgment. A form of process issued by an equity court to transfer the possession of lands, title or possession to which it has previously adjudicated, as a means of enforcing its decree, and performs the same office in a suit in equity as an execution in an action at law. *Burney v. Lee*, 57 Ariz. 41, 110 P.2d 554, 556. Its office is confined to lend aid to original equity jurisdiction, and the writ cannot be employed as a substitute for other common-law or statutory actions. *Patterson v. McKay*, 202 Ark. 241, 150 S.W.2d 196. It is essentially a mandatory injunction, effect of which is to bring about a change in the possession of realty—it dispossesses the occupant and gives possession to one adjudged entitled thereto by the court. *Dusbabek v. Local Building & Loan Ass'n*, 178 Okl. 592, 63 P.2d 756, 759.

A writ of assistance is equivalent to the writ of *habere facias possessionem* at law, and issues as of course without notice, so far as the parties to the record are concerned, when necessary to execute a decree.

While the office of both a writ of assistance and a writ of possession is to put the party entitled thereto into the possession of property, the former issues from equity and the latter from law. In England, an ancient writ issuing out of the exchequer. A writ issuing from the court of exchequer to the sheriff commanding him to be in aid of the king's tenants by knight's service, or the king's collectors, debtors, or accountants, to enforce payment of their own dues, in order to enable them to pay their own dues to the king.

**Writ of association.** In English practice a writ whereby certain persons (usually the clerk of assize and his subordinate officers) are directed to associate themselves with the justices and serjeants; and they are required to admit the said persons into their society in order to take the assizes. 3 Bl.Comm. 59.

**Writ of attachment.** A writ employed to enforce obedience to an order or judgment of the court. It may take the form of commanding the sheriff to attach the disobedient party and to have him before the court to answer his contempt. In its generic sense, any mesne civil process in the nature of a writ on which property may be attached, including trustee process. See also *Attachment*.

**Writ of capias.** See *Capias*.

**Writ of certiorari.** An order by the appellate court which is used when the court has discretion on whether or not to hear an appeal. If the writ is denied, the court refuses to hear the appeal and, in effect, the judgment below stands unchanged. If the writ is granted, then it has the effect of ordering the lower court to certify the record and send it up to the higher court which has used its discretion to hear the appeal. See also *Certiorari*.

**Writ of conspiracy.** A writ which anciently lay against persons who had conspired to injure the plaintiff, under the same circumstances which would now give him an action on the case. It did not lie at common law, in any case, except when the conspiracy was to indict the party either of treason or felony; all the other cases of conspiracy in the books were but actions on the case.

**Writ of covenant.** A writ which lies where a party claims damages for breach of covenant; *i.e.*, of a promise under seal.

**Writ of debt.** A writ which lies where the party claims the recovery of a debt; *i.e.*, a liquidated or certain sum of money alleged to be due to him.

**Writ of deceit.** The name of a writ which lies where one man has done anything in the name of another, by which the latter is damaged and deceived.

**Writ of delivery.** A writ of execution employed to enforce a judgment for the delivery of chattels. It commands the sheriff to cause the chattels mentioned in the writ to be returned to the person who has obtained the judgment; and, if the chattels cannot be found, to distrain the person against whom the judgment was given until he returns them.

**Writ of detinue** /rɪd əv dɛtən(y)uw/. A writ which lies where a party claims the specific recovery of goods and chattels, or deeds and writings, detained from him. This is seldom used; trover is the more frequent remedy, in cases where it may be brought.

**Writ of dower.** This is either a writ of dower *unde nihil habet*, which lies for a widow, commanding the tenant to assign her dower, no part of which has yet been set off to her; or a writ of *right of dower*, whereby she seeks to recover the remainder of the dower to which she is entitled, part having been already received from the tenant. This latter writ is seldom used.

**Writ of ejectment.** The writ in an action of ejectment, for the recovery of lands. See *Ejectment*.

**Writ of entry.** A real action to recover the possession of land where the tenant (or owner) has been disseised or otherwise wrongfully dispossessed. If the disseisor has aliened the land, or if it has descended to his heir, the writ of entry is said to be in the *per*, because it alleges that the defendant (the alienee or heir) obtained possession *through* the original disseisor. If two alienations (or descents) have taken place, the writ is in the *per* and *cui*, because it alleges that the defendant (the second alienee) obtained possession *through* the first alienee, *to whom* the original disseisor had aliened it. If more than two alienations (or descents) have taken place, the writ is in the *post*, because it simply alleges that the defendant acquired possession *after* the original disseisin. 3 Bl.Comm. 180. The writ of entry was abolished, with other real actions, in England, by St. 3 & 4 Wm. IV, c. 27, § 36, but is still in use in a few of the states. Under rules practice, such writ has been abolished in favor of a civil action which grants similar relief, *e.g.* *Mass.R. Civ.P.* 81(b). See also *Entry*, *writ of*.

**Writ of error.** A writ issued from a court of appellate jurisdiction, directed to the judge or judges of a court of record, requiring them to remit to the appellate court the record of an action before them, in which a final judgment has been entered, in order that examination may be made of certain errors alleged to have been committed, and that the judgment may be reversed, corrected, or affirmed, as the case may require. It is brought for supposed error in law apparent on record and takes case to higher tribunal, which

affirms or reverses. It is commencement of new suit to set aside judgment, and is not continuation of suit to which it relates. *Winchester v. Winn*, 225 Mo. App. 288, 29 S.W.2d 188, 190. And unless abolished by statute, is writ of right applicable to all cases in which jurisdiction is exercised according to course of common law, but is inapplicable to cases not known to or in derogation of common law, unless otherwise provided by statute. See also **Writ of error coram nobis**; **Writ of error coram vobis**.

**Writ of error coram nobis** /rɪd əv ɛɦrɚr kɔrəm nɔwbəs/. A common-law writ, the purpose of which is to correct a judgment in the same court in which it was rendered, on the ground of error of fact, for which the statute provides no other remedy, which fact did not appear of record, or was unknown to the court when judgment was pronounced, and which, if known, would have prevented the judgment, and which was unknown, and could not have been known to the party by the exercise of reasonable diligence in time to have been otherwise presented to the court, unless he was prevented from so presenting them by duress, fear, or other sufficient cause.

An ordinary "writ of error" is brought for a supposed error in law apparent on the record, and takes the case to a higher tribunal where the question is to be decided and the judgment, sentence or decree is to be affirmed or reversed, while the "writ of error coram nobis" is brought for an alleged error in fact not appearing on the record and lies to the same court in order that it may correct the error, which it is presumed would not have been committed had the fact been brought to the court's notice in the first instance.

At common law in England, it issued from the Court of King's Bench to a judgment of that court. Its principal aim is to afford the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered. It is also said that at common law it lay to correct purely ministerial errors of the officers of the court.

See also **Coram nobis**.

**Writ of error coram vobis** /rɪd əv ɛɦrɚr kɔrəm vɔwbəs/. This writ, at the English common law, is distinguished from "writ of error coram nobis," in that the former issued from the Court of King's Bench to a judgment of the Court of Common Pleas, whereas the latter issued from the Court of King's Bench to a judgment of that court. See also **Coram vobis**.

**Writ of execution.** A writ to put in force the judgment or decree of a court. See **Execution**.

**Writ of exigi facias** /rɪd əv ɛgzəjaj fɛyʃh(iy)əs/. See **Exigent**.

**Writ of formedon** /rɪd əv fɔrmədən/. A writ which lies for the recovery of an estate by a person claiming as issue in tail, or by the remainder-man or reversioner after the termination of the entail. See **Formedon**.

**Writ of habeas corpus.** See **Habeas corpus**.

**Writ of inquiry.** In common-law practice, a writ which issued after the plaintiff in an action had obtained a judgment by default, on an unliquidated claim, direct-

ing the sheriff, with the aid of a jury, to inquire into the amount of the plaintiff's demand and assess his damages.

**Writ of mainprize, or mainprise** /rɪd əv méynprəyz/. In English law, a writ directed to the sheriff (either generally, when any man is imprisoned for a bailable offense and bail has been refused, or specially, when the offense or cause of commitment is not properly bailable below), commanding him to take sureties for the prisoner's appearance, commonly called "mainperners," and to set him at large. 3 Bl.Comm. 128. See also **Mainprise**.

**Writ of mandamus.** See **Mandamus**.

**Writ of mesne** /rɪd əv míyn/. In old English law, a writ which was so called by reason of the words used in the writ, namely, "*Unde idem A. qui medius est inter C. et præfatum B.*"; that is, A., who is mesne between C., the lord paramount, and B., the tenant paravail. See also **Process** (*Mesne process*).

**Writ of possession.** Writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. For a distinction between this writ and the "Writ of Assistance," see that title. See also **Ejectment**.

**Writ of præcipe** /rɪd əv prɛsɛpij/. This writ is also called a "writ of covenant," and is sued out by the party to whom lands are to be conveyed by fine, the foundation of which is a supposed agreement or covenant that the one shall convey the land to the other. 2 Bl.Comm. 349.

**Writ of prevention.** This name is given to certain writs which may be issued in anticipation of suits which may arise. See **Quia timet**.

**Writ of probable cause.** An auxiliary process designed to supersede enforcement of judgment of trial court brought up for review. *Martin v. Rosen*, 2 Cal. App.2d 450, 38 P.2d 855, 857.

**Writ of process.** See **Action**; **Process**.

**Writ of proclamation.** In English law, by the statute 31 Eliz., c. 3, § 1, when an *exigent* was sued out, a writ of proclamation issued at the same time, commanding the sheriff of the county where the defendant lived to make three proclamations thereof, in places the most notorious, and most likely to come to his knowledge, a month before the outlawry was to take place. 3 Bl.Comm. 284.

When it was not directed to the same sheriff as the *exigent* was, it was called a foreign writ of proclamation.

**Writ of prohibition.** See **Prohibition**.

**Writ of protection.** In England, the king may, by his writ of protection, privilege any person in his service from arrest in civil proceedings during a year and a day; but this prerogative is seldom, if ever, exercised.

**Writ of quare impedit.** See **Quare impedit**.

**Writ of quo warranto.** See **Quo warranto**.

**Writ of reCAPtion.** If, pending an action of replevin for a distress, the defendant distrains again for the same rent or service, the owner of the goods is not driven to another action of replevin, but is allowed a writ of reCAPtion, by which he recovers the goods and damages for the defendant's contempt of the process of the law in making a second distress while the matter is *sub judice*.

**Writ of replevin.** See **Replevin**.

**Writ of restitution.** A writ which is issued on the reversal of a judgment commanding the sheriff to restore to the defendant below the thing levied upon, if it has not been sold, and, if it has been sold, the proceeds. A writ which lies, after the reversal of a judgment, to restore a party to all that he has lost by occasion of the judgment.

**Writ of review.** A general designation of any form of process issuing from an appellate court and intended to bring up for review the record or decision of the court below. See **Writ of certiorari**.

**Writ of right.** A writ which lay for one who had the right of property, against another who had the right of possession and the actual occupation. The writ properly lay only to recover corporeal hereditaments for an estate in fee-simple; but there were other writs, said to be "in the nature of a writ of right," available for the recovery of incorporeal hereditaments or of lands for a less estate than a fee-simple. 3 Bl.Comm. 391.

In another sense, a writ which is grantable as a matter of right, as opposed to a "prerogative writ," which is issued only as a matter of grace or discretion.

In England, the writ of right was abolished in 1833.

**Writ of summons.** The writ by which, under the English judicature acts, all actions are commenced.

**Writ of supersedeas** /rɪd əv s(y)üwpərsɪdyəs/. See **Supersedeas**.

**Writ of supervisory control.** A writ which is issued only to correct erroneous rulings made by the lower court within its jurisdiction, where there is no appeal, or the remedy by appeal cannot afford adequate relief, and gross injustice is threatened as the result of such rulings. It is in nature of summary appeal to control course of litigation in trial court when necessary to prevent miscarriage of justice, and may be employed to prevent extended and needless litigation. State ex rel. Regis v. District Court of Second Judicial Dist. in and for Silver Bow County, 102 Mont. 74, 55 P.2d 1295.

Function of "writ of supervisory control" is to enable Supreme Court to control course of litigation in inferior courts where such courts are proceeding within their jurisdiction, but by mistake of law, or willful disregard of it, are doing gross injustice, and there is no appeal or remedy by appeal is inadequate. State ex rel. State Bank of Townsend v. District Court of First Judicial Dist. in and for Lewis and Clark County, 94 Mont. 551, 25 P.2d 396.

**Writ of tolt.** In old English law, the name of a writ to remove proceedings on a writ of right patent from the court-baron into the county court.

**Writ of trial.** In English law, a writ directing an action brought in a superior court to be tried in an inferior court or before the undersheriff, under St. 3 & 4 Wm. IV, c. 42. It was superseded by the county courts act of 1867, c. 142, § 6, by which a defendant, in certain cases, became enabled to obtain an order that the action be tried in a county court.

**Writ of waste.** The name of a writ to be issued against a tenant who has committed waste of the premises. There were anciently several forms of this writ, adapted to the particular circumstances.

**Writ pro retorno habendo** /rɪt prɔw rətɔrnɔw hɒbɛndɔw/. A writ commanding the return of the goods to the defendant, upon a judgment in his favor in replevin, upon the plaintiff's default.

**Written contract.** See **Contract**.

**Written instrument.** Something reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract. See **Instrument**.

**Written law.** Statutory law; *i.e.* law deriving its force from express legislative enactment. See also **Common law**; **Statute**.

One of the two leading divisions of the Roman law, comprising the *leges*, *plebiscita*, *senatus-consulta*, *principum placita*, *magistratum edicta*, and *responsa prudentum*.

**Wrong.** A violation of the legal rights of another; an invasion of right to the damage of the parties who suffer it, especially a tort. State ex rel. and to Use of Donelon v. Deuser, 345 Mo. 628, 134 S.W.2d 132, 133. It usually signifies injury to person, property or relative noncontractual rights of another than wrongdoer, with or without force, but, in more extended sense, includes violation of contract. Daurizio v. Merchants' Despatch Transp. Co., 152 Misc. 716, 274 N.Y.S. 174. See **Tort**.

The idea of *rights* naturally suggests the correlative one of *wrongs*; for every right is capable of being violated. A right to receive payment for goods sold (for example) implies a wrong on the part of him who owes, but withholds the price; a right to live in personal security, a wrong on the part of him who commits personal violence. And therefore, while, in a general point of view, the law is intended for the establishment and maintenance of *rights*, we find it, on closer examination, to be dealing both with *rights* and *wrongs*. It first fixes the character and definition of *rights*, and then, with a view to their effectual security, proceeds to define *wrongs*, and to devise the means by which the latter shall be prevented or redressed.

**Private wrong.** The violation of public or private rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation. Huntington v. Attrill, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123. See **Tort**.

**Public wrongs.** Violations of public rights and duties which affect the whole community, considered as a community; crimes and misdemeanors. 3 Bl.Comm. 2; 4 Bl.Comm. 1.

**Real wrong.** In old English law, an injury to the freehold.

**Wrongdoer.** One who commits an injury; a *tort-feasor*. The term ordinarily imports an invasion of right to the damage of the party who suffers such invasion.

**Wrongful.** Injurious, heedless, unjust, reckless, unfair. Infringement of some right. *Mathes v. Williams*, Tex. Civ.App., 134 S.W.2d 853, 858. See *Tort*.

**Wrongful abuse of process.** See *Abuse of process*; *Malicious abuse of legal process*.

**Wrongful act.** Any act which in the ordinary course will infringe upon the rights of another to his damage, unless it is done in the exercise of an equal or superior right. Term is occasionally equated to term "negligent," but generally has been considered more comprehensive term, including criminal, wilful, wanton, reckless and all other acts which in ordinary course will infringe upon rights of another to his damage. *County of DuPage v. Kussel*, 12 Ill.App.3d 272, 298 N.E.2d 323, 326.

**Wrongful conduct.** Conduct which contravenes some duty which law attaches to relation between parties affected. *Duncan v. Lumbermen's Mut. Casualty Co.*, 91 N.H. 349, 23 A.2d 325, 326.

**Wrongful death action.** Type of lawsuit brought on behalf of a deceased person's beneficiaries that alleges that death was attributable to the willful or negligent act of another. Such action is original and distinct claim for damages sustained by statutory beneficiaries and is not derivative of or continuation of claim existing in decedent. *Barragan v. Superior Court of Pima County*, 12 Ariz.App. 402, 470 P.2d 722, 724. See *Killberg doctrine*.

**Wrongful death statutes.** Such statutes, which exist in all states, provide a cause of action in favor of the decedent's personal representative for the benefit of certain beneficiaries (e.g. spouse, parent, children) against person who negligently caused death of spouse, child, parent, etc. Statutory provision which operates upon the common-law rule that the death of a human being may not be complained of as an injury in a civil court. The cause of action for wrongful death permitted under such statutes is for the wrong to the beneficiaries. Most such statutes are compensatory though some states retain statutes which measure damages in terms of culpability and some statutes reflect a combination of both. See also *Death on High Seas Act*; *Lord Campbell Act*; *Survival statutes*; *Wrongful death action*.

**Wrongful levy.** Such as will entitle the owner of property levied on to damages for wrongful execution,

exists where there has been done to a third person's personalty those acts that would constitute a valid and complete levy if the debtor's property had been seized. *Farris v. Castor*, 186 Okl. 668, 99 P.2d 900, 902, 903.

**Wrongful life action.** In a wrongful birth or life action the parents of an unplanned child seek to shift to the defendant various costs, including medical expenses of pregnancy and delivery, pain and suffering, and the more formidable costs of rearing and educating a child. As the history of this litigation has progressed, the damages claimed have been more extensive. The litigation arises in several contexts. Malpracticed sterilization operations, including both tubal ligations and vasectomies constitute the major number of suits. Included also are failures to diagnose pregnancy in time for abortion and failures to perform successful abortions. The suits are brought mainly on the basis of negligence. *Lane v. Cohen*, 201 So.2d 804. However, breach of warranty, breach of contract, and misrepresentation have also been alleged as bases of liability.

A doctor whose incorrect medical advice led a couple to have a second child who died of the same hereditary disease that killed their first baby can be sued for malpractice. *Park v. Chessin*, 60 A.D.2d 80, 400 N.Y.S.2d 110. Also, a doctor whose negligently performed vasectomy resulted in an unwanted child may be sued for malpractice. *Sherlock v. Stillwater Clinic*, 260 N.W.2d 169.

**Wrongfully.** In a wrong manner; unjustly; in a manner contrary to the moral law, or to justice. See also *Wrongful*.

**Wrongfully intending.** In the language of pleading, this phrase is appropriate to be used in alleging the malicious motive of the defendant in committing the injury which forms the cause of action.

**Wurth /wúrθ/. In Saxon law, worthy; competent; capable. *Atheswurthe*, worthy of oath; admissible or competent to be sworn.**

**Wye /wáy/. As applied to a street railway, a "wye" means a track with two branches, one joining the main track from one direction and the other joining the main track from another direction.**

**Wyte /wáyt/. In old English law, acquittance or immunity from amerement.**